STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,

Petitioner/Appellant,

v

Lisa Jeanne Peterson, P 71365,

Respondent/Appellee,

Case No. 20-51-GA

Decided: June 24, 2021

Appearances

Jordan D. Paterra, for Grievance Administrator, Petitioner/Appellant
Donald D. Campbell and Trent B. Collier, for Respondent/Appellee

BOARD OPINION

This matter arises out of allegations that respondent misused her Interest on Lawyers Trust Account (IOLTA) by commingling earned fees with client fees in the IOLTA. This case is before the Board after the hearing panel dismissed the formal complaint for failure to state a claim on which relief can be granted pursuant to MCR 2.116(C)(8).

On July 21, 2020, the Grievance Administrator filed a one-count formal complaint, alleging respondent held funds other than client or third person funds relating to a representation in her IOLTA, in violation of MRPC 1.15(a)(3); failed to hold property of clients separate from her own property, in violation of MRPC 1.15(d); and deposited funds into her IOLTA in an amount in excess of the amount reasonably necessary to pay financial institution service charges or fees, in violation of MRPC 1.15(f). It is also alleged that respondent violated the Rules of Professional Conduct, in violation of MRPC 8.4(a); engaged in conduct involving dishonesty, fraud, deceit, and/or misrepresentation, in violation of MRPC 8.4(b); engaged in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2); and engaged in conduct that is contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3).[1]

[1] The Formal Complaint also alleged that respondent knowingly failed to respond to a lawful demand for information from a disciplinary authority, in violation of MRPC 8.1(a)(2). The Grievance Administrator is not appealing the dismissal of that allegation.

The matter was assigned to Tri-County Hearing Panel #1. On August 13, 2020, respondent filed a motion for summary disposition pursuant to MCR 2.116(C)(8), asserting that MRPC 1.15(g) does not require respondent to withdraw earned fees from her IOLTA. The Grievance Administrator filed a response on September 10, 2020, arguing that summary disposition is not appropriate because the allegations, if proven, would establish that respondent impermissibly commingled earned funds with client funds. Respondent filed a reply on September 16, 2020, again asserting that a lawyer is not required to withdraw fees from an IOLTA once those fees are earned.

On December 4, 2020, the hearing panel issued an order granting respondent's motion for summary disposition and dismissing the formal complaint, based solely on the fact that MRPC 1.15(g) "says nothing about when earned fees may or must be withdrawn and to read the rule any other way requires the reader to step outside the plain language of what is stated." (Internal quotations omitted.) The hearing panel found no requirement that respondent "was required to transfer earned fees daily, weekly, monthly, semi-annually, or annually." (Order 12/4/20, p 2.)

On December 22, 2020, the Grievance Administrator filed a timely petition for review, seeking review of the dismissal of the formal complaint. On January 27, 2021, the Grievance Administrator filed his Brief in Support of Petition for Review. That same day, the complainant also filed a Brief in Support of Petitioner/Appellant's Petition for Review. Respondent filed a response to the petition for review on February 9, 2021.

The only issue to be decided by this Board is whether the allegations in the complaint state a claim for a violation of the rules of professional conduct charged in the formal complaint. It is crucial to remember that respondent's motion was filed pursuant to MCR 2.116(C)(8), which only tests the legal sufficiency of the complaint. All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant. A motion under (C)(8) may be granted only where the claims alleged are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Maiden v Rozwood*, 461 Mich 109, 119 (1999) (quoting *Wade v Dep't of Corrections*, 439 Mich 158, 163 (1992)). When deciding a motion brought under MCR 2.116(C)(8), only the pleadings are considered. *Id.*, at 119-120.

The Grievance Administrator has alleged violations of MRPC 1.15, which provides for the protection of the property and funds of clients and third persons that are in possession of the lawyer,

and prohibits commingling. "Commingling" simply means "the failure to hold separate lawyer and client or third party funds, as required by MRPC 1.15(d)." *Grievance Administrator v Robin H. Kyle*, 13-14-GA (ADB 2016). The first sentence of MRPC 1.15(d) is drawn from ABA Model Rule 1.15(a). It states the core principle of MRPC 1.15, which is often referred to as the "anti-commingling rule."

Among other things, the Formal Complaint in this matter alleges:

> 6. At all times relevant to this complaint, Respondent held an IOLTA with the Bank of Ann Arbor (Account# 1659) (IOLTA).
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> 7. At all times relevant to this complaint, Respondent held a business account with the Bank of Ann Arbor (Account# 1329) (Business Account).
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> 8. From at least April 30, 2013 to May 29, 2014, Respondent accumulated and retained $27,000 in earned fees in her IOLTA.
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> 9. From at least April 30, 2013 to May 29, 2014, Respondent had unearned fees in her IOLTA.
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> 10. On or about May 29, 2014, Respondent transferred $27,000 of these earned fees to her Business Account.
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> 11. On or about June 24, 2014, Respondent caused a cashier's check drawn on her business account to be made payable to the U.S. Department of Education for a student loan debt in the amount of $24,891.67.
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> 12. At the time of the payment, Respondent had been delinquent on her student loan payments for approximately one year.
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> * * *
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> 24. . . . Respondent deposited funds into her IOLTA in an amount in excess of the amount reasonably necessary to pay financial institution service charges or fees . . . ." [Formal Complaint, pp 2, 4.]

Looking at these allegations only, the Formal Complaint clearly states a claim for commingling under MRPC 1.15(d). For purposes of the motion brought pursuant to MCR 2.116(C)(8), this Board has to accept as true the fact that respondent (1) had earned fees in her IOLTA from at least April 30, 2013 to May 29, 2014, and (2) had unearned fees in her IOLTA for

the exact same time period. This is all that is necessary to properly allege a violation of MRPC 1.15(d). Although at the hearing the Grievance Administrator will have to prove these facts, for this review, we have to assume that those statements are true.

Respondent's argument that the complaint fails to state a claim is based on her unique reading of MRPC 1.15(g), which provides: "Legal fees and expenses that have been paid in advance shall be deposited in a client trust account and may be withdrawn only as fees are earned or expenses incurred." This provision was added to our Rule 1.15 in 2005 after a similar provision was added to the Model Rule in 2002 "because of reports that 'the single largest class of claims made to client protection funds is for the taking of unearned fees.'" *Annotated Model Rules of Professional Conduct* (9th ed, 2019), p 274. The paragraph was added to clarify that unearned fees are client property, and are therefore required to be held in a trust account in accordance with MRPC 1.15(d).

Before and after the adoption of MRPC 1.15(g), this Board has consistently held that retaining earned fees (which belong to the lawyer) in a trust account constitutes commingling in violation of MRPC 1.15(d) or its predecessor, 1.15(a). In *Grievance Administrator v Brian D. Albritton*, 00-200-GA (ADB 2002), the respondent's usual practice was to deposit settlement funds into his trust account, and then to leave his portion of the settlement funds in the trust account. The hearing panel held that leaving the settlement funds in his trust account violated the anti-commingling rule – then numbered MRPC 1.15(a) – and reprimanded the respondent. *Id.* at 4. The Board agreed, writing in the first sentence of its opinion: "The respondent, Brian D. Albritton, commingled client funds with his own by allowing the funds to which he was entitled as fees and costs in a contingent fee case to remain in his trust account while funds belonging to at least one client remained in that account." Disagreeing with the panel that respondent's failure to answer the Formal Complaint was a "technical" matter, and noting various prior disciplinary offenses, this Board increased the discipline to a 90-day suspension. *Id.* at 8. The Board stated, "The seriousness of the offense of commingling of client and attorney funds, and the likelihood of a suspension for that offense, has consistently been recognized by the Board," emphasizing that "there are no exceptions to Rule 1.15 which allow an attorney, as in this case, to commingle his own funds in a trust account, either out of . . . convenience, expedience, or ignorance of the rule." *Id.* at 6-7.

In *Kyle, supra,* decided after MRPC 1.15 was amended and paragraph (g) was added, this Board considered a case in which a lawyer maintained earned fees in his trust account along with some unearned fees. *Kyle, supra,* p 10 n 19. Although paragraph (d), the anti-commingling rule, was not charged in that case, our analysis makes it clear that the conduct constituted commingling. Indeed, we upheld the panel's consideration of the ABA Standard for Imposing Lawyer Sanctions pertaining to commingling (Standard 4.12) in determining the sanction in light of the potential harm to the client funds in the account.

Also, in *Grievance Administrator v Scott E. Combs*, 15-154-GA (ADB 2021), we recently affirmed a panel's finding of a violation of MRPC 1.15(d) where respondent allowed earned fees to remain in his IOLTA, because "by using his IOLTA in this way, he exposed the client funds to his own personal creditors, including the IRS. The rule prohibiting the commingling of funds is designed to insure against any invasion of client funds."

These are not novel interpretations of the anti-commingling rule. Lawyers have been consistently advised that once earned, fees must be removed from the IOLTA to avoid commingling client funds with the lawyer's funds. See, e.g., *Article: Common Trust Accounting Pitfalls and Avoiding Trust Account Overdraft Notifications*, 94 MI Bar J 34 (March 2015) ("Maintaining earned fees in a lawyer's trust account or depositing the lawyer's own funds into his or her trust account constitutes commingling"). See also: *State Bar of Michigan Ethics Opinion R-21* (June 8, 2012) (A lawyer is not permitted to commingle the lawyer's funds with client or third person funds. When funds are received from a client or third person in a "lump sum" that represents both earned and unearned funds, the entire sum must be placed in trust and then any earned funds must be "promptly" withdrawn. "Once funds on deposit in the trust account are earned, they become the lawyer's property and must be withdrawn, whereupon they may be deposited into an operating or other account containing the lawyer's property."); *State Bar of Michigan Ethics Opinion RI-344* (April 25, 2008) (When a lawyer accepts credit card payments for advance (unearned) legal fees and expenses, all credit card payments must be deposited into the lawyer's trust account and the lawyer must transfer legal fees and expenses to the business account as they are earned).

One treatise interpreting the Model Rule upon which MRPC 1.15(d) is based explains:

> If the lawyer earned fees, the lawyer would send a statement to the client and would need to withdraw the earned fees within a reasonable time (assuming that the client did not object to the

> lawyer's earned fees). For example, a lawyer could not continue to leave earned legal fees in the client trust account for months at a time because this practice constitutes commingling of funds. [Rotunda & Dzienkowski, *Legal Ethics - The Lawyer's Deskbook on Professional Responsibility* (ABA/Thomson Reuters, 2018-2019), p 719.]

Jurisdictions with anti-commingling rules identical or substantially similar to MRPC 1.15(d) have also held it is misconduct to hold earned fees in an IOLTA. For example, in *Matter of Anonymous*, 698 NE2d 808 (Ind 1998), the court found that an attorney commingled personal funds with client funds in his client trust account in violation of Indiana Professional Rule of Conduct 1.15(a), by allowing significant sums of earned fees to accumulate and remain in the account for extended periods of time.[2] In interpreting IPRC 1.15(a), the court held:

> The obligation under Ind. Professional Rule of Conduct 1.15(a) is one necessitating the care required of a professional fiduciary. See Comment to Ind. Professional Conduct Rule 1.15(a). Subsection (a) requires that lawyers hold the property of clients separate from their own, aside from a limited exception to the rule whereby lawyers may leave or deposit in client trust accounts nominal amounts of their own funds, including earned funds, to maintain a nominal balance or to cover nominal account maintenance charges. See footnote 1, *supra*; *Matter of Lehman*, 690 N.E.2d 696, 704 (Ind. 1997). By allowing significant sums of earned fees to accumulate and remain in his client trust account for extended periods, and by depositing significant amounts of rental payments into that same account containing client funds, the respondent violated Prof. Cond. R. 1.15(a).
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> The commingling of a lawyer's funds with those held in trust for clients subjects client funds to many unacceptable risks, including attachment by creditors and misappropriation or conversion of the funds (whether intentional or not) by the lawyer. With regard to determining whether a violation of the "anti-commingling" rule has occurred, it is irrelevant that the misconduct was not part of a scheme to conceal income, was not the product of selfish or dishonest motives, or that client funds were never in fact at risk. Such factors,

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[2] IRPC 1.15(a) provides: "A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation."

> however, do impact our assessment of proper sanction for violations of the rule. That the respondent had no selfish motive, did not seek to conceal funds, and never placed his client funds in any demonstrable risk is fortunate and relevant to assessment of sanction and therefore persuades us that a private reprimand is appropriate in this instance. [*Id*. at 809.]

See also three other cases from the 1990's, prior to the adoption of the model rule analogous to MRPC 1.15(g), *People v Shidler*, 901 P2d 477, 478 (Colo 1995) ("Permitting earned fees (which are the property of the lawyer), to accumulate in an account containing unearned or advance fees (which remain client property until earned), as well as other client funds, constitutes commingling."); *Matter of Archuleta*, 122 NM 52, 54; 920 P2d 517, 519 (1996) (" if the attorney leaves funds earned in his or her trust account, he or she is commingling the attorney's money with clients' money"); *Matter of Radford*, 698 NE2d 310 (Ind 1998) (Attorney's failure to promptly withdraw his earned fees from a trust account constituted commingling of his funds with client funds in violation of professional rules, where amount left in account was greater than normal and far more than needed to ensure protection and integrity of the account). These cases demonstrate that the basic anti-commingling rule, expressed in the first sentence of our MRPC 1.15(d) and the Model Rule's 1.15(a) have long been held to prohibit the retention of earned fees in a trust account with client or third party funds.[3]

Other cases standing for the proposition include: *In re Caskey*, 866 So2d 226 (La 2004) (Respondent violated La. RPC 1.15(a) when he "retained attorney's fees in his client trust account for a period of several months in 1997 and 1998, thereby commingling his funds with those of his clients.");[4] *Disciplinary Counsel v Corner*, 47 NE3d 847 (Ohio 2016) (Attorney violated rules of professional conduct by leaving earned fees in her IOLTA and withdrawing them a bit at a time); *Disciplinary Counsel v Thompson*, 12 NE3d 1203 (Ohio 2014) (Attorney committed misconduct by failing to timely withdraw his own earned fees from his client trust account, thus commingling

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[3] Respondent confuses the issue by citing the current rules in those states which contain the ABA Model's language regarding deposit of advanced fees which would have been added after the decisions in *Shidler* and *Archuletta*, which were cited by the Administrator. But, as we discuss *infra* respondent's arguments that Michigan's MRPC 1.15(g) drives the decision here are unpersuasive.

[4] Again, although the minor difference between Michigan Rule 1.15(g) and the Model language regarding deposit of *un*earned fees is not dispositive, *Caskey* was decided before the Model language was adopted and the conduct at issue occurred many years before the language was adopted. That case, like the others, is premised on the language providing that: "A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property." LA ST BAR ART 16 RPC Rule 1.15(a).

personal and client funds); *In re Hoffman*, 758 SE2d 708 (SC 2014) (Attorney violated Rule 1.15 by using his trust account like a savings account, and leaving earned fees in the trust account for at least sixty days).

Yet, respondent asserts that she is allowed to leave earned funds in her IOLTA for as long as she wants, first because of a purported difference between the Michigan and Model rules, and also because of an odd, almost tautological "argument" that fees aren't earned until they are removed from the trust account.

As to the first contention, compare the language of Michigan's Rule 1.15(g) and ABA Model Rule 1.15(c). Again, Michigan's rule states: "Legal fees and expenses that have been paid in advance shall be deposited in a client trust account and may be withdrawn only as fees are earned or expenses incurred." MRPC 1.15(g). The Model Rule states: "A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred." ABA Model Rule 1.15(c).

Respondent contends that there is a meaningful difference between these two rules because MRPC 1.15(g) says that earned fees "may" be withdrawn, which, she claims, makes such withdrawal "optional." No authority is cited in support of this construction, and the argument is specious for several reasons.

First, the verbiage in the Michigan rule simply does not lead to a different application of the anti-commingling rule. Whether the language of MRPC 1.15(g) said advance fees "may be withdrawn from a trust account only when earned," or "are to be withdrawn only when earned," or "shall be withdrawn only when earned," it is clear that unearned fees must remain in a trust account until they are earned, at which point MRPC 1.15*(d)* requires that they be removed. This is how we have consistently interpreted MRPC 1.15, as have courts throughout the country. Indeed, it is telling that the authors of the *Annotated Model Rules, supra,* actually equate Michigan's language with the Model in describing the latter: "The rule [Model RPC 1.15] is now explicit that a lawyer must deposit in a client trust account any legal fees and expenses that have been paid in advance, and *may withdraw them only as earned or incurred*." *Annotated Model Rules, supra,* p 274 (emphasis added).

Michigan's language also appears in Maryland's rule. Respondent acknowledges that Maryland's rule is identical to Michigan's in the respects relevant here, but concludes that the cases

"aren't helpful" because one case relied upon by the Administrator – *Attorney Grievance Comm'n of Maryland v McLaughlin*, 456 Md 172, 195; 171 A3d 1205, 1218 (2017) – "never mentions this 'may withdraw' language and declines to consider Rule 1.15 at all." Respondent's Reply Brief, p 14. This distorts the holding of the cited case and the state of the law in Maryland. The Court in *McLaughlin* found no violation of its Rule 1.15(a), the first sentence of which is identical to our Rule 1.15(d), "[b]ecause we do not know what legal services she provided, or when, [thus] it is impossible to know whether or when she should have removed these funds." In other words, the allegation was not established as a factual matter after full hearing. Here, respondent is trying to persuade us that this case should not even be heard because our rules allow attorneys to keep earned fees in their trust account indefinitely.

The point is that, although Maryland's Rule 1.15 contains language identical to Michigan's Rule 1.15(g),[5] this language is no impediment to a finding of commingling under the the equivalent of our Rule 1.15(d) when an attorney leaves earned fees in a trust account, as the *McLaughlin* court made absolutely clear:

> Rule 1.15(a) requires a lawyer "to keep the property of clients separate from the lawyer's own property." *Attorney Grievance Comm'n v. Hamilton*, 444 Md. 163, 188, 118 A.3d 958 (2015). This Court has consistently held that "an attorney's failure to withdraw earned fees from his or her trust account in a timely manner results in an impermissible commingling of funds violative of MLRPC 1.15(a) …." *Attorney Grievance Comm'n v. Weiers*, 440 Md. 292, 305, 102 A.3d 332 (2014). [*McLaughlin*, 456 Md at 195.]

This is not an isolated holding in Maryland. See, e.g., *Attorney Grievance Comm'n of Maryland v Johnson*, 472 Md 491, 537-38; 247 A3d 767, 795 (2021) (quoting *McLaughlin*'s reference to the consistency with which the Court has held that failure to withdraw earned fees is commingling). In sum, Maryland has a rule like ours in relevant respects and its cases hold that earned fees must be withdrawn from the trust account so as to avoid commingling.

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[5] Maryland's Rule 1.15(c) provides, in pertinent part: "an attorney shall deposit legal fees and expenses that have been paid in advance into a client trust account and may withdraw those funds for the attorney's own benefit only as fees are earned or expenses incurred.

Second, when called on to construe a court rule, we apply the legal principles that govern the construction and application of statutes. *Grievance Administrator v Underwood*, 462 Mich 188, 193; 612 NW2d 116 (2000). "[S]tatutory provisions are not to be read in isolation; rather, context matters, and thus statutory provisions are to be read as a whole." *Robinson v City of Lansing*, 486 Mich 1, 15; 782 NW2d 171 (2010). The same applies here when reading and interpreting MRPC 1.15. Subsection (g) cannot be read in isolation, but must be read in context of the entire rule. Nothing in MRPC 1.15(g) allows a lawyer to leave earned fees in the IOLTA, in contravention of MRPC 1.15(d) – which *unequivocally* requires the separation of a lawyer's property from client funds.

The core principle of MRPC 1.15 is that a lawyer must hold his or her own funds separate from that of clients or third persons. Subsection (g) is a specific example of a kind of client property. It would be absurd to construe the rule such that paragraph (g) would eviscerate paragraph (d) by allowing earned fees belonging to the lawyer to remain in a trust account indefinitely. Neither the plain language of the rule nor canons of construction support reading MRPC 1.15(g) as modifying MRPC 1.15(d)'s broad and unequivocal prohibition against commingling. Nothing in MRPC 1.15(g) suggests that it deals comprehensively and exclusively with earned and unearned fees, thereby displacing the general anti-commingling rule. It merely says that unearned fees must be placed in trust and may only be removed when earned.

Finally, respondent's construction is not only contrary to the language and purpose of MRPC 1.15, it also contravenes this Board's consistent interpretation of the Michigan Rules of Professional Conduct as applied to IOLTAs, as we have discussed above.

Respondent also erroneously asserts that all fees in an IOLTA are client funds, and do not become the lawyer's property until they are removed by the attorney, even if they have been clearly earned. This argument is baseless and warrants no further discussion. Once a fee is earned by a lawyer and the amount due the lawyer is fixed, e.g., billed to the client and not disputed by the client, it becomes the lawyer's property. As such, the lawyer has a duty to separate the earned fee from the unearned fees and other client funds in the IOLTA.

The violation of MRPC 1.15(d) requiring a lawyer to hold property of clients or third persons separate from the lawyer's own property is the critical rule to be considered in this case. The Grievance Administrator has alleged that the misconduct falls under MRPC 1.15(d), which states that "[a] lawyer shall hold property of clients or third persons in connection with a representation separate from the lawyer's own property."

In dismissing the formal complaint, the hearing panel found that it was not misconduct for an attorney to leave earned fees in an IOLTA, reasoning that "by the GA's argument, it could be asserted that attorneys are required to withdraw their fees from their IOLTA accounts daily - or at least every day on which an attorney works billable hours." Although we are not faced with such a hypertechnical approach here, we do understand that the panel is concerned that the rule not be applied in a manner that could ensnare practitioners conducting their affairs in good faith. For example, a reading of the rule requiring *immediate* withdrawal, though certainly a best practice and possible in many circumstances, may be utterly impractical in many other circumstances.[6] Lawyers need time to bill clients, resolve any disputes, and transfer funds in a reasonable period considering a host of factors and demands on the lawyer's time. Indeed, requiring immediate withdrawal would disadvantage clients by not affording them time to review and question the lawyer's bill. This is why the cases and authorities in this area refer to withdrawal of earned fees within a "reasonable time,"[7] and the cases resulting in disciplinary consequences seem to all involve serious misuse of the trust account, which, as we have noted, creates the potential risk of seizure or attachment of any client or third party funds in the account.[8]

Therefore, while we understand the panel's concerns, in deciding whether a claim for misconduct has been stated (MCR 2.116(C)(8)), we must focus on the actual allegations in the formal complaint, the rule, and the cases applying it. From our decisions in *Albritton, Kyle, and Combs*, it is absolutely clear that the allegations here state a claim of commingling. However, "[t]he Rules of Professional Conduct are rules of reason." MRPC 1.0, Preamble. If a discipline proceeding presents an unreasonable or unfair proposed application of the rule, the panels will serve the important function of assuring that our rules are applied reasonably and fairly under all of the circumstances of the case.

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[6] See, e.g., *People v Greene*, 276 P3d 94, 102 (Colo PDJ, 2011), citing *Shidler*, *supra*, and observing that the anti-commingling rule "does not mean lawyers must execute the nearly impossible feat of instantaneously transferring such fees," referencing Regulation Counsel's position – expressed in an article – that attorneys must transfer earned fees out of their trust accounts within ninety days of completing the work, and concluding, "the fact that earned fees remained in Respondent's trust account for a certain period of time does not necessarily amount to a violation of Colo. RPC 1.15(a)."

[7] See, e.g., Rotunda and Dzienkowski, *supra*.

[8] See, e.g., *Matter of Anonymous*, *supra* (respondent commingled "[b]y allowing *significant sums* of earned fees to accumulate and remain in his client trust account for *extended* periods"; emphasis added).

For the foregoing reasons, we reverse the dismissal of the claim for violations of MCR 1.15. Under MCR 2.116(C)(8), the hearing panel must accept all well-pleaded allegations as true. Here, it was alleged that respondent held funds other than client or third person funds in an IOLTA; held over $27,000 in earned fees in her IOLTA, along with client funds, from at least April 30, 2013 to May 29, 2014; and deposited funds into her IOLTA in an amount in excess of the amount reasonably necessary to pay financial institution service charges. Accepting these allegations as true, the Grievance Administrator has stated a claim for violations of MRPC 1.15. Furthermore, drawing all reasonable inferences from the facts alleged, the Grievance Administrator could conceivably make out a case of dishonesty in violation of MRPC 8.4 and MCR 9.104. As such, we reverse the dismissal of the formal complaint, and remand for hearing on the charges in the formal complaint.

Board members Jonathan E. Lauderbach, Barbara Williams Forney, Karen D. O'Donoghue, Linda S. Hotchkiss, M.D., Peter A. Smit, and Linda M. Orlans concur in this decision.

Board member Michael S. Hohauser concurs in the result, noting (1) that the rules should be read as a whole, and (2) the related rule requires that earned fees should be promptly disbursed.

Board members Michael B. Rizik, Jr., and Alan Gershel were recused and did not participate.