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ATTACHMENT*

RULES OF THE SUPREME COURT

RULE 42. ARIZONA RULES OF PROFESSIONAL CONDUCT

ER 1.15. Safekeeping Property

(a)-(d) [No change in text.]

(e) When in the course of representation a lawyer possesses property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer ~~until the dispute is resolved~~. The lawyer shall promptly distribute ~~all~~ any portions of the property as to which ~~the interests are not in dispute. there are no competing claims.~~ Any other property shall be kept separate until one of the following occurs:

(1) the parties reach an agreement on the distribution of the property;

(2) a court order resolves the competing claims; or

(3) distribution is allowed under section (f) below.

(f) Where the competing claims are between a client and a third party, the lawyer may provide written notice to the third party of the lawyer's intent to distribute the property to the client, as follows:

(1) The notice shall be served on the third party in the manner provided under Rules 4.1 or 4.2 of the Arizona Rules of Civil Procedure, and must inform the third party that the lawyer may distribute the property to the client unless the third party initiates legal action and provides the lawyer with written notice of such action within 90 calendar days of the date of service of the lawyer's notice.

(2) If the lawyer does not receive such written notice from the third party within the 90-day period, and provided that the disbursement is not prohibited by law or court order, the lawyer may distribute the funds to the client after consulting with the client regarding the advantages and disadvantages of disbursement of the disputed funds and obtaining the client's informed consent to the distribution, confirmed in writing.

(3) If the lawyer is notified in writing of an action filed within the 90-day period, the lawyer

* Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

shall continue to hold the property separate unless and until the parties reach an agreement on distribution of the property, or a court resolves the matter.

(4) Nothing in this rule is intended to alter a third party's substantive rights.

Comment [2003 amendment]

[1]-[3] [No change in text.]

[4] **[Effective December 1, 2004]** The Rule also recognizes that third parties may have just claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim has become a matured legal or equitable claim, and unless distribution is otherwise allowed under this rule, the lawyer must refuse to surrender the property to the client until the claims are resolved. ~~A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but~~ In addition to the procedures described in this rule, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

[5]-[7] [No change in text.]

Comment [2009 amendment]

[1]-[3] [No change in text.]

Comment [2014 amendment]

[1] New paragraph (f) allows a lawyer to distribute funds or property in the lawyer's possession after providing notice to third persons known to claim an interest. Notice under paragraph (f) must be sufficient to allow the third person to take appropriate action to protect its interests. Although there is no one form of notice that will be acceptable, the notice should generally include at least the following: (a) a description of the funds or property in the lawyer's possession; (b) the name of the client claiming an interest in the funds and other information reasonably available to the lawyer that would allow the third person to identify the claim or interest; (c) a mailing address, telephone number, and email address where the third party can provide notice to the lawyer of the commencement of an action asserting an interest in the funds or property; and (d) the proposed distribution of the funds or

property. The notice shall be served in the manner provided under Rules 4.1 or 4.2 of the Arizona Rules of Civil Procedure.

[2] Apart from their ethical obligations, lawyers may have legal obligations to safeguard third-party funds under applicable case and statutory law. The notice provisions of paragraph (f) do not alter a lawyer's legal obligations and duties to third persons with respect to funds or property in the lawyer's possession. A lawyer who proposes to distribute funds under this paragraph should carefully evaluate the underlying law governing the lawyer's obligations to safeguard funds in which third persons claim an interest, which may expose the lawyer to a risk of civil or other liability even if the notice provisions of paragraph (f) are satisfied.

[3] Before making any distribution of funds or property pursuant to paragraph (f), a lawyer should explain to the client that the client may remain responsible to satisfy valid claims of third persons, and that the third person's failure to commence an action within the 90-day period of paragraph (f) will not by itself operate to waive, reduce or extinguish the third person's claim, if any, against the client or the funds or property received by the client. Before making any distribution under paragraph (f), the lawyer must obtain the client's informed consent, confirmed in writing, to the distribution.