

In the Indiana Supreme Court

CAUSE NUMBER: 94S00-0909-MS-

ORDER AMENDING INDIANA RULES OF PROFESSIONAL CONDUCT

Under the authority vested in this Court pursuant to Article 7, Section 4 of the Indiana Constitution providing for the admission and discipline of attorneys in this state, Professional Conduct Rules 1.15 and 6.1 are amended to read as follows (deletions shown by ~~striking~~ and new text shown by underlining):

...

Rule 1.15. Safekeeping Property

...

(g) Every lawyer admitted to practice in this State shall annually certify to this Court, pursuant to Ind.Admis.Disc.R. ~~23(21)2(f)~~, that all client funds which are nominal in amount or to be held for a short period of time by the lawyer or the lawyer's law firm so that they could not earn income for the client in excess of the costs incurred to secure such income are held in an IOLTA account, or that the lawyer is exempt because:

...

Rule 6.1. Pro Bono Publico Service

...

Comment

[1] The American Bar Association House of Delegates has formally acknowledged "the basic responsibility of each lawyer engaged in the practice of law to provide public interest legal services" without fee, or at a substantially reduced fee, in one or more of the following areas:

poverty law, civil rights law, public rights law, charitable organization representation and the administration of justice. The Indiana State Bar Association's House of Delegates has declared that "all Indiana lawyers have an ethical and a social obligation to provide uncompensated legal assistance to poor persons" and adopted an aspirational goal of fifty hours a year, or an equivalent financial contribution, for each member of the bar.

For purposes of this paragraph:

- (a) Poverty law means legal representation of a client who does not have the financial resources to compensate counsel.
- (b) Civil rights (including civil liberties) law means legal representation involving a right of an individual that society has a special interest in protecting.
- (c) Public rights law means legal representation involving an important right belonging to a significant segment of the public.
- (d) Charitable organization representation means legal service to or representation of charitable, religious, civic, governmental and educational institutions in matters in furtherance of the organization's purpose, where the payment of customary legal fees would significantly deplete the organization's economic resources or where it would be inappropriate.
- (e) Administration of justice means activity, whether under bar association auspices or otherwise, which is designed to increase the availability of legal representation, or otherwise improve the administration of justice. This may include increasing the availability of legal resources to individuals or groups, improving the judicial system, or reforming legal institutions that significantly affect the lives of disadvantaged individuals and groups.

[2] The rights and responsibilities of individuals and organizations in the United States are increasingly defined in legal terms. As a consequence, legal assistance in coping with the web of statutes, rules and regulations is imperative for persons of modest and limited means, as well as for the relatively well-to-do.

[3] The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged

can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in or otherwise support the provision of legal services to the disadvantaged. The provision of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer as well as the profession generally, but the efforts of individual lawyers are often not enough to meet the need. Thus, it has been necessary for the profession and government to institute additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services and other related programs have been developed, and others will be developed by the profession and government. Every lawyer should support all proper efforts to meet this need for legal services.

[4] Typically, to fulfill the aspirational goals in Comment 1, legal services should be performed without the expectation of compensation. If, during the course of representation, a paying client is no longer able to afford a lawyer's legal services, and the lawyer continues to represent the client at no charge, any work performed with the knowledge and intent of no compensation may be considered pro bono legal service.

The award of attorney's fees in a case originally accepted as pro bono does not disqualify such services from fulfilling the foregoing aspirational goals. However, lawyers who receive attorney's fees in pro bono cases are strongly encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means, or that promote access to justice for persons of limited means.

[5] Typically, the following would not fulfill the aspirational goals in Comment 1:

- (a) Legal services written off as bad debts.
- (b) Legal services performed for family members.
- (c) Legal services performed for political organizations for election purposes.
- (d) Activities that do not involve the provision of legal services, such as serving on the board of a charitable organization.

These amendments shall take effect January 1, 2010.

The Clerk of this Court is directed to forward a copy of this Order to the clerk of each circuit court in the state of Indiana; Attorney General of Indiana; Legislative Services Agency

and its Office of Code Revision; Administrator, Indiana Supreme Court; Administrator, Indiana Court of Appeals; Administrator, Indiana Tax Court; Public Defender of Indiana; Prosecuting Attorney's Council; Public Defender's Council; Indiana Supreme Court Disciplinary Commission; Indiana Supreme Court Commission for Continuing Legal Education; Indiana Board of Law Examiners; Indiana Judicial Center; Division of State Court Administration; Indiana Judges and Lawyers Assistance Program; the libraries of all law schools in this state; the Michie Company; and Thomson Reuters.

Thomson Reuters is directed to publish this Order in the advance sheets of this Court.

The Clerks of the Circuit Courts are directed to bring this Order to the attention of all judges within their respective counties and to post this Order for examination by the Bar and general public.

DONE at Indianapolis, Indiana, this 15th day of September, 2009.

/s/ Randall T. Shepard
Chief Justice of Indiana

All Justices concur.