



1 to supervise nonlawyer assistant). Wyoming Bar Counsel asked Respondent to produce  
2 all records required by Rule 1.15 (g) for the period 2016 to the present.

3 4. Respondent did not fully or timely cooperate with Wyoming Bar Counsel's  
4 request, despite two extensions. After the second extension passed, Wyoming Bar  
5 Counsel emailed Respondent advising him that if he did not respond by March 19, 2021,  
6 it would file a petition for Respondent's immediate suspension with the Wyoming  
7 Supreme Court.

8 5. Respondent answered on March 19, 2021. He told Wyoming's Bar Counsel  
9 that his merchant business deposits via credit card were set up for automatic deposit in  
10 his trust account, which he described as "an oversight on his part." Respondent claimed  
11 that he corrected the error.

12 6. Wyoming Bar Counsel requested trust account records documentation  
13 required by Wyoming Rule of Professional Conduct 1.15(g). Respondent did not respond  
14 to the request or produce the records.

15 7. Respondent admitted, after Wyoming Bar Counsel's fourth request for  
16 documentation, that he had not maintained a trust account ledger of transactions.

17 8. On May 27, 2021, Wyoming Bar Counsel petitioned the Wyoming Supreme  
18 Court for Respondent's immediate suspension pursuant to Rule 17, W.R.Disc.P., alleging  
19 that "Unearned client funds have been commingled with Respondent's funds and have  
20 been utilized to fund his law firm..." and "...the impetus for this request is the immediacy  
21

1 of the potential public and private harm in light of Respondent's recent affirmation that  
2 he does not have a ledger tracing his clients' funds."

3 9. On June 22, 2021, the Court issued an order denying the petition for  
4 immediate suspension.

5 10. A month later, Wyoming Bar Counsel issued a document subpoena to Wells  
6 Fargo Bank for account statements related to an estate for which Respondent received  
7 funds. Respondent filed a probate petition for the estate on September 1, 2016. On  
8 October 5, 2017, he filed a motion to replace the personal representative with his own  
9 legal assistant. The motion alleged that the appointed personal representative "has failed,  
10 neglected and refused to maintain contact with counsel for the estate." The probate court  
11 appointed Respondent's legal assistant, Natalie Benson, as the estate's personal  
12 representative.

13 11. Respondent opened a checking account for the estate at Wells Fargo Bank  
14 with Benson as signatory. Respondent deposited a cashier's check for \$89,905.25 into  
15 the account.

16 12. By October 31, 2018, Benson had depleted the estate's account balance to  
17 \$15,980.98. Wyoming Bar Counsel's subsequent discovery confirmed that Benson often  
18 withdrew from the account for personal spending and rarely for the beneficiary of the  
19 estate.

1           13.   Respondent was unaware of Benson's theft until her deposition on August  
2 9, 2021. During the deposition, Respondent also learned that Benson withdrew money  
3 from Respondent's operating and trust accounts to repay the estate.

4           14.   Respondent then secured all checks, deposit slips, and passwords to his  
5 operating and trust accounts.

6           15.   Fortunately, Wyoming Bar Counsel determined that Respondent was the  
7 only victim of Benson's fraud. Bank statements revealed that Respondent commingled  
8 personal and client funds in his operating and trust accounts. But Benson had only taken  
9 from Respondent's earned fees and operating capital.

10          16.   Respondent conditionally admitted to violations of Wyoming's Rules of  
11 Professional Conduct 1.15 (safekeeping property belonging to clients or others) and 5.3  
12 (oversight of nonlawyer assistance).

13          17.   Respondent stipulated to a one-year suspension as an appropriate sanction  
14 for his violation of Wyoming Rules of Professional Conduct 1.15 and 5.3.

15          18.   On February 2, 2022, the Wyoming Supreme Court affirmed the Board of  
16 Professional Responsibility's Report and Recommendation for a One-Year Suspension.

17          19.   On March 6, 2022, Respondent notified the State Bar of Nevada that the  
18 Wyoming Supreme Court had disciplined him. He attached a copy of the Suspension  
19 Order. A copy of the self-reporting email is attached as **Exhibit 1**.

20          20.   The State Bar of Nevada's Office of Bar Counsel investigated Respondent's  
21 report pursuant to SCR 114(2). It obtained certified copies of the Wyoming State Bar's



1 records, consisting of the Report and Recommendation for a One-Year Suspension and  
2 the Wyoming Supreme Court Order of One-Year Suspension. Certified copies of the  
3 Report and Recommendation and the Supreme Court's Order are attached as **Exhibit 2**.

4 21. The Report and Recommendation stated there was clear and convincing  
5 evidence that Respondent violated Wyoming Rules of Professional Conduct 1.15 and 5.3.  
6 Copies of the relevant Wyoming Rules of Professional Conduct are attached as **Exhibit**  
7 **3**.

8 22. On February 2, 2022, the Supreme Court of Wyoming issued its Order for  
9 One-Year Suspension and adopting the Board of Professional Responsibility's Report  
10 and Recommendation. A certified copy of the Order for One-Year Suspension appears in  
11 **Exhibit 2**.

12 23. A final adjudication in another jurisdiction that an attorney has engaged in  
13 misconduct conclusively establishes the misconduct for purposes of this instant Petition.  
14 SCR 114(5).

15 **B. NRPC Counterparts to the rules violated:**

16 24. Respondent violated Wyoming Rule of Professional Conduct 1.15, which  
17 provides in pertinent part, "A lawyer shall hold property of clients or third persons that  
18 is in a lawyer's possession in connection with a representation separate from the lawyer's  
19 own property."

20 25. NRPC 1.15 is Nevada's counterpart to Wyoming Rule of Professional  
21 Conduct 1.15.

1        26. Respondent also violated Wyoming Rule of Professional Conduct 5.3,  
2 which provides in pertinent part: “(c) a lawyer shall be responsible for the conduct of  
3 such a person that would be a violation of the Rules of Professional Conduct if engaged  
4 in by a lawyer if the lawyer orders or, with the knowledge of the specific conduct, ratifies  
5 the conduct involved...”

6        27. NRPC 5.3 is Nevada’s counterpart to Wyoming Rule of Professional  
7 Conduct 5.3.

8        28. Respondent conditionally admitted that he committed gross violations of  
9 Rules 1.15 and 5.3. He and Wyoming Bar Counsel asked the Wyoming Board of  
10 Professional Responsibility to consider the parties’ Stipulation for a One-Year  
11 Suspension pursuant to Rules 9 and 12 of the Wyoming Rules of Disciplinary Procedure.

12        29. The Review Panel found that the Respondent’s systematic violation of Rule  
13 1.15 (safekeeping property) falls within Standard 4.1, “Failure to Preserve the Client’s  
14 Property,” of the ABA Standards for Imposing Lawyer Sanctions (“ABA Standards”).  
15 The Review Panel found that the presumptive sanction for Respondent’s repeated  
16 violations of Rule 1.15 is a suspension.

17        30. The Review Panel further found that Respondent’s systemic violation of  
18 Rule 5.3 falls within ABA standard 7.0, “Violations of Other Duties Owed as a  
19 Professional.” The Review Panel found that the presumptive sanction for Respondent’s  
20 repeated violations of Rule 5.3 is a suspension.

1           31. Nevada also applies the ABA Standards in deciding sanction impositions.  
2   *See e.g. In re Discipline of Arabia*, 495 P.3d 1103, 1115, 2021 Nev. LEXIS 57, 137 Nev.  
3   Adv. Rep. 59 (2021). Therefore, Standard 4.1 and Standard 7.0 would set forth the  
4   presumptive sanction in Nevada as well.

5           32. WHEREFORE, Bar Counsel moves this Court to impose reciprocal  
6   discipline in the State of Nevada in accordance with SCR 114, which would include a  
7   one-year suspension from the practice of law.

8   DATED this 2nd day of May 2022.

9                               STATE BAR OF NEVADA  
10                              Daniel M. Hooge, Bar Counsel

11                             By: Kait Flocchini  
12                               R. Kait Flocchini Assistant Bar Counsel  
13                               Nevada Bar No. 9861  
14                               3100 W. Charleston Blvd., #100  
15                               Las Vegas, NV 89102  
16                               Attorney for Petitioner  
17  
18  
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Hampton M. Young, Jr., Esq.  
Law Office of Hampton M. Young Jr. P.C.  
3956 SW Condor Ave.,  
Portland, OR 97239

Laura Peters

Laura Peters, an Employee of the  
State Bar of Nevada

# **Exhibit 1**

# **Exhibit 1**

**From:** [Dan Hooge](#)  
**To:** [Louise Watson](#)  
**Cc:** [Yoselyn Segundo](#)  
**Subject:** FW:  
**Date:** Monday, March 7, 2022 9:06:41 AM  
**Attachments:** [Order of 1-Year Suspension.pdf](#)

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Louise and Yoselyn,

Let's open a reciprocal matter on Mr. Young and assign an investigator.

Thanks,

Daniel M. Hooge

Bar Counsel

**STATE BAR OF NEVADA**

3100 W. Charleston, Suite 100

Las Vegas, NV 89102

Telephone: 702.382.2200 Ext. 444

[www.nvbar.org](http://www.nvbar.org)



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**From:** Hampton Young <[hamp@hamptonyounglaw.com](mailto:hamp@hamptonyounglaw.com)>

**Sent:** Sunday, March 6, 2022 9:09 PM

**To:** Dan Hooge <[danh@nvbar.org](mailto:danh@nvbar.org)>

**Subject:**

Mr. Daniel Hooge,

I am a license attorney Nevada, Bar No. 011. It is my obligation to report to the Nevada bar that my license in another state, Wyoming, has been suspended for one year as of February 4, 2022. A copy of the suspension order is attached for your review.

Thank you,  
Hampton Young

Hampton M. Young Jr.

3956 SW Condor Ave.

Portland, OR 97239-4104

307-797-2486 Phone

307-232-8610 Fax

[hamp@hamptonyounglaw.com](mailto:hamp@hamptonyounglaw.com)

**CONFIDENTIALITY NOTICE**

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# Exhibit 2

# Exhibit 2



***IN THE SUPREME COURT, STATE OF WYOMING***

**2022 WY 20**

***October Term, A.D. 2021***

***February 2, 2022***

**BOARD OF PROFESSIONAL  
RESPONSIBILITY, WYOMING  
STATE BAR,**

**Petitioner,**

**v.**

**HAMPTON M. YOUNG, WSB  
#6-3672,**

**Respondent.**

IN THE SUPREME COURT  
STATE OF WYOMING  
FILED

FEB - 2 2022

SHAWNA GOETZ, CLERK

**D-21-0004**

**ORDER OF ONE-YEAR SUSPENSION**

[¶ 1] **This matter** came before the Court upon the Board of Professional Responsibility's Report and Recommendation for One-Year Suspension, filed herein January 24, 2022. The Report and Recommendation was filed pursuant to Rule 12 of the Wyoming Rules of Disciplinary Procedure, which governs regulated discipline. Now, after a careful review of the Report and Recommendation and the file, the Court finds the Report and Recommendation should be approved, confirmed, and adopted by the Court, and that Hampton M. Young should be suspended from the practice of law for one year. It is, therefore,

[¶ 2] **ADJUDGED AND ORDERED** that the Board of Professional Responsibility's Report and Recommendation for One-Year Suspension, which is attached hereto and incorporated herein, shall be, and the same hereby is, approved, confirmed, and adopted by this Court; and it is further

[¶ 3] **ADJUDGED AND ORDERED** that, as a result of the conduct set forth in the Report and Recommendation for One-Year Suspension, Respondent Hampton M. Young shall be, and hereby is, suspended from the practice of law for one year, with the period of suspension to begin February 4, 2022; and it is further

[¶ 4] **ORDERED** that, during the period of suspension, Respondent shall comply with the requirements of the Wyoming Rules of Disciplinary Procedure, particularly the requirements found in Rule 21 of those rules. That rule governs the duties of disbarred and suspended attorneys; and it is further

[¶ 5] **ORDERED** that, pursuant to Rule 25 of the Wyoming Rules of Disciplinary Procedure, Respondent shall reimburse the Wyoming State Bar the amount of \$50.00, which represents the costs incurred in handling this matter, as well as pay an administrative fee of \$750.00. Respondent shall pay the total amount of \$800.00 to the Wyoming State Bar on or before April 1, 2022. If Respondent fails to make payment in the time allotted, execution may issue on the award; and it is further

[¶ 6] **ORDERED** that the Wyoming State Bar may issue the agreed press release contained in the Report and Recommendation for One-Year Suspension; and it is further

[¶ 7] **ORDERED** that the Clerk of this Court shall docket this Order of One-Year Suspension, along with the incorporated Report and Recommendation for One-Year Suspension as a matter coming regularly before this Court as a public record; and it is further

[¶ 8] **ORDERED** that, pursuant to Rule 9(b) of the Wyoming Rules of Disciplinary Procedure, this Order of One-Year Suspension, along with the incorporated Report and Recommendation for One-Year Suspension shall be published in the Wyoming Reporter and the Pacific Reporter; and it is further

[¶ 9] **ORDERED** that the Clerk of this Court cause a copy of this Order of One-Year Suspension to be served upon Respondent Hampton M. Young.

[¶ 10] **DATED** this 2<sup>nd</sup> day of February, 2022.

BY THE COURT:

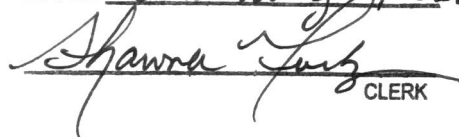


KATE M. FOX  
Chief Justice

IN THE SUPREME COURT  
STATE OF WYOMING

CERTIFIED to be a full, true and correct  
copy of the original in my custody.

DATED February 14, 2022

  
CLERK

BEFORE THE SUPREME COURT

STATE OF WYOMING

JAN 24 2022

SHAWNA GOETZ, CLERK

*In the matter of*  
**HAMPTON M. YOUNG**  
**WSB # 6-3672,**

***Respondent.***

**D-21-0004**

**WSB No. 2021-004**

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**REPORT AND RECOMMENDATION FOR ONE-YEAR SUSPENSION**

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THIS MATTER came before a Review Panel of the Board of Professional Responsibility via video conference call on the 18<sup>th</sup> day of January 2022 for consideration of the parties' Stipulation for One-Year Suspension pursuant to Rules 9 and 12 of the Wyoming Rules of Disciplinary Procedure. Present on the call were Review Panel members Robert C. Jarosh, Jeffrey A. Donnell and Tandy Dockery. Mark W. Gifford, Bar Counsel, appeared on behalf of the Wyoming State Bar. Respondent Hampton M. Young appeared on his behalf. The Review Panel, having reviewed the Stipulation and the supporting Affidavit, and being fully advised in the premises, finds, concludes, and recommends:

**FINDINGS**

1. Respondent Hampton M. Young is a licensed attorney in the State of Wyoming, Bar # 6-3672. Respondent has been licensed to practice in Nevada since 1978 and in Wyoming since 2005. Until recently, Respondent maintained an active practice of law in Casper, Wyoming.

2. Late in 2020 the trial of Respondent's divorce from his wife was held before the Hon. Dawnessa Snyder. During the trial, Respondent's legal assistant, Natalie Benson, testified regarding various matters, including Respondent's law office trust account.

3. In January 2021, Judge Snyder reported her concerns about apparently improper disbursements from the trust account to the Office of Bar Counsel (OBC). Potentially improper transactions identified by Judge Snyder included several disbursements from the trust account to Benson directly.

4. Respondent was sent a letter of inquiry from the OBC dated January 25, 2021, enclosing Judge Snyder's report, and inquiring as to possible violations of Rule 1.15 (law office trust account) and Rule 5.3 (failure to adequately supervise nonlawyer assistant). The letter asked Respondent to produce all records required by Rule 1.15(g) for the period 2016 to present.

5. Respondent did not fully nor timely cooperate with the OBC's request. The initial inquiry from OBC asked for Respondent's written response by February 8, 2021. Respondent requested and was granted an extension until February 22, 2021. On February 22, 2021, Respondent's assistant, Natalie Benson, sent an email to OBC requesting an additional extension to March 15, 2021. The OBC granted the request. When Respondent's response was not submitted by March 15, 2021, Bar Counsel sent an email advising that if the response was not received by March 19, 2021, Bar Counsel would file a petition for Respondent's immediate suspension with the Wyoming Supreme Court.

6. In Respondent's written response dated March 19, 2021, Respondent told the OBC that since the inception of Respondent's office, his merchant business deposits via

credit card were set up to be automatically deposited in his trust account. Respondent admitted to the OBC, "This was an oversight on my part, which was apparent to me as a result of my divorce trial. The deficiency was corrected last month." Respondent further acknowledged that certain direct payments were improperly made from his trust account to his legal assistants. Respondent stated, "Regardless, it is my responsibility to ensure all trust account transactions are made correctly." Included with Respondent's response were copies of Hilltop National Bank statements for his trust account for the period January 2016 through December 2019.

7. The next correspondence from OBC to Respondent came in the form of a letter dated April 7, 2021, from Melinda McCorkle, Deputy Bar Counsel. The letter began:

I have reviewed your March 19, 2021 response to Mark Gifford's January 25, 2021 inquiry. Based upon your response and accompanying documents, I am concerned that your IOLTA Trust Account has been utilized as an operating account. Consequently, there is no ability to delineate between funds belonging to clients and third parties that are required to be held in trust, funds that were appropriately transferred to the operating account once fees were earned or costs expended, and funds used to operate your business. In other words, it appears that client funds relating to fees that you had not yet earned were used to fund your business or personal expenses, which is tantamount to stealing. This practice constitutes a cardinal violation of the Rule 1.15 prohibition against commingling of funds, and exposes money belonging to clients to the claims of your creditors.

I am further concerned that you do not seem to understand the gravity of this situation. Your two-page letter states that there were two trust account transactions on behalf of both Ms. Benson and Tami Studer. This is disproven on the following page, which identifies seven transactions on behalf of Ms. Benson. Similarly, page 28 alone of the "Check Detail" provided contains four transactions to Ms. Studer. Your letter also states that your "merchant business deposits via credit card" has automatically deposited funds into your trust account since the inception of your business. None of those uses are appropriate for a trust account. I encourage you to review Rule 1.15 and the Wyoming State Bar's Trust Account Handbook, available as a free

download on the Bar's website at <https://www.wyomingbar.org/for-lawyers/lawyer-resources/trust-account-information/>.

Along those lines, Mr. Gifford's letter expressly requested "copies of all records relating to your trust account that are required to be maintained pursuant to Rule 1.15(g) for the period 2016 to present." Although you provided bank statements and a report generated by your office, you did not provide all records required by Rule 1.15(g).

Ms. McCorkle's letter concluded:

Please provide all documents identified in Rule 1.15(g). Please also provide the following:

1. A copy of the "Check Detail" report (pages 1-54) identifying all transactions in date order. The state of the report provided makes it extremely difficult to compare each transaction to the accompanying bank statement.
2. Copies of all 2016-present statements from the "business account" identified in your March 19, 2021 letter.
3. Copies of additional 2016-present statements from other operating or trust accounts, if any.
4. Federal income tax returns from 2016-present.
5. A copy of the "self-report" email (Exhibit 2) identifying the date on which the email was sent. None of the emails provided contain a date or time stamp. At a minimum, the bounce-back email received will contain a date and time stamp.
6. Identify all accounts on which you are an account holder, including the trust and business account identified above, stating:
  - a. The name and address of the institution;
  - b. The full account number; and
  - c. The purpose of the account.

Mr. Gifford's January 25, 2021 letter required a response by February 8, 2021. While our office agreed to two extensions of time, your response was still overdue. **Due to the seriousness of this issue, we require a response to this inquiry by Friday, April 23, 2021.** No extensions will be granted. Failure to timely provide the requested information and documents will

require me to file a request for an immediate suspension pursuant to Wyoming Rule of Disciplinary Procedure 17, as I am gravely concerned about the risks you are improperly imposing upon your clients.

8. Respondent responded to Ms. McCorkle's requests with a letter dated April 23, 2021, with which Respondent transmitted copies of a check detail report identifying all trust account transactions in date order, copies of statements from Respondent's operating account, and copies of federal income tax reports from 2016 to present.

9. Respondent next received a letter from Ms. McCorkle dated May 6, 2021, requesting copies of the following documents by May 17, 2021:

- The individual ledgers for each client whose funds went into Respondent's trust account showing date of deposit, date of withdrawals, descriptions and charges, and fee agreements. Rule 1.15(g) requires Respondent to maintain such individual ledgers.
- Records relating to electronic transfers, including the name of the person authorizing the transfer, date of transfer, name of recipient and confirmation from the financial institution that the transfer was completed. Rule 1.15(g) requires Respondent to maintain such records.
- All transactions in which either of Respondent's legal assistants, Natalie Benson and Tammy Studer, withdrew or deposited money into Respondent's trust account, the purpose of the withdrawal or deposit, and the client to whom each such withdrawal relates.

10. On May 25, 2021, Respondent wrote to Ms. McCorkle and requested an extension of the deadline to provide the requested information. Respondent admitted that he had not maintained a ledger documenting all trust account transactions. Respondent provided certain information regarding bankruptcy clients since February 2017, and explained that it would be necessary to pull the requested information from bank statements, individual credit card receipts, and hand-written receipt books, a very time-consuming endeavor.

11. On May 27, 2021, Deputy Bar Counsel petitioned the Wyoming Supreme Court for Respondent's immediate suspension pursuant to Rule 17, W.R.Disc.P. In the petition, Ms. McCorkle cited Respondent's inability to produce the records required by Rule 1.15(g) and the fact that Respondent had clearly commingled client trust funds with funds held in Respondent's operating account over an extended period of time. The petition further alleged:

Based upon the documents Respondent has provided, and as evidenced by the Affidavit of Deputy Bar Counsel, it is clear Respondent has repeatedly commingled his funds with client funds in his Trust Account and converted client funds for his own use. Since at least 2016, Respondent has deposited payments from clients into his Trust Account while simultaneously using his Trust Account to pay invoices and firm obligations unrelated to client services. On July 13, 2017, and July 26, 2017, Respondent's paralegals, Natelina Benson and Tami Studer, received payment advances totaling over \$5,000.00 from Respondent's Trust Account. Between August 31, 2018 – December 31, 2019, Ms. Benson deposited seven personal checks into the Trust Account that purportedly paid back a loan from Respondent's firm to Ms. Benson. Ms. Benson has repeatedly reimbursed herself for "filing fees" from the Trust Account. Respondent has made payments to Sam's Club, Capital One, Pitney Bowes, and Signapay (merchant bankcard fees) from his Trust Account that appear to be unrelated to specific clients.

On March 19, 2021, Respondent admitted that his "merchant business deposits via credit card was set to automatically deposit into [his] trust account" since the inception of his business. He acknowledged that "[i]t should have been set up so that I could delineate deposits to either my trust account or my business account. This was an oversight on my part, which was made apparent to me as a result of my divorce trial. Ths [sic] deficiency was corrected last month."

On May 6, 2021, the undersigned again requested the Rule 1.15(g) records, and in particular, a ledger reflecting the flow of income and payments for each client with money in the Trust Account. To ascertain whether client funds had been properly placed in the Trust Account, i.e., whether the funds were unearned advance fees or otherwise clients' property, the undersigned requested representation agreements for the clients with money in the Trust Account. The undersigned also asked Respondent to identify all Trust



Account transactions in which Natalie Benson and Tami Studer deposited or withdrew money on their own behalf. The undersigned further requested an accounting of each client's money in the Trust Account for whom Ms. Benson was reimbursed for "filing fees" and similar transactions.

Respondent provided none of this information. Rather, Respondent provided standard Representation Agreements and fees for bankruptcy clients, none of which identified an actual client. He further produced an "internet payment history" ledger for some clients, none of which identify whether the funds were placed in the Trust Account or the Operating Account. Finally, he provided invoices that primarily reflect flat fees and costs. None of this information allows the Office of Bar Counsel to trace the client funds that flowed in and out of Respondent's Trust Account. In his May 25, 2021 response again requesting more time to compile information that should have been readily available pursuant to Rule 1.15(g), Respondent stated, "I have not kept a ledger which documents all trust transactions for the time frames requested... the information requested is being painstakingly reconstructed." Respondent asserted that the "information [requested] must be pulled from bank statement records, each individual credit card receipt, and hand written [sic] receipt books, specifically between January 1, 2016 to February 2, 2017." Consequently, he could not even provide information related to Ms. Benson's or Ms. Studer's Trust Account transactions.

At this time, it is unclear whether all of the funds deposited into the Trust Account were advanced, unearned fees. This seems unlikely. Regardless, Respondent has undoubtedly commingled client funds with his own funds. It appears Respondent has been utilizing his Trust Account as an Operating Account since perhaps the inception of his practice, despite having a separate Operating Account. Respondent seemingly has no understanding of the proper use of a Trust Account or the requirements stated in Rule 1.15. He undoubtedly has not maintained the records required by Rule 1.15(g). It appears he lost control of his Trust Account years ago.

Respondent's nonlawyer assistant and former assistant, Ms. Benson and Ms. Studer, are either ignorant of a lawyer's professional obligations relating to trust accounts or willfully ignored those obligations.

Although the Office of Bar Counsel's record contains 1796 pages, most of which are bank statements, it is impossible for Deputy Bar Counsel to trace the flow of client funds in and out of the Trust Account without the preceding information. It is unlikely that such a flow can be reconstructed. This concern is further validated by the passage of four months since the request for records maintained pursuant to Rule 1.15(g).

It is apparent Respondent's Trust Account has been mishandled. Un-earned client funds have been commingled with Respondent's funds and have been utilized to fund his law firm, which is tantamount to stealing. Because this is an issue of public and client protection, the Office of Bar Counsel has no choice but to request an Order of Immediate Suspension.

A formal charge has not yet been filed in this case. While Deputy Bar Counsel requires additional information and documents to finalize a charging document, the impetus for this request is the immediacy of the potential public and private harm in light of Respondent's recent affirmation that he does not have a ledger tracing his clients' funds. Deputy Bar Counsel intends to file a formal charge alleging violations of Rule 1.15. Deputy Bar Counsel may amend the formal charge upon receipt of information and documents Respondent has not yet provided, which may include a violation of Rule 5.3 and Rule 8.1(b).

12. On June 14, 2021, Respondent filed a response to the petition for immediate suspension, advising the Court that he was working diligently to provide the requested records but that he was also operating a busy practice. Respondent apologized for his slow and cumbersome response. Respondent urged the Court to deny the petition for immediate suspension, citing the absence of evidence produced to date indicating that client funds were converted to Respondent's own use, and the impact his immediate suspension would have on Respondent's current clients and pending cases.

13. On June 22, 2021, the Court issued an order denying the petition for immediate suspension.

14. On July 19, 2021, the OBC issued a document subpoena to Wells Fargo Bank seeking production of account statements relating to a checking account established in 2018 for the Marie Delphine Kincheloe Estate, Probate No. 23293, Seventh Judicial District Court, Natrona County, Wyoming. The Kincheloe Estate probate was filed by

Respondent on September 1, 2016, after Marie Delphaine Kincheloe, the decedent, passed away on August 21, 2016. On September 27, 2016, Seventh Judicial District Court Judge Dan Forgey entered an order appointing Crystal Gonzalez as personal representative of the estate. On October 5, 2017, Respondent filed a motion to replace Crystal Gonzalez as personal representative with Natalie Benson, Respondent's legal assistant, alleging that Ms. Gonzalez "has failed, neglected and refused to maintain contact with counsel for the estate." On December 1, 2017, Judge Forgey entered an order appointing Benson as personal representative. On August 2, 2018, an estate checking account was opened at Wells Fargo Bank in Casper, with Benson as the signatory. A Rawlins Bank of Commerce cashier's check in the amount of \$89,905.25 was deposited in the new Wells Fargo account, which was named, "Marie Delphaine Kincheloe Estate, Natelina R Benson, PREP." It was the records of this account for which the OBC issued a subpoena to Wells Fargo on July 19, 2021.

15. The Kincheloe Estate checking account statements produced by Wells Fargo in response to the subpoena revealed that the account, which began with an opening balance of \$89,905.25 on August 3, 2018, was depleted to a balance of \$15,980.98 by October 31, 2018. Subsequent discovery confirmed that almost all withdrawals from the account were spent on Benson's personal shopping, and very little was paid to or for the benefit of the beneficiary of the Kincheloe estate, Troy Kincheloe, who was incarcerated at the time. Purchases made by Benson with money from the estate checking account included the following, all made on August 20, 2018:

Walmart	\$459.24
ATM withdrawal	300.00
Maurice's (a women's clothing store)	416.59

16. By the end of August 2018, Ms. Benson had purchased a \$20,000.00 used Suburban with money from the account. In addition, the following purchases were made with money from the account on September 4, 2018:

Kim's Fine Furniture (purchase of a bed)	\$3,538.50
Ulta (beauty products)	863.71
Verizon Wireless	920.00
Verizon Wireless	560.00
Verizon Wireless	1,133.98
Cellular Plus	1,154.99
Cellular Plus	115.48

17. During the month of October 2018, Benson made personal purchases from Walmart in excess of \$3,000.00, all from the Kincheloe estate checking account. Similar purchases were made at Macy's, Sam's Club, Target, Torrid (a plus-size clothing store) and other merchants. Benson paid a \$500.00 doctor's bill, spent \$1,250.20 on tags for personal vehicles and spent an additional \$1,193.28 at Verizon Wireless, all with funds taken from the Kincheloe estate checking account.

18. In November 2018, Benson spent an additional \$2,378.24 of estate money at Walmart. By the end of the month, there was just \$110.81 remaining in the Kincheloe estate checking account.

19. On August 15, 2018, a Final Report Accounting and Petition for Complete Distribution was filed, signed by Respondent and Benson, in which Judge Forgey was asked to approve distribution of the \$89,905.25 as follows: (1) \$990.00 to pay a creditor's claim from Interim Healthcare; (2) \$2,711.88 to Respondent's law office (comprised of

Respondent's statutory attorney fee of \$2,148.11 and costs of \$563.77); (3) \$2,158.11 to Benson (comprised of Benson's statutory fee of \$2,148.11 and costs of \$10.00); and (4) the balance of \$84,405.26 to the estate's heir, Troy Kincheloe. On September 7, 2018, Judge Forgey signed an order approving distribution of the estate and closing the matter.

20. Respondent was unaware of Benson's theft of funds from the Kincheloe estate until Respondent attended Benson's deposition on August 9 and 10, 2021. During her deposition, Benson was presented with evidence (in the form of account statements the OBC had subpoenaed from Wells Fargo) of the funds she had withdrawn from the Kincheloe estate checking account and confessed to the fraudulent purchases. She testified that she made sure that Troy Kincheloe received all that he was entitled to. Benson produced a release of liability she had Troy Kincheloe sign confirming his receipt of all funds. Benson testified that she paid the funds over time using a \$15,000.00 loan from her sister and a \$14,000 Paycheck Protection Program (PPP) loan from the federal government. The rest was money she obtained from Respondent's operating and trust accounts. Benson also produced a ledger of payments she made to Troy Kincheloe which indicated that she had charged Kincheloe a "money management" fee of \$5,000.00 and a \$2,500.00 annual "flat fee" for tasks she performed for him.

21. Also during Benson's deposition, Respondent learned for the first time that Benson had made additional, improper and unauthorized withdrawals of tens of thousands of dollars from Respondent's operating and trust accounts. In addition to being Respondent's legal assistant, Benson was Respondent's bookkeeper and entered all transactions for Respondent's operating and trust accounts in Quickbooks. Many of the payments to

Benson were booked into Quickbooks as "loans" or "advances" which Benson, without Respondent's authorization, wrote off at the end of a given year, hence forgiving the debt. As one example, Benson took \$21,000.00 in "advances" from Respondent's operating account in November 2018. She took almost \$11,000.00 in advances during August 2019. Respondent also learned during Benson's deposition that she failed to pay federal payroll taxes on paychecks she received from Respondent, resulting in an IRS lien on Respondent's accounts. On occasion, she wrote herself paychecks out of Respondent's trust account. At the conclusion of her deposition, Benson admitted that the money she had taken out of Respondent's practice the last few years dwarfed Respondent's income from the practice.

22. Following these revelations in Benson's deposition, and at OBC's insistence, Respondent secured all checks, all deposit slips, and changed the password on Respondent's operating and trust accounts. Respondent removed Benson from any bookkeeping or other record-keeping duties regarding Respondent's finances as well as Respondent's trust account. Respondent took immediate steps to assure that Benson no longer comes into possession of client funds or payments received from clients. Respondent took away Benson's key to Respondent's post office box and took steps to assure that all mail delivered to his office was opened by Respondent and not by Benson.

23. Fortunately, as best Respondent and OBC can determine, Respondent was the only victim of Benson's fraud. Though review of bank statements for Respondent's operating and trust accounts shows that the two accounts were hopelessly commingled

with little separation between the accounts, there is no evidence that any client was harmed by Benson's numerous defalcations.

24. Respondent conditionally admits that he committed gross violations of Rule 1.15 (safekeeping property belonging to clients or others) and Rule 5.3 (oversight of nonlawyer assistance). The Review Panel finds that there is clear and convincing evidence that Respondent violated these two rules.

25. The Review Panel finds that Respondent's systematic violation of Rule 1.15 (lawyer trust accounts) falls within Standard 4.1, "Failure to Preserve the Client's Property," of ABA Standards for Imposing Lawyer Sanctions ("ABA Standards"). The Review Panel finds that the presumptive sanction for Respondent's repeated violations of Rule 1.15 is a suspension.

26. The Review Panel further finds that Respondent's systematic violation of Rule 5.3 falls within ABA Standard 7.0, "Violations of Other Duties Owed as a Professional." The Review Panel finds that the presumptive sanction for Respondent's repeated violations of Rule 5.3 is a suspension.

27. With regard to Respondent's mental state in committing these violations, the parties have stipulated that Respondent's complete abdication of his professional duty of oversight of a nonlawyer assistant was so pervasive as to rise to the level of knowledge. The Review Panel so finds.

28. The parties have stipulated that Respondent's professional misconduct posed a significant risk of injury to Respondent's clients. The Review Panel so finds.

29. The parties have stipulated that there are significant aggravating factors, including a pattern of misconduct, multiple offenses, and substantial experience in the practice of law. The Review Panel so finds.

30. The parties have further stipulated that the absence of a dishonest or selfish motive is a mitigating factor. The Review Panel so finds.

31. Respondent has stipulated to a one-year suspension as an appropriate sanction for Respondent's violation of these rules. The Review Panel finds that a one-year suspension is an appropriate sanction for Respondent's misconduct.

32. If the Court adopts the Review Panel's recommendation and issues an Order of Suspension in accordance herewith, the parties have agreed to the following press release:

The Wyoming Supreme Court has issued an order of the disciplinary suspension of Hampton M. Young, formerly of Casper, for a period of one year. The order stems from Young's conduct in failing to maintain proper records regarding funds held in his lawyer trust account, an account in which client funds are required to be kept segregated from the lawyer's own funds, and in failing to appropriately supervise his nonlawyer assistant. Investigation of activities in Young's trust account revealed that funds in the account were routinely commingled with Young's own funds. Further, the investigation revealed that Young's legal assistant, who had been appointed to act as the personal representative in a probate matter being handled by Young, embezzled tens of thousands of dollars from the estate and then replaced those funds with money she embezzled from Young. The investigation revealed no evidence that any client was harmed by such conduct. The parties' stipulation for a one-year suspension of Young's license to practice law was approved by the Board of Professional Responsibility (BPR) of the Wyoming State Bar and was submitted to the Wyoming Supreme Court. In adopting the BPR's recommendation for a public censure, the Court ordered Young to pay an administrative fee of \$750.00 and costs in the amount of \$50.00 to the Wyoming State Bar.



## CONCLUSIONS OF LAW

33. Rule 1.15, W.R.Prof.Cond., provides in pertinent part, "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." The effect of the rule is a blanket prohibition of commingling a lawyer's funds with those of the lawyer's client.

34. Rule 5.3, W.R.Prof.Cond., provides:

Rule 5.3. Responsibilities regarding nonlawyer assistance.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

35. Rule 15(b)(3)(D), W.R.Disc.P., provides, "In imposing a sanction after a finding of misconduct by the respondent, the BPR shall consider the following factors, as enumerated in the ABA Standards for Imposing Lawyer Sanctions:"

1. Whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
2. Whether the lawyer acted intentionally, knowingly, or negligently;
3. The amount of the actual or potential injury caused by the lawyer's misconduct; and
4. The existence of any aggravating or mitigating factors.

36. ABA Standard 7.0, "Violations of Other Duties Owed as a Professional," provides:

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving false or misleading communication about the lawyer or the lawyer's services, improper communication of fields of practice, improper solicitation of professional employment from a prospective client, unreasonable or improper fees, unauthorized practice of law, improper withdrawal from misrepresentation, or failure to report professional misconduct.

7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public or the legal system.

7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

7.3 Reprimand [i.e., "public censure" under Rule 9(a)(3) of the Rules of Disciplinary Procedure] is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

7.4. Admonition [i.e., "private reprimand" under Rule 9(a)(4) of the Rules of Disciplinary Procedure] is generally appropriate when a lawyer engages in an isolated instance of negligence that is a violation of a duty owed as a professional, and causes little or no actual or potential injury to a client, the public, or the legal system.

37. ABA Standard 7.0, "Violations of Other Duties Owed as a Professional," provides:

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving false or misleading communication about the lawyer or the lawyer's services, improper communication of fields of practice, improper solicitation of professional employment from a prospective client, unreasonable or improper fees, unauthorized practice of law, improper withdrawal from misrepresentation, or failure to report professional misconduct.

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7.4. Admonition [i.e., "private reprimand" under Rule 9(a)(4), Wyo.R.Disc.Proc.] is generally appropriate when a lawyer engages in an isolated instance of negligence that is a violation of a duty owed as a professional, and causes little or no actual or potential injury to a client, the public, or the legal system.

38. The Preface to the ABA Standards includes the following discussion regarding mental state:

The mental states used in this model are defined as follows. The most culpable mental state is that of intent, when the lawyer acts with the conscious objective or purpose to accomplish a particular result. The next most culpable mental state is that of knowledge, when the lawyer acts with conscious awareness of the nature or attendant circumstances of his or her conduct both without the conscious objective or purpose to accomplish a particular result. The least culpable mental state is negligence, when a lawyer fails to be aware of a substantial risk that circumstances exist or that a result will follow, which

failure is a deviation of a care that a reasonable lawyer would exercise in the situation.

39. Under the ABA Standards, "injury" is defined as "harm to a client, the public, the legal system, or the profession which results from a lawyer's misconduct. The level of injury can range from 'serious' injury to 'little or no' injury; a reference to 'injury' alone indicates any level of injury greater than 'little or no' injury." "Potential injury" is defined as "harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the lawyer's misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct."

40. ABA Standard 9.0, entitled "Aggravation and Mitigation," provides as follows:

9.1 *Generally*

After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose.

9.2 *Aggravation*

9.21 *Definition.* Aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed.

9.22 *Factors which may be considered in aggravation.* Aggravating factors include:

- (a) prior disciplinary offenses;
- (b) dishonest or selfish motive;
- (c) a pattern of misconduct;
- (d) multiple offenses;
- (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
- (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- (g) refusal to acknowledge wrongful nature of conduct;
- (h) vulnerability of the victim;
- (i) substantial experience in the practice of law;
- (j) indifference in making restitution; and
- (k) illegal conduct, including that involving the use of controlled substances.

9.3 *Mitigation.*

9.31 *Definition.* Mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed.

9.32 *Factors which may be considered in mitigation.* Mitigating factors include:

- (a) absence of a prior disciplinary record;
- (b) absence of a dishonest or selfish motive;
- (c) personal or emotional problems;
- (d) timely good faith effort to make restitution or to rectify consequences of misconduct;
- (e) full and free disclosure of disciplinary board or cooperative attitude toward proceedings;
- (f) inexperience in the practice of law;
- (g) character or reputation;
- (h) physical disability;
- (i) mental disability or chemical dependency including alcoholism or drug abuse when:
  - (1) there is medical evidence that the respondent is affected by a chemical dependency or mental disability;
  - (2) the chemical dependency or mental disability caused the misconduct;
  - (3) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and
  - (4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely.
- (j) delay in disciplinary proceedings;
- (k) imposition of other penalties or sanctions;
- (l) remorse; and
- (m) remoteness of prior offenses.

9.4 *Factors Which Are Neither Aggravating nor Mitigating.*

The following factors should not be considered as either aggravating nor mitigating:

- (a) forced or compelled restitution;
- (b) agreeing to the client's demand for certain improper behavior or result;
- (c) withdrawal of complaint against the lawyer;
- (d) resignation prior to completion of disciplinary proceedings;
- (e) complainant's recommendation as to sanction; and
- (f) failure of injured client to complain.

### RECOMMENDATION

In consideration of the foregoing findings of fact and conclusions of law, the Review

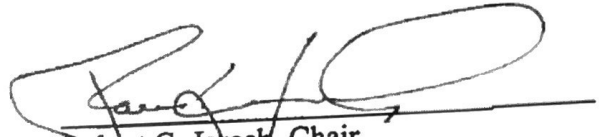
Panel recommends as follows:

1. That Respondent be suspended for one year for violations of Rules 1.15 and 5.3, W.R.Prof.Cond.

2. That, upon issuance of the order of suspension, the foregoing press release may be issued.

3. That Respondent be required to pay an administrative fee of \$750.00 and costs of \$50.00 to the Wyoming State Bar within 10 days of such order.

Dated this 19th day of January 2022.



Robert C. Jarosh, Chair  
Review Panel of the Board of Profes-  
sional Responsibility  
Wyoming State Bar

# Exhibit 3

# Exhibit 3

## **Wy Prof. Conduct, Client-Lawyer Relationship, Safekeeping Property**

This document reflects changes through rules received by the publisher on or before April 25, 2022.

**WY - Wyoming State & Federal Court Rules > Rules of Professional Conduct for Attorneys at Law > Client-Lawyer Relationship > Safekeeping Property**

### **Safekeeping Property**

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#### **History:**

**(a)** 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. All client or third person funds shall be deposited in an "IOLTA Account" or "Non-IOLTA Account" (or accounts). Other property shall be identified as belonging to the appropriate entity and appropriately safeguarded.

**(1)** "IOLTA Account" refers to a trust account, at an "IOLTA-Eligible Institution" from which funds may be withdrawn upon request as soon as permitted by law. An IOLTA Account is a pooled interest-bearing account that shall include only client or third person funds that cannot earn income for the client or third person in excess of the costs incurred to secure such income while the funds are held. All other client or third person funds shall be deposited into a Non-IOLTA Account.

**(i)** In determining whether client or third person funds should be deposited in an IOLTA Account or a Non-IOLTA Account, a lawyer shall consider the following factors:

- (A)** the amount of interest or dividends the funds would earn during the period that they are expected to be deposited in light of the amount of the funds to be deposited; the expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held; and the rates of interest or yield at financial institutions where the funds are to be deposited;
- (B)** the cost of establishing and administering Non-IOLTA Accounts for the client or third person's benefit, including service charges or fees, the lawyer's services, preparation of tax reports, or other associated costs;
- (C)** the capability of financial institutions or lawyers to calculate and pay income to individual clients or third persons; and
- (D)** any other circumstances that affect the ability of the funds to earn a net return for the client or third person.

**(ii)** Lawyers may only place their IOLTA Accounts in IOLTA Eligible Institutions. IOLTA Eligible Institutions are depository institutions which voluntarily offer IOLTA Accounts and meet the requirements of this Rule. The Equal Justice Wyoming Foundation will maintain a list of IOLTA Eligible Institutions currently holding IOLTA Accounts, and shall provide the list upon request.

**(iii)** An IOLTA Eligible Institution shall:

- (A)** ensure that each IOLTA Account receives the highest interest rate that the depository institution pays other customers when the IOLTA Account meets the same minimum balance or other requirements. IOLTA Eligible Institutions may elect to pay higher rates than required;
- (B)** deduct only allowable reasonable fees from IOLTA interest, defined as per check charges, per deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, sweep fees, and a reasonable IOLTA Account administrative or maintenance fee. All



## Wy Prof. Conduct, Client-Lawyer Relationship, Safekeeping Property

other fees are the responsibility of, and may be charged to, the lawyer maintaining the IOLTA Account. Fees or charges in excess of the interest or dividends earned on the account for any month or quarter shall not be taken from interest or dividends earned on other IOLTA Accounts or from the principal of the account. IOLTA Eligible Institutions may elect to waive any or all fees on IOLTA Accounts;

**(C)** remit, each month, interest or dividends, net of any service charges or fees, on the average monthly balance in the account, or as otherwise computed in accordance with the institution's standard accounting practice for other depositors, to the Equal Justice Wyoming Foundation, a tax exempt entity;

**(D)** transmit with each remittance to the Equal Justice Wyoming Foundation, in an electronic format to be specified by the Equal Justice Wyoming Foundation, a statement which shall include the following: (1) the name of the member or the member's law firm for whom the remittance is sent, (2) the account number of each account, (3) the rate of interest applied, (4) the amount of interest or dividends remitted, (5) the amount and type of charges or fees deducted, if any, and (6) the average account balance for the period in which the report is made; and

**(E)** transmit to the depositing lawyer a report in accordance with normal procedures for reporting to its depositors.

**(iv)** All interest transmitted to the Equal Justice Wyoming Foundation shall be distributed by the Equal Justice Wyoming Foundation for the purposes of providing legal services to the indigent of Wyoming, who would otherwise be unable to obtain legal assistance; providing public education projects which promote a knowledge and awareness of the law; providing projects which improve the administration of justice; or providing for the reasonable costs of administration of interest earned on accounts under this Rule. Subject to the fulfillment of fund purposes, the Equal Justice Wyoming Foundation shall have the sole discretion of allocation, division, and distribution of funds.

**(v)** The Equal Justice Wyoming Foundation shall have authority to promulgate administrative policies and rules consistent with this Rule, subject to the approval of the Supreme Court.

**(2)** "Non-IOLTA Account" refers to a trust account, from which funds may be withdrawn upon request as soon as permitted by law. Any interest earned on such an account shall be paid to the client or third person. Such an account shall be established as:

**(i)** A separate client trust account for the particular client or matter; or

**(ii)** A pooled client trust account with subaccounting by the depository institution or by the lawyer. Such subaccounting shall provide for computation of net interest or dividend earned by each client or third person's funds and the payment thereof to the client or third person.

**(3)** A lawyer's good-faith decision regarding the deposit or holding of all client or third person funds in an IOLTA Account versus a Non-IOLTA Account is not reviewable by a disciplinary body. A lawyer shall review the IOLTA Account at reasonable intervals to determine whether changed circumstances require the funds to be deposited prospectively in a Non-IOLTA Account.

**(b)** Any trust account shall comply with the following provisions:

**(1)** The account shall be with a regulated financial institution that is located or has a branch located in Wyoming, the deposits of which are insured by an agency of the federal government and which has been approved by the Wyoming State Bar to serve as a depository for lawyer trust accounts.

**(i)** To apply for approval, financial institutions shall file with the Wyoming State Bar an overdraft notification agreement, in a form provided by the Wyoming State Bar, to report to the Office of Bar Counsel, Wyoming State Bar, in the event any properly payable trust account instrument is presented against insufficient funds or when any other debit to such account

## Wy Prof. Conduct, Client-Lawyer Relationship, Safekeeping Property

would create a negative balance in the lawyer trust account, whether or not the instrument or other debit is honored and irrespective of any overdraft protection or other similar privileges that may attach to such account. Such agreement shall apply to all branches of the financial institution and shall not be canceled except on 120 days' notice in writing to the Wyoming State Bar. Upon notice of cancellation or termination of the agreement, a financial institution must notify all holders of trust accounts subject to the provisions of this rule at least 90 days before termination of approved status that the financial institution will no longer be approved to hold such trust account.

**(ii)** The Wyoming State Bar, in consultation with the Office of Bar Counsel, shall establish guidelines regarding the process of approving and terminating "approved status" for financial institutions, and for other operational procedures to effectuate this rule. The Wyoming State Bar shall periodically publish a list of approved financial institutions. No trust account shall be maintained in any financial institution that has not been so approved. Approved status under this section does not substitute for "IOLTA-Eligible Institution" status under Rule 1.15(a)(1).

**(iii)** The overdraft notification agreement shall further provide that all reports made by the financial institution shall be in the following format: (1) in the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor; (2) in the case of an instrument that is presented against insufficient funds but which instrument is honored, the report shall identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of the overdraft created thereby. Such reports shall be made simultaneously with, and within the time provided by law for, notice of dishonor. If an instrument presented against insufficient funds is honored, then the report shall be made within five business days of the date of presentation for payment against insufficient funds.

**(iv)** The overdraft notification agreement must provide that a financial institution is not prohibited from charging the lawyer for the reasonable cost of providing the reports and records required by this rule, but those costs may not be charged against principal, nor against interest earned on trust accounts, including earnings on IOLTA Accounts payable to the Equal Justice Wyoming Foundation. Such costs, if charged, shall not be borne by clients.

**(v)** Each financial institution must cooperate with the Office of Bar Counsel and produce any trust account records on receipt of a subpoena in accordance with any proceeding pursuant to the Rules of Disciplinary Procedure.

**(vi)** Every lawyer or law firm maintaining a trust account in accordance with this Rule shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements by financial institutions mandated by this Rule, and shall be deemed to have consented under applicable privacy laws to the reporting of information required by this Rule.

**(vii)** A financial institution shall be immune from suit arising out of its actions or omissions in reporting overdrafts or insufficient funds or producing documents under this Rule.

**(viii)** The agreement required by this Rule shall not be deemed to create a duty to exercise a standard of care and shall not constitute a contract for the benefit of any third parties that may sustain a loss as a result of lawyers overdrawing trust accounts.

**(2)** The account shall include all client or third party funds except those funds deposited pursuant to the written instructions of the client or third party in a special interest bearing account with the interest being paid pursuant to the written instructions of the client or third party.

**(3)** No interest from the account shall be made available to a lawyer or law firm.

**(4)** Trust accounts shall be managed as follows:

**(i)** Debit cards or automated teller machine cards shall not be used to withdraw funds from a trust account.

## Wy Prof. Conduct, Client-Lawyer Relationship, Safekeeping Property

- (ii) Client or third party funds received shall be deposited intact and records of deposit should be sufficiently detailed to identify each item.
  - (iii) All trust account withdrawals and transfers shall be made only by a lawyer admitted to practice law in Wyoming or by a person supervised by such lawyer and may be made only by authorized bank or wire transfer or by check payable to a named payee.
  - (iv) Cash withdrawals and checks made payable to "Cash" are prohibited.
  - (v) A lawyer shall request that the lawyer's trust account bank return to the lawyer, photo static or electronic images of canceled checks written on the trust account. If the bank provides electronic images, the lawyer shall either maintain paper copies of the electronic images or maintain the electronic images in readily obtainable format.
  - (vi) Only a lawyer admitted to practice law in Wyoming or a person supervised by such lawyer shall be an authorized signatory on a trust account.
- (5) The account must be in the name of the lawyer or the law firm and be clearly labeled or designated as a "trust account." The lawyer must be able to write checks or make disbursements directly from the account.
- (c) A lawyer may deposit the lawyer's own funds in a trust account solely to satisfy the bank's minimum deposit requirement or for the purpose of paying bank service charges on that account, but only in an amount necessary for such purposes.
  - (d) A lawyer shall deposit into a client trust account legal fees that have been paid but not yet earned and expenses that are anticipated but have not yet been incurred. The lawyer may withdraw such advance payments only as fees are earned or expenses incurred.
  - (e) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property. Complete records of such accounting shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.
  - (f) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property in dispute shall be kept in trust by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

**COMMENT** [1] *A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property which is the property of clients or third persons should be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities.*

[2] *Lawyers often receive funds from third parties from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds should be kept in trust and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.*

[3] *Paragraph (f) recognizes that third parties may have lawful 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*

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*claims against wrongful interference by the client. In such cases, when the third-party claim is not frivolous under applicable law, 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, 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.*

*[4] The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this Rule.*

*[5] While normally it is impermissible to commingle the lawyer's own funds with client funds, paragraph (c) provides that it is permissible when necessary to pay bank service charges on that account. Accurate records must be kept regarding which part of the funds belong to the lawyer.*

**(g)** A lawyer shall maintain current trust account records and shall retain the following records for a period of five years after termination of the representation.

- (1)** Receipt and disbursement journals containing a record of deposits to and withdrawals from client trust accounts, specifically identifying the date, payor, and description of each item deposited, as well as the date, payee and purpose of each disbursement;
- (2)** Ledger records for all trust accounts showing, for each separate client, the payor of all funds deposited, the names of all persons for whom the funds are or were held, the amount of such funds, the descriptions and amounts of charges or withdrawals, and the names of all persons or entities to whom such funds were disbursed;
- (3)** At least quarterly a written reconciliation of trust account journals, ledgers, and bank statements;
- (4)** The physical or electronic equivalents of all checkbooks registers, bank statements, records of deposit, and canceled or voided checks;
- (5)** Records of all electronic transfers from trust accounts, including the name of the person authorizing the transfer, the date of transfer, the name of the recipient and confirmation from the financial institution of the trust account number from which money was withdrawn and the date and the time the transfer was completed; and
- (6)** Copies of those portions of client files that are reasonably related to trust account transactions.

Records required by this Rule may be maintained in electronic, photographic, or other media provided that they otherwise comply with these Rules and that printed copies can be produced. These records shall be readily accessible to the lawyer.

**(h)** A trust account complying with this Rule is required for funds of clients or third persons coming into a lawyer's possession in the course of legal representation for which membership in the Wyoming State Bar is required. Members of the Wyoming State Bar who, because of the nature of their practice, do not, in the course of providing legal representation requiring membership in the Wyoming State Bar, receive funds of clients or third persons need not maintain a trust account in compliance with this Rule.

**(i)** Each active member of the Wyoming State Bar who practices within the state shall certify each year upon making payment of annual license fees that the member has and intends to keep in force in the State of Wyoming a separate bank account or accounts for the purpose of keeping money in trust for clients or third persons, which account conforms to the requirements of this Rule, or that because of the nature of the member's practice no client or third person funds are received. Certification shall be upon a form to be provided by the Wyoming State Bar and shall include the following: (1) the name and address of the lawyer or law firm filing the certification; (2) the name and address of each financial institution in which the account or accounts are maintained; (3) the account number of each account maintained pursuant to this Rule; (4) the dates covered by the certification; (5) the lawyer's express

## Wy Prof. Conduct, Client-Lawyer Relationship, Safekeeping Property

consent to the overdraft notification required by subsection (b)(1) of this Rule; and (6) the signature, under penalty of perjury, of the lawyer making the certification.

(j) If the owner of property being held in trust by a member of the Wyoming State Bar cannot be located after reasonable efforts, such property shall be remitted to the Client Protection Fund of the Wyoming State Bar.

(k) Upon dissolution of a law firm or of any legal professional corporation, the partners shall make reasonable arrangements for the maintenance of client trust account records specified in this Rule.

(l) Upon the sale of a law practice, the seller shall make reasonable arrangements for the maintenance of records specified in this Rule.

## History

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Amended April 11, 2006, effective July 1, 2006; amended September 30, 2008, effective January 1, 2009; amended August 16, 2012, effective September 1, 2012; amended October 20, 2015, effective November 2, 2015; amended November 23, 2015, effective December 1, 2015; amended September 7, 2016, effective October 1, 2016; amended October 19, 2016, effective November 1, 2016; amended June 25, 2019, effective September 1, 2019.

### Annotations

#### **Delivery of client funds. —**

#### **Misappropriating client funds. —**

**Delivery of client funds.** —Wyo. R. Prof. Conduct 1.15(c) obligates an attorney to deliver to his client and third parties any funds they are entitled to receive; the rule does not require, or even allow, the attorney to pay funds belonging to a third party to his client, and the rule recognizes the possibility of a client's creditors having just claims against funds or other property in a lawyer's custody. [\*Winship v. Gem City Bone & Joint, P.C.\*, 2008 WY 68, 185 P.3d 1252, 2008 Wyo. LEXIS 71 \(Wyo. 2008\)](#).

**Misappropriating client funds.** —Lawyer was publicly censured and ordered to pay a portion of the costs for her disciplinary proceeding for a violation of W.R.P.C. 1.15 after she offset her attorney fees out of funds held for her client without obtaining client permission. [\*Bd. of Prof'l Responsibility v. Davidson\*, 2005 WY 89, 117 P.3d 452, 2005 Wyo. LEXIS 107 \(Wyo. 2005\)](#).

## WY Prof. Conduct Rule 5.3

This document reflects changes through rules received by the publisher on or before April 25, 2022.

**WY - Wyoming State & Federal Court Rules > Rules of Professional Conduct for Attorneys at Law > Law Firms and Associations**

### **Rule 5.3. Responsibilities Regarding Nonlawyer Assistance.**

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With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
  - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
  - (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

**Comment.** — [1] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that nonlawyers in the firm and nonlawyers outside the firm who work on firm matters will act in a way compatible with the professional obligations of the lawyer. See Comment [6] to Rule 1.1 (retaining lawyers outside the firm) and Comment [1] to Rule 5.1 (responsibilities with respect to lawyers within a firm). Paragraph (b) applies to lawyers who have supervisory authority over such nonlawyers within or outside the firm. Paragraph (c) specifies the circumstances in which a lawyer is responsible for the conduct of such nonlawyers within or outside the firm that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer.

*Nonlawyers Within the Firm.* [2] Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

*Nonlawyers Outside the Firm.* [3] A lawyer may use nonlawyers outside the firm to assist the lawyer in rendering legal services to the client. Examples include the retention of an investigative or paraprofessional service, hiring a document management company to create and maintain a database for complex litigation, sending client documents to a third party for printing or scanning, and using an Internet-based service to store client information. When using such services outside the firm, a lawyer must make reasonable efforts

## WY Prof. Conduct Rule 5.3

*to ensure that the services are provided in a manner that is compatible with the lawyer's professional obligations. The extent of this obligation will depend upon the circumstances, including the education, experience and reputation of the nonlawyer; the nature of the services involved; the terms of any arrangements concerning the protection of client information; and the legal and ethical environments of the jurisdictions in which the services will be performed, particularly with regard to confidentiality. See also Rules 1.1 (competence), 1.2 (allocation of authority), 1.4 (communication with client), 1.6 (confidentiality), 5.4(a) (professional independence of the lawyer), and 5.5(a) (unauthorized practice of law). When retaining or directing a nonlawyer outside the firm, a lawyer should communicate directions appropriate under the circumstances to give reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer.*

*[4] Where the client directs the selection of a particular nonlawyer service provider outside the firm, the lawyer ordinarily should agree with the client concerning the allocation of responsibility for monitoring as between the client and the lawyer. See Rule 1.2. When making such an allocation in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules.*

## History

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Amended April 11, 2006, effective July 1, 2006; amended August 5, 2014, effective October 6, 2014.

Annotations

## Research References & Practice Aids

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### Hierarchy Notes:

[WY Prof. Conduct](#)

Wyoming State & Federal Court Rules  
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