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NOTICE: CHANGES TO MARYLAND RULE 19-301.15

On July 18, 2024, the Standing Committee on Rules of Practice and Procedure submitted its 223rd Report to the Supreme Court of Maryland for consideration. Among the Committee's recommended Rule changes was an amendment to Rule 19-301.15(c), which governs the safekeeping of property, to replace the provision establishing an exception to the general rule that an attorney may not withdraw fees from the attorney's escrow account until they are earned with a provision that merely contained the general rule.

On November 13, 2024, the Supreme Court approved the Rule changes, which go into effect on July 1, 2025.

In the amended Rule 19-301.15, the prior provision in subsection (c) pertaining to informed consent will be replaced with the following language: "An attorney shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the attorney only as fees are earned or expenses incurred." The Rule change eliminates the ability of the client to agree to a different arrangement.

The changes to Rule 19-301.15 also include a stylistic change to Comment 1; the deletion of Comment 3; the renumbering of Comments 4, 5, and 6 to Comments 3, 4, and 5, respectively; and the addition of a cross reference following renumbered Comment 3.

The amendment to Rule 19-301.15 brings it into closer alignment with American Bar Association Model Rule of Professional Conduct 1.15. The Maryland Rule will no longer align with the District of Columbia's version of Rule 1.15.

The Office of Bar Counsel is providing this information as a courtesy in an effort to bring practitioners' attention to this upcoming Rule change. Attorneys should, as always, review relevant upcoming Rule changes and review the manner in which they handle fees and their retainer agreements to ensure compliance with the requirements of Rule 19-301.15(c) as amended.

For more information about the upcoming Rule changes, including the full text of the 223rd Rules Report, please refer to the Proposed Rules Changes and Recent Rules Orders section of the Maryland Courts website, available at <https://www.mdcourts.gov/rules/ruleschanges>.

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Please note that the language following is for your consideration and determination as to whether or not it would be appropriate in any particular matter. As with all suggested forms, it should be used carefully and with great thought and if necessary conformed to fit your practice.

RETAINER AGREEMENT

We have agreed that the total fee for my services rendered will be \$_____. That amount is due and payable immediately.

Upon payment, in accordance with the Rules of Professional Conduct for Maryland Lawyers, that entire sum will be held in my Attorney Trust Account. The fee will be deemed earned as follows:

A. 50% of the fee shall be earned once we have signed this retainer agreement because I will have met with you, obtained initial information as to the nature of the matter, and set aside on my calendar the trial date meaning that I cannot render services to another person on that date. As such, once the sum clears my attorney trust account, it shall be earned.

B. 25% of the fee shall be earned once I complete my preparation with you in anticipation of the trial day. We will meet prior to the trial to prepare for our presentation and your testimony, if any. Following that occurrence, I shall be authorized to remove 25% of the fee from my trust account and it will be earned.

C. The remaining fee will be earned on the trial date, whether the case is tried or not. Please note, if the case is continued and not tried on the scheduled date, for any reason, I will prepare with you again and try the case and there will be no additional fee.

THIRD PERSON PAYERS

If someone else is either paying the fee or assisting you with regard to the payment of the fee it is understood and agreed that person is not my client. As such, my communication with that person is not protected by the attorney-client privilege of confidentiality. To that end, I will not confer with you in the presence of a third person unless that person is necessary for some other reason to assist in your representation such as a medical professional.

In the event any part of the fee is returned, it will be returned to the person who paid it.