

The Supreme Court of South Carolina

Re: Amendment to Rule 1.15(e), Rule 407, South
Carolina Appellate Court Rules

Appellate Case No. 2022-000516

ORDER

The South Carolina Bar proposes amending Rule 1.15(e) of the Rules of Professional Conduct (RPC), which are found in Rule 407 of the South Carolina Appellate Court Rules (SCACR). The amendments allow lawyers to resolve a competing claim to property in the possession of a lawyer if the claim is between a client and a third party and disbursement to the client is not otherwise prohibited by law or court order. The Bar also proposes to amend Comment 4 to the rule.

Pursuant to Article V, § 4 of the South Carolina Constitution, we adopt the Bar's proposed amendments with minor changes. We further amend various other portions of the rule to refer to rule provisions as "paragraphs," rather than "Subsections," for consistency, since all other rules within the RPC refer to rule provisions as paragraphs.¹ The amendments to paragraph (e) and Comment 4 are set forth in the attachment. These amendments are effective immediately.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

¹ These amended references are contained in paragraph (f)(2) and Comments 7 and 8 of Rule 1.15.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

s/ D. Garrison Hill J.

Columbia, South Carolina
April 26, 2023

Rule 1.15(e), RPC, Rule 407, SCACR, is amended to provide:

(e)(1) 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 shall be kept separate 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. Disputed property shall be kept separate until one of the following occurs:

- (i) the parties reach an agreement on the distribution of the property;
- (ii) a court order resolves the competing claims; or
- (iii) distribution is allowed under paragraph (e)(2) of this Rule.

(2) Where competing claims to property in the possession of a lawyer are between a client and a third party and disbursement to the client is not otherwise prohibited by law or court order, the lawyer may provide written notice to the third party of the lawyer's intent to distribute the property to the client, as follows:

- (i) The notice must inform the third party that the lawyer may distribute the property to the client unless the third party files a civil action and provides the lawyer with written notice and a copy of the filed action within 90 calendar days of the date of service of the lawyer's notice. The lawyer's notice shall be served on the third party in the manner provided under Rules 4(c) and (d) of the South Carolina Rules of Civil Procedure.
- (ii) If the lawyer does not receive written notice of the filing of a civil action from the third party within the 90-day period, the lawyer may distribute the property to the client after consulting with the client regarding the advantages and disadvantages of disbursement of the disputed property and obtaining the client's informed consent to the distribution, confirmed in writing.

(iii) If the lawyer is notified in writing of a civil action filed within the 90-day period, the lawyer shall continue to hold the property in accordance with paragraph (e)(1) of this Rule unless and until the parties reach an agreement on distribution of the property or a court resolves the matter.

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

Comment 4 to Rule 1.15, RPC, Rule 407, SCACR, is amended to provide:

[4] Paragraph (e) also 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 claims against wrongful interference by the client. In such cases, when the third-party claim has become a matured legal or equitable claim under applicable law 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. Except with regard to the procedures set out in paragraph (e)(2) of this Rule, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party. Alternatively, when a lawyer reasonably believes 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.