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IN THE SUPREME COURT
STATE OF ARIZONA

PETITION TO AMEND ETHICAL RULE 1.15, RULE 42, RULES OF THE ARIZONA SUPREME COURT	Supreme Court No. R-12-0032 and R-11-0024 **Comment of the State Bar of Arizona on Petition to Amend Ethical Rule 1.15, Rule 42, Rules of the Arizona Supreme Court**

A Petition has been submitted to amend Ethical Rule 1.15, Rule 42, Rules of the Arizona Supreme Court, which was filed as an alternative to Petition R-11-0024. (Both Petitions will be referred to as the "Petitions." The second Petition, R-12-0032, will be referred to as the "Alternate Petition").

The State Bar of Arizona previously asked that the comment period for these Petitions be extended to allow the State Bar the opportunity to form a Task Force to consider the issues. After the Court extended the comment period, a Task Force was formed to evaluate and make recommendations to the State Bar on the issues presented in the Petitions. The State Bar also requested input from the Committee on the Rules of Professional Conduct ("Ethics Committee").

Based on its review of the issues, and after considering input from the Task Force and the Ethics Committee, the State Bar opposes the specific amendments proposed in the Petitions. The State Bar agrees, however, that some change in ER 1.15 is warranted to address the concerns raised in the Petitions. The State Bar proposes an alternate

amendment to ER 1.15 and the accompanying comment, in lieu of the amendment proposed in the Alternate Petition. The State Bar's proposal is contained in Exhibit A. Exhibit B contains a red-line showing changes between the State Bar's proposal and current ER 1.15 and the Comments thereto.

The State Bar is informed that the Petitioners support these modifications.

DISCUSSION

I. BACKGROUND OF CURRENT ER 1.15.

Under the common law, a lawyer holding property or funds of a third party will ordinarily be a fiduciary as to the property.[1] Following traditional fiduciary duty principles, Rule 1.15(e) of the ABA Model Rules provides that the lawyer must hold property the lawyer possesses in the course of representation "in which two or more persons (one of whom may be the lawyer) claim interests," ***separate*** "until the dispute is resolved." Further, "[t]he lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute." Arizona adopted the Model Rule.

The third party's claim must be to the property itself, rather than a generalized claim against the client. Where a client owes a creditor money, but the creditor does not have a specific interest in the property held by the lawyer, the lawyer is free to disburse the property as directed by the client, but should advise the client of the consequences of failing to pay the claim. G. Hazzard, W. Hodes & P. Jarvis, The Law of Lawyering § 19.6, Illustration 19-1 (3d ed. 2012).

Authorities give slightly different direction on the nature of the dispute triggering the lawyer's obligation to hold the property, rather than simply paying it as directed by the client. For example, the Restatement of the Law Governing Lawyers § 45(d) (3d ed. 2000) ("Restatement") states that the lawyer's obligation to hold property arises when "there are

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[1] The term "property" will be used in this Comment to refer to all property interests, including funds held by the lawyer.

substantial grounds for dispute as to the person entitled to property." Comment [4] to the ABA Model Rules explains that "third parties may have lawful claims against specific funds or other property in the lawyer's custody," and the lawyer must protect against wrongful interference by the client with such claims "when the third party claim is not frivolous under applicable law." Comment [4] to Arizona's ER 1.15 provides that the lawyer must refuse to surrender the property to the client "when the third-party claim has become a matured legal or equitable claim."

Rule 1.15(e), in its current form, provides important protection for a lawyer holding property in which a client or third person both claim an interest. On the one hand, the lawyer owes duties to the client, including following the client's directions. See E.R. 1.2(a). On the other hand, the lawyer can owe obligations to one or more third persons with respect to property in the lawyer's possession. These obligations may be contractual, such as an agreement by the lawyer to honor the client's assignment; statutory (including the Arizona Lien of Healthcare Providers under A.R.S. § 33-931 et seq. and under the Uniform Commercial Code, *see* A.R.S. § 47-9406(A)), or arise under any number of other circumstances. In addition to helping a lawyer resolve the conflict between a lawyer's duties to clients and third parties, the current rule thus protects the lawyer from potential liability for an improper disbursement. For example, the Restatement explains in § 45, Comment D, "[w]hen it is unclear who is entitled to property in the lawyer's possession, the lawyer is not required to deliver the disputed property to either claimant; indeed, if the lawyer delivers the property to one claimant, the lawyer can later be held liable to the other."

II. PROCEDURAL HISTORY

The Petitions under consideration were filed in 2011 and 2012 by Thomas Ryan, David Abney and Geoffrey Trachtenberg, as Co-Petitioners on behalf of the Arizona

Association of Justice. Both Petitions proposed to amend ER 1.15(e) or the related comment, which require that an attorney holding property in which two or more persons claim interests must keep the property separate "until the dispute is resolved." The Petitions argued, among other concerns, that this ethical requirement had the practical effect of freezing property, without providing the statutory protections that would normally be required for a prejudgment writ of attachment, and made clients vulnerable to illegitimate claims. The original Petition proposed amending the Comment to ER 1.15, to allow a lawyer to distribute the funds or property at issue if the third party failed to bring an action within 90 days of receiving notice from the lawyer of his or her intent to distribute the property to the client. The Alternate Petition incorporates a 90-day notice procedure as part of ER 1.15(e).

In response to the Petitions, the State Bar asked that the Court extend the comment period to allow the Bar to establish a Task Force to consider potential solutions. The Court granted the continuance, allowing comments to be filed by May 2013.

Thereafter, a Task Force of 15 members was appointed by President Cramer. The Task Force ultimately presented a strongly divided recommendation to the State Bar. A slight majority favored the elimination of ER 1.15(e) in its entirety. A minority of the Task Force supported leaving ER 1.15(e) "as is," with no changes.

The State Bar, after careful review, has determined that it does not support eliminating ER 1.15(e) in its entirety, for several reasons. First, the approach would depart substantially from long-standing ethical rules not just in Arizona, but nationally. Such a radical change is likely to have unintended consequences, as there is a lack of precedent to guide lawyers who may be faced with competing client and third-party demands to distribute funds, in situations where the ethical rules now provide guidance. The State Bar was also concerned that the elimination of ER 1.15(e), which allows a lawyer to hold funds

in which the interests are in dispute, would put lawyers in an unresolvable conflict position with clients. In circumstances where the lawyer is uncertain about the validity of the third party claim, where the claim is valid, or where valid claims exceed available proceeds, current ER 1.15(e) allows the lawyer to hold the funds until the dispute is resolved, even if the client instructs the lawyer to distribute the disputed funds directly to the client.

If ER 1.15(e) is eliminated, however, a lawyer who is uncertain about the proper disposition of funds may nonetheless have an ethical obligation to follow the client's instructions (see ER 1.2(a) (lawyer shall abide by a client's decisions concerning the objectives of representation)). Although ER 1.2(d) provides that a lawyer shall not assist a client in conduct that the lawyer "knows is criminal or fraudulent," and ER 8.4(b) precludes a lawyer from committing a criminal act or knowingly assisting another to do so, those limitations would not apply where the client's decision not to pay valid claims is neither criminal nor fraudulent. Yet if the common law imposes fiduciary liability on a lawyer holding third party funds, the choice of paying one claimant (the client) over another could be a straight forward breach of fiduciary duty. As a result, a lawyer faced with client direction to pay funds to the client would face a difficult choice between acceding to a client's demand for distribution and placing the lawyer at risk of liability if the distribution is improper, or refusing the client's demand and placing the lawyer at risk of violating ER 1.2(a). *See also* ER 1.7(a)(2) and Cmt. 10 (lawyer has conflict when personal interest of the lawyer is at odds with the client's interest).

III. THE STATE BAR'S PROPOSED MODIFICATIONS TO ER 1.15 AND THE ACCOMPANYING COMMENT

While the State Bar does not support the proposed amendment to ER 1.15(e) as set forth in Alternate Petition (R-12-0032) as written, it agrees that some change is warranted. The Alternate Petition sets forth a new procedure that would allow the lawyer to distribute funds or property in which there are competing claims, unless the third-party files an action

within 90 calendar days after the lawyer provides a written notice to the third party. [Alternate Petition, Ex. 1] The primary concerns with the proposed amendment are that it does not distinguish among claims that are valid against the property, are doubtful against the property, are valid against the client, or are doubtful against the client. These permutations present different risks for the lawyer and client, yet nothing in the proposed amendment requires the lawyer to evaluate anything beyond whether the interests are in dispute. In addition, the proposed amendment does not adequately address the risk to the client of such a "distribution on notice" procedure; the client may be led to believe, incorrectly, that the such a procedure extinguishes the third party's claim.

The State Bar's proposed modification attempts to address these concerns, as follows:

(1) *First,* the State Bar's draft provides that the new notice procedure cannot be invoked to allow distribution unless the lawyer "believes that the third party does not have a matured legal or equitable claim to the property." The term "belief" is already defined in ER 1.10(a), and refers to a lawyer's actual state of mind. The phrase "matured legal or equitable claim" comes from current Comment [4], which provides in part that "when the third-party claim has become a matured legal or equitable claim, the lawyer must refuse to surrender the property to the client until the claims are resolved." [See also Ariz. Ethics Op. 11-03 ("only matured legal or equitable claims of which the lawyer has actual knowledge are protected by ER 1.15(d)")] The State Bar believes that it is important that the notice procedure be limited to situations where the lawyer actually believes that the claim is invalid. If the lawyer believes the third party does, in fact, have a "matured legal or equitable claim," then the lawyer is in a traditional fiduciary position with respect to the property or funds, and should abide by the Rule's longstanding ethical requirement to keep the funds separate until the dispute is resolved.

(2) *Second,* the State Bar's draft adds language specifying that if the third party does not provide the required written notice to the lawyer within 90 days, the lawyer may distribute the property, but only after: (a) consulting with the client regarding the advantages and disadvantages of the disbursement; and (b) obtaining the client's informed consent, confirmed in writing, to the disbursement. Because the notice procedure does not alter a third-party's legal rights against the client, any distribution--even if otherwise proper under the ethical rules--may nonetheless subject the client to potential liability to third parties. At a minimum, the lawyer must competently advise the client about the risks involved. This procedure is similar to the requirement that a lawyer obtain a client's informed consent, confirmed in writing, for a waiver of conflicts. *See* ER 1.7(b); *see also* ER 1.0(b) (defining "confirmed in writing" requirement); ER 1.4(b) (lawyer's obligation to communicate "to the extent reasonably necessary to permit the client to make informed decisions regarding the representation").

(3) *Third,* the State Bar's proposed amendment adds language clarifying that even if the notice procedure is used, the lawyer cannot disburse funds if the disbursement would otherwise be "prohibited by law or court order."

(4) *Fourth,* the State Bar believes that the Comment to ER 1.15 should also be amended to provide additional guidance on the new notice procedure. The proposed revisions modify some portions of the existing Comments for consistency with the new notice procedure (e.g., Comment [4]). In addition, new comments are proposed that: (a) explain the new procedure; (b) provide additional guidance on the contents of the third-party notice; (c) reiterate that the notice procedure cannot alter the third-parties substantive rights; and (d) emphasize the importance of obtaining the client's informed consent to any distribution.

CONCLUSION

As discussed above, the State Bar requests that the Court adopt the proposed modifications set forth in Exhibit A hereto, in lieu of the proposals set for in the Petitions.

RESPECTFULLY SUBMITTED this 29th day of April 2013.

By John A. Furlong
John A. Furlong
General Counsel

Electronic copy filed with the Clerk
of the Supreme Court of Arizona this
29th day of April, 2013.

By: Kathleen A. Lundgren

Exhibit A: Proposed Amendment to Ethical Rule 1.15 ("Safeguarding Property") of Rule 42, Arizona Rules of the Supreme Court

ER 1.15. Safekeeping Property

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(d) 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 between the client and the third person, 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.

(e) When in the course of representation a lawyer possesses property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer. The lawyer shall promptly distribute any portions of the property as to which there are no competing claims. Any other property shall be kept separate until one of the following occurs:

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

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

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

(f) Where the competing claims are between a client and a third party, and the lawyer believes that the third party does not have a matured legal or equitable claim to the property, the lawyer may provide written notice to the third party of the lawyer's intent to distribute the property to the client, as follows:

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

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

(3) If the lawyer is notified in writing of an action filed within the 90-day period, the lawyer shall continue to hold the property separate unless and until the parties reach an agreement on distribution of the property, or a court resolves the matter.

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

CREDIT(S)

Amended June 9, 2003, effective Dec. 1, 2003; June 8, 2004, effective Dec. 1, 2004. Amended on emergency basis effective Jan. 1, 2009. Adopted on a permanent basis and amended effective Sept. 3, 2009. Amended Sept. 2, 2010, effective Jan. 1, 2011.

COMMENT

COMMENT [2003 AMENDMENT]

[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, including prospective clients, must 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. A lawyer should maintain on a current basis books and records in accordance with generally accepted accounting practice and comply with any recordkeeping rules established by law or court order. See Supreme Court Rules 43(i) and 44.

[2] While normally it is impermissible to commingle the lawyer's own funds with client funds, paragraph (b) 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 are the lawyer's.

[3] Lawyers often receive funds 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 must be kept in a trust account 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.

[4] [**Effective December 1, 2004**] The Rule also recognizes that third parties may have just claims against specific funds or other property in a lawyer's custody,

such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim has become a matured legal or equitable claim, and unless distribution is otherwise allowed under this rule, the lawyer must refuse to surrender the property to the client until the claims are resolved. In addition to the procedures described in this rule, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

[5] 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 only 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.

[6] A lawyer's fund for client protection provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Where such a fund has been established, a lawyer must participate where it is mandatory, and, even when it is voluntary, the lawyer should participate. Every lawyer has a professional obligation to participate in the collective efforts of the bar to reimburse clients and escrow beneficiaries who have lost money or property as the result of dishonest conduct in the practice of law. A lawyer's financial contribution to a lawyers' fund for client protection is an acceptable method of fulfilling this obligation.

[7] For further obligations regarding client property and trust accounts, see Supreme Court Rule 43 ("Trust Account Verification") and Rule 44 ("Trust Accounts; Interest Thereon").

COMMENT [2009 AMENDMENT]

[1] The 2009 amendments to E.R. 1.15 correspond with the 2009 amendments to Supreme Court Rule 43 on Trust Accounts. Supreme Court Rule 43and the 2009 comments thereto contain additional requirements and procedures governing credit card transactions.

[2] For purposes of this rule, "merchant fees" and "credit card transaction fees" are fees that are deducted from the amount of the credit card charge to pay the company that issued the client's credit card, the lawyer or law firm's credit card processing service, and the credit card association (e.g., Visa, MasterCard), and related charges. Those fees typically include a percentage of the total amount billed plus a fixed fee, which, unless paid by the lawyer or law firm, reduces the amount that can be credited to the client's account. A "chargeback" (or reversal of

charges) occurs when a client or former client writes to the credit card company that issued the credit card used to pay a lawyer to dispute the amount that should be paid to the lawyer or law firm. When a client or former client does so, the lawyer's or law firm's account is debited an amount equal to the disputed amount, plus a chargeback fee.

[3] Lawyers and law firms are permitted, and in some cases may be required, to place their own funds into their trust accounts in very limited circumstances. Lawyers and law firms that accept payment by credit card for advance fees, costs or expenses must at all times maintain in their trust accounts sufficient funds of their own to pay fees and charges related to operation of the trust account, and to pay all merchant and credit card transaction fees, chargeback fees and related charges. Lawyers and law firms must make a reasonable determination of the amount of their own funds that may appropriately be kept in their trust accounts to pay trust account and credit card fees and charges. Lawyers and law firms that use credit card processing services that debit all chargebacks and credit card fees and charges from an operating or business account are not required to maintain their own funds in their trust accounts to cover those charges, since no client or third-party funds will be at risk due to debits from the trust account. Lawyers should consult Rule 43 on the circumstances when lawyer funds are required to be maintained in a trust account to avoid misappropriation or conversion of client or third-party funds.

COMMENT [20__ AMENDMENT]

[1] New paragraph (f) allows a lawyer to distribute funds or property in the lawyer's possession, upon providing notice to third persons known to claim an interest. If the requirements of this paragraph are met, the lawyer may distribute funds as provided in the notice unless the third party provides written notice to the lawyer, within 90 days of service of the lawyer's notice on the third person, informing the lawyer that an action has been filed. However, if the lawyer believes that the third person has a matured legal or equitable claim to the funds or property, the notice provisions of paragraph (f) are inapplicable and the lawyer must continue to keep the property separate until an agreement on distribution is reached, or a court order resolves the competing claims, as provided in paragraph (e)(1) and (2).

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

third party can provide notice to the lawyer of the commencement of an action asserting an interest in the funds or property; and (d) the proposed distribution of the funds or property. The notice shall be served in the manner provided under Rules 4.1 or 4.2 of the Arizona Rules of Civil Procedure.

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

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

EXHIBIT B

Proposed Amendment to Ethical Rule 1.15 ("Safeguarding Property") of Rule 42, Arizona Rules of the Supreme Court

[Additions are shown by underlining; deletions are shown by strike-through]

ER 1.15. Safekeeping Property

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

(2) If the lawyer does not receive such written notice from the third party within the 90- day period, and provided that the disbursement is not prohibited by law or court order, the lawyer may distribute the funds to the client after consulting with the client

regarding the advantages and disadvantages of disbursement of the disputed funds and obtaining the client's informed consent to the distribution, confirmed in writing.

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

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[6] A lawyer's fund for client protection provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Where such a fund has been established, a lawyer must participate where it is mandatory, and, even when it is voluntary, the lawyer should participate. Every lawyer has a professional obligation to participate in the collective efforts of the bar to reimburse clients and escrow beneficiaries who have lost money or property as the result of dishonest conduct in the practice of law. A lawyer's financial contribution to a lawyers' fund for client protection is an acceptable method of fulfilling this obligation.

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[3] Lawyers and law firms are permitted, and in some cases may be required, to place their own funds into their trust accounts in very limited circumstances. Lawyers and law firms that accept payment by credit card for advance fees, costs or expenses must at all times maintain in their trust accounts sufficient funds of their own to pay fees and charges related to operation of the trust account, and to pay all merchant and credit card transaction fees, chargeback fees and related charges. Lawyers and law firms must make a reasonable determination of the amount of their own funds that may appropriately be kept in their trust accounts to pay trust account and credit card fees and charges. Lawyers and law firms that use credit card processing services that debit all chargebacks and credit card fees and charges from an operating or business account are not required to maintain their own funds in their trust accounts to cover those charges, since no client or third-party funds will be at risk due to debits from the trust account. Lawyers should consult Rule 43 on the circumstances when lawyer funds are required to be maintained in a trust account to avoid misappropriation or conversion of client or third-party funds.

COMMENT [20__ AMENDMENT]

[1] New paragraph (f) allows a lawyer to distribute funds or property in the lawyer's possession, upon providing notice to third persons known to claim an interest. If the requirements of this paragraph are met, the lawyer may distribute funds as provided in the notice unless the third party provides written notice to the lawyer, within 90 days of service of the lawyer's notice on the third person, informing the lawyer that an action has been filed. However, if the lawyer believes that the third person has a matured legal or equitable claim to the funds or property, the notice provisions of paragraph (f) are inapplicable and the lawyer must continue to keep the property separate until an agreement on distribution is reached, or a court order resolves the competing claims, as provided in paragraph (e)(1) and (2).

[2] Notice under paragraph (f) must be sufficient to allow the third person to take appropriate action to protect its interests. Although there is no one form of notice that will be acceptable, the notice should generally include at least the following: (a) a description of the funds or property in the lawyer's possession; (b) the name of the client claiming an interest in the funds and other information reasonably available to the lawyer that would allow the third person to identify the claim or interest; (c) a mailing address, telephone number and email address where the third party can provide notice to the lawyer of the commencement of an action asserting an interest in the funds or property; and (d) the proposed distribution of the funds or property. The notice shall be served in the manner provided under Rules 4.1 or 4.2 of the Arizona Rules of Civil Procedure.

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

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