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OF THE
PRESIDENT

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KENNETH J. HOROHO, JR.

August 2, 2006

Elaine M. Bixler
Office of the Secretary
The Disciplinary Board of the Supreme Court of PA
First Floor, Two Lemoyne Drive
Lemoyne, PA 17043

Dear Ms. Bixler:

The Pennsylvania Bar Association Board of Governors met on Friday, July 28, 2006 and considered a recommendation from the PBA Real Property, Probate and Trust Law Section. The recommendation addressed the proposed amendments to the Rule 1.15 of the Pennsylvania Rules of Professional Conduct and Rule 221 of the Pennsylvania Rules of Disciplinary Enforcement.

After a thoughtful debate on these important issues, the Board voted to approve the enclosed recommendation. We thank the Disciplinary Board for extending the comment period so we had time to conduct a thorough review of the proposed amendments and offer comments. We look forward to working with you in the future.

Sincerely,

Kenneth J. Horoho, Jr.
President

KJHjr/slg
Enclosure

c: Andrew F. Susko, Esq.
C. Dale McClain, Esq.
William P. Carlucci, Esq.
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Real Property, Probate and Trust Law Section Recommendation and Report on Proposed Amendments to Pa. R. Prof. Conduct 1.15

Recommendation

The Real Property, Probate and Trust Law Section recommends that the Pennsylvania Bar Association oppose the adoption of amendments to Pa. R. Prof. Conduct 1.15 and Pa. Rule of Disciplinary Enforcement 221 that would apply the reporting and investment requirements of those rules to funds or other property held by a lawyer as an executor, trustee, or other fiduciary, and that the opposition of the Association be communicated by the officers of the Association to the Disciplinary Board of the Supreme Court before the deadline for comments on August 10, 2006, and to other parties and officials as may be appropriate.

Report

The Disciplinary Board of the Supreme Court of Pennsylvania has proposed amendments to Pa. R. Prof. Conduct 1.15 and Pa. Rule of Disciplinary Enforcement 221 that would bring funds or other property held by lawyers as executors, trustees, or other fiduciaries within the scope of those rules. "Amendments to the Pennsylvania Rules of Professional Conduct and the Pennsylvania Rules of Disciplinary Enforcement Relating to Safekeeping Property and Funds of Clients and Third Persons--Mandatory Overdraft Notification," 36 Pa.B. 2801 (6/10/2006). The original deadline for written comments was July 3, 2006, but the deadline has been extended to August 10, 2006.

The proposed amendments are complex, would either conflict with or supersede provisions of the Pa. Probate, Estates, and Fiduciaries Code ("PEF Code"), would be uncertain in their application, would unduly restrict lawyers serving as fiduciaries, would not be effective in enforcing any fiduciary duties of lawyers serving as fiduciaries, and would needlessly complicate the administration of estates and trusts by lawyers serving as fiduciaries in Pennsylvania.

Summary of Amendments:

Under the proposed amendments, Rule 1.15 ("Safekeeping Property"), which currently applies only to property of a client or third party received "in connection with a client-lawyer relationship" would be extended to include property held by a lawyer "in a fiduciary capacity." This change (along with other related changes) would have the following consequences:

- Amended Rule 1.15(c) would require that a lawyer receiving property in a fiduciary capacity "promptly notify the client or third party."
- Amended Rule 1.15(c) would also require a lawyer receiving funds or other property in a fiduciary capacity to "promptly comply with applicable requirements of the Pennsylvania Probate Estate and Fiduciaries Code, the Pennsylvania Supreme Court Orphans' Court Rules, and applicable Orphans' Court Rules of the county which has jurisdiction of the matter."

