

HOW WE GOT HERE

by Judge Glenn T. Harrell, Jr.

At the annual Maryland Judicial Conference held in May 2006 in Cambridge, the Court of Appeals met with representatives of the Attorney Grievance Commission (AGC), among other court-related bodies, to discuss issues of general concern. One concern was the relative frequency of complaints against attorneys in which Maryland Rule of Professional Conduct (MRPC) 1.15 and related rules were implicated. The Court examines closely only a few of the total complaints filed annually, usually the most serious or where the Commission and a respondent are unable to agree on a disposition. Even at that, the Court noted the following fairly recent representative cases in which a violation of MRPC 1.15 was a central facet: *AGC v. Obi*, 393 Md. 643 (2006); *AGC v. Rose*, 391 Md. 101 (2006); *AGC v. McLain*, 389 Md. 123 (2005); *AGC v. Glenn*, 386 Md. 653 (2005); *AGC v. Zuckerman*, 386 Md. 341 (2005); *AGC v. Auwah*, 374 Md. 505 (2003); *AGC v. Jeter*, 374 Md. 80 (2003); *AGC v. DiCicco*, 369 Md. 662 (2002); and *AGC v. Briscoe*, 357 Md. 554 (2000). The respondents in these cases and others not reaching the Court, but handled by the Commission, cut across many categorical lines – youth and seniority; relative inexperience and long experience; and sole practitioners and practitioners in firms. In many of those cases, violation of the generally-framed record-keeping requirement of MRPC 1.15(a) was attributed to respondents' lack of knowledge of what constitutes proper record-keeping regarding trust monies. The Rule gave little or no specific guidance on that score. Consideration seemed appropriate as to what the Court might do to address the situation more clearly, other than to consider individual attorney's conduct on an ad hoc basis.

Many other State judiciaries take a tact of supplying greater specificity in their analogous record-keeping rules. For example, Virginia, Massachusetts, Minnesota, New Mexico, Florida, and North Carolina spell-out minimum expectations for trust account record-keeping. Using these States' approaches as guides, a small working group was delegated by the Court with the responsibility to draft proposed amendments that would provide the Bar with a better "front-end" understanding of what is expected of practitioners and thereby avoid traps for the unwary.

The working group, composed of myself, David Downes (Chair of the Attorney Grievance Commission), Mel Hirshman (Bar Counsel), and Glenn Grossman (Deputy Bar Counsel), surveyed the schemes of the pertinent States and devised a draft set of revisions to MRPC 1.15 (b), making more specific what is expected of attorneys. We transmitted in October and November of 2006 the proposal to the Presidents of the MSBA, every local bar association in the State, and virtually every specialty bar association in the State. In addition, the Chairs of the relevant MSBA Sections were sent copies. All were solicited for their advice and suggestions. Offers were made by our working group to come to any meeting the recipients wished so that we could present our proposal in person and answer any questions. The working group announced its intent from the beginning that any revisions that might be adopted by the Court should not become effective until 1 January 2008, in order to give adequate time for further outreach to the practicing Bar as to the new expectations and to allow practitioners a reasonable period to adjust their office practices and procedures, where

necessary, to any new requirements.¹

As anticipated, the Rules Committee also was sent the draft proposal for its consideration and recommendation. Leading up to the Rules Committee's 5 January 2007 public hearing on the proposal, written suggestions were received from the MSBA's Committee on Ethics, the Ethics Committee of the Bar Association of Montgomery County, the Maryland Trial Lawyers Association, the MSBA's Administrative Law Section, and the MSBA's Solo & Small Firm Practice Section. Through the able contributions of these groups, a revised version of the working group's initial draft was able to be agreed upon at the Rules Committee's 5 January 2007 public meeting. This version was reported to the Court of Appeals and was the subject of a duly noticed public hearing on 22 January 2007. Because consensus had been reached previously between all those who chose to participate in the discussion leading up to this hearing, the event could only be described as a "love in," for those of you familiar with the 60s.

The Court unanimously adopted the version reported out of the Rules Committee, with an effective date of 1 January 2008. A presentation of the new rules was made by our working group on 15 June 2007 to attendees at the Maryland State Bar Association's Solo and Small Firm Practitioners Section program in Ocean City during the State Bar's annual meeting. Moreover, since then, we proposed to each local Bar Association throughout the

¹Articles regarding the proposed revisions were printed voluntarily, as a member service, in the newsletters of the Bar Association of Montgomery County (in December 2006 and February 2007) and the Prince George's County Bar Association (in January 2007). Moreover, the MSBA featured the proposal on its website and monthly events emails. There may well have been other voluntary dissemination by other bar associations to their members, though the above were the only ones brought to the attention of the working group.

State the production of regional presentations where the attorneys in each region would be invited. Acceptances of our offer resulted in events produced or to be produced in Hagerstown on 15 October, Towson on 7 November, Upper Marlboro on 26 November, Oakland on 10 December, and tonight here in Ellicott City. Thus, tonight, we continue the missionary work started in the middle of 2006. My cohorts will now explain to you the changes and attempt to suggest how you may comply, if you are not already in sync.