

SUPREME COURT OF WISCONSIN

NOTICE

This order is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 06-04A

In the matter of amendment of Supreme Court
Rules 20:1.15(b)(4m) and 20:1.15(e)(4)h.
Safekeeping Property.

FILED

MAY 27, 2010

David R. Schanker
Clerk of Supreme Court
Madison, WI

On May 22, 2006, the Office of Lawyer Regulation and the State Bar of Wisconsin filed a joint petition proposing certain modifications to the "trust account rule," Supreme Court Rule (SCR) 20:1.15, together with related amendments to SCR 20:1.0 that added definitions for advanced fees, flat fees, and retainers, SCR 21.16 (Discipline) and SCR 12.04 (Wisconsin Lawyers' Fund for Client Protection). On January 17, 2007, the supreme court held a public hearing on the rule petition number 06-04. On April 12, 2007, the Court voted 6 to 1 to adopt the petition, with modifications. Justice Bradley dissented from that portion of the petition permitting alternative protection for advanced fees, SCR 20:1.15(b)(4m).

On November 12, 2009, the court issued an order scheduling a review of the 2007 amendments and requested comments. On May 10, 2010, the court held an administrative conference. The

court reviewed the rule amendments and considered the comments and proposed amendments received. Upon consideration of the submissions made in response to the scheduled and noticed review, the court unanimously adopted the following amendments. Therefore,

IT IS ORDERED that the following amendments to the Supreme Court Rules shall be effective January 1, 2011, but are subject to revision if the court receives comments and further proposed changes that would necessitate a public hearing in the fall of 2010. Any written comments and proposed amendments related to rule order 06-04A should be filed with the Clerk of the Supreme Court by August 15, 2010:

SECTION 1. SCR 20:1.15(b)(4m) (intro.) and a.5. are amended to read:

20:1.15 (b) (4m) **Alternative protection for advanced fees.** (intro.) A lawyer who accepts advanced payments of fees may deposit the funds in the lawyer's business account, provided that review of the lawyer's fee by a court of competent jurisdiction must ultimately approve the lawyer's fee is available in the proceeding to which the fee relates, or provided that the lawyer complies with each of the following requirements:

a. 5. that the lawyer is required to submit any unresolved dispute about ~~a requested refund of advanced fees~~ the fee to binding arbitration within 30 days of receiving ~~a request for such a refund~~ written notice of such a dispute; and

SECTION 2. The first paragraph of the Comment to SCR 20:1.15(b)(4m) is amended to read:

This section allows lawyers to deposit advanced fees into the lawyer's business account, as an alternative to SCR 20:1.15(b)(4). The provision regarding court review applies to lawyers' fees in proceedings in which the lawyer's fee is subject to review at the request of the parties or the court, such as bankruptcy, formal probate, and proceedings in which a guardian ad litem's fee may be subject to judicial review. In any proceeding in which the lawyer's fee must be challenged in a separate action, the lawyer must either deposit advanced fees in trust or use the alternative protections for advanced fees in SCR 20:1.15(b)(4m). The lawyer's fee remains subject to the requirement of reasonableness (SCR 20:1.5) as well as the requirement that unearned fees be refunded upon termination of the representation [SCR 20:1.16(d)]. A lawyer must comply either with SCR 20:1.15(b)(4), or with SCR 20:1.15(b)(4m), and a lawyer's failure to do so shall be professional misconduct and grounds for discipline.

SECTION 3. SCR 20:1.15(e)(4)h. (intro.), 2., and 3. are amended to read:

20:1.15 (e) (4) h. (intro.) **Exception: Fee and cost advances by credit card, debit card or other electronic deposit.** A lawyer may establish a trust account, separate from the lawyer's IOLTA account, ~~solely~~ for the purpose of receiving ~~advanced payments of~~ legal fees and costs by credit card, debit card or other electronic deposit, ~~subject to the following~~

conditions provided that the lawyer complies with all of the following:

2. lawyer ~~and~~ or law firm funds, reasonably sufficient to cover all monthly account fees and charges and, if necessary, any deductions by the financial institution or card issuer from a client's payment by credit card, debit card, or other electronic deposit, shall be maintained in the credit card trust account, and a ledger for account fees and charges shall be maintained;

3. each payment of legal fees or costs by credit card, debit card or other electronic deposit, including, if necessary, a reimbursement by the lawyer or law firm for any deduction by the financial institution or card issuer from the gross amount of each payment, shall be transferred from the credit card trust account to the IOLTA account immediately upon becoming available for disbursement, ~~and~~ subject to the following requirements:

SECTION 4. SCR 20:1.15(e)(4)h.3.a. and b. are created to read:

20:1.15 (e) (4) h. 3. a. All advanced costs and advanced fees held in trust under sub. (b)(4) shall be transferred by check to the IOLTA account.

b. Earned fees, cost reimbursements, and advanced fees that are subject to the requirements of sub. (b)(4m) shall be transferred by check to the business account.

IT IS FURTHER ORDERED that notice of the amendments to SCR 20:1.15 be given by a single publication of a copy of this order

in the official state newspaper and in an official publication
of the State Bar of Wisconsin.

Dated at Madison, Wisconsin, this 27th day of May, 2010.

BY THE COURT:

Christopher J. Paulsen for DRS

David R. Schanker
Clerk of Supreme Court