

Wisconsin's Trust Account Rule: A Guide for Financial Institutions



On July 1, 2004, the Wisconsin Supreme Court made sweeping changes to Wisconsin's trust account rules for attorneys, effectively recreating the applicable Supreme Court Rule (SCR) 20:1.15. Additional changes took effect three years later, on July 1, 2007. Still further changes relating to IOLTA accounts and insurance requirements took effect on January 1, 2010 and January 1, 2011, respectively.

This Guide will highlight certain sections of SCR 20:1.15 that may be of interest to financial institutions at which lawyers and law firms maintain their trust and fiduciary accounts.

Definitions

Wisconsin's trust account rule includes definitions for a number of key terms that appear throughout the rule. It is important to be aware of the definitions in SCR 20:1.15(a) as they may well differ from a financial institution's definitions of the same or similar terms.

SCR 20:1.15(a) Definitions.

In this section:

- (1m) "**Draft account**" means an account upon which funds are disbursed through a properly payable instrument.
- (3) "**Fiduciary account**" means an account in which the lawyer deposits fiduciary property.
- (4) "**Fiduciary property**" means funds or property of a client or 3rd party that is in the lawyer's possession in a fiduciary capacity that directly arises in the course of, or as a result of, a lawyer-client relationship or an appointment by a court. Fiduciary property includes, but is not limited to, property held as agent, attorney-in-fact, conservator, guardian, personal representative, special administrator, or trustee, subject to the exceptions identified in sub. (k).
- (5) "**Financial institution**" means a bank, savings bank, trust company, credit union, savings and loan association, or investment institution, including a brokerage house.
- (7) "**Interest on Lawyer Trust Account or "IOLTA account"**" means a pooled interest-bearing or dividend-paying draft trust account, separate from the lawyer's business and personal accounts. An IOLTA account must be established in an IOLTA participating institution pursuant to SCR 20:1.15 (cm) (1) and (2), and may contain only funds that cannot earn income for the benefit of the client or 3rd party in excess of the costs to secure that income. Typical funds that would be placed in an IOLTA account include earnest monies, loan

proceeds, settlement proceeds, collection proceeds, cost advances, and advance payments for fees that have not yet been earned. An IOLTA account is subject to the provisions of SCR Chapter 13 and the trust account provisions of subs. (a) to (i), including the IOLTA account provisions of sub. (cm).

(7m) "**IOLTA participating institution**" means a financial institution that voluntarily offers IOLTA accounts and certifies to WisTAF annually that it meets the IOLTA account requirements of SCR 20:1.15 (cm) (3) to (6) and that it reports overdrafts on draft trust accounts and draft fiduciary accounts of lawyers and law firms to the office of lawyer regulation, pursuant to the financial institution's agreements with those lawyers and law firms. WisTAF shall confirm the accuracy of the certifications and publish, at least annually, a list of IOLTA participating institutions.

(8) "**Properly payable instrument**" means an instrument that, if presented in the normal course of business, is in a form requiring payment pursuant to the laws of this state.

(9) "**Trust account**" means an account in which the lawyer deposits trust property.

(10) "**Trust property**" means funds or property of clients or 3rd parties that is in the lawyer's possession in connection with a representation, which is not fiduciary property.



Titling and Proper Identification of Trust Accounts

With respect to the proper titling and identification of trust accounts, Wisconsin's trust account rule includes the following requirements:

SCR 20:1.15(b)(2) Identification of account.

Each trust account shall be clearly designated as a "Client Account," a "Trust Account," or words of similar import. The account shall be identified as such on ***all account records***, including ***signature cards, monthly statements, checks, and deposit slips***. An acronym, such as "***IOLTA,***" "***IOTA,***" or "***LTAB,***" ***without further elaboration, does not clearly designate the account as a client account or trust account.***¹

SCR 20:1.15(f)(1)f. Monthly statement.

The monthly statement provided to the lawyer or law firm by the financial institution ***shall identify the name and address of the lawyer or law firm and the name of the account.***



¹ Certain portions of the rules in this Guide have, for emphasis, been highlighted in ***bold italic print*** and/or **underscoring**.



Checks and Deposit Slips

Financial institutions should be aware of the required formatting for deposit slips and checks. There are also requirements for the content of wire transfer records. The applicable rules are:

SCR 20:1.15(f)(1)d. Deposit records.

Deposit slips ***shall identify the name of the lawyer or law firm, and the name of the account.*** The deposit slip shall identify the amount of each deposit item, the client or matter associated with each deposit item, and the date of the deposit. The lawyer shall maintain a copy or duplicate of each deposit slip. All deposits shall be made intact. No cash, or other form of disbursement, shall be deducted from a deposit. ***Deposits of wired funds shall be documented in the account's monthly statement.***

SCR 20:1.15(f)(1)e. Disbursement records.

1. **Checks.** Checks ***shall be pre-printed and pre-numbered. The name and address of the lawyer or law firm, and the name of the account shall be printed in the upper left corner of the check. Trust account checks shall include the words "Client Account," or "Trust Account," or words of similar import in the account name.*** Each check disbursed from the trust account shall identify the client matter and the reason for the disbursement on the memo line.

2. **Canceled checks.** Canceled checks ***shall be obtained from the financial institution. Imaged checks may be substituted for canceled checks.***

3. **Imaged checks.** Imaged checks ***shall be acceptable if they provide both the front and reverse of the check*** and comply with the requirements of this paragraph. The information contained on ***the reverse side*** of the imaged checks ***shall include any endorsement signatures or stamps, account numbers, and transaction dates that appear on the original.*** Imaged checks ***shall be of sufficient size to be readable without magnification and as close as possible to the size of the original check.***

4. **Wire transfers.** Wire transfers ***shall be documented by a written withdrawal authorization or other documentation, such as a monthly statement of the account that indicates the date of the transfer, the payee, and the amount.***





IOLTA Account Requirements

On January 1, 2010, substantial changes affecting Wisconsin IOLTA accounts, including income requirements, took effect. Most of those changes are found in SCR 20:1.15(cm):

SCR 20:1.15(cm) Interest on Lawyer Trust Account (IOLTA) requirements.

An IOLTA account must meet the following requirements:

(1) **Location.** An IOLTA account *shall be held in an IOLTA participating institution* that shall comply with location requirements of sub. (e) (1).

(2) **Certification by IOLTA participating institutions.**

a. *Each IOLTA participating institution shall certify to WisTAF annually that the financial institution meets the requirements of sub. (cm) (3) to (6) for IOLTA accounts and that it reports overdrafts on draft trust accounts and draft fiduciary accounts of lawyers and law firms to the office of lawyer regulation, pursuant to the institution's agreements with those lawyers and law firms. WisTAF shall by rule adopted under SCR 13.03 (1) establish the date by which IOLTA participating institutions shall certify their compliance.*

b. *WisTAF shall confirm annually, by a date established by WisTAF by rule adopted under SCR 13.03 (1), the accuracy of a financial institution's certification under sub. (cm) (2) a. by reviewing one or more of the following:*

1. the IOLTA comparability rate information form submitted by the financial institution to WisTAF;
2. rate and product information published by the financial institution; and
3. other publicly or commercially available information regarding products and interest rates available at the financial institution.

c. *WisTAF shall publish annually, no later than the date on which the state bar mails annual dues statements to members of the bar, a list of all financial institutions that have certified, and have been confirmed by WisTAF as IOLTA participating institutions.* WisTAF shall update the published list located on its website to add newly confirmed IOLTA participating institutions and to remove financial institutions that WisTAF cannot confirm as IOLTA participating institutions.

d. *Prior to removing any financial institution from the list of IOLTA participating institutions or failing to include any financial institution on the list of IOLTA participating institutions, WisTAF shall first provide the financial institution with notice and sufficient time to respond.* In the event a financial institution is removed from the list of IOLTA participating

institutions, WisTAF shall notify the office of lawyer regulation and provide that office with a list of the lawyers and law firms maintaining IOLTA accounts at that financial institution. The office of lawyer regulation shall notify those lawyers and law firms of the removal of the financial institution from the list, and provide time for those lawyers and law firms to move their IOLTA accounts to an IOLTA participating institution.

e. Lawyers and law firms shall be entitled to rely on the most recently published list of IOLTA participating institutions for purposes of compliance with sub. (c) (1), except when the office of lawyer regulation notifies the lawyer or law firm of removal, in accordance with sub. (cm) (2) d.

(3) **Insurance and safety requirements.**

a. ***An IOLTA participating institution shall comply with the insurance and safety requirements of sub. (e) (2).***²

b. ***A repurchase agreement utilized for an IOLTA account*** may be established only at an IOLTA participating institution deemed to be "well-capitalized" or "adequately capitalized" as defined by applicable federal statutes and regulations.

c. ***An open-end money market fund utilized for an IOLTA account*** may be established only at an IOLTA participating institution in a fund that holds itself out as a money market fund as defined under the Investment Act of 1940 and, at the time of investment, has total assets of at least \$250,000,000.

(4) **Income requirements.**

a. **Beneficial owner.** ***The interest or dividends accruing on an IOLTA account, less any allowable reasonable fees, as allowed under par. (5), shall be paid to WisTAF,*** which shall be considered the beneficial owner of the earned interest or dividends, pursuant to SCR Chapter 13.

b. **Interest and dividend requirements.** ***An IOLTA account shall bear the highest non-promotional interest rate or dividend that is generally available to non-IOLTA customers at the same branch or main office location when the IOLTA account meets or exceeds the same eligibility qualifications, if any, including a minimum balance, required at that same branch or main office location.*** In determining the highest rate or dividend available, the IOLTA participating institution may consider factors in addition to the IOLTA account balance that are customarily considered

² SCR 20:1.15(e)(2) states as follows:

(2) **Insurance and safety requirements.**

a. Each trust account shall be maintained at a financial institution that is insured by the federal deposit insurance corporation, the national credit union share insurance fund, the securities investor protection corporation, or any other investment institution financial guaranty insurance. ***Except as provided in subs. (b)(6) and (cm)(3)b. and c., trust property shall be held in an account in which each individual owner's funds are eligible for insurance.***

b. IOLTA accounts shall also comply with the requirements of sub. (cm) (3).

by the institution at that branch or main office location when setting interest rates or dividends for its customers, provided the institution does not discriminate between IOLTA accounts and accounts of non-IOLTA customers and that these factors do not include that the account is an IOLTA account. However, IOLTA participating institutions may voluntarily choose to pay higher rates.

c. **IOLTA account.** *An IOLTA participating institution may establish an IOLTA account as, or convert an IOLTA account to, any of the following types of accounts*, assuming the particular financial institution at that branch or main office location offers these account types to its non-IOLTA customers, and the particular IOLTA account meets the eligibility qualifications to be established as this type of account at the particular branch or main office location:

1. *a business checking account with an automated or other automatic investment sweep feature into a daily financial institution repurchase agreement or open-end money market fund.* A daily financial institution *repurchase agreement must be invested in United States government securities.* An *open-end money market fund must consist solely of United States government securities or repurchase agreements fully collateralized by United States government securities, or both.* In this subd. c. 1., "United States government securities" include securities of government-sponsored entities, such as, but not limited to, securities of, or backed by, the federal national mortgage association, the government national mortgage association, and the federal home loan mortgage corporation;

2. a checking account paying preferred interest rates, such as money market or indexed rates;

3. an interest-bearing checking account such as a negotiable order of withdrawal (NOW) account or business checking account with interest; and

4. any other suitable interest-bearing or dividend-paying account offered by the institution to its non-IOLTA customers.

d. **Options for compliance.**

1. An IOLTA participating institution may establish the comparable product for qualifying IOLTA accounts, subject to the direction of the lawyer or law firm; or,

2. an IOLTA participating institution may pay the highest non-promotional interest rate or dividend, as defined in sub. (cm) (4) b., less any allowable reasonable fees charged in connection with the comparable highest interest rate or dividend product, on the IOLTA checking account in lieu of actually establishing the comparable highest interest rate or dividend product.

e. **Paying rates above comparable rates.** An IOLTA participating institution may pay a set rate above its comparable rates on the IOLTA checking account negotiated with WisTAF that is fixed over a period of time set by WisTAF, such as 12 months.

(5) **Allowable reasonable fees on IOLTA accounts.**

a. Allowable reasonable fees on an IOLTA account shall be as follows:

1. per check charges;
2. per deposit charges;
3. fees in lieu of minimum balance;
4. sweep fees;
5. an IOLTA administrative fee approved by WisTAF; and
6. federal deposit insurance fees.

b. ***Allowable reasonable fees may be deducted from interest earned or dividends paid on an IOLTA account, provided that such charges shall be calculated in accordance with an IOLTA participating institution's standard practice for non-IOLTA customers.*** Fees in excess of the interest earned or dividends paid on the IOLTA account for any month or quarter shall not be taken from interest or dividends of any other IOLTA accounts. ***No fees that are authorized under this subsection shall be assessed against or deducted from the principal of any IOLTA account.*** All other fees are the responsibility of, and may be charged to, the lawyer or law firm maintaining the IOLTA account. IOLTA participating institutions may elect to waive any or all fees on IOLTA accounts.

(6) **Remittance and reporting requirements.** A lawyer or law firm shall direct the IOLTA participating institution at which the lawyer or law firm's IOLTA account is located to do all of the following, on at least a quarterly basis:

a. ***Remit to WisTAF the interest or dividends,*** less allowable reasonable fees as allowed under par. (5), if any, on the average monthly balance in the account or as otherwise computed in accordance with the IOLTA participating institution's standard accounting practice.

b. ***Provide to WisTAF a remittance report*** showing for each IOLTA account the name of the lawyer or law firm for whose IOLTA account the remittance is sent, the rate and type of interest or dividend applied, the amount of allowable reasonable fees deducted, if any, the average account balance for the period for which the report is made, and the amount of remittance attributable to each IOLTA account.

c. ***Provide to the depositing lawyer or law firm a remittance report*** in accordance with the participating institution's normal procedures for reporting account activity to depositors.

d. ***Respond to reasonable requests from WisTAF*** for information needed for purposes of confirming the accuracy of an IOLTA participating institution's certification.





Prohibited Transactions

Since 2004, Wisconsin's trust account rule has specifically prohibited certain types of transactions in trust accounts, including IOLTAs. A similar set of prohibitions was applied to fiduciary accounts at that time.

On July 1, 2007, an exception to the credit card prohibition was created,³ allowing lawyers to accept fee and cost advances by credit card, subject to certain conditions. The prohibited transactions, along with the credit card exception, are as follows:

SCR 20:1.15(e)(4) Prohibited transactions.

- a. **Cash.** No disbursement of cash shall be made from a trust account or from a deposit to a trust account, and no check shall be made payable to "Cash."
- b. **Telephone transfers.** No deposits or disbursements shall be made to or from a pooled trust account by a telephone transfer of funds. ***This section does not prohibit any of the following:***
 1. ***wire transfers.***
 2. ***telephone transfers between non-pooled draft and non-pooled non-draft trust accounts that a lawyer maintains for a particular client.***
- c. **Internet transactions.** A lawyer shall not make deposits to or disbursements from a trust account by way of an Internet transaction.
- d. **Electronic transfers by 3rd parties.** A lawyer shall not authorize a 3rd party to electronically withdraw funds from a trust account. A lawyer shall not authorize a 3rd party to deposit funds into the lawyer's trust account through a form of electronic deposit that allows the 3rd party making the deposit to withdraw the funds ***without the permission of the lawyer.***⁴
- e. **Credit card transactions.** A lawyer shall not authorize transactions by way of credit card to or from a trust account. However, earned fees may be deposited by way of credit card to a lawyer's business account.
- f. **Debit card transactions.** A lawyer shall not use a debit card to make deposits to or disbursements from a trust account.
- g. **Exception: Collection trust accounts.** Upon demonstrating to the office of lawyer regulation that a transaction prohibited by sub. (e)(4)c., e., or f., constitutes an integral part of the lawyer's practice, a lawyer may petition that office for a separate, written agreement, permitting the lawyer to continue to engage in the prohibited transaction, provided the lawyer identifies the excepted account, provides adequate account security, and complies with specific record-keeping and production requirements.

³ This exception was amended in 2011 to allow both earned and unearned fees to be paid by credit card and deposited into a credit card trust account. This enables lawyers to avoid the need for two merchant accounts, i.e., one for earned fees and another for fee advances.

⁴ See, *Comment* on this rule on page 4.

h. 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 for the purpose of receiving legal fees and costs by credit card, debit card or other electronic deposit, provided that the lawyer complies with all of the following:

1. the separate trust account shall be entitled: "Credit Card Trust Account";

2. lawyer 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 trust account immediately upon becoming available for disbursement subject to the following requirements:

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.⁵

4. within 3 business days of receiving actual notice that a chargeback or surcharge has been made against the credit card trust account, the lawyer shall replace any and all funds that have been withdrawn from the credit card trust account by the financial institution or card issuer; and shall reimburse the account for any shortfall or negative balance caused by a chargeback or surcharge. The lawyer shall not accept new payments to the credit card trust account until the lawyer has reimbursed the credit card trust account for the chargeback or surcharge.

Wisconsin Comment

SCR 20:1.15(e)(4)d. Electronic transfers by 3rd parties.

Many forms of electronic deposit allow the transferor to remove the funds without the consent of the account holder. A lawyer must not only be aware of the bank's policy but also federal regulations pertaining to the specific form of electronic deposit, and must ensure that the transferor is prohibited from withdrawing deposited funds without the lawyer's consent.

⁵ See also, *Comment* on this rule.

SCR 20:1.15(e)(4)h.3. Exception: Fee and cost advances by credit card, debit card or other electronic deposit.

Financial institutions, as credit card issuers, routinely impose charges on vendors when a customer pays for goods or services with a credit card. That charge is deducted directly from the customer's payment. Vendors who accept credit cards routinely credit the customer with the full amount of the payment and absorb the charges. Before holding a client responsible for such charges, a lawyer needs to disclose this practice to the client in advance, and assure that the client understands and consents to the charges.

In addition, the lawyer needs to investigate the following concerns before accepting payments by credit card:

1. Does the credit card issuer prohibit a lawyer/vendor from requiring the customer to pay the charge? If a lawyer intends to credit the client for anything less than the full amount of the credit card payment, the lawyer needs to assure that this practice is not prohibited by the credit card issuer's regulations and/or by the agreement between the lawyer and the credit card issuer. Entering into an agreement with a credit card issuer with the intent to violate this type of requirement may constitute conduct involving dishonesty, fraud, or deceit, in violation of SCR 20:8.4(c).

2. Does the credit card issuer require services to be rendered before a credit card payment is accepted? If a lawyer intends to accept fee advances by credit card, the lawyer needs to assure that fee advances are not prohibited by the credit card issuer's regulations and/or by the agreement between the lawyer and the credit card issuer. Entering into an agreement with a credit card issuer with the intent to violate this type of requirement may constitute conduct involving dishonesty, fraud, or deceit, in violation of SCR 20:8.4(c).

3. By requiring clients to pay the credit cards charges, is the lawyer required to make certain specific disclosures to such clients and offer cash discounts to all clients? If a lawyer intends to require clients to pay credit card charges, the lawyer needs to assure that the lawyer complies with all state and federal laws relating to such transactions, including, but not limited to, Regulation Z of the Truth in Lending Act, 12 C.F.R. s. 206.

NOTE: Financial institutions are **not** responsible for enforcing these prohibitions or for reporting a lawyer who has engaged in a prohibited transaction to OLR. Nevertheless, it is advisable that financial institutions be aware that lawyers are prohibited from conducting certain types of transactions in connection with a Wisconsin trust account or fiduciary account. If questions arise, please feel free to contact the Office of Lawyer Regulation:

**Trust Account Program Administrator
(877) 315-6941, Option 2**





Overdraft Notification Requirements

In a number of states across the country, lawyer IOLTA accounts are subject to overdraft reporting requirements, i.e., financial institutions have agreed to report overdrafts on IOLTAs, IOLAs and LTABs to the lawyer regulatory office in the applicable state.

However, in Wisconsin, IOLTA accounts are not the only type of lawyer trust account that is subject to overdraft notification requirements. Further information regarding these requirements can be found in OLR's on-line article, entitled: *Accounts that are Subject to Overdraft Notification Requirements*. Wisconsin's overdraft reporting rule for lawyer trust accounts is:

SCR 20:1.15(h) Dishonored instrument notification; (Overdraft notices).

All draft trust accounts and draft fiduciary accounts are subject to the following provisions on dishonored instrument notification:

(1) **Overdraft reporting agreement.** A lawyer shall maintain draft trust accounts only in a financial institution that has agreed to provide an overdraft report to the office of lawyer regulation under par. (3).

(2) **Identification of accounts subject to this subsection.** A lawyer or law firm shall notify the financial institution at the time a trust account or fiduciary account is established that the account is subject to this sub. (h) and shall provide the financial institution with a list of all existing accounts at that institution that are subject to this subsection.

(3) **Overdraft report.** In the event any properly payable instrument is presented against a lawyer trust account containing insufficient funds, whether or not the instrument is honored, the financial institution shall report the overdraft to the office of lawyer regulation.

(4) **Content of report.** All reports made by a financial institution under this subsection shall be substantially in the following form:

a. In the case of a dishonored instrument, the report shall be identical to an overdraft notice customarily forwarded to the depositor or investor, accompanied by the dishonored instrument, if a copy is normally provided to the depositor or investor.

b. In the case of instruments that are presented against insufficient funds and are honored, the report shall identify the financial institution involved, the lawyer or law firm, the account number, the date on which the instrument is paid, and the amount of overdraft created by the payment.

(5) **Timing of report.** A report made under this subsection shall be made simultaneously with the overdraft notice given to the depositor or investor.

(6) **Confidentiality of report.** A report made by a financial institution under this subsection shall be subject to SCR 22.40, Confidentiality.

(7) **Withdrawal of report by financial institution.** The office of lawyer regulation shall hold each overdraft report for 10 business days to enable the financial institution to withdraw a report provided by inadvertence or mistake. The deposit of additional funds by the lawyer or law firm shall not constitute reason for withdrawing an overdraft report.

(8) **Lawyer compliance.** Every lawyer practicing or admitted to practice in Wisconsin shall comply with the reporting and production requirements of this subsection, including filing of an overdraft notification agreement for each IOLTA account, each draft-type trust account and each draft-type fiduciary account that is not subject to an alternative protection under sub. (j) (9).

(9) **Service charges.** A financial institution may charge a lawyer or law firm for the reasonable costs of producing the reports and records required by this rule.

(10) **Immunity of financial institution.** This subsection does not create a claim against a financial institution or its officers, directors, employees, or agents for failure to provide a trust account overdraft report or for compliance with this subsection.