STATE OF WISCONSIN

SUPREME COURT

In the Matter of the Amendment of SCR 20:1.15 Safekeeping Property; Trust Accounts and Fiduciary Accounts **PETITION**

TO: Chief Justice Shirley S. Abrahamson
Justice Ann Walsh Bradley
Justice N. Patrick Crooks
Justice Michael Gableman
Justice David T. Prosser, Jr.
Justice Patience D. Roggensack
Justice Annette Kingsland Ziegler

BACKGROUND

For about two years, the Wisconsin Trust Account Foundation, Inc. ("WisTAF") has explored the possibility of developing a comparable interest rule so that IOLTA (Interest on Lawyers Trust Accounts) accounts are treated equitably by earning interest comparable to that earned by similarly situated non-IOLTA bank customers. In August 2007, WisTAF formed a Comparable Interest Committee to develop a comparable interest rule change. In the rule development process, the committee received substantial input from the Office of Lawyer Regulation. The committee has met twice with the Wisconsin Bankers Association ("WBA") seeking its input. Lisa Roys, Public Affairs Director of the State Bar of Wisconsin, joined the meetings with the WBA. The committee has presented its proposed rule change to the State Bar of Wisconsin's Board of Governors, which unanimously voted to support the proposed comparable interest petition and trust account rule changes. In drafting the proposed rule change, WisTAF utilized American Bar Association resources to develop the proposed rule language.

In October 2007, WisTAF hired experienced and qualified independent consultants to perform a feasibility study to determine the impact an interest rate comparability rule would have on Wisconsin IOLTA accounts. The study estimated that under an IOLTA interest rate comparability rule, WisTAF would realize a net remittance of up to $2,400,000 more per year above present IOLTA revenue. This estimate assumed a Federal Funds Rate of 4.75%. A supplemental report (in February 2008) from the consultants indicated an estimated net remittance revenue of up to $1,300,000 above present IOLTA revenue at a Federal Funds Rate of 3.00%. At the present Federal Funds Target rate of 2.00%, a smaller increase is likely but as rates recover, the increases over past revenue will grow. Other states report their revenue no longer falls as low as it did before comparability even at the lowest part of the interest rate cycle.

An updated rule is also necessary to be consistent with the recent United States Supreme Court decision on the legality of IOLTA. In *Brown v. Legal Foundation of Washington*, 538 U.S. 216, 123 S. Ct. 1406 (2003), the court defined IOLTA accounts as those that may only contain funds which cannot earn income for the benefit of the client or 3rd party in excess of the costs to secure that income.

GENERAL COMMENTS

The attached rule proposal, Appendix A, presents proposed deletions in strikethroughs and additions in underlines to relevant sections of the trust account rule. Appendix B presents the proposed changes within the context of the entire trust account rule. Also attached are lists that provide synopses of the proposed changes. The first list, Appendix C, contains descriptions of specific proposed revisions. The second list, Appendix D, contains general substantive changes.

DISCUSSION

In WisTAF's 18-year history, it has granted more than $26,000,000 to agencies providing civil legal services to low income people. While these funds help thousands of people every year receive legal representation to help with basic life necessities, many thousands more go without any civil legal assistance.

In fact, only about 12% of Wisconsin's low-income residents' civil legal assistance needs are being met satisfactorily, according to *Bridging the Justice Gap: Wisconsin's Unmet Legal Needs*, a study released in March 2007 by the Access to Justice Committee, State Bar of Wisconsin. The study also found that closing the gap in meeting the civil legal needs of people who are eligible for legal services programs but are turned away because of lack of funding would require an additional $16,000,000 per year for direct civil legal services.

It is important to update IOLTA account interest requirements because the banking landscape has changed since those requirements were written well over 20 years ago. Since WisTAF began, some banks have not treated lawyers' trust accounts ("IOLTA accounts") in the same manner as other accounts with similar balances. Generally, lawyers' trust accounts have been treated as a group, regardless of principal balance size. Today, an interest-bearing checking (NOW) account often may no longer be the best or only option for an IOLTA account. To benefit from changes in the banking landscape, updating the IOLTA rule is necessary to allow IOLTA accounts to be treated equitably by earning rates comparable to what banks pay their similarly-situated non-IOLTA customers.

Without the rule changes proposed in this petition, interest rates for many larger IOLTA accounts will remain artificially low. Representatives from the Wisconsin Bankers Association assert that the smaller IOLTA trust accounts are earning interest rates similar to those earned by non-IOLTA customers in the same bank. Because IOLTA accounts with larger balances have

been treated the same as other smaller IOLTA accounts, they have not been considered eligible to use alternate revenue generating vehicles to earn a higher rate of interest similar to that earned by non-IOLTA customers with higher balances. The trust account rule changes proposed by this petition would allow IOLTA accounts to be treated in the same fashion as non-IOLTA accounts that earn higher rates of interest. The majority of IOLTA accounts with smaller balances would not change their current interest rate or revenue generation. Those IOLTA accounts with larger balances, however, would likely generate greater revenue through use of alternate investment vehicles.[1]

It is a matter of fairness that IOLTA accounts be paid the highest interest rate or dividend generally available at a bank to its other customers when IOLTA accounts meet the same minimum balance or other qualifications. Twenty states[2] have incorporated an interest rate comparability provision into their IOLTA Supreme Court rule, statute, or regulatory guideline. Most states that have adopted interest rate comparability have seen impressive increases in IOLTA revenue. For example, with the implementation of its comparability rule, Florida's IOLTA income grew by 298% from June 2004 to June 2006.

The proposed rule changes will predominantly affect IOLTA accounts with larger balances. These accounts often qualify for higher yield products that offer higher rates, but the current trust account rule does not contain language allowing IOLTA accounts to be placed in higher yield products with the appropriate safety protections. As stated before, IOLTA accounts with smaller balances already typically receive business checking account interest rates that are comparable to what banks pay their customers with similar account balance sizes.

To offer financial institutions flexibility and maximum choice in complying with comparability requirements, the proposed rule changes provide a variety of choices for account options. The option of converting or establishing an IOLTA account in a higher yield product is offered in all of the states that have comparability rules, however, no bank has chosen to convert or establish an account as a higher yield product. Instead, banks have chosen to emulate interest rates of higher yield products. Even so, the higher yield product must be one of the options for

---

[1] In 2006, 23 banks held IOLTA accounts with an interest rate greater than 1.0%, 112 banks had IOLTA accounts with an interest rate of between 0.5 and 1.0%, and 115 banks held IOLTA accounts with an interest rate less that 0.5%. Out of 250 banks holding IOLTA accounts, 227 (or 90%) paid interest of less than 1.0%.

[2] As of August, 2008, these states have adopted comparable interest: **Alabama** Supreme Court Rules of Professional Conduct, Rule 1.15; **Arkansas** Supreme Court Rules of Professional Conduct 1.15; State Bar of **California** Rule 2.110-2.130; **Connecticut** Superior Court Rules of Professional Conduct, Rule 1.15; Rules Regulating The **Florida** Bar 5-1.1; Supreme Court of **Hawaii** Rule 11; **Illinois** Supreme Court Rules of Professional Conduct, Rule 1.15; **Louisiana** Supreme Court Rules of Professional Conduct, Rule 1.15; **Maryland** Rules of Procedure, Rule 16-610; **Massachusetts** Rules of Professional Conduct, Rule 1.15 and Supreme Judicial Court Rules 3.07 and 4.02; **Maine** Bar Rules, Rule 3.6(e); **Michigan** Supreme Court Rules of Professional Conduct 1.15; **Minnesota** Supreme Court Rules of Professional Conduct Rule 1.15; **Mississippi** Supreme Court Rules of Professional Conduct 1.15; Supreme Court of **Missouri** Rules of Professional Conduct, Rule 4-1.15; **New Jersey** Supreme Court Rule 1:28A; **New York** State Register, Ch. LXIX Section 7000; **Ohio** Rules of Professional Conduct, Rule 1.15; Supreme Court of **Texas** IOLTA Rule 7; and **Utah** Supreme Court Rules of Professional Practice, Ch. 14-1001 .

IOLTA accounts, or, consequently, IOLTA accounts would not be compared to higher yield products. In addition, because establishing and maintaining higher yield products often takes additional bank resources, the proposed rule changes allow for the usual sweep fees charged to customers with the higher rate products as well as an IOLTA administrative fee approved by WisTAF.

Comparability requirements regulate where lawyers place IOLTA accounts, but do not regulate the banking industry. Under the proposed rule change, lawyers would be required to place IOLTA accounts in participating institutions that meet interest rate comparability and related IOLTA account requirements. Banks are not required to offer IOLTA accounts; doing so is completely voluntary.

Comparability requirements do not require banks to offer a product for IOLTA accounts that they do not already offer their other customers. Presumably, these other products are profitable or banks would not offer them to their customers.

Comparability requirements do not compare rates among banks or set specific rates. Rather, each bank sets rates for its own customers based on factors a bank normally considers in setting rates. Comparability simply requires that an IOLTA account receive the highest interest rate or dividend that other non-IOLTA customers receive if the IOLTA account meets the same eligibility or other requirements.

Under the comparability requirements, attorneys will not need to do anything differently in managing their IOLTA accounts than they do now. There are only two situations where an attorney's or law firm's IOLTA account could be affected: (1) A bank decides to place the IOLTA account in a sweep account in which case the attorney or law firm would need to sign two documents, provided by WisTAF, allowing for the investment transaction to occur; or (2) A bank chooses not to comply with the trust account requirements established in SCR 20:1.15, requiring an attorney to move his or her IOLTA account to a participating institution. WisTAF is unaware of either situation happening in any of the other states that have adopted comparability language because banks have chosen to emulate product rates rather than establish IOLTA accounts in sweep products, and banks have not refused to comply with comparability requirements.

Interest rate comparability is important because it achieves fairness with other similarly situated non-IOLTA bank customers. WisTAF believes that interest rate comparability will significantly enhance the revenue paid on IOLTA accounts thereby generating substantially more revenue for civil legal services for low-income people in Wisconsin. Interest rate comparability should not affect financial institutions' profitability since they already price the products allowed in the proposed rule amendments and routinely offered to their other customers to be profitable.

KEY PROPOSALS

Many of the proposed changes to the trust account rule involve updating language. There are no changes regarding how attorneys manage IOLTA accounts. The most substantive change

in the rule concerns IOLTA interest rate requirements under a collected new subsection titled "(cm)." The following is a synopsis of the proposed changes to SCR 20:1.15, "Safekeeping property; trust accounts and fiduciary accounts."

SCR 20:1.15(a)(7) Definitions. This proposal amends the existing definition of "IOLTA account" to incorporate proposed trust account rule references and to clarify that IOLTA accounts are trust accounts subject to SCR 20:1.15.

SCR 20:1.15(a)(7m) Definitions. "IOLTA participating institution" is a new definition that clarifies the difference between financial institutions that choose to offer IOLTA products to their attorney customers and financial institutions offering other trust account or fiduciary products. "IOLTA participating institution" means a financial institution that has voluntarily chosen to offer IOLTA accounts and which is certified by WisTAF as meeting the IOLTA account requirements of SCR 20:1.15(cm) and has also assured WisTAF that it has complied with the overdraft notification requirements of SCR 20:1.15(h).

SCR 20:1.15(a)(11) Definitions. The definition of WisTAF has been added for ease of reference.

SCR 20:1.15(c)(1) IOLTA accounts. This proposal amends the existing definition of IOLTA so that it is consistent with the definition in *Brown v. Legal Foundation of Washington,* 538 U.S. 216, 123 S. Ct. 1406 (2003): An IOLTA account may only contain funds which cannot earn income for the benefit of the client or 3rd party in excess of the costs to secure that income.

SCR 20: 1.15(cm) Interest on Lawyer Trust Account (IOLTA) requirements. This is a new provision that incorporates existing language and new information on where IOLTA accounts may be placed, necessary insurance and safety requirements, income requirements (including comparable interest requirements), allowable reasonable fees on IOLTA accounts, and remittance and reporting requirements.

SCR 20:1.15(d) Prompt notice and delivery of trust property; (e) Operational requirements for trust accounts; and (f) Record-keeping requirements for trust accounts. This proposal amends existing titles and terms to provide clarity regarding which trust accounts are subject to the provisions contained within these sections.

Under the proposed rule changes, attorneys will continue to be required to instruct their financial institutions to comply with the provisions of the rule for any IOLTA account that the bank establishes for the attorney or law firm. These new provisions require attorneys to hold IOLTA accounts in banks that comply with the trust account rule, including comparability requirements. Banks that comply are called "IOLTA participating institutions." WisTAF will identify whether a bank is in compliance with the rule and will publish on its web site a list of IOLTA participating institutions that comply with the IOLTA account requirements and overdraft notice requirements. A bank can become an IOLTA participating institution at any time.

These new provisions also allow for appropriate safety and security protections, including language to ensure that, if used, repurchase agreements and money market funds meet safety parameters based on government securities and that open-end money market funds have a minimum level of asset protection. Expanded language on interest and dividend requirements provide that IOLTA accounts must bear the highest rate or dividend generally available to non-IOLTA customers when the IOLTA account meets the same minimum balance or other eligibility requirements. In determining the highest rate or dividend available, banks cannot discriminate between IOLTA accounts and accounts of non-IOLTA customers. The new language will also require that IOLTA participating financial institutions be in compliance with the overdraft agreement requirements of SCR 20:1.15(h).

To comply with the comparability requirements, the rule offers banks three account options. The first option allows financial institutions to actually establish the IOLTA account as the qualifying higher rate product, such as a repurchase agreement[3] or an open-end money market fund[4]. In lieu of establishing a comparable high yield product, a second option is for a bank to pay a comparable rate on the IOLTA checking account. In states with comparability rules, most banks have chosen this option. A third option allows a bank to pay a benchmark rate, which is a fixed percentage of the Federal Funds Rate based on data showing what percentage would be close to comparable rates net of fees for Wisconsin banks.[5] An additional option is available for banks that wish to pay IOLTA interest rates higher than the comparable or benchmark level. Banks which agree to pay a set rate negotiated with WisTAF over a fixed

---

[3] A repurchase agreement is a contract in which the seller of securities agrees to buy them back at a specified time and price. A party sells the securities to investors, usually on an overnight basis, and buys them back the following day.

[4] An open-end money market fund is a mutual fund that invests only in money markets. Funds are invested in short-term debt obligations, such as Treasury bills, certificates of deposit, and commercial paper.

[5] In the proposed rule change, the benchmark rate is set at 70% of the Federal Funds Rate. WisTAF's Board of Directors selected this benchmark rate after reviewing a benchmark rate analysis report provided by The Resource (a consulting firm that works with IOLTA programs across the country) and following The Resource's recommendation of establishing a benchmark rate of 70% of the Federal Funds Rate based on the Wisconsin financial institution market. There were several reasons for this recommendation. First, this level restricts potential revenue losses to WisTAF to a reasonable threshold and to just one bank. The threshold was defined as the point at which the average high-interest product would pay a net interest rate to IOLTA accounts equivalent to the net interest rate paid to other bank customers with similarly situated accounts, expressed as a percentage of the Federal Funds Rate. The independent analysis report indicated that in Wisconsin, this threshold was reached at an interest rate net of fees equivalent to 67% of the Federal Funds Rate. US Bank currently pays interest rates on IOLTA accounts that are significantly above that threshold, which would result in a loss of IOLTA income from US Bank if it were to switch to the benchmark rate. Second, the rate is within the range set by IOLTA programs nationally (ranges from 55-80%) and is easier to apply than a more nuanced rate such as 67%. Third, if the 67% threshold level were rounded down to the next most easily applicable rate, a benchmark rate of 65% or lower would continue to place IOLTA accounts at a disadvantage to other customers in the Wisconsin financial institution market.

period of time that is above their comparable rate will receive recognition from WisTAF for voluntarily going above and beyond the requirement of the rule.

A new provision lists the reasonable fees allowed to be deducted from IOLTA account interest and states that these fees may not be taken from interest or dividends of other IOLTA accounts. The fees cannot be assessed against or deducted from the principal of any IOLTA account. Lawyers are responsible for any other fees banks charge on the account.

IMPLEMENTATION AND MANAGEMENT OF A COMPARABILITY PROGRAM

Currently, there are 230 financial institutions participating in Wisconsin's IOLTA program. If the trust account rule is amended to provide for comparable interest on IOLTA accounts, a certification process and a monitoring plan will be necessary to assist financial institutions that wish to offer IOLTA accounts in complying with the amended rule. Implementing rate comparability will not be possible without clear, fair guidelines that ensure financial institutions currently participating in the IOLTA program have sufficient time to comply with changes to the trust account rule.

WisTAF will identify whether a financial institution is a participating institution, and consequently eligible for lawyers to hold IOLTA accounts there, based on the institution's compliance with SCR 20:1.15 IOLTA provisions. Each bank will choose between a safe harbor certification benchmark rate of 70 percent of the Federal Funds Rate or an application certification and return the appropriate form and any materials to WisTAF by a specified date. WisTAF will evaluate certification statements and applications as they are received.

Financial institutions that submit a safe harbor certification statement will not be subject to further review and the implementation process is complete once the proposed benchmark rate is in effect and documented. Financial institutions that submit an application for certification will provide designated information supporting the application (including but not limited to rate sheets and product descriptions). Financial institutions submitting an application for certification will receive final approval after any required change has been implemented. Institutions receiving final approval will be added on an ongoing basis to WisTAF's list of IOLTA certified financial institutions, maintained on the WisTAF website.

If the comparable interest rule language is approved, WisTAF is prepared to implement comparable interest at the earliest possible date in a manner that allows financial institutions currently holding IOLTA accounts to reasonably attain compliance. WisTAF's implementation plan is based on successful implementation plans followed in Michigan, Illinois, Texas and Maine.

With the earliest possible effective date of January 1, 2009, WisTAF would establish a six-month grace period in which financial institutions that currently hold IOLTA accounts could attain compliance. Current IOLTA participating institutions would have until July 1, 2009 to come into compliance with the comparable interest requirements. All financial institutions that

enter the IOLTA program as new IOLTA participating institutions (i.e., institutions that did not offer IOLTA accounts prior to January 1, 2009) would be required to be compliant immediately.

Comparable interest rates would be effective as of April 1, 2009. Institutions completing their compliance requirements and approved by WisTAF before April 1, 2009, would have no further deadlines to meet. Financial institutions completing their compliance requirements between April 1, 2009 and July 1, 2009 would be allowed to retroactively submit, by July 1, 2009, the difference between their IOLTA rates prior to April 1, 2009, and the April 1, 2009 adjusted compliance rates. The deadline for applications to be sent to WisTAF would be June 1, 2009. In order to best support financial institutions through the process of certification, WisTAF will complete all certification reviews in a prompt and timely manner.

Alternately, if comparability rate language were made effective as of July 1, 2009, WisTAF would conduct the certification process between the time the rule language was approved and July 1, 2009 so that all currently participating IOLTA financial institutions would be certified and compliant on the effective date.

This foregoing implementation plan could be modified to accommodate a later implementation date, if needed.

Once the initial certification process has been implemented, WisTAF will establish a monitoring program adaptable to factors such as financial institution size, the average principal balance of IOLTA deposits held, and the fluctuation of the economy. These factors will be used to determine whether a financial institution should be monitored on a monthly, quarterly or annual basis, or to monitor financial institutions' implementation of new rates as the Federal Funds Rate changes. Any discrepancies discovered between stated interest rates and the amounts of funds that are received by WisTAF would be promptly addressed with the financial institution involved.

Once a financial institution has been certified to hold IOLTA accounts, WisTAF will decertify that financial institution only if repeated and documented attempts to resolve any compliance issue(s) are not successful. At that time, the financial institution will receive written notice of its decertified status and attorneys holding accounts at the decertified financial institution would be notified that the institution no longer is in compliance with the trust account rule and they will need to move their IOLTA accounts to certified participating institutions. If the decertified financial institution subsequently reapplies for certification and can demonstrate compliance with the IOLTA provisions of the trust account rule, WisTAF will re-certify the institution. To date, no other comparable interest state has had to decertify a financial institution for non-compliance.

CONCLUSION

The Wisconsin Trust Account Foundation respectfully requests approval of the proposed rule changes to ensure that comparable interest is paid on all IOLTA accounts.

Attached to this Petition are the proposed amendments to SCR 20:1.15.

Respectfully submitted, this 21st day of August, 2008.

By: John Bermingham, President
Wisconsin Trust Account Foundation, Inc.
825 Williamson Street
Madison, WI 53703

By: De Ette Tomlinson, Executive Director
Wisconsin Trust Account Foundation
825 Williamson Street
Madison, WI 53703

SUMMARY OF PROPOSED CHANGES TO SCR 20:1.15

SCR 20:1.15 Safekeeping property; trust accounts and fiduciary accounts.

(a) Definitions.

****

(7) "Interest ~~of~~ on Lawyer Trust Account ("IOLTA account") means a pooled, interest-bearing~~,~~ or dividend-paying demand trust account, separate from the lawyer's business and personal accounts.~~, via which the lawyer deposits, holds, and disburses funds received in trust on behalf of a client or 3rd party, the interest on which does not go to the client.~~ The IOLTA account must be established in an IOLTA participating institution, certified by WisTAF, pursuant to SCR 20:1.15(cm)(1) and (2), and may contain only funds which 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. ~~These accounts are~~An IOLTA account is subject to the provisions of SCR Chapter 13~~, Interest on Trust Accounts Program.~~ and the trust account provisions of SCR 20:1.15(a)-(i), including the IOLTA account provisions of SCR 20:1.15(cm).

(7m) "IOLTA participating institution" means a financial institution that has voluntarily chosen to offer IOLTA accounts, which is certified by WisTAF as meeting the IOLTA account requirements of SCR 20:1.15(cm)(3)-(6) and has also assured WisTAF that it has complied with the overdraft notification requirements of SCR 20:1.15(h).

***

(11) "WisTAF" means the Wisconsin Trust Account Foundation, Inc.

***

(c) Types of trust accounts.

(1) **IOLTA accounts**. A lawyer or law firm who receives client or 3rd party funds, which the lawyer or law firm determines to be nominal in amount or which are expected to be held for a short period of time such that the funds cannot earn income for the benefit of the client or 3rd party in excess of the costs to secure that income, shall maintain a pooled interest-bearing~~,~~ or dividend-paying demand trust account ~~for deposit of client or 3rd-party funds that are:~~ in an IOLTA participating institution.

~~a. nominal in amount or expected to be held for a short period of time; or~~

~~b. not deposited in an account or investment under par. (2); or~~

~~c. not eligible for an account or investment under par. (2), because the client is a corporation or organization not permitted by law to maintain such an account or the terms of the account are not consistent with a need to make funds available without delay.~~

~~(1m) The interest accruing on an account under par. (1), less any transaction costs, shall be paid to the Wisconsin Trust Account Foundation, Inc., which shall be considered the beneficial owner of the accrued interest, pursuant to SCR Chapter 13, Interest on Trust Accounts Program. A lawyer may notify the client of the intended use of these funds.~~

(2) ~~Other client accounts~~ **Non-IOLTA trust accounts**. ~~A lawyer shall deposit all client funds in an account specified in par. (1) unless the funds are deposited in any of the following:~~ A lawyer or law firm who receives client or 3rd party funds which the lawyer or law firm determines to be capable of earning income for the benefit of the client or 3rd party shall maintain an interest-bearing or dividend-paying non-IOLTA trust account. A non-IOLTA trust account shall be established as any of the following:

a. a separate interest-bearing or dividend-paying trust account maintained for the particular client or ~~client's matter~~ 3rd party, the interest or dividends on which shall be paid to the client or 3rd party, less any transaction costs;

b. a pooled interest-bearing or dividend-paying trust account with sub-accounting by the financial institution, the lawyer, or the law firm that will provide for computation of interest or dividends earned by each client's or 3rd party's funds and the payment of the interest to the client or 3rd party, less any transaction costs;

c. an income-generating investment vehicle selected by the client and designated in specific written instructions from the client or authorized by a court or other tribunal, on which income shall be paid to the client or 3rd party or as directed by the court or other tribunal, less any transaction costs; ~~or~~

d. an income-generating investment vehicle selected by the lawyer to protect and maximize the return of funds in a bankruptcy estate, which investment vehicle is approved by the trustee in bankruptcy and by a bankruptcy court order, consistent with 11 U.S.C. s. 345; or

e. a demand deposit or other ~~non-interest-bearing~~ account, which does not bear interest or pay dividends because it holds ~~for~~ funds ~~that~~ the lawyer has decided are not eligible for deposit in an IOLTA account because they are neither nominal in amount nor expected to be held for a short term~~, if the client specifically so approves.~~ such that they cannot earn income for the client or 3rd party in excess of the costs to secure the income, provided that such account has been designated in specific written instructions from the client or 3rd party.

(3) **Selection of account**. In deciding whether to use the account specified in par. (1) or an account or investment vehicle specified in par. (2), a lawyer shall determine, at the

time of the deposit, whether the client or 3rd party funds could be utilized to provide a positive net return to the client or 3rd party by taking into consideration all of the following:

a. the amount of interest, dividends or other income that the funds would earn or pay during the period the funds are expected to be on deposit;

b. the cost of establishing and administering ~~the~~ a non-IOLTA trust account, including the cost of the lawyer's services and the cost of preparing any tax reports required for income accruing to a client's or 3rd party's benefit; ~~and~~

c. the capability of the financial institution~~s~~, lawyer, or law firm to calculate and pay interest, dividends, or other income to individual clients or 3rd parties; and

d. any other circumstance that affects the ability of the client's or 3rd party's funds to earn income in excess of the costs to secure such income for the client or 3rd party.

(4) **Professional judgment**. The determination whether funds to be invested could be utilized to provide a positive net return to the client or 3rd party rests in the sound judgment of the lawyer or law firm. If a lawyer acts in good faith in making this determination, the lawyer is not subject to any charge of ethical impropriety or other breach of the Rules of Professional Conduct.

~~(5) WisTAF. For accounts created under par. (1), the lawyer or law firm shall direct the financial institution to remit to the Wisconsin Trust Account Foundation, Inc., also known as "WisTAF," at least quarterly, all of the following:~~

~~a. the interest or dividends, less any service charges or fees, on the average monthly balance in the account or as otherwise computed in accordance with an institution's standard accounting practice; and~~

~~b. a statement showing the name of the lawyer or law firm for whose account the remittance is sent, the rate of interest applied, the amount of service charges deducted, if any, and the account balance for the period for which the report is made. A copy of the statement shall be provided to the lawyer or law firm.~~

(cm) IOLTA account requirements.

An IOLTA account must meet the following requirements:

(1) **Location.** An IOLTA account shall be held in an IOLTA participating institution.

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

a. WisTAF shall certify as an IOLTA participating institution each financial institution that complies with the requirements of sub. (cm)(3)-(6) for IOLTA accounts held by that financial institution and has assured WisTAF that it has complied with the overdraft notification requirements of SCR 20:1.15(h).

b. WisTAF shall annually publish a list of financial institutions certified as an IOLTA participating institution.

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

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

b. A repurchase agreement utilized for an IOLTA account may be established only at IOLTA participating institutions 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 must hold itself out as a money market fund as defined under the Investment Act of 1940, and, at the time of investment, have 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 defined in 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 interest rate or dividend that is generally available to non-IOLTA customers when the IOLTA account meets or exceeds the same minimum balance or other eligibility qualifications, if any. 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 by the institution when setting interest rates or dividends for its customers, provided it 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 options available to IOLTA participating institutions**.

1. An IOLTA participating institution may establish an IOLTA account as, or convert an IOLTA account to:

a. 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. United States government securities are defined to include securities of government sponsored enterprises, 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;

b. a government interest-bearing checking account such as accounts used for municipal deposits;

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

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

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

2. An IOLTA participating institution may pay the comparable rate on the IOLTA checking account in lieu of actually establishing the comparable highest interest rate or dividend product;

3. An IOLTA participating institution may pay an amount on funds that would otherwise qualify for the investment options noted at (cm)(4)c.1.a. equal to 70% of the federal funds target rate as of the first business day of the month or other IOLTA remitting period, which is deemed to be already net of allowable reasonable fees; or

4. An IOLTA participating institution may pay a set rate above its comparable rate(s) on the IOLTA checking account negotiated with WisTAF which is fixed over a period of time set by WisTAF, such as 12 months.

(5) **Allowable reasonable fees on IOLTA accounts**. Allowable reasonable fees on an IOLTA account shall be as follows: per check charges; per deposit charges; a fee in lieu of minimum balance; sweep fees and an IOLTA administrative fee approved by WisTAF. Allowable reasonable fees may be deducted from interest earned or dividends paid on an IOLTA account, provided that such charges or fees shall be calculated in accordance with an IOLTA participating institution's standard practice for non-IOLTA customers. Fees or charges 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 or charges 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 defined in par. (5), if any, on the average monthly balance in the IOLTA 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 IOLTA participating institution's normal procedures for reporting account activity to depositors; and

d. respond to reasonable requests from WisTAF for information needed for purposes of certification as an IOLTA participating institution.

***

(e) Operational requirements for all trust accounts.

(1) **Location**. Each trust account shall be maintained in a financial institution that is authorized by federal or state law to do business in Wisconsin and that is located in Wisconsin or has a branch office located in Wisconsin, and which agrees to comply with the overdraft notice requirements of sub. (h). In addition, IOLTA accounts may be maintained only at IOLTA participating institutions that meet the IOLTA account requirements of sub. (cm).

(2) **Insurance and safety requirements**. 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 Wisconsin credit union savings insurance corporation,~~ the securities investor protection corporation, or any other investment institution financial guaranty insurance. IOLTA accounts must also comply with the requirements of sub. (cm)(3).

(3) **Interest requirements**. ~~An interest-bearing trust account~~ Non-IOLTA accounts shall bear interest at a rate ~~of~~ not less than that applicable to individual interest-bearing accounts of the same type, size, and duration. All trust accounts must allow ~~and in which~~

withdrawals or transfers ~~can~~ to be made without delay when funds are required, subject only to any notice period that the depository institution is required to observe by law. IOLTA accounts must comply with the requirements of sub. (cm)(4)b.

(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 separate, non-pooled demand and separate, non-pooled, non-demand 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.

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.

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 ~~trust~~ 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:

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

2. lawyer and 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 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; and

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.

***

(f) Record-keeping requirements for <u>all</u> trust accounts.

(1) **Demand accounts**. Complete records of a trust account that is a demand account shall include a transaction register; individual client ledgers <u>for IOLTA accounts and other pooled trust accounts</u>; a ledger for account fees and charges, if law firm funds are held in the account pursuant to sub. (b)(3); deposit records; disbursement records; monthly statements; and reconciliation reports, subject to all of the following:

a. **Transaction register**. The transaction register shall contain a chronological record of all account transactions, and shall include all of the following:

1. the date, source, and amount of all deposits;

2. the date, check or transaction number, payee and amount of all disbursements, whether by check, wire transfer, or other means;

3. the date and amount of every other deposit or deduction of whatever nature;

4. the identity of the client for whom funds were deposited or disbursed; and

5. the balance in the account after each transaction.

b. **Individual client ledgers**. A subsidiary ledger shall be maintained for each client or ~~matter~~ 3rd party for ~~which~~ whom the lawyer receives trust funds that are deposited in an IOLTA account or any other pooled trust account.~~, and t~~ The lawyer shall record each receipt and disbursement of ~~that~~ a client's or 3rd party's funds and the balance following each transaction. A lawyer shall not disburse funds from ~~the~~ an IOLTA account or any pooled trust account that would create a negative balance with respect to any individual client or matter.

c. **Ledger for account fees and charges**. A subsidiary ledger shall be maintained for funds of the lawyer deposited in the trust account to accommodate monthly service charges. Each deposit and expenditure of the lawyer's funds in the account and the balance following each transaction shall be identified in the ledger.

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.

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.

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.

g. **Reconciliation reports**. For each trust account, the lawyer shall prepare and retain a printed reconciliation report on a regular and periodic basis not less frequently than every 30 days. Each reconciliation report shall show all of the following balances and verify that they are identical:

1. the balance that appears in the transaction register as of the reporting date;

2. the total of all subsidiary ledger balances for IOLTA accounts and other pooled trust accounts, determined by listing and totaling the balances in the individual client ledgers and the ledger for account fees and charges, as of the reporting date; and

3. the adjusted balance, determined by adding outstanding deposits and other credits to the balance in the financial institution's monthly statement and subtracting outstanding checks and other deductions from the balance in the monthly statement.

***

***

(h) Dishonored instrument notification; (Overdraft notices).

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

(1) **Overdraft reporting agreement.** A lawyer shall maintain demand 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 the filing of an overdraft notification agreement for each IOLTA account, each demand-type trust account and each demand-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.

****

(j) Fiduciary property.

(1) **Separate account**. A lawyer shall hold in trust, separate from the lawyer's own funds or property, those funds or that property of clients or 3rd parties that are in the lawyer's possession when acting in a fiduciary capacity that directly arises in the course of, or as a result of, a lawyer-client relationship or by appointment of a court.

(1m) **Other fiduciary accounts**. A lawyer shall deposit all fiduciary funds specified in par. (1) in any of the following:

a. a pooled interest-bearing or dividend-paying fiduciary account with sub-accounting by the financial institution, the lawyer, or the law firm that will provide for computation of interest or dividends earned by each fiduciary entity's funds and the proportionate allocation of the interest or dividends to each of the fiduciary ~~entity~~entities, less any transaction costs;

b. an income-generating investment vehicle, on which income shall be paid to the fiduciary entity or its beneficiary or beneficiaries, less any transaction costs;

c. an income-generating investment vehicle selected by the lawyer and approved by a court for guardianship funds if the lawyer serves as guardian for a ward under chs. 54 and 881, stats.;

d. an income-generating investment vehicle selected by the lawyer to protect and maximize the return on funds in a bankruptcy estate, which investment vehicle is approved by the trustee in bankruptcy and by a bankruptcy court order, consistent with 11 U.S.C. s. 345; or

e. a demand deposit or other ~~non-interest-bearing~~ account which does not bear interest or pay dividends when, in the sound professional judgment of the lawyer, placement in such an account is consistent with the needs and purposes of the fiduciary entity or its beneficiary or beneficiaries.

***

Wisconsin Comment

A lawyer must hold the property of others with the care required of a professional fiduciary. All property that is the property of clients or 3rd parties must be kept separate from the lawyer's business and personal property and, if monies, in one or more trust or fiduciary accounts.

* * *

SCR 20:1.15(cm)(3) Insurance and safety requirements.

Pursuant to SCR 20:1.15(cm)(3), IOLTA trust accounts are required to be held in IOLTA participating institutions that are insured by the federal deposit insurance corporation (FDIC), the national credit union share insurance fund, the securities investor protection corporation or any other investment institution financial guaranty insurance. However, since federal law limits the amount of the insurance coverage available for each account, funds

in excess of the limit are not insured. Consequently the purpose of the insurance and safety requirements is not to guarantee that all funds are adequately insured. Rather, it is to assure that trust funds are held in reputable IOLTA participating institutions.

SCR 20:1.15(e)(2) Insurance and safety requirements.

Pursuant to SCR 20:1.15(e)(2), trust ~~funds~~accounts are required to be held in~~ accounts~~ financial, investment, or IOLTA participating institutions that are insured by the federal deposit insurance corporation (FDIC), the national credit union share insurance fund, ~~the Wisconsin credit union savings insurance corporation,~~ the securities investor protection corporation or any other investment institution financial guaranty insurance. However, since federal law limits the amount of the insurance coverage available for each account, funds in excess of the limit are not insured. Consequently, the purpose of the insurance and safety requirements is not to guarantee that all funds are adequately insured. Rather, it is to assure that trust funds are held in reputable financial, investment, or IOLTA participating institutions.

SCR 20:1.15 Safekeeping property; trust accounts and fiduciary accounts.

(a) Definitions.

In this section:

(1) "Demand account" means an account upon which funds are disbursed through a properly payable instrument.

(2) "Fiduciary" means an agent, attorney-in-fact, conservator, guardian, personal representative, special administrator, trustee, or other position requiring the lawyer to safeguard the property of a 3rd party.

(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.

(6) "Immediate family member" means the lawyer's spouse, child, stepchild, grandchild, sibling, parent, grandparent, aunt, uncle, niece, or nephew.

(7) "Interest ~~of~~ on Lawyer Trust Account ("IOLTA account") means a pooled, interest-bearing~~,~~ or dividend-paying demand trust account, separate from the lawyer's business and personal accounts.~~, via which the lawyer deposits, holds, and disburses funds received in trust on behalf of a client or 3rd party, the interest on which does not go to the client.~~ The IOLTA account must be established in an IOLTA participating institution, certified by WisTAF, pursuant to SCR 20:1.15(cm)(1) and (2), and may contain only funds which 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. ~~These accounts are~~An IOLTA account is subject to the provisions of SCR Chapter 13~~, Interest on Trust Accounts Program.~~ and the trust account provisions of SCR 20:1.15(a)-(i), including the IOLTA account provisions of SCR 20:1.15(cm).

(7m) "IOLTA participating institution" means a financial institution that has voluntarily chosen to offer IOLTA accounts, which is certified by WisTAF as meeting the IOLTA account requirements of SCR 20:1.15(cm)(3)-(6) and has also assured

WisTAF that it has complied with the overdraft notification requirements of SCR 20:1.15(h).

(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.

(11) "WisTAF" means the Wisconsin Trust Account Foundation, Inc.

(b) Segregation of trust property.

(1) **Separate account**. A lawyer shall hold in trust, separate from the lawyer's own property, that property of clients and 3rd parties that is in the lawyer's possession in connection with a representation. All funds of clients and 3rd parties paid to a lawyer or law firm in connection with a representation shall be deposited in one or more identifiable trust accounts.

(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.

(3) **Lawyer funds**. No funds belonging to the lawyer or law firm, except funds reasonably sufficient to pay monthly account service charges, may be deposited or retained in a trust account.

(4) **Unearned fees and cost advances**. Except as provided in par. (4m), unearned fees and advanced payments of fees shall be held in trust until earned by the lawyer, and withdrawn pursuant to sub. (g). Funds advanced by a client or 3rd party for payment of costs shall be held in trust until the costs are incurred.

(4m) **Alternative protection for advanced fees**. A lawyer who accepts advanced payments of fees may deposit the funds in the lawyer's business account, provided that a court of competent jurisdiction must ultimately approve the lawyer's fee, or that the lawyer complies with each of the following requirements:

a. Upon accepting any advanced payment of fees pursuant to this subsection, the lawyer shall deliver to the client a notice in writing containing all of the following information:

1. the amount of the advanced payment;

2. the basis or rate of the lawyer's fee;

3. any expenses for which the client will be responsible;

4. that the lawyer has an obligation to refund any unearned advanced fee, along with an accounting, at the termination of the representation;

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

6. the ability of the client to file a claim with the Wisconsin lawyers' fund for client protection if the lawyer fails to provide a refund of unearned advanced fees.

b. Upon termination of the representation, the lawyer shall deliver to the client in writing all of the following:

1. a final accounting, or an accounting from the date of the lawyer's most recent statement to the end of the representation, regarding the client's advanced fee payment with a refund of any unearned advanced fees;

2. notice that, if the client disputes the amount of the fee and wants that dispute to be submitted to binding arbitration, the client must provide written notice of the dispute to the lawyer within 30 days of the mailing of the accounting; and

3. notice that, if the lawyer is unable to resolve the dispute to the satisfaction of the client within 30 days after receiving notice of the dispute from the client, the lawyer shall submit the dispute to binding arbitration.

c. Upon timely receipt of written notice of a dispute from the client, the lawyer shall attempt to resolve that dispute with the client, and if the dispute is not resolved, the lawyer shall submit the dispute to binding arbitration with the State Bar Fee Arbitration Program or a similar local bar association program within 30 days of the lawyer's receipt of the written notice of dispute from the client.

d. Upon receipt of an arbitration award requiring the lawyer to make a payment to the client, the lawyer shall pay the arbitration award within 30 days, unless the client fails to agree to be bound by the award of the arbitrator.

(6) **Trust property other than funds**. Unless the client otherwise directs in writing, a lawyer shall keep securities in bearer form in a safe deposit box at a financial institution authorized to do business in Wisconsin. The safe deposit box shall be clearly designated

as a "Client Account" or "Trust Account." The lawyer shall clearly identify and appropriately safeguard other property of a client or 3rd party.

(7) **Multi-jurisdictional practice**. If a lawyer also licensed in another state is entrusted with funds or property in connection with a representation in the other state, the provisions of this rule shall not supersede the applicable rules of the other state.

(c) Types of trust accounts.

(1) **IOLTA accounts**. A lawyer or law firm who receives client or 3rd party funds, which the lawyer or law firm determines to be nominal in amount or which are expected to be held for a short period of time such that the funds cannot earn income for the benefit of the client or 3rd party in excess of the costs to secure that income, shall maintain a pooled interest-bearing, or dividend-paying demand trust account ~~for deposit of client or 3rd-party funds that are:~~ in an IOLTA participating institution.

~~a. nominal in amount or expected to be held for a short period of time; or~~

~~b. not deposited in an account or investment under par. (2); or~~

~~c. not eligible for an account or investment under par. (2), because the client is a corporation or organization not permitted by law to maintain such an account or the terms of the account are not consistent with a need to make funds available without delay.~~

~~(1m) The interest accruing on an account under par. (1), less any transaction costs, shall be paid to the Wisconsin Trust Account Foundation, Inc., which shall be considered the beneficial owner of the accrued interest, pursuant to SCR Chapter 13, Interest on Trust Accounts Program. A lawyer may notify the client of the intended use of these funds.~~

(2) ~~Other client accounts~~ **Non-IOLTA trust accounts**. ~~A lawyer shall deposit all client funds in an account specified in par. (1) unless the funds are deposited in any of the following:~~ A lawyer or law firm who receives client or 3rd party funds which the lawyer or law firm determines to be capable of earning income for the benefit of the client or 3rd party shall maintain an interest-bearing or dividend-paying non-IOLTA trust account. A non-IOLTA trust account shall be established as any of the following:

Deleted: The

a. a separate interest-bearing or dividend-paying trust account maintained for the particular client or ~~client's matter~~ 3rd party, the interest or dividends on which shall be paid to the client or 3rd party, less any transaction costs;

b. a pooled interest-bearing or dividend-paying trust account with sub-accounting by the financial institution, the lawyer, or the law firm that will provide for computation of interest or dividends earned by each client's or 3rd party's funds and the payment of the interest to the client or 3rd party, less any transaction costs;

c. an income-generating investment vehicle selected by the client and designated in specific written instructions from the client or authorized by a court or other tribunal, on which income shall be paid to the client or 3rd party or as directed by the court or other tribunal, less any transaction costs; ~~or~~

d. an income-generating investment vehicle selected by the lawyer to protect and maximize the return of funds in a bankruptcy estate, which investment vehicle is approved by the trustee in bankruptcy and by a bankruptcy court order, consistent with 11 U.S.C. s. 345; or

e. a demand deposit or other ~~non-interest-bearing~~ account, which does not bear interest or pay dividends because it holds ~~for~~ funds ~~that~~ the lawyer has decided are not eligible for deposit in an IOLTA account because they are neither nominal in amount nor expected to be held for a short term~~, if the client specifically so approves.~~ such that they cannot earn income for the client or 3rd party in excess of the costs to secure the income, provided that such account has been designated in specific written instructions from the client or 3rd party.

Deleted: ,
Formatted: Strikethrough
Formatted: Strikethrough
Formatted: Strikethrough
Formatted: Not Strikethrough
Formatted: Superscript

(3) **Selection of account**. In deciding whether to use the account specified in par. (1) or an account or investment vehicle specified in par. (2), a lawyer shall determine, at the time of the deposit, whether the client or 3rd party funds could be utilized to provide a positive net return to the client or 3rd party by taking into consideration all of the following:

a. the amount of interest, dividends or other income that the funds would earn or pay during the period the funds are expected to be on deposit;

b. the cost of establishing and administering ~~the~~ a non-IOLTA trust account, including the cost of the lawyer's services and the cost of preparing any tax reports required for income accruing to a client's or 3rd party's benefit; ~~and~~

c. the capability of the financial institution~~s~~, lawyer, or law firm to calculate and pay interest, dividends, or other income to individual clients or 3rd parties; and

d. any other circumstance that affects the ability of the client's or 3rd party's funds to earn income in excess of the costs to secure such income for the client or 3rd party.

(4) **Professional judgment**. The determination whether funds to be invested could be utilized to provide a positive net return to the client or 3rd party rests in the sound judgment of the lawyer or law firm. If a lawyer acts in good faith in making this determination, the lawyer is not subject to any charge of ethical impropriety or other breach of the Rules of Professional Conduct.

~~(5) WisTAF. For accounts created under par. (1), the lawyer or law firm shall direct the financial institution to remit to the Wisconsin Trust Account Foundation, Inc., also known as "WisTAF," at least quarterly, all of the following:~~

~~a. the interest or dividends, less any service charges or fees, on the average monthly balance in the account or as otherwise computed in accordance with an institution's standard accounting practice; and~~

~~b. a statement showing the name of the lawyer or law firm for whose account the remittance is sent, the rate of interest applied, the amount of service charges deducted, if any, and the account balance for the period for which the report is made. A copy of the statement shall be provided to the lawyer or law firm.~~

(cm) IOLTA account requirements.

An IOLTA account must meet the following requirements:

Deleted: ll

Deleted: s are subject to the following provisions

(1) **Location.** An IOLTA account shall be held in an IOLTA participating institution.

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

a. WisTAF shall certify as an IOLTA participating institution each financial institution that complies with the requirements of sub. (cm)(3)-(6) for IOLTA accounts held by that financial institution and has assured WisTAF that it has complied with the overdraft notification requirements of SCR 20:1.15(h).

b. WisTAF shall annually publish a list of financial institutions certified as an IOLTA participating institution.

Deleted: s

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

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

b. A repurchase agreement utilized for an IOLTA account may be established only at IOLTA participating institutions 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 must hold itself out as a money market fund as defined under the Investment Act of 1940, and, at the time of investment, have 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 defined in 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 interest rate or dividend that is generally available to non-IOLTA customers when the IOLTA account meets or exceeds the same minimum balance or other eligibility qualifications, if any. 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 by the institution when setting interest rates or dividends for its customers, provided it 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 options available to IOLTA participating institutions**.

1. An IOLTA participating institution may establish an IOLTA account as, or convert an IOLTA account to:

a. 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. United States government securities are defined to include securities of government sponsored enterprises, 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;

b. a government interest-bearing checking account such as accounts used for municipal deposits;

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

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

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

2. An IOLTA participating institution may pay the comparable rate on the IOLTA checking account in lieu of actually establishing the comparable highest interest rate or dividend product;

3. An IOLTA participating institution may pay an amount on funds that would otherwise qualify for the investment options noted at (cm)(4)c.1.a. equal to 70% of the federal funds target rate as of the first business day of the month or other IOLTA remitting period, which is deemed to be already net of allowable reasonable fees; or

4. An IOLTA participating institution may pay a set rate above its comparable rate(s) on the IOLTA checking account negotiated with WisTAF which is fixed over a period of time set by WisTAF, such as 12 months.

(5) **Allowable reasonable fees on IOLTA accounts**. Allowable reasonable fees on an IOLTA account shall be as follows: per check charges; per deposit charges; a fee in lieu of minimum balance; sweep fees and an IOLTA administrative fee approved by WisTAF. Allowable reasonable fees may be deducted from interest earned or dividends paid on an IOLTA account, provided that such charges or fees shall be calculated in accordance with an IOLTA participating institution's standard practice for non-IOLTA customers. Fees or charges 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 or charges 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 defined in par. (5), if any, on the average monthly balance in the IOLTA 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 IOLTA participating institution's normal procedures for reporting account activity to depositors; and

d. respond to reasonable requests from WisTAF for information needed for purposes of certification as an IOLTA participating institution.

Deleted: provide to WisTAF any information requested by WisTAF

(d) Prompt notice and delivery of property.

(1) **Notice and disbursement**. Upon receiving funds or other property in which a client has an interest, or in which the lawyer has received notice that a 3rd party has an interest identified by a lien, court order, judgment, or contract, the lawyer shall promptly notify the client or 3rd party in writing. Except as stated in this rule or otherwise permitted by law or by agreement with the client, the lawyer shall promptly deliver to the client or 3rd party any funds or other property that the client or 3rd party is entitled to receive.

(2) **Accounting**. Upon final distribution of any trust property or upon request by the client or a 3rd party having an ownership interest in the property, the lawyer shall promptly render a full written accounting regarding the property.

(3) **Disputes regarding trust property**. When the lawyer and another person or the client and another person claim ownership interest in trust property identified by a lien, court order, judgment, or contract, the lawyer shall hold that property in trust until there is an accounting and severance of the interests. If a dispute arises regarding the division of the property, the lawyer shall hold the disputed portion in trust until the dispute is resolved. Disputes between the lawyer and a client are subject to the provisions of sub. (g)(2).

(e) Operational requirements for <u>all</u> trust accounts.

(1) **Location**. Each trust account shall be maintained in a financial institution that is authorized by federal or state law to do business in Wisconsin and that is located in Wisconsin or has a branch office located in Wisconsin, and which agrees to comply with the overdraft notice requirements of sub. (h). <u>In addition, IOLTA accounts may be maintained only at IOLTA participating institutions that meet the IOLTA account requirements of sub. (cm).</u>

(2) **Insurance <u>and safety</u> requirements**. 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 Wisconsin credit union savings insurance corporation,~~ the securities investor protection corporation, or any other investment institution financial guaranty insurance. <u>IOLTA accounts must also comply with the requirements of sub. (cm)(3).</u>

(3) **Interest requirements**. ~~An interest-bearing trust account~~ <u>Non-IOLTA accounts</u> shall bear interest at a rate ~~of~~ not less than that applicable to individual <u>interest-bearing</u> accounts of the same type, size, and duration<u>. All trust accounts must allow</u> ~~and in which~~ withdrawals or transfers ~~can~~ <u>to</u> be made without delay when funds are required, subject only to any notice period that the depository institution is required to observe by law. <u>IOLTA accounts must comply with the requirements of sub. (cm)(4)b.</u>

(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 separate, non-pooled demand and separate, non-pooled, non-demand 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.

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.

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 ~~trust~~ 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:

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

2. lawyer and 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 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; and

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.

(5) **Availability of funds for disbursement**.

a. **Standard for trust account transactions**. A lawyer shall not disburse funds from any trust account unless the deposit from which those funds will be disbursed has cleared, and the funds are available for disbursement.

b. **Exception: Real estate transactions**. In closing a real estate transaction, a lawyer's disbursement of closing proceeds from funds that are received on the date of the closing, but that have not yet cleared, shall not violate sub. (e)(5)a. if those proceeds are deposited no later than the first business day following the closing and are comprised of the following types of funds:

1. a certified check;

2. a cashier's check, teller's check, bank money order, official bank check or electronic transfer of funds, issued or transferred by a financial institution insured by the federal deposit insurance corporation or a comparable agency of the federal or state government;

3. a check drawn on the trust account of any lawyer or real estate broker licensed under the laws of any state;

4. a check issued by the state of Wisconsin, the United States, or a political subdivision of the state of Wisconsin or the United States;

5. a check drawn on the account of or issued by a lender approved by the federal department of housing and urban development as either a supervised or a nonsupervised mortgagee as defined in 24 C.F.R. s. 202.2;

6. a check from a title insurance company licensed in Wisconsin, or from a title insurance agent of the title insurance company, if the title insurance company has guaranteed the funds of that title insurance agent;

7. a non-profit organization check in an amount not exceeding $5000 per closing if the lawyer has reasonable and prudent grounds to believe that the deposit will be irrevocably credited to the trust account; and

8. a personal check or checks in an aggregate amount not exceeding $5000 per closing if the lawyer has reasonable and prudent grounds to believe that the deposit will be irrevocably credited to the trust account.

bm. Without limiting the rights of the lawyer against any person, it shall be the responsibility of the disbursing lawyer to reimburse the trust account for any funds described in sub. (e)(5)b. that are not collected and for any fees, charges, and interest assessed by the financial institution on account of the funds being disbursed before the related deposit has cleared and the funds are available for disbursement. The lawyer shall maintain a subsidiary ledger for funds of the lawyer that are deposited in the trust account to reimburse the account for uncollected funds and to accommodate any fees, charges, and interest.

c. **Exception: Collection trust accounts**. When handling collection work for a client and maintaining a separate trust account to hold funds collected on behalf of that client, a lawyer's disbursement to the client of collection proceeds that have not yet cleared, does not violate sub. (e)(5)a. so long as those collection proceeds have been deposited prior to the disbursement.

(6) **Record retention**. A lawyer shall maintain complete records of trust account funds and other trust property and shall preserve those records for at least 6 years after the date of termination of the representation.

(7) **Production of records**. All trust account records have public aspects related to a lawyer's fitness to practice. Upon request of the office of lawyer regulation, or upon direction of the supreme court, the records shall be submitted to the office of lawyer regulation for its inspection, audit, use, and evidence under any conditions to protect the privilege of clients that the court may provide. The records, or an audit of the records, shall be produced at any disciplinary proceeding involving the lawyer, whenever material. Failure to produce the records constitutes unprofessional conduct and grounds for disciplinary action.

(8) **Business account**. Each lawyer who receives trust funds shall maintain at least one demand account, other than the trust account, for funds received and disbursed other

than in the lawyer's trust capacity, which shall be entitled "Business Account," "Office Account," "Operating Account," or words of similar import.

(f) Record-keeping requirements for all trust accounts.

(1) **Demand accounts**. Complete records of a trust account that is a demand account shall include a transaction register; individual client ledgers for IOLTA accounts and other pooled trust accounts; a ledger for account fees and charges, if law firm funds are held in the account pursuant to sub. (b)(3); deposit records; disbursement records; monthly statements; and reconciliation reports, subject to all of the following:

a. **Transaction register**. The transaction register shall contain a chronological record of all account transactions, and shall include all of the following:

1. the date, source, and amount of all deposits;

2. the date, check or transaction number, payee and amount of all disbursements, whether by check, wire transfer, or other means;

3. the date and amount of every other deposit or deduction of whatever nature;

4. the identity of the client for whom funds were deposited or disbursed; and

5. the balance in the account after each transaction.

b. **Individual client ledgers**. A subsidiary ledger shall be maintained for each client or ~~matter~~ 3rd party for ~~which~~ whom the lawyer receives trust funds that are deposited in an IOLTA account or any other pooled trust account.~~, and t~~ The lawyer shall record each receipt and disbursement of ~~that~~ a client's or 3rd party's funds and the balance following each transaction. A lawyer shall not disburse funds from ~~the~~ an IOLTA account or any pooled trust account that would create a negative balance with respect to any individual client or matter.

c. **Ledger for account fees and charges**. A subsidiary ledger shall be maintained for funds of the lawyer deposited in the trust account to accommodate monthly service charges. Each deposit and expenditure of the lawyer's funds in the account and the balance following each transaction shall be identified in the ledger.

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.

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.

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.

g. **Reconciliation reports**. For each trust account, the lawyer shall prepare and retain a printed reconciliation report on a regular and periodic basis not less frequently than every 30 days. Each reconciliation report shall show all of the following balances and verify that they are identical:

1. the balance that appears in the transaction register as of the reporting date;

2. the total of all subsidiary ledger balances for IOLTA accounts and other pooled trust accounts, determined by listing and totaling the balances in the individual client ledgers and the ledger for account fees and charges, as of the reporting date; and

3. the adjusted balance, determined by adding outstanding deposits and other credits to the balance in the financial institution's monthly statement and

subtracting outstanding checks and other deductions from the balance in the monthly statement.

(2) **Non-demand accounts**. Complete records of a trust account that is a non-demand account shall include all of the following:

a. all monthly or other periodic statements provided by the financial institution to the lawyer or law firm; and

b. all transaction records, including passbooks, records of electronic fund transactions, duplicates of any instrument issued by the financial institution from funds held in the account, duplicate deposit slips identifying the source of any deposit, and duplicate withdrawal slips identifying the purpose of any withdrawal.

(3) **Tangible trust property and bearer securities.**

a. **Property ledger**. A lawyer who receives, in trust, tangible personal property or securities in bearer form shall maintain a property ledger that identifies the property, date of receipt, owner, client or matter, and location of the property. The ledger shall also identify the disposition of all of the trust property received by the lawyer.

b. **Receipt upon taking custody**. Upon taking custody, in trust, of any tangible personal property or securities in bearer form, the lawyer shall provide to the previous custodian a signed receipt, with a description of the property and the date of receipt.

c. **Dispositional receipt**. Upon disposition of any tangible personal property or securities in bearer form held in trust, the lawyer shall obtain a signed receipt, with a description of the property and the date of disposition, from the recipient.

(4) **Electronic record retention**.

a. **Back-up of records**. A lawyer who maintains trust account records by computer shall maintain the transaction register, client ledgers, and reconciliation reports in a form that can be reproduced to printed hard copy. Electronic records must be regularly backed up by an appropriate storage device.

b. **IOLTA account records.** In addition to the requirements of sub. (f)(4)a., the transaction register, the subsidiary ledger, and the reconciliation report shall be printed every 30 days for the IOLTA account. The printed copy shall be retained for at least 6 years, as required under sub. (e)(6).

(g) Withdrawal of non-contingent fees from trust account.

(1) **Notice to client**. At least 5 business days before the date on which a disbursement is made from a trust account for the purpose of paying fees, with the

exception of contingent fees or fees paid pursuant to court order, the lawyer shall transmit to the client in writing all of the following:

a. an itemized bill or other accounting showing the services rendered;

b. notice of the amount owed and the anticipated date of the withdrawal; and

c. a statement of the balance of the client's funds in the lawyer trust account after the withdrawal.

(1m) **Alternative notice to client**. The lawyer may withdraw earned fees on the date that the invoice is transmitted to the client, provided that the lawyer has given prior notice to the client in writing that earned fees will be withdrawn on the date that the invoice is transmitted. The invoice shall include each of the elements required by sub. (g)(1)a., b., and c.

(2) **Objection to disbursement**. If a client makes a particularized and reasonable objection to the disbursement described in sub. (g)(1), the disputed portion shall remain in the trust account until the dispute is resolved. If the client makes a particularized and reasonable objection to a disbursement described in sub. (g)(1) or (1m) within 30 days after the funds have been withdrawn, the disputed portion shall be returned to the trust account until the dispute is resolved, unless the lawyer reasonably believes that the client's objections do not present a basis to hold funds in trust or return funds to the trust account under this subsection. The lawyer will be presumed to have a reasonable basis for declining to return funds to trust if the disbursement was made with the client's informed consent, in writing. The lawyer shall promptly advise the client in writing of the lawyer's position regarding the fee and make reasonable efforts to clarify and address the client's objections.

(h) Dishonored instrument notification; (Overdraft notices).

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

(1) **Overdraft reporting agreement.** A lawyer shall maintain demand 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 the filing of an overdraft notification agreement for each IOLTA account, each demand-type trust account and each demand-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.

(i) Certification of compliance with trust account rules.

(1) **Annual requirement**. A member of the state bar of Wisconsin shall file with the state bar of Wisconsin annually, with payment of the member's state bar dues or upon any other date approved by the supreme court, a certificate stating whether the member is engaged in the practice of law in Wisconsin. If the member is practicing law, the member shall state the account number of any trust account, and the name of each

financial institution in which the member maintains a trust account, a safe deposit box, or both, as required by this section. The state bar shall supply to each member, with the annual dues statement, or at any other time directed by the supreme court, a form on which the certification must be made.

(2) **Trust account record compliance**. Each state bar member shall explicitly certify on the state bar certificate described in par. (1) that the member has complied with each of the record-keeping requirements set forth in subs. (f) and (j)(5).

(3) **Certification by law firm**. A law firm shall file one certificate on behalf of the lawyers in the firm who are required to file a certificate under par. (1). The law firm shall give a copy of the certificate to each lawyer in the firm.

(4) **Suspension for non-compliance**. The failure of a state bar member to file the certificate is grounds for automatic suspension of the member's membership in the state bar in the same manner provided in SCR 10.03(6) for nonpayment of dues. The filing of a false certificate is unprofessional conduct and is grounds for disciplinary action.

(j) Fiduciary property.

(1) **Separate account**. A lawyer shall hold in trust, separate from the lawyer's own funds or property, those funds or that property of clients or 3rd parties that are in the lawyer's possession when acting in a fiduciary capacity that directly arises in the course of, or as a result of, a lawyer-client relationship or by appointment of a court.

(1m) **Other fiduciary accounts**. A lawyer shall deposit all fiduciary funds specified in par. (1) in any of the following:

a. a pooled interest-bearing or dividend-paying fiduciary account with sub-accounting by the financial institution, the lawyer, or the law firm that will provide for computation of interest or dividends earned by each fiduciary entity's funds and the proportionate allocation of the interest or dividends to each of the fiduciary ~~entity~~entities, less any transaction costs;

b. an income-generating investment vehicle, on which income shall be paid to the fiduciary entity or its beneficiary or beneficiaries, less any transaction costs;

c. an income-generating investment vehicle selected by the lawyer and approved by a court for guardianship funds if the lawyer serves as guardian for a ward under chs. 54 and 881, stats.;

d. an income-generating investment vehicle selected by the lawyer to protect and maximize the return on funds in a bankruptcy estate, which investment vehicle is approved by the trustee in bankruptcy and by a bankruptcy court order, consistent with 11 U.S.C. s. 345; or

e. a demand deposit or other ~~non-interest-bearing~~ account which does not bear interest or pay dividends when, in the sound professional judgment of the lawyer, placement in such an account is consistent with the needs and purposes of the fiduciary entity or its beneficiary or beneficiaries.

(2) **Location**. Each fiduciary account shall be maintained in a financial institution as provided by the written authorization of the client, the governing trust instrument, organizational by-laws, an order of a court or, absent such direction, in a financial institution that, in the lawyer's professional judgment, will best serve the needs and purposes of the client or 3rd party for whom the lawyer serves as fiduciary. If a lawyer acts in good faith in making this determination, the lawyer is not subject to any charge of ethical impropriety or other breach of the Rules of Professional Conduct. When the fiduciary property is held in a demand account from which funds are disbursed through a properly payable instrument issued directly by the lawyer or a member or employee of the lawyer's firm and the account is at a financial institution that is not located in Wisconsin or authorized by state or federal law to do business in Wisconsin, the lawyer shall comply with the requirements of sub. (j)(9)b. or c.

(3) **Prohibited transactions.**

a. **Cash**. No disbursement of cash shall be made from a fiduciary account or from a deposit to a fiduciary account, and no check shall be made payable to "Cash."

b. **Internet transactions**. A lawyer shall not make deposits to or disbursements from a fiduciary account by way of an Internet transaction.

c. **Credit card transactions**. A lawyer shall not authorize transactions by way of credit card to or from a fiduciary account.

d. **Debit card transactions**. A lawyer shall not use a debit card to make deposits to or disbursements from a fiduciary account.

(4) **Availability of funds for disbursement**. A lawyer shall not disburse funds from a fiduciary account unless the deposit from which those funds will be disbursed has cleared, and the funds are available for disbursement. However, the exception for real estate transactions under sub. (e)(5)b. shall apply to fiduciary accounts.

(5) **Records**. For each fiduciary account, the lawyer shall retain records of receipts and disbursements as necessary to document the transactions. The lawyer shall maintain all of the following:

a. all monthly or other periodic statements provided by the financial institution to the lawyer or law firm; and

b. all transaction records, including canceled or imaged checks, passbooks, records of electronic fund transactions, duplicates of any instrument issued by the

financial institution from funds held in the account, duplicate deposit slips identifying the source of any deposit, and duplicate withdrawal slips identifying the purpose of any withdrawal.

(6) **Record retention**. A lawyer shall maintain complete records of fiduciary accounts and other fiduciary property during the course of the fiduciary relationship. A lawyer shall maintain a complete record of the fiduciary account for the 6 most recent years of the account's existence and shall maintain, at a minimum, a summary accounting of the fiduciary account for prior years of the account's existence. After the termination of the fiduciary relationship, the lawyer shall preserve complete records for at least 6 years.

(7) **Production of records**. All fiduciary account records have public aspects related to a lawyer's fitness to practice. Upon request of the office of lawyer regulation, or upon direction of the supreme court, the records shall be submitted to the office of lawyer regulation for its inspection, audit, use, and evidence under any conditions to protect the privilege of clients that the court may provide. The records, or an audit of the records, shall be produced at any disciplinary proceeding involving the lawyer, whenever material. Failure to produce the records constitutes unprofessional conduct and grounds for disciplinary action.

(8) **Tangible fiduciary property and bearer securities.**

a. **Property ledger**. A lawyer who, as a fiduciary, receives tangible personal property or securities in bearer form shall maintain a property ledger that identifies the property, date of receipt, owner, and location of the property. The ledger shall also identify the disposition of all such fiduciary property received by the lawyer.

b. **Receipt upon taking custody**. Upon taking custody, as a fiduciary, of any tangible personal property or securities in bearer form, the lawyer shall provide to the previous custodian a signed receipt, with a description of the property, and the date of receipt.

c. **Dispositional receipt**. Upon disposition of any tangible personal property or securities in bearer form held by the lawyer as a fiduciary, the lawyer shall obtain a signed receipt, with a description of the property and the date of disposition, from the recipient.

(9) **Dishonored instrument notification or alternative protection.** A lawyer who holds fiduciary property in a demand account from which funds are disbursed through a properly payable instrument issued directly by the lawyer or a member or employee of the lawyer's firm shall take one of the following actions:

a. comply with the requirements of sub. (h) dishonored instrument notification (overdraft notices); or

b. have the account independently audited by a certified public accountant on at least an annual basis; or

c. hold the funds in a demand account, which requires the approving signature of a co-trustee, co-agent, co-guardian, or co-personal representative before funds may be disbursed from the account.

(10) **Certification requirements**. Funds held by a lawyer in a fiduciary account shall comply with the certification requirements of sub. (i).

(k) Exceptions to this section.

This rule does not apply in any of the following instances in which a lawyer is acting in a fiduciary capacity:

(1) the lawyer is serving as a bankruptcy trustee, subject to the oversight and accounting requirements of the bankruptcy court;

(2) the property held by the lawyer when acting in a fiduciary capacity is property held for the benefit of an "immediate family member" of the lawyer;

(3) the lawyer is serving in a fiduciary capacity for a civic, fraternal, or non-profit organization that is not a client and has other officers or directors participating in the governance of the organization; or

(4) the lawyer is acting in the course of the lawyer's employment by an employer not itself engaged in the practice of law, provided that the lawyer's employment is not ancillary to the lawyer's practice of law.

Wisconsin Comment

A lawyer must hold the property of others with the care required of a professional fiduciary. All property that is the property of clients or 3rd parties must be kept separate from the lawyer's business and personal property and, if monies, in one or more trust or fiduciary accounts.

SCR 20:1.15(b)(1) Separate accounts.

With respect to probate matters, a lawyer's role may be to represent the estate's personal representative, to serve as the personal representative, or to act as both personal representative and attorney for an estate. SCR 20:1.15(b) identifies the rules that apply when a lawyer holds trust property as the attorney for a client/personal representative.

Those rules, SCR 20:1.15(b)-(i), also apply when the lawyer serves as both the attorney and personal representative for an estate. However, if the lawyer serves solely as an estate's personal representative, the lawyer acts as a fiduciary and is subject to the requirements of SCR 20:1.15(j).

SCR 20:1.15(b)(4) Advances for fees and costs.

Lawyers often receive funds from 3rd parties from which the lawyer's fee will be paid. If there is risk that the client may divert the funds without paying the fee, the lawyer is not required to remit the portion from which the fee is to be paid. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds should be kept in trust, 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.

Lawyers also receive cost advances from clients or 3rd parties. Since January 1, 1987, the supreme court has required cost advances to be held in trust. Prior to that date, the applicable trust account rule, SCR 20.50(1), specifically excluded such advances from the funds that the supreme court required lawyers to hold in trust accounts. However, by order, dated March 21, 1986, the supreme court amended SCR 20.50(1) as follows:

> All funds of clients paid to a lawyer or law firm shall be deposited in one or more identifiable trust accounts as provided in sub. (3) maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm may be deposited in such an account except as follows . . . .

Deleted: ~~, other than advances for costs and expenses,~~

Formatted: No underline

This requirement is specifically addressed in SCR 20:1.15(b)(4).

SCR 20:1.15(b)(4m) Alternative protection for advanced fees.

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 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.

The writing required by SCR 20:1.15(b)(4m)a. must contain language informing the client that the lawyer is obligated to refund any unearned advanced fee at the end of the representation, that the lawyer will submit any dispute regarding a refund to binding arbitration, such as the programs run by the State Bar of Wisconsin and Milwaukee Bar Association, within 30 days of receiving a request for refund, and that the lawyer is obligated to comply with an arbitration award within 30 days of the award. The client is not obligated to arbitrate the fee dispute and may elect another forum in which to resolve the dispute. The writing must also inform the client of the opportunity to file a claim in the event an unearned advanced fee is not refunded, and should provide the address of the Wisconsin lawyers' fund for client protection.

If the client's fees have been paid by one other than the client, then the lawyer's responsibilities are governed by SCR 20:1.8(f). If there is a dispute as to the ownership of any refund of unearned advanced fees paid by one other than the client, the unearned fees should be treated as trust property pursuant to SCR 20:1.15(d)(3).

This alternative applies only to advanced fees for legal services. Cost advances must be deposited into the lawyer's trust account.

Advanced fees deposited into the lawyer's business account pursuant to this subsection may be paid by credit card, debit card, or an electronic transfer of funds. A cost advance cannot be paid by credit card, debit card, or an electronic transfer of funds under this section. Such payments are subject to SCR 20:1.15(b)(1) or SCR 20:1.15(e)(4)h.

SCR 20:1.15(d) Interest of 3rd parties.

Third parties, such as a client's creditors, may have just claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law, including SCR 20:1.15(d), to protect such 3rd-party claims against wrongful interference by the client, and accordingly, may refuse to surrender the property to the client. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the 3rd party.

If a lawyer holds property belonging to one person and a second person has a contractual or similar claim against that person but does not claim to own the property or have a security interest in it, the lawyer is free to deliver the property to the person to whom it belongs.

SCR 20:1.15(cm)(3) Insurance and safety requirements.

Pursuant to SCR 20:1.15(cm)(3), IOLTA trust accounts are required to be held in IOLTA participating institutions that are insured by the federal deposit insurance corporation (FDIC), the national credit union share insurance fund, the securities investor protection corporation or any other investment institution financial guaranty insurance. However, since federal law limits the amount of the insurance coverage available for each account, funds in excess of the limit are not insured. Consequently the purpose of the insurance and safety requirements is not to guarantee that all funds are adequately insured. Rather, it is to assure that trust funds are held in reputable IOLTA participating institutions.

Deleted: 2

Formatted: Indent: First line: 36 pt

Deleted: and

Formatted: Font: Not Bold

SCR 20:1.15(e)(2) Insurance and safety requirements.

Pursuant to SCR 20:1.15(e)(2), trust ~~funds~~accounts are required to be held in ~~accounts~~ financial, investment, or IOLTA participating institutions that are insured by the federal deposit insurance corporation (FDIC), the national credit union share insurance fund, ~~the Wisconsin credit union savings insurance corporation,~~ the securities investor protection corporation or any other investment institution financial guaranty insurance. However, since federal law limits the amount of the insurance coverage available for each account, funds in excess of the limit are not insured. Consequently, the purpose of the insurance and safety requirements is not to guarantee that all funds are adequately insured. Rather, it is to assure that trust funds are held in reputable financial, investment, or IOLTA participating institutions.

Deleted: SCR 20:1.15(cm)(2) and

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.

SCR 20:1.15(e)(4)g. Exception: Collection trust accounts.

This exception was adopted in response to concerns raised by members of the collection bar who presently rely on certain electronic banking practices that were not expressly prohibited prior to the adoption of this rule. The court acknowledges that electronic banking practices are increasingly used in the practice of law. However, the court also acknowledges that such transactions will require new approaches to alleviate legitimate concerns about the potential for fraud and risk of conversion with respect to their usage in connection with trust accounts. Collection lawyers may be able to satisfy these concerns because of security measures inherent in their practice. This exception is intended as a temporary measure, pending further consideration of the issue and eventual adoption of a rule that will permit electronic banking procedures in additional practice areas, conditioned upon the implementation of appropriate safeguards. The agreement referenced in the exception is available from the office of lawyer regulation.

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.

SCR 20:1.15(e)(5)b. Real estate transactions.

SCR 20:1.15(e)(5)b. establishes an exception to the requirement that a lawyer only disburse funds that are available for disbursement, i.e., funds that have been credited to the account. This exception was created in recognition of the fact that real estate transactions in Wisconsin require a simultaneous exchange of funds. However, even under this exception, the funds from which a lawyer disburses the proceeds of the real estate transaction, i.e., the lender's check, draft, wire transfer, etc., must be deposited no later than the first business day following the date of the closing. In refinancing transactions, the lender's funds must be deposited as soon as possible, but no later than the first business day after the loan proceeds are distributed. Proceeds are generally distributed three days after the closing date.

SCR 20:1.15(e)(7) Inspection of records.

The duty of the lawyer to produce client trust account records for inspection under SCR 20:1.15(e)(7) is a specific exception to the lawyer's responsibility to maintain the confidentiality of the client's information as required by SCR 20:1.6.

SCR 20:1.15(g) Withdrawal of non-contingent fees from trust account.

This section applies to attorney fees, other than contingent fees. It does not apply to filing fees, expert witness fees, subpoena fees, and other costs and expenses that a lawyer may incur on behalf of a client in the course of a representation.

In addition, this section does not require contingent fees to remain in the trust account or to be returned to the trust account if a client objects to the disbursement of the contingent fee, provided that the contingent fee arrangement is documented by a written fee agreement, as required by SCR 20:1.5(c). While a client may dispute the reasonableness of a lawyer's contingent fee, such disputes are subject to SCR 20:1.5(a), not to this subsection.

A client's objection under sub. (g)(3) must offer a specific and reasonable basis for the fee dispute in order to trigger the lawyer's obligation to keep funds in the lawyer's trust account or return funds to the lawyer's trust account. A generalized objection to the overall amount of the fees or a client's unilateral desire to abrogate the terms of a fee agreement should not ordinarily be considered sufficient to trigger the lawyer's obligation. A lawyer may resolve a dispute over fees by offering to participate and abide by the decision of a fee arbitration program. In addition, a lawyer may bring an action for declaratory judgment pursuant to s. 806.04, Wis. Stats. to resolve a dispute between the lawyer and a client regarding funds held in trust by the lawyer. The court of appeals suggested employment of that method to resolve a dispute between a client and a 3rd party over funds held in trust by the

lawyer. See Riegleman v. Krieg, 2004 WI App 85, 271 Wis. 2d 798, 679 N.W.2d 857, 2004 Wisc. App. LEXIS 229 (2004).

Additionally, when a lawyer's fees are subject to final approval by a court, such as fees paid to a guardian ad litem or lawyer's fees in formal probate matters, objections to disbursements by clients or 3rd party payors are properly brought before the court having jurisdiction over the matter. A lawyer should hold disputed funds in trust until such time as the appropriate court resolves the dispute.

SCR 20:1.15(i) and SCR 20:1.15(j)(10) Certification of compliance.

The current rule is intended to implement the supreme court's order of April 11, 2001; certification is required for "all trust accounts and safe deposit boxes in which the lawyer deposits clients' funds or property held in connection with a representation or held in a fiduciary capacity that directly arises in the course of or as a result of a lawyer-client relationship."

SCR 20:1.15(j) Lawyer as professional fiduciary.

A lawyer must hold the property of others with the care required of a professional fiduciary. All property which is the property of clients or 3rd parties must be kept separate from the lawyer's business and personal property and, if monies, in one or more segregated accounts. SCR 20:1.15(j) identifies the requirements and responsibilities of a lawyer with respect to the management of fiduciary property.

SCR 20:1.15(j)(1) Separate accounts.

With respect to probate matters, a lawyer's role may be to represent the estate's personal representative, to serve as the personal representative, or to act as both personal representative and attorney for an estate. SCR 20:1.15(j) applies only when the lawyer serves solely as an estate's personal representative. If the lawyer represents a client/personal representative, or when the lawyer serves as both personal representative and attorney for the estate, the lawyer is responsible for "trust" property and is subject to the requirements of SCR 20:1.15(b)-(i).

REFERENCE TO PROPOSED REVISIONS TO TRUST ACCOUNT RULE

LIST 1: PROPOSED SUBSTANTIVE REVISIONS

RULE NO.	PROPOSED REVISION
SCR 20:1.15(a)(7)	Interest on Lawyer Trust Account definition. Includes language for *Brown v. Legal Foundation of Washington*, 538 U.S. 216, 123 S. Ct. 1406 (2003).
SCR 20:1.15(a)(7m)	IOLTA participating institution definition.
SCR 20:1.15(a)(11)	WisTAF definition.
SCR 20:1.15(c)(1)	Changes based on *Brown v. Legal Foundation of Washington*, 538 U.S. 216, 123 S. Ct. 1406 (2003).
SCR 20:1.15(c)(2)	Changes based on *Brown v. Legal Foundation of Washington*, 538 U.S. 216, 123 S. Ct. 1406 (2003).
SCR 20:1.15(cm)(1)	IOLTA Requirements. Location.
SCR 20:1.15(cm)(2)	Certification of IOLTA participating institutions.
SCR 20:1.15(cm)(3) See also comment	IOLTA Requirements. Insurance and safety requirements.
SCR 20:1.15(cm)(4)	Retitled. IOLTA Requirements. Income requirements.
SCR 20:1.15(cm)(4)(b)	IOLTA Requirements. Income requirements. Interest and dividend requirements.
SCR 20:1.15(cm)(4)(c)	IOLTA Requirements. Income requirements. IOLTA account options available to participating institutions.
SCR 20:15(cm)(5)	IOLTA Requirements. Allowable reasonable fees on IOLTA accounts.

SCR 20:1.15(cm)(6)d.	Certification documentation requirements.

LIST 2: PROPOSED NON-SUBSTANTIVE REVISIONS

RULE NO.	**RULE TITLE OR DESCRIPTION OF REVISION**
SCR 20:1.15(a)(7)	Added "dividend-paying" when "interest-bearing" is used (throughout rule). Added "3rd party" when "client" is used (throughout rule). Added references to trust account rule provisions.
SCR 20:1.15(c)(1)	Made plural "lawyer or law firm." Added "in an IOLTA participating institution."
SCR 20:1.15(c)(1)b, c	*[Sections eliminated – Repetitive.]*
SCR 20:1.15(c)(1m)	*[Section moved to SCR 20:1.15(cm)(4)a.]*
SCR 20:1.15(c)(2)	*[Revised and retitled]*
SCR 20:1.15(c)(2)a, b, c	*[Revised]*
SCR 20:1.15(c)(2)e	Account must have specific written instructions from client or 3rd party.
SCR 20:1.15(c)(3)d	Added "any other circumstance" paragraph.
SCR 20:1.15(c)(5)	*[Section revised, retitled, and moved to SCR 20:1.15(cm)(6).]*
SCR 20:1.15(e)	*[Section revised, retitled]*
20:1.15(e)(2)	Added "safety" to insurance requirements title. Revised comment.
20:1.15(e)(2), (3)	*[Revised]*
20:1.15(e)(4)h.	*[Revised]*.
20:1.15(f)	*[Revised and retitled]*
20:1.15(f)(1)	*[Revised]*
20:1.15(h)(8)	*[Revised]*
20:1.15(j)(1m)	*[Revised]*