

# SUPREME COURT OF WISCONSIN

NOTICE

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

No. 10-05

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In the matter of the petition to amend Supreme Court Rule 20:1.15(e)(2)a., relating to trust account insurance and safety requirements.

**FILED**

**NOV. 5, 2010**

A. John Voelker  
Acting Clerk of Supreme  
Court  
Madison, WI

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On March 16, 2010, the Board of Administrative Oversight and the Office of Lawyer Regulation filed a petition with the Wisconsin Supreme Court. The petition requests the court amend Supreme Court Rule (SCR) 20:1.15(e)(2)a., its comment, and the comments to SCR 20:1.15(cm)(3), to provide greater protection to the public when a lawyer holds trust property at a credit union.

On November 5, 2010, the court held a public hearing and administrative conference. Upon consideration of matters presented at the public hearing and submissions made in response to the proposed amendments, the court unanimously adopted the petition.

Therefore,

IT IS ORDERED that effective January 1, 2011:

**SECTION 1.** 20:1.15(e)(2)a. of the Supreme Court Rules is amended to read:

20:1.15(e)(2)a. Each trust account shall be maintained at a financial institution that is insured by the federal deposit insurance corporation, the national credit union share insurance fund, the securities investor protection corporation, or any other investment institution financial guaranty insurance. Except as provided in subs. (b)(6) and (cm)(3)b. and c., trust property shall be held in an account in which each individual owner's funds are eligible for insurance.

**SECTION 2.** The Comment to SCR 20:1.15 (cm) (3) pertaining to insurance requirements is amended to read:

COMMENT

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

Pursuant to SCR 20:1.15 (cm)(3), IOLTA 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 (NCUSIF), the securities investor protection corporation (SIPC) or any other investment institution financial guaranty insurance. However, since federal law dictates the amount of ~~available~~ insurance coverage available from the FDIC, the NCUSIF and the SPIC, funds in excess of ~~the those limit limits~~ are not insured. Federal law also limits the types of losses that are covered by SIPC insurance. 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 and, as specified in subsection (e)(2)a., that the funds are eligible for the insurance that is available.

SCR 20:1.15(e)(2)a. requires a lawyer to hold funds in an account where each owner's funds are eligible for the financial institution's insurance coverage. Practitioners should exercise care when placing trust funds in an IOLTA or any other type of lawyer trust account at a credit union, because an individual owner of funds held in any type of lawyer trust account (i.e., a client or third party) is eligible for NCUSIF insurance only if that individual owner is a member of the credit union, or if the credit union is designated by the National Credit Union Administration (NCUA) as a "low-income" credit union. The exceptions to the SCR 20:1.15(e)(2)a. requirement relate to trust property other than funds and to IOLTA accounts that are subject to the safety requirements of SCR 20:1.15(cm)(3)b. and c.

**SECTION 3.** The Comment to SCR 20:1.15 (e) (2) pertaining to insurance requirements is amended to read:

COMMENT

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

Pursuant to SCR 20:1.15(e)(2), trust accounts are required to be held in financial, investment, or IOLTA participating institutions that are insured by the federal deposit insurance corporation (FDIC), the national credit union share insurance fund (NCUSIF), the securities investor protection corporation (SIPC) or any other investment institution financial guaranty insurance. However, since federal law limits dictates the amount of available insurance coverage available from the FDIC, the NCUSIF and the SIPC, funds in excess of ~~the~~ those limit limits are not insured. Federal law also limits the types of losses that are covered by SIPC insurance. 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 and, as specified in subsection (e)(2)a., that the funds are eligible for the insurance that is available.

SCR 20:1.15(e)(2)a. requires a lawyer to hold funds in an account where each owner's funds are eligible for the financial institution's insurance coverage. Practitioners should exercise care when placing trust funds in an IOLTA or any other type of lawyer trust account at a credit union, because an individual owner of funds placed in any type of lawyer trust account (i.e., a client or third party) is eligible for NCUSIF insurance only if that individual owner is a member of the credit union, or if the credit union is designated by the National Credit Union Administration (NCUA) as a "low-income" credit union. The exceptions to the SCR 20:1.15(e)(2)a. requirement relate to trust property other than funds and to IOLTA accounts that are subject to the safety requirements of SCR 20:1.15(cm)(3)b. and c.

IT IS ORDERED that notice of this amendment of Supreme Court Rule (SCR) 20:1.15(e)(2)a., its comment, and the comments to SCR 20:1.15(cm)(3) be given by a single publication of a copy of this order in the official state newspaper and in an official publication of the State Bar of Wisconsin.

Dated at Madison, Wisconsin, this 5<sup>th</sup> day of November, 2010.

BY THE COURT:

A. John Voelker  
Acting Clerk of Supreme Court



