

SPD (State Public Defender) payments by direct deposit

Lawyers who are appointed by the State Public Defender's Office are required to submit their hours and mileage to the SPD at the conclusion of a case in order to receive payment. In addition, appointed lawyers are required to provide the SPD with bills for the services of any investigators, expert witnesses, presentence report authors, etc. In mid-2013, the SPD began offering lawyers the option to receive such payments by direct deposit.

In order to accept a payment of fees by direct deposit, a lawyer must comply with one of the following alternatives:

1. Business Account Option

The lawyer must pre-pay any investigator, expert witness or pre-sentence report author from funds belonging to the lawyer prior to receiving the direct deposit from the SPD. When such fees are paid in advance, the SPD's payment is a reimbursement and does not constitute funds belonging to a third party. As such, those funds must not be deposited to a trust account. They must be deposited to the lawyer's business account.

OR

2. Credit Card Trust Account Option

The lawyer must maintain a "Credit Card Trust Account," as described in [SCR 20:1.15\(e\)\(4\)h](#). A credit card trust account (CCTA) is an IOLTA trust account, separate from a lawyer's primary IOLTA, which is utilized as a pass-through account for electronic payments of legal fees and costs. At this time, the only funds that can be deposited to a CCTA are earned and unearned fees, cost advances and cost reimbursements.

While SCR 20:1.15(e)(4)h.1 requires the account to be entitled: "Credit Card Trust Account," deposits to the account are not limited to credit card transactions. The rule also allows payments to be made by debit card and other forms of electronic deposit. Other forms of electronic deposit include ACH transactions, direct deposits, remote deposits, and payments via Square, PayPal and similar payment processors.

If a lawyer chooses to establish a Credit Card Trust Account solely to accept direct deposits from the SPD and does not accept deposits by credit card, debit card, Square or PayPal and the like, there is no need for the lawyer to purchase the hardware and software required to accept those types of electronic payments.

THE MECHANICS OF DIRECT DEPOSIT UNDER OPTION 2

SET-UP: The SPD makes payments to lawyers through the Department of Administration. In order to accept such payments, a lawyer will be required to sign a State of Wisconsin Electronic Funds Transfer Enrollment Application ([Form DOA 6622](#)). The application requires the lawyer to identify the account number of the CCTA and to agree that the State can make "debit adjustments," i.e., withdrawals, from the account to correct problems and errors. OLR does not interpret a lawyer's authorization of such debits to constitute a violation of SCR 20:1.15(e)(4)d. since credit card vendors can make similar withdrawals (chargebacks) from a CCTA. The steps that must be followed when such withdrawals occur are explicitly referenced in the rule. (See, **DEBITS FROM A CCTA** below).

PRE-PRINTED CHECKS: At this time, all disbursements from a CCTA must be by check. Internet transfers from this account are not permitted. Checks must be pre-printed and pre-numbered and must include the name and address of the lawyer or law office and the title of the account: "Credit Card Trust Account."

OVERDRAFT REPORTING: The CCTA is subject to the overdraft notification requirements of SCR 20:1.15(h). Consequently, a lawyer must file an overdraft notification [agreement](#) for the account, along with a voided CCTA check, with the Office of Lawyer Regulation.

TRANSFER OF FUNDS FROM CCTA: Direct deposits to a CCTA must be transferred by check to another account as soon as the funds are available.

FEES: With respect to the handling of the attorney fees paid by the SPD (earned fees), the rule specifies that the funds must be transferred by check to the business account. A lawyer must identify the client matter and purpose of the check on the check's memo line, pursuant to [SCR 20:1.15\(f\)\(1\)e.1](#). For example:

Jane Jones (*or Client ID #*) – Fees (Case # or other identifier)

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COSTS: If the direct deposit payment includes funds owed to an investigator, an expert witness, a pre-sentence report writer, or anyone other than the lawyer, that portion of the payment must be transferred by check to the lawyer's primary IOLTA account. As with the check for fees, the lawyer must identify the client matter and purpose of the check on the check's memo line. For example:

Jane Jones (*or Client ID #*) – Investigator (Case # or other identifier)

NOTE: If a lawyer has paid the expert, the investigator or the pre-sentence report author from the lawyer's own funds prior to receiving payment of those fees from the SPD, the cost payment is a reimbursement, which must be transferred by check to the business account. A cost reimbursement may be included in a single check, along with the lawyer's fee. Again, the memo line of the check must identify the client matter and purpose of the check.

DEBITS FROM A CCTA: Pursuant to SCR 20:1.15(e)(4)h.4., a lawyer whose CCTA is debited by the State to correct a problem or error relating to an SPD payment must replace the debited funds within 3 business days of receiving notice of the State's debit. In addition, after receiving notice, the lawyer must not accept any new payments to the CCTA until the lawyer has reimbursed the account for any shortfall or negative balance caused by the State's debit.

SCR 20:1.15 Safekeeping property; trust accounts and fiduciary accounts. (Effective, 1/1/11)

(e) Operational requirements for trust accounts.

(4) Prohibited transactions.

h. Exception: Fee and cost advances by credit card, debit card or other electronic deposit. A lawyer may establish a trust account, separate from the lawyer's IOLTA account for the purpose of receiving legal fees and costs by credit card, debit card or other electronic deposit, provided that the lawyer complies with all of the following:

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

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

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

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

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

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.

SCR 20:1.15 Safekeeping property; trust accounts and fiduciary accounts. (Effective, 1/1/11)

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

(1) Draft accounts.

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.