

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. 02-06

**In the matter of repeal and recreation of
Supreme Court Rules Chapter 20:1.15 -
Safekeeping Property; Trust Account and
Fiduciary Accounts**

FILED

APR 30, 2004

Cornelia G. Clark
Clerk of Supreme Court
Madison, WI

On September 18, 2003, the court held a public hearing on the petition filed on December 19, 2002, by the State Bar of Wisconsin and the Office of Lawyer Regulation, seeking to repeal and recreate Supreme Court Rules Chapter 20:1.15 relating to safekeeping property; trust account and fiduciary accounts. At its ensuing open administrative conference the court approved the petition and adopted the proposed rule, subject to further consideration of certain issues presented by members of the collection bar. The court considered those aspects of the petition at its open administrative conferences on September 18, 2003, December 19, 2003, March 31, 2004, and approved the final form of the rule on April 21, 2004.

IT IS ORDERED that, effective July 1, 2004, Supreme Court Rules Chapter 20:1.15 is repealed and recreated to read:

Section 1. SCR 20:1.15 of the supreme court rules is repealed and recreated to read as follows:

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

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|-----------------|---|-----------------|--|
| SCR 20:1.15 (a) | Definitions. | SCR 20:1.15 (g) | Withdrawal of fees from trust account. |
| SCR 20:1.15 (b) | Segregation of trust property. | SCR 20:1.15 (h) | Dishonored instrument notification; (Overdraft notices). |
| SCR 20:1.15 (c) | Types of trust accounts. | SCR 20:1.15 (i) | Certification of compliance with trust account rules. |
| SCR 20:1.15 (d) | Prompt notice and delivery of property. | SCR 20:1.15 (j) | Fiduciary property. |
| SCR 20:1.15 (e) | Operational requirements for trust accounts. | SCR 20:1.15 (k) | Exceptions to SCR 20:1.15. |
| SCR 20:1.15 (f) | Record-keeping requirements for trust 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. Fiduciary property includes, but is not limited to, property held as agent, attorney-in-fact, conservator, guardian, personal representative, special administrator, or trustee.

(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 Lawyer Trust Account ("IOLTA") account" means a pooled, interest-bearing, demand 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. 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 subject to the provisions of SCR Chapter 13, Interest on Trust Accounts Program.

(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.

(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.** Unearned fees and advanced payments of fees shall be held in trust until earned by the lawyer, and withdrawn pursuant to SCR 20:1.15 (g). Funds advanced by a client or 3rd party for payment of costs shall be held in trust until the costs are incurred.

(5) **Probate accounts.** Trust property of a probate estate shall be maintained in a separate account that is subject to the requirements of subs. (b) through (i).

(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 trust account rules of the other state.

(c) Types of trust accounts.

(1) **IOLTA accounts.** A lawyer who receives client funds shall maintain a pooled interest-bearing, demand account for deposit of client or 3rd-party funds that are:

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 SCR 20:1.15 (c) (2); or

c. not eligible for an account or investment under SCR 20:1.15 (c) (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.** 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. a separate interest-bearing trust account for the particular client or client's matter, the interest on which shall be paid to the client, less any transaction costs;

b. a pooled interest-bearing trust account with sub-accounting by the financial institution, the lawyer, or the law firm that will provide for computation of interest earned by each client's funds and the payment of the interest to the client, 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 as directed by the court or other tribunal, less any transaction costs;

d. 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. 880 and 881, stats.;

e. 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 USC 345; or

f. a demand deposit or other non-interest-bearing account for funds that are neither nominal in amount nor expected to be held for a short term, if the client specifically so approves.

(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 funds could be utilized to provide a positive net return to the client by taking into consideration all of the following:

a. the amount of income that the funds would earn during the period the funds are expected to be on deposit;

b. the cost of establishing and administering the 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 benefit; and

c. the capability of financial institutions to calculate and pay interest or other income to individual clients.

(4) **Professional judgment.** The determination whether funds to be invested could be utilized to provide a positive net return to the client 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.

(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 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).

(2) **Insurance 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.

(3) **Interest requirements.** An interest-bearing trust account shall bear interest at a rate of not less than that applicable to individual accounts of the same type, size, and duration and in which withdrawals or transfers can be made without delay when funds are required, subject only to any notice period that the depository institution is required to observe by law.

(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 trust account by a telephone transfer of funds. This section does not prohibit wire transfers.

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.

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.

(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 CFR 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 \$5,000 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 \$5,000 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 trust accounts.

(1) **Demand accounts.** Complete records of a trust account that is a demand account shall include a transaction register; individual client ledgers; 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 for which the lawyer receives trust funds, and the lawyer shall record each receipt and disbursement of that client's funds and the balance following each transaction. A lawyer shall not disburse funds from the 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 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) **Trust property other than funds.**

a. **Property ledger.** A lawyer who receives trust property other than funds 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 of any trust property described in sub. (f) (3)a., 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 trust property described in sub. (f) (3)a., 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 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, the lawyer shall deliver 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.

(2) **Objection to disbursement.** If a client objects to the disbursement described in sub. (g) (1), the funds shall remain in the trust account until the dispute is resolved. If the client objects after the funds have been withdrawn, the disputed portion shall be returned to the trust account.

(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 SCR 20:1.15 (h) (3).

(2) **Identification of accounts subject to SCR 20:1.15 (h).** 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 SCR 20:1.15 (h) and shall provide the financial institution with a list of all existing accounts at that institution that are subject to SCR 20:1.15 (h).

(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 SCR 20:1.15 (h) 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 SCR 20:1.15 (h) 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 SCR 20:1.15 (h).

(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.** SCR 20:1.15 (h) 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 SCR 20:1.15 (h).

(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 SCR 20:1.15. 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 sub. (i) (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 SCR 20:1.15 (i) (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. When a lawyer is in possession of fiduciary property of a probate estate, the lawyer shall maintain the property in a separate account subject to the requirements of SCR 20:1.15 (j).

(2) **Location.** Each fiduciary account shall be maintained in a financial institution in the state where the lawyer's office is situated, or elsewhere as provided by the written authorization of the client, the governing trust agreement, organizational by-laws, or an order of a court.

(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) **Fiduciary property other than funds.**

a. **Property ledger.** A lawyer who receives fiduciary property other than funds 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 fiduciary property received by the lawyer.

b. **Receipt upon taking custody.** Upon taking custody of any fiduciary property described in sub. (j) (8)a., 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 fiduciary property described in sub. (j) (8)a., 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 shall take one of the following actions:

a. comply with the requirements of SCR 20:1.15 (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 SCR 20:1.15 (i).

(k) Exceptions to SCR 20:1.15.

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; or

(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.

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) (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, ~~other than advances for costs and expenses,~~ shall be deposited in one or more identifiable ~~bank~~ 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

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

SCR 20:1.15 (b) (5) Probate 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) (5) 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 must maintain the fiduciary property in a separate account that is subject to the requirements of SCR 20:1.15 (j).

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 (e) (2) Insurance requirements.

Pursuant to SCR 20:1.15 (e) (2), trust funds are required to be held in accounts that are 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. However, since federal law limits the amount of the insurance coverage, funds in excess of the limit are not insured. Consequently, the purpose of the insurance requirement is not to guarantee that all funds are adequately insured. Rather, it is to assure that trust funds are held in reputable financial institutions.

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

The current rule is intended to implement the 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 account.

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) (1) states that "(w)hen a lawyer is in possession of fiduciary property of a probate estate, the lawyer shall maintain the property in a separate fiduciary account subject to the requirements of SCR 20:1.15 (j)." 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).

IT IS ORDERED that notice of this of repeal and recreation of SCR 20:1.15 be given by a single publication of a copy of this order in the official state newspaper and in an official publication of the State Bar of Wisconsin.

Dated at Madison, Wisconsin, this 30th day of April, 2004.

BY THE COURT:

Cornelia G. Clark
Clerk of Supreme Court

