

FILED

OCT 30, 1998

SUPREME COURT OF WISCONSIN

Marilyn L. Graves
Clerk of Supreme Court
Madison, WI

In the Matter of the Amendment of
Supreme Court Rules: SCR 20:1.15 -
Safekeeping Property

ORDER
No. 98-06

The court held a public hearing October 28, 1998, on the petition of the Board of Attorneys Professional Responsibility and the Board of Governors of the State Bar of Wisconsin requesting the amendment of SCR 20:1.15 to authorize lawyers to maintain trust accounts in savings banks and other investment institutions insured by the Securities Investor Protection Corporation, among other entities, and capable of providing overdraft notification on lawyer trust accounts maintained in the institution. The court has considered the matters presented at the public hearing and the materials filed with the court in this matter.

IT IS ORDERED that, effective January 1, 1999, the Supreme Court Rules are amended as follows.

SECTION 1. 20:1.15 (a) is amended to read:

20:1.15 (a) A lawyer shall hold in trust, separate from the lawyer's own property, that property of clients and third persons that is in the lawyer's possession in connection with a representation or when acting in a fiduciary capacity. Funds held in connection with a representation or in a fiduciary

capacity include funds held as trustee, agent, guardian, personal representative of an estate, or otherwise. All funds of clients and third persons paid to a lawyer or law firm shall be deposited in one or more identifiable trust accounts as provided in paragraph (c). The trust account shall be maintained in a bank, savings bank, trust company, credit union ~~or~~ , savings and loan association or other investment institution authorized to do business and located in Wisconsin. The trust account shall be clearly designated as "Client's Account" or "Trust Account" or words of similar import. No funds belonging to the lawyer or law firm, except funds reasonably sufficient to pay or avoid imposition of account service charges, may be deposited in such an account. Unless the client otherwise directs in writing, securities in bearer form shall be kept by the attorney in a safe deposit box in a bank, savings bank, trust company, credit union ~~or~~ , savings and loan association or other investment institution authorized to do business and located in Wisconsin. The safe deposit box shall be clearly designated as "Client's Account" or "Trust Account" or words of similar import. Other property of a client or third person shall be identified as such and appropriately safeguarded. If a lawyer also licensed in another state is entrusted with funds or property in connection with an out-of-state representation, this provision shall not supersede the trust account rules of the other state.

SECTION 2. 20:1.15 (c) (intro.) of the supreme court rules is amended to read:

20:1.15 (c) (intro.) Each trust account shall be an account in a bank, savings bank, trust company, credit union ~~or~~ , savings and loan association or other investment institution selected in the exercise of ordinary prudence and authorized by federal or state law to do business in Wisconsin. The trust account shall be insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, the Wisconsin Credit Union Savings Insurance Corporation~~7~~ or the ~~Federal Savings and Loan Insurance Corporation~~ Securities Investor Protection Corporation and other investment institution financial guaranty insurance. An interest-bearing trust account shall bear interest at a rate no 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 which the depository institution is required to observe by law or regulation. Lawyers and law firms are subject to the following:

SECTION 3. 20:1.15 (h) (1m) of the supreme court rules is created to read:

20:1.15 (h) (1m) "Investment institution" means an institution, such as a brokerage house, that is capable of providing overdraft notification on lawyer trust accounts maintained in that institution and is insured by the Securities Investor Protection Corporation and other investment institution financial guaranty insurance.

SECTION 4. 20:1.15 (i) to (m) of the supreme court rules are amended to read:

20:1.15 (i) Lawyer trust accounts shall be maintained only in a financial institution or investment institution that has agreed to provide the overdraft report under sub. (j).

(j) 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 or investment institution shall, simultaneously with the customary overdraft notice to the depositor or investor, report the overdraft to the Board of Attorneys Professional Responsibility.

(k) The overdraft reporting agreement under par. (i) shall provide that all reports made by the financial institution or investment institution shall be substantially in the following format:

(1) In the case of a dishonored instrument, identical to the overdraft notice customarily forwarded to the depositor or investor and with a copy of the dishonored instrument, if a copy is normally provided to the depositor or investor.

(2) In the case of instruments that are presented against insufficient funds and are honored, identification of the financial institution or investment 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.

(L) A report made under par. (j) shall be made simultaneously with the overdraft notice given to the depositor or investor.

(m) The Board shall hold each overdraft report for 10 business days or the minimum time required by the financial institution or investment institution, whichever is less, to enable the financial institution or investment institution to withdraw a report provided by inadvertence or mistake, except that the curing of an insufficiency of available funds by a lawyer or law firm by the deposit of additional funds does not constitute reason for withdrawing an overdraft report.

SECTION 5. 20:1.15 (o) and (p) of the supreme court rules are amended to read:

20:1.15 (o) This rule does not preclude a financial institution or investment institution from charging a particular lawyer or law firm for the reasonable costs of producing the reports and records required by this rule.

(p) This rule does not create a claim against a financial institution or investment institution or its officers, directors, employees, and agents for failure to provide a trust account overdraft report or for compliance with any provision of this rule.

IT IS FURTHER ORDERED that notice of these amendments of the Supreme Court Rules shall 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 October, 1998.

BY THE COURT:

Cornelia G. Clark,
Deputy Clerk of Court