

STATE OF WISCONSIN
IN SUPREME COURT

FILED
MAY 22 2006
CLERK OF SUPREME COURT
OF WISCONSIN

In the Matter of the Amendment of

SCR 20:1.15 Safekeeping Property;
SCR 20:1.0 Definitions;
SCR 21.16 Discipline; and
SCR 12.04 Wisconsin Lawyers Fund for Client Protection

PETITION

06 04

TO: Chief Justice Shirley S. Abrahamson
Justice Jon P. Wilcox
Justice Ann Walsh Bradley
Justice N. Patrick Crooks
Justice David T. Prosser, Jr.
Justice Patience D. Roggensack
Justice Louis Butler

Filed with Cornelia G. Clark, Clerk of Supreme Court
Office of Clerk of Supreme Court
110 E. Main Street, Suite 215
Madison, WI 53703

BACKGROUND

In October, 2004, Michelle A. Behnke, Past President of the State Bar of Wisconsin, appointed a committee (the Trust Account Rule Working Group) to study SCR 20:1.15 and propose modifications to the trust account rule.

The members of the Trust Account Rule Working Group ("Working Group") included: Attorney Michael Olds, Chairperson; Attorney Barry Cohen; Cathleen Dettman, State Bar Public Policy and Media Assistant; Attorney Diane Diel, Attorney Dean Dietrich, Mary Hoeft Smith, OLR Trust Account Program Administrator; Attorney Gerald Mowris, Attorney Timothy Pierce, State Bar Ethics Counsel; Attorney Sheila Romell, Attorney Keith Sellen, OLR Director; and Attorney Daniel Shneidman.

The Working Group also received input and guidance from the following individuals and organizations: Attorney Kristine Cleven, Director, Legal Department of Wisconsin Bankers Association; Attorney Gerald Connolly; De Ette Tomlinson, Executive Director of WisTAF; Attorney George Dionosopoulos; Attorney Len

Levenson; Attorney Jon Lhost; and Attorney Rose Oswald Poels, Wisconsin Bankers Association.

This Petition is filed jointly by Attorney Keith L. Sellen, Director, Office of Lawyer Regulation and Attorney D. Michael Guerin, President, State Bar of Wisconsin.

GENERAL COMMENTS

The attached proposal, concerning amendments to SCR 20:1.15, SCR 20:1.0, SCR 21.16 and SCR 12.04, presents the current rules in a red-line format that highlights all proposed changes (i.e. amendments to current rules, proposed new rules, and proposed deletions from current rules). (Appendices A - D).

Also attached are three lists which provide synopses of the rules to which changes are proposed. The first list contains all of the changes to the above-referenced rules. (Appendix E). The second list is limited to the substantive changes. (Appendix F). The final list is limited to the non-substantive, "housekeeping" changes to SCR 20:1.15. (Appendix G).

KEY PROPOSALS

The Petitioners recognize that certain proposals involve significant changes that should be specially brought to the court's attention. The following proposals fall in that category:

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

SCR 20:1.15(b)(4m) Alternative protection for advanced fees. This proposal is a new provision that will allow a lawyer to deposit unearned, advanced fees into his/her business account, rather than a trust account, subject to certain conditions. Those conditions include providing clients with written notice of the lawyer's obligation to refund any unearned fee and to submit any disputed fee to binding arbitration. A lawyer is further required to notify the client that the client may submit a claim to the Fund for Client Protection in the event the lawyer fails to refund an unearned fee. The proposal also specifies the steps that a lawyer must take to protect the client at the termination of a representation, the steps that must be taken if the client disputes the lawyer's fee, and the steps that must be taken following a determination that a refund is owed.

SCR 20:1.15(e)(4)h. Fee advances by credit card, debit card and other electronic deposit. This proposal is a new provision that will allow lawyers to accept credit and debit card payments as well as other forms of electronic deposit in payment of fee advances, provided that a separate trust account is established for this purpose.

SCR 20:1.15(g) Withdrawal of non-contingent fees from trust account. This proposal amends the existing rule to allow fees paid pursuant to a court order to be withdrawn without the five day waiting period prior to withdrawal. It also includes a new provision that allows lawyers to withdraw funds on the date that the invoice is mailed to the client, provided that the client has previously been advised in writing that the fee will be withdrawn at that time. Finally, the proposal repeals the existing rule regarding what

the lawyer is required to do when a client objects to the fee and creates a new rule that more clearly defines when a disputed fee must be returned to the trust account.

SCR 20:1.15(k)(4) Exceptions to SCR 20:1.15. This proposal adds an exception to the trust account rule for lawyers whose employer is not engaged in the practice of law, provided that the employment is not ancillary to the lawyer's law practice.

SCR 21.16 Discipline.

SCR 21.16(5m) Restitution. This proposal is a final component of the alternative protection for advanced fees. In order to assure that the Fund for Client Protection is protected to the extent authorized by law, this rule requires that, whenever the court orders restitution to the Fund, the court shall issue a judgment in favor of the Fund, which judgment has the same force and effect as judgments docketed pursuant to Wis. Stat. Secs. 809.25 and 806.16.

SCR 12.04 Wisconsin lawyers' fund for Client Protection: creation and purpose; definitions.


SCR 12.04(2)(e) "Dishonest Conduct." This proposal is a key component of the alternative protection for advanced fees, which is proposed in SCR 20:1.15(b)(4m). In order to assure that the Fund for Client Protection will reimburse a client if the client's lawyer fails to refund an unearned fee, the definition of "dishonest conduct" must be expanded to include the failure to refund an unearned fee.

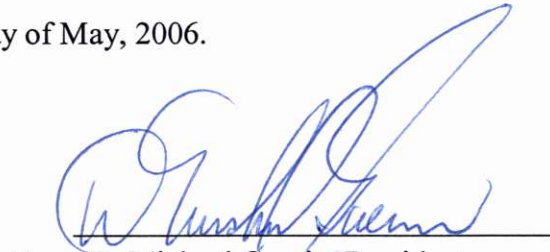
SCR 12.04(2)(g)(iii)4. "Reimbursable Loss." This proposal, like the prior one, is a key component of the alternative protection for advanced fees. In order to assure that the Fund for Client Protection will reimburse a client if the client's lawyer fails to refund an unearned fee, the definition of "reimbursable loss" must be expanded to include a lawyer's failure to refund an unearned fee.

CONCLUSION

Attached to this Petition are the Proposed Amendments to Supreme Court Rules 20:1.15, 20:1.0, 21.16 and 12.04.

Respectfully submitted, this 22nd day of May, 2006.


By: Keith L. Sellen, Director
Office of Lawyer Regulation
110 E. Main Street, Suite 315
Madison, WI 53703-2885


By: D. Michael Guerin, President
State Bar of Wisconsin
5302 Eastpark Boulevard
Madison, WI 53718-2101