



Supreme Court of Wisconsin

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December 28, 2022

FILED

DEC 28 2022

Clerk of Supreme Court
Attention: Susan Stephens, Deputy Clerk-Rules
P.O. Box 1688
Madison, WI 53701-1688

**CLERK OF SUPREME COURT
OF WISCONSIN**

Re: Rule Petition 22-05, In the Matter of amendment of Supreme Court Rules 20:1.15 and 20:1.0, Relating to Electronic Banking

Dear Ms. Stephens:

We write in response to the Court's letter dated December 1, 2022, which posed three questions regarding rule petition 22-05.

- 1. The petition proposes amending SCR 20:1.15(b)(1) to add the following language: "Except as provided by sub. (b)(3), a lawyer shall not hold any funds in a trust account that are unrelated to a representation." The petition also would create SCR 20:1.15(b)(6) to state, in part: "Advanced legal fees and costs. A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred." And the petition would add the following language to SCR 20:1.0(dm): "Notwithstanding that lawyers have a property interest upon receipt of flat fees, such fees can only be earned by the provision of legal services."**

The petitioners are invited to more fully explain why these changes are requested and how these provisions pertain to allowing electronic transfers of trust funds.

Although the primary purpose of rule petition 22-05 is to ease the restrictions on electronic transactions in attorney trust accounts, OLR also proposes two revisions generally unrelated to electronic transactions to clarify issues of confusion to practitioners that are commonly presented to OLR and the State Bar's Ethics Counsel: in proposed SCR 20:1.15(b)(1) and in proposed SCR 20:1.0(dm). Proposed SCR 20:1.15(b)(6) relates directly to the electronic transfers of funds.

First, the proposed amendment to SCR 20:1.15(b)(1) would clarify the prohibition on holding in trust funds unrelated to a client representation. The general trust account rule under SCR 20:1.15(b)(1) provides:

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.

The only exception that allows for funds not related to a client representation to be held in trust is SCR 20:1.15(b)(3), which provides in relevant part: "No funds belonging to a lawyer or law firm, except funds reasonably sufficient to pay monthly account service charges, may be deposited or retained in a trust account."

Lawyers often inquire whether they may hold funds unrelated to a client representation in their trust accounts; we colloquially refer to this as "parking" funds in trust. The proposed additional language of SCR 20:1.15(b)(1) does not change the existing rule but instead clarifies it: except for the limited exception under SCR 20:1.15(b)(3), the only funds a lawyer may hold in the trust account are those in the lawyer's possession in connection with a representation. Thus, the proposed language confirms that lawyers should not park in their client trust account funds that are unrelated to a representation.

Second, OLR has encountered confusion among lawyers regarding flat fees in light of the definition in SCR 20:1.0(dm): "Flat fees become the property of the lawyer upon receipt and are subject to the requirements of SCR 20:1.5 ... and SCR 20:1.16(d)." When this language was proposed to the court as part of the 2007 revisions, it was intended to give lawyers some protection when a third party sought forfeiture of advanced flat fees in a lawyer's possession. The 2007 revisions were not intended to imply that a lawyer could earn fees without providing legal services; the reference to SCR 20:1.16(d) was intended to clarify this point. Nonetheless, some lawyers have misinterpreted this definition to mean that lawyers may consider advanced flat fees "earned" upon receipt and disburse the fees to themselves even before they are earned. The proposed language to SCR 20:1.0(dm) is intended to clarify that flat fees, like all other advanced fees, are subject to the reasonableness provisions of SCR 20:1.5(a) and must be earned prior to disbursement from the trust account under SCR 20:1.5(f).

Finally, proposed SCR 20:1.15(b)(6) relates directly to the electronic transfers of funds. The opening language (i.e., Appx. A, 92-95) was created to outline the general requirement that a lawyer must deposit advanced fees and costs in trust until earned; it is a preface to the two exceptions to this general requirement. The exceptions are: 1) the existing "alternative protection for advanced fees" exception under SCR 20:1.5(g) that allows lawyers to deposit fees into a business account if they agree to mandatory fee arbitration and the accompanying written notifications; and 2) the new proposed electronic banking exception (similar to rules in Maine and North Dakota) that allows lawyers to accept electronic payments for advanced fees and costs directly to a non-trust account so long as they transfer such funds to the trust account within two business days.

When it was initially made effective on July 1, 2007, the alternative protection for advanced fees exception was included in the trust account rule itself at SCR 20:1.15(b)(4m). When amended effective July 1, 2017, the alternative protection for advanced fees exception was moved to the general fee rule, SCR 20:1.5(g). However, the current SCR 20:1.15 includes no direct reference to SCR 20:1.5(g) that would alert lawyers to this exception. Some persons reviewing the trust account rule relating to advanced fees may be unaware that the alternative protection for

advanced fees exception exists and is located in a separate rule (i.e., SCR 20:1.5(g)). The proposed language in the petition would clarify this exception within the bounds of the trust account rule itself.

Thus, proposed SCR 20:1.15(b)(6) serves the dual purposes of giving notice of the existing alternative protection for advanced fees exception to the general trust account rule provided by SCR 20:1.5(g) and also creating a new exception allowing for electronic payments for advanced fees and costs to be made to a non-trust account if promptly transferred to the trust account.

- 2. The petition proposes adding several comments following SCR 20:1.15(f)(1) that appear to impose substantive obligations upon attorneys, including requirements relating to reimbursements of ACH reversals prior to accepting additional electronic deposits, maintaining written confirmation of authorization for electronic disbursements, and disclosing in writing any third-party electronic payment vendor surcharges for which clients may be responsible.**

Given that Comments to SCRs generally are not adopted by the court as part of the rules and are instead provided as interpretative guidance, the petitioners are invited to explain on what specific provisions in existing SCRs these comments are based.

OLR intended that the proposed comments would clarify a lawyer's obligations under the amended SCR 20:1.15(f)(1) which may result from the application of SCRs 20:1.5(b) and 20:1.15(g). Any substantive ethical obligations result from the existing and amended rules, not the proposed comments.

The first paragraph of the proposed comment (Appx. A, 812-820) clarifies that proposed SCR 20:1.15(f)(1) allows for electronic transfers to and from the trust account, provided that the lawyer must repay any chargeback, surcharge, or ACH reversal within three business days and before accepting additional electronic payments.

The second paragraph of the proposed comment (Appx. A, 821-826) clarifies how a lawyer may comply with record-keeping obligations under proposed SCR 20:1.15(f)(1) when authorizing an electronic disbursement: they should maintain a copy of the written confirmation of authorization as part of their trust account records. Given the requirement under proposed SCR 20:1.15(f)(1) that all electronic disbursements must be authorized, and the requirement under SCR 20:1.15(g)(1) to maintain complete trust account records, this portion of the proposed comment recommends that lawyers keep with their trust account records a written confirmation of authorization for all electronic disbursements from the trust account. This is intended to provide useful guidance to lawyers as to what constitutes complete records of trust account funds.

The third paragraph of the proposed comment (Appx. A, 827-836) addresses fees associated with electronic transactions (e.g., credit card processing fees) and clarifies that SCR 20:1.5(b)(1) requires a lawyer to communicate with the client about payment of such fees. Electronic payment processing service providers regularly charge fees per transaction. It is OLR's position that an electronic transfer processing fee is part of the "basis or rate of the fee and expenses for which the client will be responsible" pursuant to SCR 20:1.5(b)(1). Therefore, whether or how a lawyer passes on such charges to the client must be communicated to the client in accordance with SCR 20:1.5(b)(1). The proposed comment also suggests lawyers consider the contractual

requirements of electronic payment processing services, many of which prohibit charging clients for processing fees. The existing comment to SCR 20:1.15 has, since 2007, provided guidance on the handling of fees associated with electronic transactions; providing similar guidance here will continue to benefit practitioners.

- 3. There are two provisions in the petition that strike references to SCR 20:1.15(f)(4)b. and replace it with (3)b. See Pet. App. A at 17 (amending SCR 20:1.15(k)(6)) and App. A at 23 (comment to SCR 20:1.15(f)). However, the petition proposes repealing SCR 20:1.15(f)(3) in its entirety and leaving that provision blank. Other provisions in the petition propose repealing references to SCR 20:1.15(f)(3)b. See Pet. App. C at 1.**

The petitioners are invited to advise whether the above two provisions striking references to SCR 20:1.15(f)(4)b. and replacing them with references to (3)b. should be included or amended.

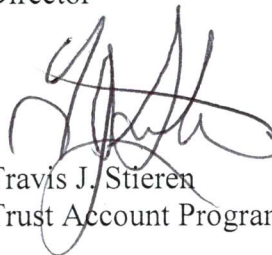
The two provisions in the petition that strike references to SCR 20:1.15(f)(4)b. were scrivener's errors; the petition should be revised to refer to SCR 20:1.15(f)(4)b., as in the current SCR 20:1.15. We enclose revised Appendices A and B which include these corrective proposals.

Thank you for your consideration.

Very truly yours,



Timothy C. Samuelson
Director



Travis J. Stieren
Trust Account Program Administrator

Enclosures (Amended Appendices A & B)



Supreme Court of Wisconsin

OFFICE OF COURT COMMISSIONERS

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December 1, 2022

Timothy Samuelson, Director
Travis J. Stiern, Trust Account Program Administrator
Office of Lawyer Regulation
110 E. Main Street, Suite 315
Madison, WI 53703

Re: Rule Petition 22-05, In the Matter of amendment of Supreme Court Rules 20:1.15 and 20:1.0, Relating to Electronic Banking

Dear Director Samuelson and Administrator Stiern (petitioners):

I am assisting the Wisconsin Supreme Court with its consideration of rule petition 22-05, filed on July 15, 2022. The petition asks the court to amend SCR 20:1.15 and 20:1.0 to permit electronic transactions in lawyer trust accounts. At a closed conference on November 29, 2022, the court voted to solicit written comments from interested persons and conduct a public hearing at a date to be determined in early 2023. On December 1, 2022, a letter to interested persons was circulated requesting written comments in anticipation of the public hearing.

In addition, the court invites the petitioners to provide answers to the following questions concerning the proposed changes referenced below:

1. The petition proposes amending SCR 20:1.15(b)(1) to add the following language: "Except as provided by sub. (b)(3), a lawyer shall not hold any funds in a trust account that are unrelated to a representation." The petition also would create SCR 20:1.15(b)(6) to state, in part: "Advanced legal fees and costs. A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred." And the petition would add the following language to SCR 20:1.0(dm): "Notwithstanding that lawyers have a property interest upon receipt of flat fees, such fees can only be earned by the provision of legal services."

The petitioners are invited to more fully explain why these changes are requested and how these provisions pertain to allowing electronic transfers of trust funds.

2. The petition proposes adding several comments following SCR 20:1.15(f)(1) that appear to impose substantive obligations upon attorneys, including requirements relating to reimbursements of ACH reversals prior to accepting additional electronic deposits, maintaining written confirmation of authorization for electronic disbursements, and disclosing in writing any third-party electronic payment vendor surcharges for which clients may be responsible.

Given that Comments to SCRs generally are not adopted by the court as part of the rules and are instead provided as interpretative guidance, the petitioners are invited to explain on what specific provisions in existing SCRs these comments are based.

3. There are two provisions in the petition that strike references to SCR 20:1.15(f)(4)b. and replace it with (3)b. See Pet. App. A at 17 (amending SCR 20:1.15(k)(6)) and App. A at 23 (comment to SCR 20:1.15(f)). However, the petition proposes repealing SCR 20:1.15(f)(3) in its entirety and leaving that provision blank. Other provisions in the petition propose repealing references to SCR 20:1.15(f)(3)b. See Pet. App. C at 1.

The petitioners are invited to advise whether the above two provisions striking references to SCR 20:1.15(f)(4)b. and replacing them with references to (3)b. should be included or amended.

The court requests that petitioners submit a written response to these questions by Friday, December 30, 2022, with the Clerk of Supreme Court, Attention: Deputy Clerk-Rules, P.O. Box 1688, Madison, WI 53701-1688. Please also email a Microsoft Word version of your response to clerk@wicourts.gov.

If you have specific questions or other comments with regard to this matter, please contact me by mail at P.O. Box 1688, Madison, WI 53701-1688; by telephone at 608-266-7442; or by email at tim.barber@wicourts.gov.

Very truly yours,

/s/

Timothy Barber

Supreme Court Commissioner

cc: Chief Justice Annette Kingsland Ziegler
Justice Ann Walsh Bradley
Justice Patience Drake Roggensack
Justice Rebecca Grassl Bradley
Justice Rebecca Frank Dallet
Justice Brian Hagedorn
Justice Jill J. Karofsky

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

3
4 **(a) Definitions.**

5 **In this section:**

6 (1) "Draft account" means an account upon which funds are
7 withdrawn through a properly payable instrument or an electronic transaction.

8 (2) "Electronic transaction" means a paperless transfer of funds to or
9 from a trust or fiduciary account. Electronic transactions do not include
10 transfers initiated by voice or automated teller or cash dispensing machines.

11 (3) "Fiduciary" means an agent, attorney-in-fact, conservator,
12 guardian, personal representative, special administrator, trustee, or other
13 position requiring the lawyer to safeguard the property of a client or 3rd party.

14 (4) "Fiduciary account" means an account in which the lawyer
15 deposits fiduciary property.

16 (5) "Fiduciary property" means funds or property of a client or 3rd
17 party that is in a lawyer's possession in a fiduciary capacity. Fiduciary property
18 includes, but is not limited to, property held as agent, attorney-in-fact,
19 conservator, guardian, personal representative, special administrator, or trustee,
20 subject to the exceptions identified in sub. (m).

21 (6) "Financial institution" means a bank, savings bank, trust company,
22 credit union, savings and loan association, or investment institution, including a
23 brokerage house.

24 (7) "Immediate family member" means the lawyer's spouse, registered
25 domestic partner, child, stepchild, grandchild, sibling, parent, stepparent,
26 grandparent, aunt, uncle, niece, or nephew.

27 (8) "Interest on Lawyer Trust Account or 'IOLTA account'" means a
28 pooled interest-bearing or dividend-paying draft trust account, separate from the
29 lawyer's business and personal accounts, which is maintained at an IOLTA
30 participating institution. Typical funds that would be placed in an IOLTA
31 account include earnest monies, loan proceeds, settlement proceeds, collection
32 proceeds, cost advances, and advanced payment of fees that have not yet been
33 earned. An IOLTA account is subject to the provisions of the SCR Chapter 13
34 and the trust account provisions of subs. (a) to (i), including the IOLTA account
35 provisions of subs. (c) and (d).

36 (9) "IOLTA participating institution" means a financial institution that
37 voluntarily offers IOLTA accounts and certifies to WisTAF annually that it
38 meets the IOLTA account requirements of sub. (d).

39 (10) "Properly payable instrument" means an instrument that, if
40 presented in the normal course of business, is in a form requiring payment

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41 pursuant to the laws of this state.

42 (11) "Trust account" means an account in which the lawyer deposits
43 trust property.

44 (12) "Trust property" means funds or property of clients or 3rd parties,
45 which is not fiduciary property, that is in the lawyer's possession in connection
46 with a representation.

47 (13) "WisTAF" means the Wisconsin Trust Account Foundation, Inc.

48 (b) **Segregation and safekeeping of trust property.**

49 (1) **Separate account.** A lawyer shall hold in trust, separate from the
50 lawyer's own property, that property of clients and 3rd parties that is in the
51 lawyer's possession in connection with a representation. All funds of clients and
52 3rd parties paid to a lawyer or law firm in connection with a representation shall
53 be deposited in one or more identifiable trust accounts. Except as provided by
54 sub. (b)(3), a lawyer shall not hold any funds in a trust account that are unrelated
55 to a representation.

56 (2) **Identification and location of account.** Each trust account shall
57 be clearly designated as a "Client Account," a "Trust Account," or words of
58 similar import. The account shall be identified as such on all account records,
59 including signature cards, monthly statements, checks, and deposit slips. An
60 acronym, such as "IOLTA," "IOTA," or "LTAB," without further elaboration,
61 does not clearly designate the account as a client account or trust account. Each
62 trust account shall be maintained in a financial institution that is authorized by
63 federal or state law to do business in Wisconsin and that is located in Wisconsin
64 or has a branch office located in Wisconsin and which agrees to comply with
65 the overdraft notice requirements of sub. (h). A trust account may be
66 maintained at a financial institution located in the jurisdiction where the lawyer
67 principally practices law if that jurisdiction has an overdraft notification
68 requirement.

69 (3) **Lawyer funds.** No funds belonging to a lawyer or law firm, except
70 funds reasonably sufficient to pay monthly account service charges, may be
71 deposited or retained in a trust account. Each lawyer or law firm that receives
72 trust funds shall maintain at least one draft account, other than the trust account,
73 for funds received and disbursed other than in a trust capacity, which shall be
74 entitled "Business Account," "Office Account," "Operating Account," or words
75 of similar import.

76 (4) **Trust property other than funds.** Unless a client otherwise directs
77 in writing, a lawyer shall keep securities in bearer form in a safe deposit box at
78 a financial institution authorized to do business in Wisconsin. The safe deposit
79 box shall be clearly designated as a "Client Account" or "Trust Account." The

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80 lawyer shall clearly identify and appropriately safeguard other property of a
81 client or 3rd party.

82 **(5) Insurance and safekeeping requirements.** Each trust account shall
83 be maintained at a financial institution that is insured by the Federal Deposit
84 Insurance Corporation (FDIC), the National Credit Union Share Insurance Fund
85 (NCUSIF), the Securities Investor Protection Corporation (SIPC), or any other
86 investment institution financial guaranty insurance. IOLTA accounts shall also
87 comply with the requirements of sub. (d)(3). ~~Lawyers using the alternative to~~
88 ~~the E-Banking Trust Account shall comply with the requirements of sub. (f)(3)e.~~
89 Except as provided in subs. (b)(4) and (d)(3)b. and c., trust property shall be
90 held in an account in which each individual owner's funds are eligible for
91 insurance.

92 **(6) Advanced legal fees and costs.** A lawyer shall deposit into a client
93 trust account legal fees and expenses that have been paid in advance, to be
94 withdrawn by the lawyer only as fees are earned or expenses incurred, except
95 as follows:

- 96 a. The lawyer complies with the requirements of SCR 20:1.5(g).
97 b. The lawyer may accept credit card payments or electronic funds
98 transfer payments of advanced legal fees and expenses as temporary deposits
99 in a non-trust account, so long as such funds are transferred promptly, and no
100 later than two business days following receipt, into a client trust account.
101 However, except as provided by SCR 20:1.5(g), a lawyer shall not accept any
102 advance payment into a non-trust account if the lawyer has any reason to
103 suspect that the funds will not be successfully transferred into the client trust
104 account within two business day of receipt.

105 **(c) Types of trust accounts.**

106 **(1) IOLTA accounts.** A lawyer or law firm who receives client or 3rd-
107 party funds that the lawyer or law firm determines to be nominal in amount or
108 that are expected to be held for a short period of time such that the funds cannot
109 earn income for the benefit of the client or 3rd party in excess of the costs to
110 secure that income, shall maintain a pooled interest-bearing or dividend-paying
111 draft trust account in an IOLTA participating institution.

112 **(2) Non-IOLTA accounts.** A lawyer or law firm who receives client or
113 3rd-party funds that the lawyer or law firm determines to be capable of earning
114 income for the benefit of the client or 3rd party shall maintain an interest-bearing
115 or dividend-paying non-IOLTA trust account. A non-IOLTA trust account shall
116 be established as any of the following:

- 117 a. A separate interest-bearing or dividend-paying trust account
118 maintained for the particular client or 3rd party, the interest or dividends on
119 which shall be paid to the client or 3rd party, less any transaction costs.

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120 b. A pooled interest-bearing or dividend-paying trust account with sub-
121 accounting by the financial institution, the lawyer, or the law firm that will
122 provide for computation of interest or dividends earned by each client's or 3rd
123 party's funds and the payment of the interest or dividends to the client or 3rd
124 party, less any transaction costs.

125 c. An income-generating investment vehicle selected by the client and
126 designated in specific written instructions from the client or authorized by a
127 court or other tribunal, on which income shall be paid to the client or 3rd party
128 or as directed by the court or other tribunal, less any transaction costs.

129 d. An income-generating investment vehicle selected by the lawyer to
130 protect and maximize the return on funds in a bankruptcy estate, which
131 investment vehicle is approved by the bankruptcy trustee or by a bankruptcy
132 court order, or otherwise consistent with 11 U.S.C. § 345.

133 e. A draft account or other account that does not bear interest or pay
134 dividends because it holds funds the lawyer has determined are not eligible for
135 deposit in an IOLTA account because they are neither nominal in amount nor
136 expected to be held for a short term such that the funds cannot earn income for
137 the client or 3rd party in excess of the costs to secure the income, provided that
138 the account has been designated in specific written instructions from the client
139 or 3rd party.

140 **(3) Selection of account.** In deciding whether to use the account
141 specified in par. (1) or an account or investment vehicle specified in par. (2), a
142 lawyer shall determine, at the time of the deposit, whether the client or 3rd-party
143 funds could be utilized to provide a positive net return to the client or 3rd party
144 by taking into consideration all of the following:

145 a. The amount of interest, dividends, or other income that the funds would
146 earn or pay during the period the funds are expected to be on deposit.

147 b. The cost of establishing and administering a non-IOLTA trust account,
148 including the cost of the lawyer's services and the cost of preparing any tax
149 reports required for income accruing to a client's or 3rd party's benefit.

150 c. The capability of the financial institution, lawyer, or law firm to
151 calculate and pay interest, dividends, or other income to individual clients or 3rd
152 parties.

153 d. Any other circumstance that affects the ability of the client's or 3rd
154 party's funds to earn income in excess of the costs to secure that income for the
155 client or 3rd party.

156 **(4) Professional judgment.** The determination whether funds to be
157 invested could be utilized to provide a positive net return to the client or 3rd
158 party rests in the sound judgment of the lawyer or law firm. If a lawyer acts in

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159 good faith in making this determination, the lawyer is not subject to any charge
160 of ethical impropriety or other breach of the Rules of Professional Conduct.

161 (d) **Interest on Lawyer Trust Account (IOLTA) requirements.**

162 (1) **Location.** An IOLTA account shall be maintained only at an IOLTA
163 participating institution.

164 (2) **Certification by IOLTA participating institutions.**

165 a. Each IOLTA participating institution shall certify to WisTAF annually
166 that the financial institution meets the requirements of sub. (d)(3) to (6) for
167 IOLTA accounts and that it reports overdrafts on draft trust accounts and draft
168 fiduciary accounts of lawyers and law firms to the office of lawyer regulation,
169 pursuant to the institution's agreements with those lawyers and law firms.
170 WisTAF shall by rule adopted under SCR 13.03(1) establish the date by which
171 IOLTA participating institutions shall certify their compliance.

172 b. WisTAF shall confirm annually, by a date established by WisTAF by
173 rule adopted under SCR 13.03(1), the accuracy of a financial institution's
174 certification under sub. (d)(2)a. by reviewing one or more of the following:

175 1. The IOLTA comparability rate information form submitted by the
176 financial institution to WisTAF.

177 2. Rate and product information published by the financial institution.

178 3. Other publicly or commercially available information regarding
179 products and interest rates available at the financial institution.

180 c. WisTAF shall publish annually, no later than the date on which the
181 state bar mails annual dues statements to members of the bar, a list of all
182 financial institutions that have certified, and have been confirmed by WisTAF
183 as IOLTA participating institutions. WisTAF shall update the published list
184 located on its website to add newly confirmed IOLTA participating institutions
185 and to remove financial institutions that WisTAF cannot confirm as IOLTA
186 participating institutions.

187 d. Prior to removing any financial institution from the list of IOLTA
188 participating institutions or failing to include any financial institution on the list
189 of IOLTA participating institutions, WisTAF shall first provide the financial
190 institution with notice and sufficient time to respond. In the event a financial
191 institution is removed from the list of IOLTA participating institutions, WisTAF
192 shall notify the office of lawyer regulation and provide that office with a list of
193 the lawyers and law firms maintaining IOLTA accounts at that financial
194 institution. The office of lawyer regulation shall notify those lawyers and law
195 firms of the removal of the financial institution from the list, and provide time
196 for those lawyers and law firms to move their IOLTA accounts to an IOLTA
197 participating institution.

198 e. Lawyers and law firms may rely on the most recently published list of
199 IOLTA participating institutions for purposes of compliance with sub. (c)(1),
200 except when the office of lawyer regulation notifies the lawyer or law firm of
201 removal, in accordance with sub. (d)(2)d.

202 **(3) Safekeeping requirements.**

203 a. An IOLTA participating institution shall comply with the insurance
204 and safety requirements of sub. (b)(5).

205 b. A repurchase agreement utilized for an IOLTA account may be
206 established only at an IOLTA participating institution deemed to be "well-
207 capitalized" or "adequately capitalized" as defined by applicable federal statutes
208 and regulations.

209 c. An open-end money market fund utilized for an IOLTA account may
210 be established only at an IOLTA participating institution in a fund that holds
211 itself out as a money market fund as defined under the Investment Act of 1940
212 and, at the time of investment, has total assets of at least \$250,000,000.

213 **(4) Income requirements.**

214 a. **Beneficial owner.** The interest or dividends accruing on an IOLTA
215 account, less any allowable reasonable fees, as allowed under par. (5), shall be
216 paid to WisTAF, which shall be considered the beneficial owner of the earned
217 interest or dividends, pursuant to SCR Chapter 13.

218 b. **Interest and dividend requirements.** An IOLTA account shall bear
219 the highest non-promotional interest rate or dividend that is generally available
220 to non-IOLTA customers at the same branch or main office location when the
221 IOLTA account meets or exceeds the same eligibility qualifications, if any,
222 including a minimum balance, required at that same branch or main office
223 location. In determining the highest rate or dividend available, the IOLTA
224 participating institution may consider factors in addition to the IOLTA account
225 balance that are customarily considered by the institution at that branch or main
226 office location when setting interest rates or dividends for its customers,
227 provided the institution does not discriminate between IOLTA accounts and
228 accounts of non-IOLTA customers and that these factors do not include that the
229 account is an IOLTA account. However, IOLTA participating institutions may
230 voluntarily choose to pay higher rates.

231 c. **IOLTA account.** An IOLTA participating institution may establish
232 an IOLTA account as, or convert an IOLTA account to, any of the following
233 types of accounts, assuming the particular financial institution at that branch or
234 main office location offers these account types to its non-IOLTA customers, and
235 the particular IOLTA account meets the eligibility qualifications to be
236 established as this type of account at the particular branch or main office
237 location:

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238 1. A business checking account with an automated or other automatic
239 investment sweep feature into a daily financial institution repurchase agreement
240 or open-end money market fund. A daily financial institution repurchase
241 agreement must be invested in United States government securities. An open-
242 end money market fund must consist solely of United States government
243 securities or repurchase agreements fully collateralized by United States
244 government securities, or both. In this par. c.1., "United States government
245 securities" include securities of government-sponsored entities, such as, but not
246 limited to, securities of, or backed by, the Federal National Mortgage
247 Association, the Government National Mortgage Association, and the Federal
248 Home Loan Mortgage Corporation;

249 2. A checking account paying preferred interest rates, such as money
250 market or indexed rates;

251 3. An interest-bearing checking account such as a negotiable order of
252 withdrawal (NOW) account or business checking account with interest; and

253 4. Any other suitable interest-bearing or dividend-paying account offered
254 by the institution to its non-IOLTA customers.

255 **d. Options for compliance.** An IOLTA participating institution may:

256 1. Establish the comparable product for qualifying IOLTA accounts,
257 subject to the direction of the lawyer or law firm; or,

258 2. Pay the highest non-promotional interest rate or dividend, as defined
259 in sub. (d)(4)b., less any allowable reasonable fees charged in connection with
260 the comparable highest interest rate or dividend product, on the IOLTA
261 checking account in lieu of actually establishing the comparable highest interest
262 rate or dividend product.

263 **e. Paying rates above comparable rates.** An IOLTA participating
264 institution may pay a set rate above its comparable rates on the IOLTA checking
265 account negotiated with WisTAF that is fixed over a period of time set by
266 WisTAF, such as 12 months.

267 **(5) Allowable reasonable fees on IOLTA accounts.**

268 a. Allowable reasonable fees on an IOLTA account are as follows:

269 1. Per check charges.

270 2. Per deposit charges.

271 3. Fees in lieu of minimum balance.

272 4. Sweep fees.

273 5. An IOLTA administrative fee approved by WisTAF.

274 6. Federal deposit insurance fees.

275 b. Allowable reasonable fees may be deducted from interest earned or
276 dividends paid on an IOLTA account, provided that the fees are calculated in
277 accordance with an IOLTA participating institution's standard practice for non-

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278 IOLTA customers. Fees in excess of the interest earned or dividends paid on
279 the IOLTA account for any month or quarter shall not be taken from interest or
280 dividends of any other IOLTA accounts. No fees that are authorized under SCR
281 20:1.15(d)(5) shall be assessed against or deducted from the principal of any
282 IOLTA account. All other fees are the responsibility of, and may be charged to,
283 the lawyer or law firm maintaining the IOLTA account. IOLTA participating
284 institutions may elect to waive any or all fees on IOLTA accounts.

285 **(6) Remittance and reporting requirements.** A lawyer or law firm
286 shall direct the IOLTA participating institution at which the lawyer or law firm's
287 IOLTA account is located to do all of the following, on at least a quarterly basis:

288 a. Remit to WisTAF the interest or dividends, less allowable reasonable
289 fees as allowed under par. (5), if any, on the average monthly balance in the
290 account or as otherwise computed in accordance with the IOLTA participating
291 institution's standard accounting practice.

292 b. Provide to WisTAF a remittance report showing for each IOLTA
293 account the name of the lawyer or law firm for whose IOLTA account the
294 remittance is sent, the rate and type of interest or dividend applied, the amount
295 of allowable reasonable fees deducted, if any, the average account balance for
296 the period for which the report is made, and the amount of remittance
297 attributable to each IOLTA account.

298 c. Provide to the depositing lawyer or law firm a remittance report in
299 accordance with the participating institution's normal procedures for reporting
300 account activity to depositors.

301 d. Respond to reasonable requests from WisTAF for information needed
302 for purposes of confirming the accuracy of an IOLTA participating institution's
303 certification.

304 **(e) Prompt notice and delivery of property.**

305 **(1) Notice and delivery.** Upon receiving funds or other property in
306 which a client has an interest, or in which a lawyer has received notice that a 3rd
307 party has an interest identified by a lien, court order, judgment, or contract, the
308 lawyer shall promptly notify the client or 3rd party in writing. Except as stated
309 in this rule or otherwise permitted by law or by agreement with the client, the
310 lawyer shall promptly deliver to the client or 3rd party any funds or other
311 property that the client or 3rd party is entitled to receive.

312 **(2) Accounting.** Upon final distribution of any trust property or upon
313 request by the client or a 3rd party having an ownership interest in the property,
314 a lawyer shall promptly render a full written accounting regarding the property.

315 **(3) Disputes regarding trust property.** When a lawyer and another
316 person or a client and another person claim an ownership interest in trust
317 property identified by a lien, court order, judgment, or contract, the lawyer shall

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318 hold that property in trust until there is an accounting and severance of the
319 interests. If a dispute arises regarding the division of the property, the lawyer
320 shall hold the disputed portion in trust until the dispute is resolved. Disputes
321 between the lawyer and a client are subject to the provisions of SCR 20:1.5(h).

322 (4) **Burden of proof.** A lawyer's failure to promptly deliver trust
323 property to a client or 3rd party entitled to the trust property, promptly submit
324 trust account records to the office of lawyer regulation or promptly provide an
325 accounting of trust property to the office of lawyer regulation shall result in a
326 presumption that the lawyer has failed to hold trust property in trust, contrary to
327 SCR 20:1.15(b)(1). This presumption may be rebutted by the lawyer's
328 production of records or an accounting that overcomes this presumption by
329 clear, satisfactory, and convincing evidence.

330 (f) **Security requirements and restricted transactions.**

331 (1) **Security of transactions.** A lawyer is responsible for the security of
332 each transaction in the lawyer's trust account and shall not conduct or authorize
333 transactions for which the lawyer does not have commercially reasonable
334 security measures in place. A lawyer shall establish and maintain safeguards to
335 assure that each disbursement from a trust account has been authorized by the
336 lawyer and that each disbursement is made to the appropriate payee. ~~Only a~~
337 ~~lawyer admitted to practice law in this jurisdiction or a person under the~~
338 ~~supervision of a lawyer having responsibility under SCR 20:5.3 shall have~~
339 ~~signatory and transfer authority for a trust account. Every check, draft,~~
340 ~~electronic transfer, or other withdrawal instrument or authorization shall be~~
341 ~~personally signed or, in the case of electronic, telephone, or wire transfer,~~
342 ~~directed by one or more lawyers authorized by the law firm or a person under~~
343 ~~the supervision of a lawyer having responsibility under SCR 20:5.3. A lawyer~~
344 ~~shall replace any and all funds that have been withdrawn from a trust account~~
345 ~~by a financial institution or card issuer, and reimburse the trust account for~~
346 ~~any shortfall or negative balance caused by a chargeback, surcharge, or ACH~~
347 ~~reversal within three business days of receiving actual notice that a~~
348 ~~chargeback, surcharge, or ACH reversal has been made against the trust~~
349 ~~account; and the lawyer shall reimburse the trust account for any chargeback,~~
350 ~~surcharge, or ACH reversal prior to accepting a new electronic deposit.~~

351 (2) **Prohibited transactions.**

352 a. Cash. No withdrawal of cash shall be made from a trust account or
353 from a deposit to a trust account. No check shall be made payable to "Cash."
354 No withdrawal shall be made from a trust account by automated teller or cash
355 dispensing machine.

356 **b. Telephone transfers.** 1. Except as provided in SCR 20:1.15(f)(2)b.2.,
357 no deposits or disbursements shall be made to or from a pooled trust account by
358 a telephone transfer of funds.

359 2. Wire transfers may be initiated by telephone, and telephone transfers
360 may be made between non-pooled trust accounts that a lawyer maintains for a
361 particular client.

362 ~~**c. Electronic transfers by 3rd parties.** A lawyer shall not authorize a~~
363 ~~3rd party to electronically withdraw funds from a trust account. A lawyer shall~~
364 ~~not authorize a 3rd party to deposit funds into the lawyer's trust account through~~
365 ~~a form of electronic deposit that allows the 3rd party making the deposit to~~
366 ~~withdraw the funds without the permission of the lawyer.~~

367 ~~(3) **omitted Electronic transactions.** A lawyer shall not make deposits~~
368 ~~to or disbursements from a trust account by way of an electronic transaction,~~
369 ~~except as provided in SCR 20:1.15(f)(3)a. through c.~~

370 ~~**a. Remote Deposit.** A lawyer may make remote deposits to a trust~~
371 ~~account, provided that the lawyer keeps a record of the client or matter to which~~
372 ~~each remote deposit relates, and that the lawyer's financial institution maintains~~
373 ~~an image of the front and reverse of each remote deposit for a period of at least~~
374 ~~six years.~~

375 ~~**b. E-Banking Trust Account.** A lawyer may accept funds paid by credit~~
376 ~~card, debit card, prepaid or other types of payment cards, and other electronic~~
377 ~~deposits, and may disburse funds by electronic transactions that are not~~
378 ~~prohibited by sub. (f)(2)c., provided that the lawyer does all of the following:~~

379 ~~1. Maintains an IOLTA account, which shall be the primary IOLTA~~
380 ~~account, in which no electronic transactions shall be conducted other than those~~
381 ~~transferring funds from the primary IOLTA to the E-Banking Trust Account for~~
382 ~~purposes of making an electronic disbursement, or those transactions authorized~~
383 ~~by SCR 20:1.15(f)(3)a., (3)b.4.a., and (3)b.4.d.~~

384 ~~2. Maintains a separate IOLTA account with commercially reasonable~~
385 ~~account security for electronic transactions, which shall be entitled: "E-Banking~~
386 ~~Trust Account."~~

387 ~~3. Holds lawyer or law firm funds in the E-Banking Trust Account~~
388 ~~reasonably sufficient to cover monthly account fees and fees deducted from~~
389 ~~deposits and maintains a ledger for those account fees.~~

390 ~~4. Transfers the gross amount of each deposit within three business days~~
391 ~~after the deposit is available for disbursement, and if necessary, adds funds~~
392 ~~belonging to the lawyer or law firm to cover any deduction of fees and~~
393 ~~surecharges relating to the deposit, in accordance with all of the following:~~

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394 a. ~~All advanced costs and advanced fees held in trust under SCR 20:1.5(f)~~
395 ~~shall be transferred to the primary IOLTA account by check or by electronic~~
396 ~~transaction.~~

397 b. ~~Earned fees, cost reimbursements, and advanced fees that are subject~~
398 ~~to the requirements of SCR 20:1.5(g) shall be transferred to the business account~~
399 ~~by check or by electronic transaction.~~

400 c. ~~Any funds that the client has directed be disbursed by electronic~~
401 ~~transfer shall be promptly disbursed from the E-Banking Trust Account by~~
402 ~~electronic transaction.~~

403 d. ~~All funds received in trust other than funds identified in SCR~~
404 ~~20:1.15(f)(3)b.4.a., b., and c. shall be transferred to the primary IOLTA account~~
405 ~~by check or by electronic transaction.~~

406 e. ~~Except for funds identified in SCR 20:1.15(f)(3)b.4.a. and b., a lawyer~~
407 ~~or law firm shall not be prohibited from deducting electronic transfer fees or~~
408 ~~surecharges from the client's funds, provided the client has agreed in writing to~~
409 ~~accept the electronic payment after being advised of the anticipated fees and~~
410 ~~surecharges.~~

411 5. ~~Identifies the client matter and the reason for disbursement on the~~
412 ~~memo line of each check used to disburse funds; records in the financial~~
413 ~~institution's electronic payment system the date, amount, payee, client matter,~~
414 ~~and reason for the disbursement for each electronic transaction; and makes no~~
415 ~~disbursements by credit card, debit card, prepaid or other types of payment~~
416 ~~cards, or any other electronic payment system that does not generate a record of~~
417 ~~the date, amount, payee, client matter, and reason for the disbursement in the~~
418 ~~financial institution's electronic payment system.~~

419 6. ~~Replaces any and all funds that have been withdrawn from the E-~~
420 ~~Banking Trust Account by the financial institution or card issuer, and reimburses~~
421 ~~the account for any shortfall or negative balance caused by a chargeback,~~
422 ~~surcharge, or ACH reversal within three business days of receiving actual notice~~
423 ~~that a chargeback, surcharge, or ACH reversal has been made against the E-~~
424 ~~Banking Trust Account; and reimburses the E-Banking Trust Account for any~~
425 ~~chargeback, surcharge, or ACH reversal prior to accepting a new electronic~~
426 ~~deposit or transferring funds from the primary IOLTA to the E-Banking Trust~~
427 ~~Account for purposes of making an electronic disbursement.~~

428 c. **Alternative to E-Banking Trust Account.** ~~A lawyer may deposit~~
429 ~~funds paid by credit card, debit card, prepaid or other types of payment cards,~~
430 ~~and other electronic deposits into a trust account, and may disburse funds from~~
431 ~~that trust account by electronic transactions that are not prohibited by sub.~~
432 ~~(f)(2)c., without establishing a separate E-Banking Trust Account, provided that~~
433 ~~all of the following conditions are met:~~

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434 ~~1. The lawyer or law firm maintains commercially reasonable account~~
435 ~~security for electronic transactions.~~

436 ~~2. The lawyer or law firm maintains a bond or crime insurance policy in~~
437 ~~an amount sufficient to cover the maximum daily account balance during the~~
438 ~~prior calendar year.~~

439 ~~3. The lawyer or law firm arranges for all chargebacks, ACH reversals,~~
440 ~~monthly account fees, and fees deducted from deposits to be deducted from the~~
441 ~~lawyer's or law firm's business account; or the lawyer or law firm replaces any~~
442 ~~and all funds that have been withdrawn from the trust account by the financial~~
443 ~~institution or card issuer within three business days of receiving actual notice~~
444 ~~that a chargeback, surcharge, or ACH reversal has been made against the trust~~
445 ~~account; and the lawyer or law firm reimburses the account for any shortfall or~~
446 ~~negative balance caused by a chargeback, surcharge, or ACH reversal. The~~
447 ~~lawyer shall reimburse the trust account for any chargeback, surcharge, or ACH~~
448 ~~reversal prior to disbursing funds from the trust account.~~

449 ~~4. The lawyer or law firm identifies the client matter and the reason for~~
450 ~~disbursement on the memo line of each check used to disburse funds; records in~~
451 ~~the financial institution's electronic payment system the date, amount, payee,~~
452 ~~client matter, and reason for the disbursement for each electronic transaction;~~
453 ~~and makes no disbursements by credit card, debit card, prepaid or other types of~~
454 ~~payment cards, or any other electronic payment system that does not generate a~~
455 ~~record of the date, amount, payee, client matter, and reason for the disbursement~~
456 ~~in the financial institution's electronic payment system.~~

457 **(4) Availability of funds for disbursement.**

458 **a. Standard for trust account transactions.** A lawyer shall not disburse
459 funds from any trust account unless the deposit from which those funds will be
460 disbursed has cleared, and the funds are available for disbursement.

461 **b. Exception: Real estate transactions.** In closing a real estate
462 transaction, a lawyer's disbursement of closing proceeds from funds that are
463 received on the date of the closing, but that have not yet cleared, shall not violate
464 sub. (f)(4)a. provided that the lawyer complies with sub. (f)(4)c., and that the
465 closing proceeds are deposited no later than the first business day following the
466 closing and are comprised of any of the following types of funds:

467 1. A cashier's check, teller's check, money order, official check or
468 electronic transfer of funds, issued or transferred by a financial institution
469 insured by the FDIC or a comparable agency of the federal or state government.

470 2. A check drawn on the trust account of any lawyer or real estate broker
471 licensed under the laws of any state.

472 3. A check issued by the state of Wisconsin, the United States, or a
473 political subdivision of the state of Wisconsin or the United States.

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474 4. A check drawn on the account of or issued by a lender approved by the
475 Federal Department of Housing and Urban Development as either a supervised
476 or a nonsupervised mortgagee as defined in 24 C.F.R. § 202.2.

477 5. A check from a title insurance company licensed in Wisconsin, or from
478 a title insurance agent of the title insurance company, if the title insurance
479 company has guaranteed the funds of that title insurance agent.

480 6. A non-profit organization check in an amount not exceeding \$5000 per
481 closing if the lawyer has reasonable and prudent grounds to believe that the
482 deposit will be irrevocably credited to the trust account.

483 7. A personal check or checks in an aggregate amount not exceeding
484 \$5000 per closing if the lawyer has reasonable and prudent grounds to believe
485 that the deposit will be irrevocably credited to the trust account.

486 **c. Uncollected funds.** Without limiting the rights of the lawyer against
487 any person, it is the responsibility of the disbursing lawyer to reimburse the trust
488 account for any funds described in sub. (f)(4)b. that are not collected and for any
489 fees, charges, and interest assessed by the financial institution on account of the
490 funds being disbursed before the related deposit has cleared and the funds are
491 available for disbursement. The lawyer shall maintain a subsidiary ledger for
492 funds of the lawyer that are deposited in the trust account to reimburse the
493 account for uncollected funds and to accommodate any fees, charges, and
494 interest.

495 **d. Exception: Collection trust accounts.** When handling collection
496 work for a client and maintaining a separate trust account to hold funds collected
497 on behalf of that client, a lawyer's disbursement to the client of collection
498 proceeds that have not yet cleared does not violate sub. (f)(4)a. so long as those
499 collection proceeds have been deposited prior to the disbursement.

500 **(g) Record keeping requirements for all trust accounts.**

501 **(1) Record retention.** A lawyer shall maintain and preserve complete
502 records of trust account funds, all deposits and disbursements, and other trust
503 property and shall preserve those records for at least six years after the date of
504 termination of the representation. Electronic records shall be backed up by an
505 appropriate storage device. The office of lawyer regulation shall publish
506 guidelines for trust account record keeping.

507 **(2) Record production.** All trust account records have public aspects
508 related to a lawyer's fitness to practice. Upon request of the office of lawyer
509 regulation, or upon direction of the supreme court, the records shall be submitted
510 to the office of lawyer regulation for its inspection, audit, use, and evidence
511 under any conditions to protect the privilege of clients that the court may
512 provide. The records, or an audit of the records, shall be produced at any
513 disciplinary proceeding involving the lawyer, whenever material.

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514 (3) **Burden of proof.** A lawyer's failure to promptly deliver trust property
515 to a client or 3rd party entitled to that trust property, promptly submit trust
516 account records to the office of lawyer regulation, or promptly provide an
517 accounting of trust property to the office of lawyer regulation shall result in a
518 presumption that the lawyer has failed to hold trust property in trust, contrary to
519 SCR 20:1.15(b)(1). This presumption may be rebutted by the lawyer's
520 production of records or an accounting that overcomes this presumption by
521 clear, satisfactory, and convincing evidence.

522 (h) **Dishonored payment notification (Overdraft notices).** All draft
523 trust accounts, and any draft fiduciary account that is not subject to an alternative
524 protection under sub. (k)(10), are subject to the following provisions on
525 dishonored payment notification:

526 (1) **Overdraft reporting agreement.** A lawyer shall maintain draft trust
527 and fiduciary accounts only in a financial institution that has agreed to provide
528 an overdraft report to the office of lawyer regulation under par. (2). A lawyer or
529 law firm shall notify the financial institution at the time a trust account or
530 fiduciary account is established that the account is subject to this subsection.

531 (2) **Overdraft report.** In the event any properly payable instrument or
532 electronic transaction is presented against or made from a lawyer trust or
533 fiduciary account containing insufficient funds, whether or not the instrument
534 or electronic transaction is honored, the financial institution shall report the
535 overdraft to the office of lawyer regulation.

536 (3) **Content of report.** All reports made by a financial institution under
537 this subsection shall be substantially in the following form:

538 a. In the case of a dishonored instrument or electronic transaction, the
539 report shall be identical to an overdraft notice customarily forwarded to the
540 depositor or investor, accompanied by the dishonored instrument or electronic
541 transaction, if a copy is normally provided to the depositor or investor.

542 b. In the case of instruments or electronic transactions that are presented
543 against insufficient funds and are honored, the report shall identify the financial
544 institution involved, the lawyer or law firm, the account, the date on which the
545 instrument or electronic transaction is paid, and the amount of overdraft created
546 by the payment.

547 (4) **Timing of report.** A report made under this subsection shall be made
548 simultaneously with the overdraft notice given to the depositor or investor.

549 (5) **Confidentiality of report.** A report made by a financial institution
550 under this subsection shall be subject to SCR 22.40, Confidentiality.

551 (6) **Withdrawal of report by financial institution.** The office of lawyer
552 regulation shall hold each overdraft report for 10 business days to enable the
553 financial institution to withdraw a report provided by inadvertence or mistake.

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554 The deposit of additional funds by the lawyer or law firm shall not constitute
555 reason for withdrawing an overdraft report.

556 (7) **Lawyer compliance.** Every lawyer shall comply with the reporting
557 and production requirements of this subsection, including filing of an overdraft
558 notification agreement for each IOLTA account, each draft-type trust account
559 and each draft-type fiduciary account that is not subject to an alternative
560 protection under sub. (k)(10).

561 (8) **Service charges.** A financial institution may charge a lawyer or law
562 firm for the reasonable costs of producing the reports and records required by
563 this rule.

564 (9) **Immunity of financial institution.** This subsection does not create
565 a claim against a financial institution or its officers, directors, employees, or
566 agents for failure to provide a trust account overdraft report or for compliance
567 with this subsection.

568 (i) **Trust account certificate and acknowledgements.**

569 (1) **Annual requirement.** A member of the state bar of Wisconsin shall
570 file with the state bar of Wisconsin annually, with payment of the member's state
571 bar dues or upon any other date approved by the supreme court, a certificate as
572 to whether the member is engaged in the practice of law in Wisconsin. If the
573 member is practicing law, the member shall certify the name, address, and
574 telephone number of each financial institution in which the member maintains
575 a trust account, a fiduciary account, or a safe deposit box. The state bar shall
576 supply to each member, with the annual dues statement, or at any other time
577 directed by the supreme court, a form on which this certification shall be made.

578 (2) **Certification by law firm.** A law firm shall file one certificate of
579 accounts on behalf of the lawyers in the firm who are required to file a certificate
580 under par. (1).

581 (3) **Compliance with SCR 20:1.15.** Each state bar member shall
582 acknowledge on the annual dues statement, or another form approved by the
583 supreme court, that the member is aware of all of the following requirements of
584 this rule:

585 a. That SCR 20:1.15 establishes fiduciary obligations for trust and
586 fiduciary property that comes into the member's possession, including the duty
587 to hold that property in trust separate from the member's own property, to
588 safeguard that property, to maintain complete records of that property, to
589 account fully for that property, and to promptly deliver that property to the
590 owner.

591 b. That SCR 20:1.15 requires a member to maintain each IOLTA account
592 in an IOLTA participating institution, to file an overdraft agreement with the
593 office of lawyer regulation for each account that is subject to SCR 20:1.15(h)

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594 and (k)(10), and to annually report all trust and fiduciary accounts to the state
595 bar of Wisconsin that are not subject to an exception under SCR 20:1.15(m).

596 (4) **Suspension for non-compliance.** A state bar member who fails to
597 file the acknowledgements required by sub. (i)(3) or a trust account certificate,
598 unless a certificate of accounts is filed by the law firm, is subject to the automatic
599 suspension of the member's membership in the state bar in the same manner
600 provided in SCR 10.03(6) for nonpayment of dues.

601 (j) **Multi-jurisdictional practice.** If a lawyer also licensed in another
602 state is entrusted with funds or property in connection with a representation in
603 the other state, the provisions of this rule shall not supersede the applicable rules
604 of the other state.

605 (k) **Fiduciary property.**

606 (1) **Segregation of fiduciary property.** A lawyer shall hold in trust,
607 separate from the lawyer's own funds or property, those funds or that property
608 of clients or 3rd parties that are in the lawyer's possession when acting in a
609 fiduciary capacity.

610 (2) **Accounting.** Upon final distribution of any fiduciary property or
611 upon request by a client or a 3rd party having an ownership interest in the
612 property, a lawyer shall promptly render a full written accounting regarding the
613 property.

614 (3) **Fiduciary accounts.** A lawyer shall deposit all fiduciary funds
615 specified in par. (1) in any of the following:

616 a. A separate interest-bearing or dividend-paying fiduciary account on
617 which interest or dividends shall be paid to the fiduciary entity or its beneficiary
618 or beneficiaries, less any taxes and expenses of the fiduciary entity.

619 b. A pooled interest-bearing or dividend-paying fiduciary account with
620 sub-accounting by the financial institution, the lawyer, or the law firm that will
621 provide for computation of interest or dividends earned by each fiduciary
622 entity's funds and the proportionate allocation of the interest or dividends to each
623 of the fiduciary entities, less any taxes and expenses of the fiduciary entity.

624 c. An income-generating investment vehicle, on which income shall be
625 paid to the fiduciary entity or its beneficiary or beneficiaries, less any taxes and
626 expenses of the fiduciary entity.

627 d. An income-generating investment vehicle selected by the lawyer and
628 approved by a court for guardianship funds if the lawyer serves as guardian for
629 a ward under Ch. 54 and subject to Ch. 881, Wis. Stats.

630 e. An income-generating investment vehicle selected by the lawyer to
631 protect and maximize the return on funds in a bankruptcy estate, which
632 investment vehicle is approved by the bankruptcy trustee, by a bankruptcy court
633 order, or otherwise consistent with 11 U.S.C. § 345.

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634 f. A draft account or other account that does not bear interest or pay
635 dividends when, in the lawyer's professional judgment, placement in the account
636 is consistent with the needs and purposes of the fiduciary entity or its beneficiary
637 or beneficiaries.

638 (4) **Location.** Each fiduciary account shall be maintained in a financial
639 institution as provided by the written authorization of the client, the governing
640 trust instrument, organizational by-laws, an order of a court, or, absent such
641 direction, in a financial institution that, in the lawyer's professional judgment,
642 will best serve the needs and purposes of the client or 3rd party for whom the
643 lawyer serves as fiduciary. If a lawyer acts in good faith in making this
644 determination, the lawyer is not subject to any charge of ethical impropriety or
645 other breach of the Rules of Professional Conduct. When the fiduciary property
646 is held in a draft account and the account is at a financial institution that is not
647 located in Wisconsin or authorized by state or federal law to do business in
648 Wisconsin, the lawyer shall comply with the requirements of sub. (k)(10)b., c.,
649 d., e., or f.

650 (5) **Cash transactions prohibited.**~~Prohibited transactions.~~

651 ~~a. Cash.~~ No withdrawal of cash shall be made from a fiduciary account
652 or from a deposit to a fiduciary account. No check shall be made payable to
653 "Cash." No withdrawal shall be made from a fiduciary account by automated
654 teller or cash dispensing machine.

655 ~~b. Card transactions.~~ A lawyer shall not authorize transactions by way
656 of credit, debit, prepaid or other types of payment cards to or from a fiduciary
657 account.

658 (6) **Availability of funds for disbursement.** A lawyer shall not disburse
659 funds from a fiduciary account unless the deposit from which those funds will
660 be disbursed has cleared and the funds are available for disbursement. The
661 exception for real estate transactions in sub. (f)(4)b. shall apply to fiduciary
662 accounts.

663 (7) **Record retention.** A lawyer shall maintain and preserve complete
664 records of fiduciary account funds, all deposits and disbursements, and other
665 fiduciary property and shall preserve those records for the six most recent years
666 during which the lawyer served as a fiduciary and shall preserve at a minimum,
667 a summary accounting of all fiduciary funds and property for prior years during
668 which the lawyer served as a fiduciary. After the termination of the fiduciary
669 relationship, the lawyer shall preserve the records required by this paragraph for
670 at least six years. Electronic records shall be backed up by an appropriate
671 storage device. The office of lawyer regulation shall publish guidelines for
672 fiduciary account record keeping.

673 **(8) Record production.** All fiduciary account records have public
 674 aspects related to a lawyer's fitness to practice. Upon request of the office of
 675 lawyer regulation, or upon direction of the supreme court, the records shall be
 676 submitted to the office of lawyer regulation for its inspection, audit, use, and
 677 evidence under any conditions to protect the privilege of clients that the court
 678 may provide. The records, or an audit of the records, shall be produced at any
 679 disciplinary proceeding involving the lawyer, whenever material.

680 **(9) Burden of proof.** A lawyer's failure to promptly submit fiduciary
 681 account records to the office of lawyer regulation or promptly provide an
 682 accounting of fiduciary property to the office of lawyer regulation shall result in
 683 a presumption that the lawyer has failed to hold fiduciary property in trust,
 684 contrary to SCR 20:1.15(k)(1). This presumption may be rebutted by the
 685 lawyer's production of records or an accounting that overcomes this
 686 presumption by clear, satisfactory, and convincing evidence.

687 **(10) Dishonored payment notification or alternative protection.** A
 688 lawyer who holds fiduciary property in a draft account from which funds are
 689 disbursed through a properly payable instrument or electronic transaction shall
 690 take any of the following actions:

691 a. Comply with the requirements of sub. (h) relating to dishonored
 692 payment notification (overdraft notices).

693 b. Have the account independently audited by a certified public
 694 accountant on at least an annual basis.

695 c. Hold the funds in a draft account, which requires the approval of a co-
 696 trustee, co-agent, co-guardian, or co-personal representative before funds may
 697 be disbursed from the account.

698 d. Require and document the approval of two people from a group
 699 consisting of a lawyer or a member or employee of the lawyer's law firm before
 700 funds may be disbursed from the account.

701 e. In the case of an estate or trust, provide an accounting of the
 702 administration at least annually to all beneficiaries currently eligible to receive
 703 income distributions.

704 f. In the case of a guardianship proceeding in which annual financial
 705 accountings must be reviewed by a court, timely file those annual financial
 706 accountings with the court.

707 **(11) Fiduciary account certificate and acknowledgements.** Funds
 708 held by a lawyer in a fiduciary account are subject to the requirements of sub.
 709 (i).

710 **(m) Exceptions to this section.** This rule does not apply in any of the
 711 following instances in which a lawyer is acting in a fiduciary capacity:

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712 (1) The lawyer is serving as a bankruptcy trustee, subject to the oversight
713 and accounting requirements of the bankruptcy court or the office of U.S.
714 Trustee.

715 (2) The lawyer is serving as an assignee or receiver under the provisions
716 of Ch. 128, Wis. Stats.

717 (3) The property held by the lawyer when acting in a fiduciary capacity
718 is property held for the benefit of an immediate family member of the lawyer.

719 (4) The lawyer is serving in a fiduciary capacity for a civic, fraternal, or
720 non-profit organization that is not a client and has other officers or directors
721 participating in the governance of the organization.

722 (5) The lawyer is acting in the course of the lawyer's employment by an
723 employer not itself engaged in the practice of law, provided that the lawyer's
724 employment is not ancillary to the lawyer's practice of law.

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728 A lawyer must hold the property of others with the care required of a professional
729 fiduciary. All property that is the property of clients or 3rd parties must be kept separate from
730 the lawyer's business and personal property and, if monies, in one or more trust or fiduciary
731 accounts. Lawyers have duties to keep clear, distinct, and accurate records of all trust
732 transactions, and to be able always to make a full accounting. See, In re Trust Estate of Martin,
733 39 Wis. 2d 437, 159 N.W.2d 660 (1968).

734

735

736 **SCR 20:1.15(a)(2) Electronic transaction.**

737 The types of electronic transactions are developing. For examples of current types of
738 electronic transactions, see the record-keeping guidelines published by the office of lawyer
739 regulation.

740

741 **SCR 20:1.15(b)(1) Separate accounts.**

742 With respect to probate matters, a lawyer's role may be to serve in a fiduciary capacity
743 as the personal representative, to represent an estate's personal representative, or to act as both
744 personal representative and attorney for an estate. SCR 20:1.15(k) applies to funds and
745 property which a lawyer receives, holds, and distributes while serving in the fiduciary role of
746 personal representative. Such funds and property may include, but are not limited to, bank and
747 investment accounts, stocks, and bonds. SCRs 20:1.15(b)-(i) apply to funds and property
748 which a lawyer receives, holds, and distributes in connection with the representation of a
749 client/personal representative or an estate. Such funds include, but are not limited to,
750 advanced legal fees and advanced costs. If a lawyer acts in good faith to safeguard funds and
751 property received in connection with a probate matter, the lawyer is not subject to any charge
752 of ethical impropriety for holding what may be determined to be fiduciary funds in a
753 segregated trust account or in an IOLTA account for a limited period of time, or for holding
754 what may be determined to be trust funds in a fiduciary account.

755

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756 **SCR 20:1.15(b)(5) Insurance and safekeeping requirements.**

757 Pursuant to SCR 20:1.15(b)(5), trust accounts are required to be held in financial or
758 IOLTA participating institutions that are insured by the FDIC, the NCUSIF, the SIPC or any
759 other investment institution financial guaranty insurance. However, since federal law dictates
760 the amount of insurance coverage available from the FDIC, the NCUSIF, and the SIPC, funds
761 in excess of those limits are not insured. Federal law also limits the types of losses that are
762 covered by SIPC insurance. Consequently, the purpose of the insurance and safety
763 requirements is not to guarantee that all funds are adequately insured. Rather, it is to assure
764 that trust funds are held in reputable financial or IOLTA participating institutions and that the
765 funds are eligible for the insurance that is available. The exceptions to the SCR 20:1.15(b)(5)
766 requirement relate to trust property other than funds and to IOLTA accounts that are subject
767 to the safety requirements of SCR 20:1.15(d)(3)b. and c.

768
769 **SCR 20:1.15(b)(6) Advanced legal fee and costs.**

770 While the general rule is that a lawyer must hold trust property separate from the
771 lawyer's own property, SCR 20:1.15(b)(6) allows very limited short-term temporary
772 commingling when accepting an electronic payment for advanced fees or costs.
773 Considering the expense of electronic payment processing providers, this allows a lawyer
774 to maintain only one electronic payment processing provider service and to have it
775 connected to just one bank account, e.g. the law firm's operating account. The lawyer may
776 accept electronic payments for advanced fees or costs to that account without violating
777 SCR 20:1.15(a), so long as any payments for advanced fees or costs are promptly
778 transferred to the lawyer's trust account within two business days.

779 **SCR 20:1.15(d)(3) Safekeeping requirements.**

780 See comment to SCR 20:1.15(b)(5).

781
782 **SCR 20:1.15(d)(4) Income requirements.**

783 Pursuant to SCR 20:1.15(d)(4), IOLTA accounts shall bear the highest non-
784 promotional interest rate or dividend that is generally available to non-IOLTA customers at
785 the same branch or main office location when the IOLTA account meets or exceeds the same
786 eligibility qualifications, if any, including a minimum balance. Investment products,
787 including repurchase agreements and shares of mutual funds, are neither deposits nor federally
788 or FDIC-insured. An investment in a repurchase agreement or money market fund may
789 involve investment risk including possible loss of the principal amount invested. The rule,
790 however, provides safeguards to minimize any potential risk by limiting investment products
791 to repurchase agreements and open-end money market funds that invest in United States
792 government securities only.

793
794 **SCR 20:1.15(e) Prompt notice and delivery of property.**

795 Third parties, such as a client's creditors, may have just claims against funds or other
796 property in a lawyer's custody. A lawyer may have a duty under applicable law, including
797 SCR 20:1.15(e), to protect such 3rd-party claims against wrongful interference by the client,
798 and accordingly, may refuse to surrender the property to the client. However, a lawyer should
799 not unilaterally assume to arbitrate a dispute between the client and the 3rd party. If a lawyer
800 holds property belonging to one person and a second person has a contractual or similar claim
801 against that person but does not claim to own the property or have a security interest in it, the
802 lawyer is free to deliver the property to the person to whom it belongs.

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803

804 **SCR 20:1.15(e)(4) Burden of proof.**

805 A lawyer's failure to comply with the delivery requirements of SCR 20:1.15(e)(1) or
806 the accounting requirements of SCR 20:1.15(e)(2) will result in a presumption that the lawyer
807 has failed to hold property in trust, contrary to SCR 20:1.15(b)(1). This presumption can be
808 rebutted by the lawyer's production of records or an accounting that overcomes this
809 presumption by clear, satisfactory, and convincing evidence. See, In re Trust Estate of Martin,
810 39 Wis. 2d 437, 159 N.W.2d 660 (1968).

811

812 **SCR 20:1.15(f)(1) Security of transactions.**

813 SCR 20:1.15(f)(1) takes into account the modern banking and payments industry,
814 allowing for electronic transfers to and from the trust account, so long as such transfers are
815 authorized in advance by a lawyer in the law firm or a person under a lawyer's direct
816 supervision. Should there be any chargeback, surcharge, or ACH reversal of an electronic
817 payment to the trust account, the lawyer is responsible for replacing any and all such funds
818 within three business days of actual notice of the chargeback, surcharge, or ACH reversal,
819 and the lawyer must reimburse the account prior to accepting any additional electronic
820 deposits.

821

Approval of disbursements

822 This rule requires the signature of a lawyer, or a person under the lawyer's direct
823 supervision, on all checks issued from a firm trust account and also requires a lawyer's
824 authorization for all electronic disbursements from a firm trust account. Written
825 confirmation of authorization for electronic disbursements should be maintained as part of
826 complete trust account records.

827

Costs associated with electronic payments

828 Electronic payment systems, such as credit cards, routinely impose charges on
829 vendors when a customer pays for goods or services. That charge may be deducted directly
830 from the customer's payment. Vendors who accept credit cards routinely credit the
831 customer with the full amount of the payment and absorb the charges. Before holding a
832 client responsible for these charges, a lawyer should disclose this practice to the client in
833 advance, and assure that the client understands and consents to the charges. This disclosure
834 should be in writing if necessary to comply with SCR 20:1.5(b). In addition, the lawyer
835 should ensure that holding the client responsible for transaction costs does not violate the
836 terms of service of the payment system provider or other law.

837

838 **~~SCR 20:1.15(f)(2)c. Electronic transfers by 3rd parties.~~**

839 ~~Many forms of electronic deposit allow the transferor to remove the funds without the~~
840 ~~consent of the account holder. A lawyer must not only be aware of the financial institution's~~
841 ~~policy but also federal regulations pertaining to the specific form of electronic deposit, and~~
842 ~~must ensure that the transferor is prohibited from withdrawing deposited funds without the~~
843 ~~lawyer's consent.~~

844

845 **~~SCR 20:1.15(f)(3)a. Remote deposit.~~**

846 ~~A remote deposit is an electronic deposit of a paper check to a lawyer's trust account.~~
847 ~~Subject to a lawyer's compliance with the requirements of this subsection, such transactions~~

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848 are permitted in an IOLTA account that is not an E-Banking IOLTA account. Unlike other
849 types of electronic transactions, remote deposits can be traced to images of the front and
850 reverse of the deposited check, which are retained for at least six years by the lawyer's
851 financial institution, pursuant to banking regulations. This exception was established to
852 facilitate deposits to an IOLTA account of a lawyer who does not utilize multiple types of
853 electronic transactions, making the expense relating to an E-Banking IOLTA account
854 unnecessary. Remote deposits may also be made to a non-pooled account for a particular
855 client, subject to those same requirements.

856

857 ~~SCR 20:1.15(f)(3)b. Exception: E-Banking Trust Account.~~

858 Financial institutions, as credit card issuers, routinely impose charges on vendors
859 when a customer pays for goods or services with a credit card. That charge is deducted
860 directly from the customer's payment. Vendors who accept credit cards routinely credit the
861 customer with the full amount of the payment and absorb the charges. Before holding a client
862 responsible for these charges, a lawyer needs to disclose this practice to the client in advance,
863 and assure that the client understands and consents to the charges. In addition, the lawyer
864 needs to investigate the following concerns before accepting payments by credit card:

865 ~~1. Does the credit card issuer prohibit a lawyer/vendor from requiring the~~
866 ~~customer to pay the charge?~~ If a lawyer intends to credit the client for anything less than
867 the full amount of the credit card payment, the lawyer needs to assure that this practice is not
868 prohibited by the credit card issuer's regulations and/or by the agreement between the lawyer
869 and the credit card issuer. Entering into an agreement with a credit card issuer with the intent
870 to violate this type of requirement may constitute conduct involving dishonesty, fraud, or
871 deceit, in violation of SCR 20:8.4(e).

872 ~~2. Does the credit card issuer require services to be rendered before a credit~~
873 ~~card payment for legal fees is accepted?~~ If a lawyer intends to accept fee advances by credit
874 card, the lawyer needs to assure that fee advances are not prohibited by the credit card issuer's
875 regulations and/or by the agreement between the lawyer and the credit card issuer. Entering
876 into an agreement with a credit card issuer with the intent to violate this type of requirement
877 may constitute conduct involving dishonesty, fraud, or deceit, in violation of SCR 20:8.4(e).

878 ~~3. By requiring clients to pay the credit card charges, is the lawyer required to~~
879 ~~make certain specific disclosures to such clients and offer cash discounts to all clients?~~
880 If a lawyer intends to require clients to pay credit card charges, the lawyer needs to assure that
881 the lawyer complies with all state and federal laws relating to such transactions, including, but
882 not limited to, Regulation Z of the Truth in Lending Act, 12 C.F.R. § 206.

883

884 ~~SCR 20:1.15(f)(3)c. Alternative to E-Banking Trust Account.~~

885 As an alternative to establishing an E-Banking Trust Account for the purpose of
886 making electronic deposits and disbursements, a lawyer may make electronic deposits to and
887 disbursements from an IOLTA account when additional protections are in place. This
888 alternative may reduce the expense of maintaining two accounts. On the other hand, the
889 alternative requires that the lawyer prevent the electronic withdrawal of funds from the
890 IOLTA account that could occur through chargebacks or reversals against a credit card
891 deposit, or other electronic withdrawals. Specifically, the lawyer must either establish
892 agreements with the lawyer's financial institution and with payment providers to deduct fees,
893 surcharges, and chargebacks from the law firm's business account or reimburse the account

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894 ~~for such deductions with funds belonging to the lawyer or law firm within three business days~~
895 ~~after receiving notice of the deductions. In addition, the lawyer must establish an agreement~~
896 ~~with the financial institution to block debits from the IOLTA account.~~

897

898 **SCR 20:1.15(f)(4)b. Exception: Real estate transactions.**

899 SCR 20:1.15(f)(4)b. establishes an exception to the requirement that a lawyer only
900 disburse funds that are available for disbursement, i.e., funds that have been credited to the
901 account. This exception was created in recognition of the fact that real estate transactions in
902 Wisconsin require a simultaneous exchange of funds. However, even under this exception,
903 the funds from which a lawyer disburses the proceeds of the real estate transaction, i.e., the
904 lender's check, draft, wire transfer, etc., must be deposited no later than the first business day
905 following the date of the closing. In refinancing transactions, the lender's funds must be
906 deposited as soon as possible, but no later than the first business day after the loan proceeds
907 are distributed. Proceeds are generally distributed three days after the closing date.

908

909 **SCR 20:1.15(g)(2) Record production.**

910 The duty of the lawyer to produce client trust account records for inspection under
911 SCR 20:1.15(g)(2) is a specific exception to the lawyer's responsibility to maintain the
912 confidentiality of the client's information as required by SCR 20:1.6.

913

914 **SCR 20:1.15(g)(3) Burden of proof.**

915 A lawyer's failure to comply with the record production requirements of SCR
916 20:1.15(g)(2) or to provide an accounting for trust property will result in a presumption that
917 the lawyer has failed to hold property in trust, contrary to SCR 20:1.15(b)(1). This
918 presumption can be rebutted by the lawyer's production of records or an accounting that
919 overcomes this presumption by clear, satisfactory, and convincing evidence. See, In re Trust
920 Estate of Martin, 39 Wis. 2d 437, 159 N.W.2d 660 (1968).

921

922 **SCR 20:1.15(j) Multi-jurisdictional practice.**

923 This rule does not prohibit a lawyer whose principal office is in another jurisdiction
924 and who permissibly represents clients in Wisconsin matters from using a trust account for
925 Wisconsin matters that is compliant with the rules of the other jurisdiction.

926 **SCR 20:1.15(k)(1) Segregation of fiduciary property.**

927 See comment to SCR 20:1.15(b)(1).

928

929 **SCR 20:1.15(k)(9) Burden of proof.**

930 A lawyer's failure to comply with the record production requirements of SCR
931 20:1.15(k)(8) or to provide an accounting for fiduciary property will result in a presumption
932 that the lawyer has failed to hold fiduciary property in trust, contrary to SCR 20:1.15(k)(1).
933 This presumption can be rebutted by the lawyer's production of records or an accounting that
934 overcomes this presumption by clear, satisfactory, and convincing evidence. See, In re Trust
935 Estate of Martin, 39 Wis. 2d 437, 159 N.W.2d 660 (1968).

936

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

3
4 **(a) Definitions.**

5 **In this section:**

6 (1) "Draft account" means an account upon which funds are
7 withdrawn through a properly payable instrument or an electronic transaction.

8 (2) "Electronic transaction" means a paperless transfer of funds to or
9 from a trust or fiduciary account. Electronic transactions do not include
10 transfers initiated by voice or automated teller or cash dispensing machines.

11 (3) "Fiduciary" means an agent, attorney-in-fact, conservator,
12 guardian, personal representative, special administrator, trustee, or other
13 position requiring the lawyer to safeguard the property of a client or 3rd party.

14 (4) "Fiduciary account" means an account in which the lawyer
15 deposits fiduciary property.

16 (5) "Fiduciary property" means funds or property of a client or 3rd
17 party that is in a lawyer's possession in a fiduciary capacity. Fiduciary property
18 includes, but is not limited to, property held as agent, attorney-in-fact,
19 conservator, guardian, personal representative, special administrator, or trustee,
20 subject to the exceptions identified in sub. (m).

21 (6) "Financial institution" means a bank, savings bank, trust company,
22 credit union, savings and loan association, or investment institution, including a
23 brokerage house.

24 (7) "Immediate family member" means the lawyer's spouse, registered
25 domestic partner, child, stepchild, grandchild, sibling, parent, stepparent,
26 grandparent, aunt, uncle, niece, or nephew.

27 (8) "Interest on Lawyer Trust Account or 'IOLTA account'" means a
28 pooled interest-bearing or dividend-paying draft trust account, separate from the
29 lawyer's business and personal accounts, which is maintained at an IOLTA
30 participating institution. Typical funds that would be placed in an IOLTA
31 account include earnest monies, loan proceeds, settlement proceeds, collection
32 proceeds, cost advances, and advanced payment of fees that have not yet been
33 earned. An IOLTA account is subject to the provisions of the SCR Chapter 13
34 and the trust account provisions of subs. (a) to (i), including the IOLTA account
35 provisions of subs. (c) and (d).

36 (9) "IOLTA participating institution" means a financial institution that
37 voluntarily offers IOLTA accounts and certifies to WisTAF annually that it
38 meets the IOLTA account requirements of sub. (d).

39 (10) "Properly payable instrument" means an instrument that, if
40 presented in the normal course of business, is in a form requiring payment

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41 pursuant to the laws of this state.

42 (11) "Trust account" means an account in which the lawyer deposits
43 trust property.

44 (12) "Trust property" means funds or property of clients or 3rd parties,
45 which is not fiduciary property, that is in the lawyer's possession in connection
46 with a representation.

47 (13) "WisTAF" means the Wisconsin Trust Account Foundation, Inc.

48 (b) **Segregation and safekeeping of trust property.**

49 (1) **Separate account.** A lawyer shall hold in trust, separate from the
50 lawyer's own property, that property of clients and 3rd parties that is in the
51 lawyer's possession in connection with a representation. All funds of clients and
52 3rd parties paid to a lawyer or law firm in connection with a representation shall
53 be deposited in one or more identifiable trust accounts. Except as provided by
54 sub. (e), a lawyer shall not hold any funds in a trust account that are unrelated to
55 a representation.

56 (2) **Identification and location of account.** Each trust account shall
57 be clearly designated as a "Client Account," a "Trust Account," or words of
58 similar import. The account shall be identified as such on all account records,
59 including signature cards, monthly statements, checks, and deposit slips. An
60 acronym, such as "IOLTA," "IOTA," or "LTAB," without further elaboration,
61 does not clearly designate the account as a client account or trust account. Each
62 trust account shall be maintained in a financial institution that is authorized by
63 federal or state law to do business in Wisconsin and that is located in Wisconsin
64 or has a branch office located in Wisconsin and which agrees to comply with
65 the overdraft notice requirements of sub. (h). A trust account may be
66 maintained at a financial institution located in the jurisdiction where the lawyer
67 principally practices law if that jurisdiction has an overdraft notification
68 requirement.

69 (3) **Lawyer funds.** No funds belonging to a lawyer or law firm, except
70 funds reasonably sufficient to pay monthly account service charges, may be
71 deposited or retained in a trust account. Each lawyer or law firm that receives
72 trust funds shall maintain at least one draft account, other than the trust account,
73 for funds received and disbursed other than in a trust capacity, which shall be
74 entitled "Business Account," "Office Account," "Operating Account," or words
75 of similar import.

76 (4) **Trust property other than funds.** Unless a client otherwise directs
77 in writing, a lawyer shall keep securities in bearer form in a safe deposit box at
78 a financial institution authorized to do business in Wisconsin. The safe deposit
79 box shall be clearly designated as a "Client Account" or "Trust Account." The

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80 lawyer shall clearly identify and appropriately safeguard other property of a
81 client or 3rd party.

82 (5) **Insurance and safekeeping requirements.** Each trust account shall
83 be maintained at a financial institution that is insured by the Federal Deposit
84 Insurance Corporation (FDIC), the National Credit Union Share Insurance Fund
85 (NCUSIF), the Securities Investor Protection Corporation (SIPC), or any other
86 investment institution financial guaranty insurance. IOLTA accounts shall also
87 comply with the requirements of sub. (d)(3). Except as provided in subs. (b)(4)
88 and (d)(3)b. and c., trust property shall be held in an account in which each
89 individual owner's funds are eligible for insurance.

90 (6) **Advanced legal fees and costs.** A lawyer shall deposit into a client
91 trust account legal fees and expenses that have been paid in advance, to be
92 withdrawn by the lawyer only as fees are earned or expenses incurred, except
93 as follows:

94 a. The lawyer complies with the requirements of SCR 20:1.5(g).

95 b. The lawyer may accept credit card payments or electronic funds
96 transfer payments of advanced legal fees and expenses as temporary deposits
97 in a non-trust account, so long as such funds are transferred promptly, and no
98 later than two business days following receipt, into a client trust account.
99 However, except as provided by SCR 20:1.5(g), a lawyer shall not accept any
100 advance payment into a non-trust account if the lawyer has any reason to
101 suspect that the funds will not be successfully transferred into the client trust
102 account within two business day of receipt.

103 (c) **Types of trust accounts.**

104 (1) **IOLTA accounts.** A lawyer or law firm who receives client or 3rd-
105 party funds that the lawyer or law firm determines to be nominal in amount or
106 that are expected to be held for a short period of time such that the funds cannot
107 earn income for the benefit of the client or 3rd party in excess of the costs to
108 secure that income, shall maintain a pooled interest-bearing or dividend-paying
109 draft trust account in an IOLTA participating institution.

110 (2) **Non-IOLTA accounts.** A lawyer or law firm who receives client or
111 3rd-party funds that the lawyer or law firm determines to be capable of earning
112 income for the benefit of the client or 3rd party shall maintain an interest-bearing
113 or dividend-paying non-IOLTA trust account. A non-IOLTA trust account shall
114 be established as any of the following:

115 a. A separate interest-bearing or dividend-paying trust account
116 maintained for the particular client or 3rd party, the interest or dividends on
117 which shall be paid to the client or 3rd party, less any transaction costs.

118 b. A pooled interest-bearing or dividend-paying trust account with sub-
119 accounting by the financial institution, the lawyer, or the law firm that will

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120 provide for computation of interest or dividends earned by each client's or 3rd
121 party's funds and the payment of the interest or dividends to the client or 3rd
122 party, less any transaction costs.

123 c. An income-generating investment vehicle selected by the client and
124 designated in specific written instructions from the client or authorized by a
125 court or other tribunal, on which income shall be paid to the client or 3rd party
126 or as directed by the court or other tribunal, less any transaction costs.

127 d. An income-generating investment vehicle selected by the lawyer to
128 protect and maximize the return on funds in a bankruptcy estate, which
129 investment vehicle is approved by the bankruptcy trustee or by a bankruptcy
130 court order, or otherwise consistent with 11 U.S.C. § 345.

131 e. A draft account or other account that does not bear interest or pay
132 dividends because it holds funds the lawyer has determined are not eligible for
133 deposit in an IOLTA account because they are neither nominal in amount nor
134 expected to be held for a short term such that the funds cannot earn income for
135 the client or 3rd party in excess of the costs to secure the income, provided that
136 the account has been designated in specific written instructions from the client
137 or 3rd party.

138 **(3) Selection of account.** In deciding whether to use the account
139 specified in par. (1) or an account or investment vehicle specified in par. (2), a
140 lawyer shall determine, at the time of the deposit, whether the client or 3rd-party
141 funds could be utilized to provide a positive net return to the client or 3rd party
142 by taking into consideration all of the following:

143 a. The amount of interest, dividends, or other income that the funds would
144 earn or pay during the period the funds are expected to be on deposit.

145 b. The cost of establishing and administering a non-IOLTA trust account,
146 including the cost of the lawyer's services and the cost of preparing any tax
147 reports required for income accruing to a client's or 3rd party's benefit.

148 c. The capability of the financial institution, lawyer, or law firm to
149 calculate and pay interest, dividends, or other income to individual clients or 3rd
150 parties.

151 d. Any other circumstance that affects the ability of the client's or 3rd
152 party's funds to earn income in excess of the costs to secure that income for the
153 client or 3rd party.

154 **(4) Professional judgment.** The determination whether funds to be
155 invested could be utilized to provide a positive net return to the client or 3rd
156 party rests in the sound judgment of the lawyer or law firm. If a lawyer acts in
157 good faith in making this determination, the lawyer is not subject to any charge
158 of ethical impropriety or other breach of the Rules of Professional Conduct.

159 **(d) Interest on Lawyer Trust Account (IOLTA) requirements.**

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160 (1) **Location.** An IOLTA account shall be maintained only at an IOLTA
161 participating institution.

162 (2) **Certification by IOLTA participating institutions.**

163 a. Each IOLTA participating institution shall certify to WisTAF annually
164 that the financial institution meets the requirements of sub. (d)(3) to (6) for
165 IOLTA accounts and that it reports overdrafts on draft trust accounts and draft
166 fiduciary accounts of lawyers and law firms to the office of lawyer regulation,
167 pursuant to the institution's agreements with those lawyers and law firms.
168 WisTAF shall by rule adopted under SCR 13.03(1) establish the date by which
169 IOLTA participating institutions shall certify their compliance.

170 b. WisTAF shall confirm annually, by a date established by WisTAF by
171 rule adopted under SCR 13.03(1), the accuracy of a financial institution's
172 certification under sub. (d)(2)a. by reviewing one or more of the following:

173 1. The IOLTA comparability rate information form submitted by the
174 financial institution to WisTAF.

175 2. Rate and product information published by the financial institution.

176 3. Other publicly or commercially available information regarding
177 products and interest rates available at the financial institution.

178 c. WisTAF shall publish annually, no later than the date on which the
179 state bar mails annual dues statements to members of the bar, a list of all
180 financial institutions that have certified, and have been confirmed by WisTAF
181 as IOLTA participating institutions. WisTAF shall update the published list
182 located on its website to add newly confirmed IOLTA participating institutions
183 and to remove financial institutions that WisTAF cannot confirm as IOLTA
184 participating institutions.

185 d. Prior to removing any financial institution from the list of IOLTA
186 participating institutions or failing to include any financial institution on the list
187 of IOLTA participating institutions, WisTAF shall first provide the financial
188 institution with notice and sufficient time to respond. In the event a financial
189 institution is removed from the list of IOLTA participating institutions, WisTAF
190 shall notify the office of lawyer regulation and provide that office with a list of
191 the lawyers and law firms maintaining IOLTA accounts at that financial
192 institution. The office of lawyer regulation shall notify those lawyers and law
193 firms of the removal of the financial institution from the list, and provide time
194 for those lawyers and law firms to move their IOLTA accounts to an IOLTA
195 participating institution.

196 e. Lawyers and law firms may rely on the most recently published list of
197 IOLTA participating institutions for purposes of compliance with sub. (c)(1),
198 except when the office of lawyer regulation notifies the lawyer or law firm of
199 removal, in accordance with sub. (d)(2)d.

200 **(3) Safekeeping requirements.**

201 a. An IOLTA participating institution shall comply with the insurance
202 and safety requirements of sub. (b)(5).

203 b. A repurchase agreement utilized for an IOLTA account may be
204 established only at an IOLTA participating institution deemed to be "well-
205 capitalized" or "adequately capitalized" as defined by applicable federal statutes
206 and regulations.

207 c. An open-end money market fund utilized for an IOLTA account may
208 be established only at an IOLTA participating institution in a fund that holds
209 itself out as a money market fund as defined under the Investment Act of 1940
210 and, at the time of investment, has total assets of at least \$250,000,000.

211 **(4) Income requirements.**

212 a. **Beneficial owner.** The interest or dividends accruing on an IOLTA
213 account, less any allowable reasonable fees, as allowed under par. (5), shall be
214 paid to WisTAF, which shall be considered the beneficial owner of the earned
215 interest or dividends, pursuant to SCR Chapter 13.

216 b. **Interest and dividend requirements.** An IOLTA account shall bear
217 the highest non-promotional interest rate or dividend that is generally available
218 to non-IOLTA customers at the same branch or main office location when the
219 IOLTA account meets or exceeds the same eligibility qualifications, if any,
220 including a minimum balance, required at that same branch or main office
221 location. In determining the highest rate or dividend available, the IOLTA
222 participating institution may consider factors in addition to the IOLTA account
223 balance that are customarily considered by the institution at that branch or main
224 office location when setting interest rates or dividends for its customers,
225 provided the institution does not discriminate between IOLTA accounts and
226 accounts of non-IOLTA customers and that these factors do not include that the
227 account is an IOLTA account. However, IOLTA participating institutions may
228 voluntarily choose to pay higher rates.

229 c. **IOLTA account.** An IOLTA participating institution may establish
230 an IOLTA account as, or convert an IOLTA account to, any of the following
231 types of accounts, assuming the particular financial institution at that branch or
232 main office location offers these account types to its non-IOLTA customers, and
233 the particular IOLTA account meets the eligibility qualifications to be
234 established as this type of account at the particular branch or main office
235 location:

236 1. A business checking account with an automated or other automatic
237 investment sweep feature into a daily financial institution repurchase agreement
238 or open-end money market fund. A daily financial institution repurchase
239 agreement must be invested in United States government securities. An open-

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240 end money market fund must consist solely of United States government
241 securities or repurchase agreements fully collateralized by United States
242 government securities, or both. In this par. c.1., "United States government
243 securities" include securities of government-sponsored entities, such as, but not
244 limited to, securities of, or backed by, the Federal National Mortgage
245 Association, the Government National Mortgage Association, and the Federal
246 Home Loan Mortgage Corporation;

247 2. A checking account paying preferred interest rates, such as money
248 market or indexed rates;

249 3. An interest-bearing checking account such as a negotiable order of
250 withdrawal (NOW) account or business checking account with interest; and

251 4. Any other suitable interest-bearing or dividend-paying account offered
252 by the institution to its non-IOLTA customers.

253 **d. Options for compliance.** An IOLTA participating institution may:

254 1. Establish the comparable product for qualifying IOLTA accounts,
255 subject to the direction of the lawyer or law firm; or,

256 2. Pay the highest non-promotional interest rate or dividend, as defined
257 in sub. (d)(4)b., less any allowable reasonable fees charged in connection with
258 the comparable highest interest rate or dividend product, on the IOLTA
259 checking account in lieu of actually establishing the comparable highest interest
260 rate or dividend product.

261 **e. Paying rates above comparable rates.** An IOLTA participating
262 institution may pay a set rate above its comparable rates on the IOLTA checking
263 account negotiated with WisTAF that is fixed over a period of time set by
264 WisTAF, such as 12 months.

265 **(5) Allowable reasonable fees on IOLTA accounts.**

266 a. Allowable reasonable fees on an IOLTA account are as follows:

267 1. Per check charges.

268 2. Per deposit charges.

269 3. Fees in lieu of minimum balance.

270 4. Sweep fees.

271 5. An IOLTA administrative fee approved by WisTAF.

272 6. Federal deposit insurance fees.

273 b. Allowable reasonable fees may be deducted from interest earned or
274 dividends paid on an IOLTA account, provided that the fees are calculated in
275 accordance with an IOLTA participating institution's standard practice for non-
276 IOLTA customers. Fees in excess of the interest earned or dividends paid on
277 the IOLTA account for any month or quarter shall not be taken from interest or
278 dividends of any other IOLTA accounts. No fees that are authorized under SCR
279 20:1.15(d)(5) shall be assessed against or deducted from the principal of any

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280 IOLTA account. All other fees are the responsibility of, and may be charged to,
281 the lawyer or law firm maintaining the IOLTA account. IOLTA participating
282 institutions may elect to waive any or all fees on IOLTA accounts.

283 **(6) Remittance and reporting requirements.** A lawyer or law firm
284 shall direct the IOLTA participating institution at which the lawyer or law firm's
285 IOLTA account is located to do all of the following, on at least a quarterly basis:

286 a. Remit to WisTAF the interest or dividends, less allowable reasonable
287 fees as allowed under par. (5), if any, on the average monthly balance in the
288 account or as otherwise computed in accordance with the IOLTA participating
289 institution's standard accounting practice.

290 b. Provide to WisTAF a remittance report showing for each IOLTA
291 account the name of the lawyer or law firm for whose IOLTA account the
292 remittance is sent, the rate and type of interest or dividend applied, the amount
293 of allowable reasonable fees deducted, if any, the average account balance for
294 the period for which the report is made, and the amount of remittance
295 attributable to each IOLTA account.

296 c. Provide to the depositing lawyer or law firm a remittance report in
297 accordance with the participating institution's normal procedures for reporting
298 account activity to depositors.

299 d. Respond to reasonable requests from WisTAF for information needed
300 for purposes of confirming the accuracy of an IOLTA participating institution's
301 certification.

302 **(e) Prompt notice and delivery of property.**

303 **(1) Notice and delivery.** Upon receiving funds or other property in
304 which a client has an interest, or in which a lawyer has received notice that a 3rd
305 party has an interest identified by a lien, court order, judgment, or contract, the
306 lawyer shall promptly notify the client or 3rd party in writing. Except as stated
307 in this rule or otherwise permitted by law or by agreement with the client, the
308 lawyer shall promptly deliver to the client or 3rd party any funds or other
309 property that the client or 3rd party is entitled to receive.

310 **(2) Accounting.** Upon final distribution of any trust property or upon
311 request by the client or a 3rd party having an ownership interest in the property,
312 a lawyer shall promptly render a full written accounting regarding the property.

313 **(3) Disputes regarding trust property.** When a lawyer and another
314 person or a client and another person claim an ownership interest in trust
315 property identified by a lien, court order, judgment, or contract, the lawyer shall
316 hold that property in trust until there is an accounting and severance of the
317 interests. If a dispute arises regarding the division of the property, the lawyer
318 shall hold the disputed portion in trust until the dispute is resolved. Disputes
319 between the lawyer and a client are subject to the provisions of SCR 20:1.5(h).

320 **(4) Burden of proof.** A lawyer's failure to promptly deliver trust
321 property to a client or 3rd party entitled to the trust property, promptly submit
322 trust account records to the office of lawyer regulation or promptly provide an
323 accounting of trust property to the office of lawyer regulation shall result in a
324 presumption that the lawyer has failed to hold trust property in trust, contrary to
325 SCR 20:1.15(b)(1). This presumption may be rebutted by the lawyer's
326 production of records or an accounting that overcomes this presumption by
327 clear, satisfactory, and convincing evidence.

328 **(f) Security requirements and restricted transactions.**

329 **(1) Security of transactions.** A lawyer is responsible for the security of
330 each transaction in the lawyer's trust account and shall not conduct or authorize
331 transactions for which the lawyer does not have commercially reasonable
332 security measures in place. A lawyer shall establish and maintain safeguards to
333 assure that each disbursement from a trust account has been authorized by the
334 lawyer and that each disbursement is made to the appropriate payee. Every
335 check, draft, electronic transfer, or other withdrawal instrument or
336 authorization shall be personally signed or, in the case of electronic,
337 telephone, or wire transfer, directed by one or more lawyers authorized by the
338 law firm or a person under the supervision of a lawyer having responsibility
339 under SCR 20:5.3. A lawyer shall replace any and all funds that have been
340 withdrawn from a trust account by a financial institution or card issuer, and
341 reimburse the trust account for any shortfall or negative balance caused by a
342 chargeback, surcharge, or ACH reversal within three business days of
343 receiving actual notice that a chargeback, surcharge, or ACH reversal has been
344 made against the trust account; and the lawyer shall reimburse the trust
345 account for any chargeback, surcharge, or ACH reversal prior to accepting a
346 new electronic deposit.

347 **(2) Prohibited transactions.**

348 **a. Cash.** No withdrawal of cash shall be made from a trust account or
349 from a deposit to a trust account. No check shall be made payable to "Cash."
350 No withdrawal shall be made from a trust account by automated teller or cash
351 dispensing machine.

352 **b. Telephone transfers.** 1. Except as provided in SCR 20:1.15(f)(2)b.2.,
353 no deposits or disbursements shall be made to or from a pooled trust account by
354 a telephone transfer of funds.

355 2. Wire transfers may be initiated by telephone, and telephone transfers
356 may be made between non-pooled trust accounts that a lawyer maintains for a
357 particular client.

358 (3) omitted

359 **(4) Availability of funds for disbursement.**

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360 **a. Standard for trust account transactions.** A lawyer shall not disburse
361 funds from any trust account unless the deposit from which those funds will be
362 disbursed has cleared, and the funds are available for disbursement.

363 **b. Exception: Real estate transactions.** In closing a real estate
364 transaction, a lawyer's disbursement of closing proceeds from funds that are
365 received on the date of the closing, but that have not yet cleared, shall not violate
366 sub. (f)(4)a. provided that the lawyer complies with sub. (f)(4)c., and that the
367 closing proceeds are deposited no later than the first business day following the
368 closing and are comprised of any of the following types of funds:

369 1. A cashier's check, teller's check, money order, official check or
370 electronic transfer of funds, issued or transferred by a financial institution
371 insured by the FDIC or a comparable agency of the federal or state government.

372 2. A check drawn on the trust account of any lawyer or real estate broker
373 licensed under the laws of any state.

374 3. A check issued by the state of Wisconsin, the United States, or a
375 political subdivision of the state of Wisconsin or the United States.

376 4. A check drawn on the account of or issued by a lender approved by the
377 Federal Department of Housing and Urban Development as either a supervised
378 or a nonsupervised mortgagee as defined in 24 C.F.R. § 202.2.

379 5. A check from a title insurance company licensed in Wisconsin, or from
380 a title insurance agent of the title insurance company, if the title insurance
381 company has guaranteed the funds of that title insurance agent.

382 6. A non-profit organization check in an amount not exceeding \$5000 per
383 closing if the lawyer has reasonable and prudent grounds to believe that the
384 deposit will be irrevocably credited to the trust account.

385 7. A personal check or checks in an aggregate amount not exceeding
386 \$5000 per closing if the lawyer has reasonable and prudent grounds to believe
387 that the deposit will be irrevocably credited to the trust account.

388 **c. Uncollected funds.** Without limiting the rights of the lawyer against
389 any person, it is the responsibility of the disbursing lawyer to reimburse the trust
390 account for any funds described in sub. (f)(4)b. that are not collected and for any
391 fees, charges, and interest assessed by the financial institution on account of the
392 funds being disbursed before the related deposit has cleared and the funds are
393 available for disbursement. The lawyer shall maintain a subsidiary ledger for
394 funds of the lawyer that are deposited in the trust account to reimburse the
395 account for uncollected funds and to accommodate any fees, charges, and
396 interest.

397 **d. Exception: Collection trust accounts.** When handling collection
398 work for a client and maintaining a separate trust account to hold funds collected
399 on behalf of that client, a lawyer's disbursement to the client of collection

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400 proceeds that have not yet cleared does not violate sub. (f)(4)a. so long as those
401 collection proceeds have been deposited prior to the disbursement.

402 **(g) Record keeping requirements for all trust accounts.**

403 **(1) Record retention.** A lawyer shall maintain and preserve complete
404 records of trust account funds, all deposits and disbursements, and other trust
405 property and shall preserve those records for at least six years after the date of
406 termination of the representation. Electronic records shall be backed up by an
407 appropriate storage device. The office of lawyer regulation shall publish
408 guidelines for trust account record keeping.

409 **(2) Record production.** All trust account records have public aspects
410 related to a lawyer's fitness to practice. Upon request of the office of lawyer
411 regulation, or upon direction of the supreme court, the records shall be submitted
412 to the office of lawyer regulation for its inspection, audit, use, and evidence
413 under any conditions to protect the privilege of clients that the court may
414 provide. The records, or an audit of the records, shall be produced at any
415 disciplinary proceeding involving the lawyer, whenever material.

416 **(3) Burden of proof.** A lawyer's failure to promptly deliver trust property
417 to a client or 3rd party entitled to that trust property, promptly submit trust
418 account records to the office of lawyer regulation, or promptly provide an
419 accounting of trust property to the office of lawyer regulation shall result in a
420 presumption that the lawyer has failed to hold trust property in trust, contrary to
421 SCR 20:1.15(b)(1). This presumption may be rebutted by the lawyer's
422 production of records or an accounting that overcomes this presumption by
423 clear, satisfactory, and convincing evidence.

424 **(h) Dishonored payment notification (Overdraft notices).** All draft
425 trust accounts, and any draft fiduciary account that is not subject to an alternative
426 protection under sub. (k)(10), are subject to the following provisions on
427 dishonored payment notification:

428 **(1) Overdraft reporting agreement.** A lawyer shall maintain draft trust
429 and fiduciary accounts only in a financial institution that has agreed to provide
430 an overdraft report to the office of lawyer regulation under par. (2). A lawyer or
431 law firm shall notify the financial institution at the time a trust account or
432 fiduciary account is established that the account is subject to this subsection.

433 **(2) Overdraft report.** In the event any properly payable instrument or
434 electronic transaction is presented against or made from a lawyer trust or
435 fiduciary account containing insufficient funds, whether or not the instrument
436 or electronic transaction is honored, the financial institution shall report the
437 overdraft to the office of lawyer regulation.

438 **(3) Content of report.** All reports made by a financial institution under
439 this subsection shall be substantially in the following form:

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440 a. In the case of a dishonored instrument or electronic transaction, the
441 report shall be identical to an overdraft notice customarily forwarded to the
442 depositor or investor, accompanied by the dishonored instrument or electronic
443 transaction, if a copy is normally provided to the depositor or investor.

444 b. In the case of instruments or electronic transactions that are presented
445 against insufficient funds and are honored, the report shall identify the financial
446 institution involved, the lawyer or law firm, the account, the date on which the
447 instrument or electronic transaction is paid, and the amount of overdraft created
448 by the payment.

449 **(4) Timing of report.** A report made under this subsection shall be made
450 simultaneously with the overdraft notice given to the depositor or investor.

451 **(5) Confidentiality of report.** A report made by a financial institution
452 under this subsection shall be subject to SCR 22.40, Confidentiality.

453 **(6) Withdrawal of report by financial institution.** The office of lawyer
454 regulation shall hold each overdraft report for 10 business days to enable the
455 financial institution to withdraw a report provided by inadvertence or mistake.
456 The deposit of additional funds by the lawyer or law firm shall not constitute
457 reason for withdrawing an overdraft report.

458 **(7) Lawyer compliance.** Every lawyer shall comply with the reporting
459 and production requirements of this subsection, including filing of an overdraft
460 notification agreement for each IOLTA account, each draft-type trust account
461 and each draft-type fiduciary account that is not subject to an alternative
462 protection under sub. (k)(10).

463 **(8) Service charges.** A financial institution may charge a lawyer or law
464 firm for the reasonable costs of producing the reports and records required by
465 this rule.

466 **(9) Immunity of financial institution.** This subsection does not create
467 a claim against a financial institution or its officers, directors, employees, or
468 agents for failure to provide a trust account overdraft report or for compliance
469 with this subsection.

470 **(i) Trust account certificate and acknowledgements.**

471 **(1) Annual requirement.** A member of the state bar of Wisconsin shall
472 file with the state bar of Wisconsin annually, with payment of the member's state
473 bar dues or upon any other date approved by the supreme court, a certificate as
474 to whether the member is engaged in the practice of law in Wisconsin. If the
475 member is practicing law, the member shall certify the name, address, and
476 telephone number of each financial institution in which the member maintains
477 a trust account, a fiduciary account, or a safe deposit box. The state bar shall
478 supply to each member, with the annual dues statement, or at any other time
479 directed by the supreme court, a form on which this certification shall be made.

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480 (2) **Certification by law firm.** A law firm shall file one certificate of
481 accounts on behalf of the lawyers in the firm who are required to file a certificate
482 under par. (1).

483 (3) **Compliance with SCR 20:1.15.** Each state bar member shall
484 acknowledge on the annual dues statement, or another form approved by the
485 supreme court, that the member is aware of all of the following requirements of
486 this rule:

487 a. That SCR 20:1.15 establishes fiduciary obligations for trust and
488 fiduciary property that comes into the member's possession, including the duty
489 to hold that property in trust separate from the member's own property, to
490 safeguard that property, to maintain complete records of that property, to
491 account fully for that property, and to promptly deliver that property to the
492 owner.

493 b. That SCR 20:1.15 requires a member to maintain each IOLTA account
494 in an IOLTA participating institution, to file an overdraft agreement with the
495 office of lawyer regulation for each account that is subject to SCR 20:1.15(h)
496 and (k)(10), and to annually report all trust and fiduciary accounts to the state
497 bar of Wisconsin that are not subject to an exception under SCR 20:1.15(m).

498 (4) **Suspension for non-compliance.** A state bar member who fails to
499 file the acknowledgements required by sub. (i)(3) or a trust account certificate,
500 unless a certificate of accounts is filed by the law firm, is subject to the automatic
501 suspension of the member's membership in the state bar in the same manner
502 provided in SCR 10.03(6) for nonpayment of dues.

503 (j) **Multi-jurisdictional practice.** If a lawyer also licensed in another
504 state is entrusted with funds or property in connection with a representation in
505 the other state, the provisions of this rule shall not supersede the applicable rules
506 of the other state.

507 (k) **Fiduciary property.**

508 (1) **Segregation of fiduciary property.** A lawyer shall hold in trust,
509 separate from the lawyer's own funds or property, those funds or that property
510 of clients or 3rd parties that are in the lawyer's possession when acting in a
511 fiduciary capacity.

512 (2) **Accounting.** Upon final distribution of any fiduciary property or
513 upon request by a client or a 3rd party having an ownership interest in the
514 property, a lawyer shall promptly render a full written accounting regarding the
515 property.

516 (3) **Fiduciary accounts.** A lawyer shall deposit all fiduciary funds
517 specified in par. (1) in any of the following:

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518 a. A separate interest-bearing or dividend-paying fiduciary account on
519 which interest or dividends shall be paid to the fiduciary entity or its beneficiary
520 or beneficiaries, less any taxes and expenses of the fiduciary entity.

521 b. A pooled interest-bearing or dividend-paying fiduciary account with
522 sub-accounting by the financial institution, the lawyer, or the law firm that will
523 provide for computation of interest or dividends earned by each fiduciary
524 entity's funds and the proportionate allocation of the interest or dividends to each
525 of the fiduciary entities, less any taxes and expenses of the fiduciary entity.

526 c. An income-generating investment vehicle, on which income shall be
527 paid to the fiduciary entity or its beneficiary or beneficiaries, less any taxes and
528 expenses of the fiduciary entity.

529 d. An income-generating investment vehicle selected by the lawyer and
530 approved by a court for guardianship funds if the lawyer serves as guardian for
531 a ward under Ch. 54 and subject to Ch. 881, Wis. Stats.

532 e. An income-generating investment vehicle selected by the lawyer to
533 protect and maximize the return on funds in a bankruptcy estate, which
534 investment vehicle is approved by the bankruptcy trustee, by a bankruptcy court
535 order, or otherwise consistent with 11 U.S.C. § 345.

536 f. A draft account or other account that does not bear interest or pay
537 dividends when, in the lawyer's professional judgment, placement in the account
538 is consistent with the needs and purposes of the fiduciary entity or its beneficiary
539 or beneficiaries.

540 (4) **Location.** Each fiduciary account shall be maintained in a financial
541 institution as provided by the written authorization of the client, the governing
542 trust instrument, organizational by-laws, an order of a court, or, absent such
543 direction, in a financial institution that, in the lawyer's professional judgment,
544 will best serve the needs and purposes of the client or 3rd party for whom the
545 lawyer serves as fiduciary. If a lawyer acts in good faith in making this
546 determination, the lawyer is not subject to any charge of ethical impropriety or
547 other breach of the Rules of Professional Conduct. When the fiduciary property
548 is held in a draft account and the account is at a financial institution that is not
549 located in Wisconsin or authorized by state or federal law to do business in
550 Wisconsin, the lawyer shall comply with the requirements of sub. (k)(10)b., c.,
551 d., e., or f.

552 (5) **Cash transactions prohibited.** No withdrawal of cash shall be made
553 from a fiduciary account or from a deposit to a fiduciary account. No check
554 shall be made payable to "Cash." No withdrawal shall be made from a fiduciary
555 account by automated teller or cash dispensing machine.

556 (6) **Availability of funds for disbursement.** A lawyer shall not disburse
557 funds from a fiduciary account unless the deposit from which those funds will

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558 be disbursed has cleared and the funds are available for disbursement. The
559 exception for real estate transactions in sub. (f)(4)b. shall apply to fiduciary
560 accounts.

561 **(7) Record retention.** A lawyer shall maintain and preserve complete
562 records of fiduciary account funds, all deposits and disbursements, and other
563 fiduciary property and shall preserve those records for the six most recent years
564 during which the lawyer served as a fiduciary and shall preserve at a minimum,
565 a summary accounting of all fiduciary funds and property for prior years during
566 which the lawyer served as a fiduciary. After the termination of the fiduciary
567 relationship, the lawyer shall preserve the records required by this paragraph for
568 at least six years. Electronic records shall be backed up by an appropriate
569 storage device. The office of lawyer regulation shall publish guidelines for
570 fiduciary account record keeping.

571 **(8) Record production.** All fiduciary account records have public
572 aspects related to a lawyer's fitness to practice. Upon request of the office of
573 lawyer regulation, or upon direction of the supreme court, the records shall be
574 submitted to the office of lawyer regulation for its inspection, audit, use, and
575 evidence under any conditions to protect the privilege of clients that the court
576 may provide. The records, or an audit of the records, shall be produced at any
577 disciplinary proceeding involving the lawyer, whenever material.

578 **(9) Burden of proof.** A lawyer's failure to promptly submit fiduciary
579 account records to the office of lawyer regulation or promptly provide an
580 accounting of fiduciary property to the office of lawyer regulation shall result in
581 a presumption that the lawyer has failed to hold fiduciary property in trust,
582 contrary to SCR 20:1.15(k)(1). This presumption may be rebutted by the
583 lawyer's production of records or an accounting that overcomes this
584 presumption by clear, satisfactory, and convincing evidence.

585 **(10) Dishonored payment notification or alternative protection.** A
586 lawyer who holds fiduciary property in a draft account from which funds are
587 disbursed through a properly payable instrument or electronic transaction shall
588 take any of the following actions:

589 a. Comply with the requirements of sub. (h) relating to dishonored
590 payment notification (overdraft notices).

591 b. Have the account independently audited by a certified public
592 accountant on at least an annual basis.

593 c. Hold the funds in a draft account, which requires the approval of a co-
594 trustee, co-agent, co-guardian, or co-personal representative before funds may
595 be disbursed from the account.

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596 d. Require and document the approval of two people from a group
597 consisting of a lawyer or a member or employee of the lawyer's law firm before
598 funds may be disbursed from the account.

599 e. In the case of an estate or trust, provide an accounting of the
600 administration at least annually to all beneficiaries currently eligible to receive
601 income distributions.

602 f. In the case of a guardianship proceeding in which annual financial
603 accountings must be reviewed by a court, timely file those annual financial
604 accountings with the court.

605 **(11) Fiduciary account certificate and acknowledgements.** Funds
606 held by a lawyer in a fiduciary account are subject to the requirements of sub.
607 (i).

608 **(m) Exceptions to this section.** This rule does not apply in any of the
609 following instances in which a lawyer is acting in a fiduciary capacity:

610 (1) The lawyer is serving as a bankruptcy trustee, subject to the oversight
611 and accounting requirements of the bankruptcy court or the office of U.S.
612 Trustee.

613 (2) The lawyer is serving as an assignee or receiver under the provisions
614 of Ch. 128, Wis. Stats.

615 (3) The property held by the lawyer when acting in a fiduciary capacity
616 is property held for the benefit of an immediate family member of the lawyer.

617 (4) The lawyer is serving in a fiduciary capacity for a civic, fraternal, or
618 non-profit organization that is not a client and has other officers or directors
619 participating in the governance of the organization.

620 (5) The lawyer is acting in the course of the lawyer's employment by an
621 employer not itself engaged in the practice of law, provided that the lawyer's
622 employment is not ancillary to the lawyer's practice of law.

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WISCONSIN COMMENT

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626 A lawyer must hold the property of others with the care required of a professional
627 fiduciary. All property that is the property of clients or 3rd parties must be kept separate from
628 the lawyer's business and personal property and, if monies, in one or more trust or fiduciary
629 accounts. Lawyers have duties to keep clear, distinct, and accurate records of all trust
630 transactions, and to be able always to make a full accounting. See, In re Trust Estate of Martin,
631 39 Wis. 2d 437, 159 N.W.2d 660 (1968).

632

633

634 **SCR 20:1.15(a)(2) Electronic transaction.**

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635 The types of electronic transactions are developing. For examples of current types of
636 electronic transactions, see the record-keeping guidelines published by the office of lawyer
637 regulation.

638

639 **SCR 20:1.15(b)(1) Separate accounts.**

640 With respect to probate matters, a lawyer's role may be to serve in a fiduciary capacity
641 as the personal representative, to represent an estate's personal representative, or to act as both
642 personal representative and attorney for an estate. SCR 20:1.15(k) applies to funds and
643 property which a lawyer receives, holds, and distributes while serving in the fiduciary role of
644 personal representative. Such funds and property may include, but are not limited to, bank and
645 investment accounts, stocks, and bonds. SCR 20:1.15(b)-(i) apply to funds and property
646 which a lawyer receives, holds, and distributes in connection with the representation of a
647 client/personal representative or an estate. Such funds include, but are not limited to,
648 advanced legal fees and advanced costs. If a lawyer acts in good faith to safeguard funds and
649 property received in connection with a probate matter, the lawyer is not subject to any charge
650 of ethical impropriety for holding what may be determined to be fiduciary funds in a
651 segregated trust account or in an IOLTA account for a limited period of time, or for holding
652 what may be determined to be trust funds in a fiduciary account.

653

654 **SCR 20:1.15(b)(5) Insurance and safekeeping requirements.**

655 Pursuant to SCR 20:1.15(b)(5), trust accounts are required to be held in financial or
656 IOLTA participating institutions that are insured by the FDIC, the NCUSIF, the SIPC or any
657 other investment institution financial guaranty insurance. However, since federal law dictates
658 the amount of insurance coverage available from the FDIC, the NCUSIF, and the SIPC, funds
659 in excess of those limits are not insured. Federal law also limits the types of losses that are
660 covered by SIPC insurance. Consequently, the purpose of the insurance and safety
661 requirements is not to guarantee that all funds are adequately insured. Rather, it is to assure
662 that trust funds are held in reputable financial or IOLTA participating institutions and that the
663 funds are eligible for the insurance that is available. The exceptions to the SCR 20:1.15(b)(5)
664 requirement relate to trust property other than funds and to IOLTA accounts that are subject
665 to the safety requirements of SCR 20:1.15(d)(3)b. and c.

666

667 **SCR 20:1.15(b)(6) Advanced legal fee and costs.**

668 While the general rule is that a lawyer must hold trust property separate from the
669 lawyer's own property, SCR 20:1.15(b)(6) allows very limited short-term temporary
670 commingling when accepting an electronic payment for advanced fees or costs.
671 Considering the expense of electronic payment processing providers, this allows a lawyer
672 to maintain only one electronic payment processing provider service and to have it
673 connected to just one bank account, e.g. the law firm's operating account. The lawyer may
674 accept electronic payments for advanced fees or costs to that account without violating
675 SCR 20:1.15(a), so long as any payments for advanced fees or costs are promptly
676 transferred to the lawyer's trust account within two business days.

677

SCR 20:1.15(d)(3) Safekeeping requirements.

678

See comment to SCR 20:1.15(b)(5).

679

680

SCR 20:1.15(d)(4) Income requirements.

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681 Pursuant to SCR 20:1.15(d)(4), IOLTA accounts shall bear the highest non-
682 promotional interest rate or dividend that is generally available to non-IOLTA customers at
683 the same branch or main office location when the IOLTA account meets or exceeds the same
684 eligibility qualifications, if any, including a minimum balance. Investment products,
685 including repurchase agreements and shares of mutual funds, are neither deposits nor federally
686 or FDIC-insured. An investment in a repurchase agreement or money market fund may
687 involve investment risk including possible loss of the principal amount invested. The rule,
688 however, provides safeguards to minimize any potential risk by limiting investment products
689 to repurchase agreements and open-end money market funds that invest in United States
690 government securities only.

691

692 **SCR 20:1.15(e) Prompt notice and delivery of property.**

693 Third parties, such as a client's creditors, may have just claims against funds or other
694 property in a lawyer's custody. A lawyer may have a duty under applicable law, including
695 SCR 20:1.15(e), to protect such 3rd-party claims against wrongful interference by the client,
696 and accordingly, may refuse to surrender the property to the client. However, a lawyer should
697 not unilaterally assume to arbitrate a dispute between the client and the 3rd party. If a lawyer
698 holds property belonging to one person and a second person has a contractual or similar claim
699 against that person but does not claim to own the property or have a security interest in it, the
700 lawyer is free to deliver the property to the person to whom it belongs.

701

702 **SCR 20:1.15(e)(4) Burden of proof.**

703 A lawyer's failure to comply with the delivery requirements of SCR 20:1.15(e)(1) or
704 the accounting requirements of SCR 20:1.15(e)(2) will result in a presumption that the lawyer
705 has failed to hold property in trust, contrary to SCR 20:1.15(b)(1). This presumption can be
706 rebutted by the lawyer's production of records or an accounting that overcomes this
707 presumption by clear, satisfactory, and convincing evidence. See, In re Trust Estate of Martin,
708 39 Wis. 2d 437, 159 N.W.2d 660 (1968).

709

710 **SCR 20:1.15(f)(1) Security of transactions.**

711 SCR 20:1.15(f)(1) takes into account the modern banking and payments industry,
712 allowing for electronic transfers to and from the trust account, so long as such transfers are
713 authorized in advance by a lawyer in the law firm or a person under a lawyer's direct
714 supervision. Should there be any chargeback, surcharge, or ACH reversal of an electronic
715 payment to the trust account, the lawyer is responsible for replacing any and all such funds
716 within three business days of actual notice of the chargeback, surcharge, or ACH reversal,
717 and the lawyer must reimburse the account prior to accepting any additional electronic
718 deposits.

719

Approval of disbursements

720 This rule requires the signature of a lawyer, or a person under the lawyer's direct
721 supervision, on all checks issued from a firm trust account and also requires a lawyer's
722 authorization for all electronic disbursements from a firm trust account. Written
723 confirmation of authorization for electronic disbursements should be maintained as part of
724 complete trust account records.

725

Costs associated with electronic payments

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726 Electronic payment systems, such as credit cards, routinely impose charges on
727 vendors when a customer pays for goods or services. That charge may be deducted directly
728 from the customer's payment. Vendors who accept credit cards routinely credit the
729 customer with the full amount of the payment and absorb the charges. Before holding a
730 client responsible for these charges, a lawyer should disclose this practice to the client in
731 advance, and assure that the client understands and consents to the charges. This disclosure
732 should be in writing if necessary to comply with SCR 20:1.5(b). In addition, the lawyer
733 should ensure that holding the client responsible for transaction costs does not violate the
734 terms of service of the payment system provider or other law.

735
736 **SCR 20:1.15(f)(4)b. Exception: Real estate transactions.**

737 SCR 20:1.15(f)(4)b. establishes an exception to the requirement that a lawyer only
738 disburse funds that are available for disbursement, i.e., funds that have been credited to the
739 account. This exception was created in recognition of the fact that real estate transactions in
740 Wisconsin require a simultaneous exchange of funds. However, even under this exception,
741 the funds from which a lawyer disburses the proceeds of the real estate transaction, i.e., the
742 lender's check, draft, wire transfer, etc., must be deposited no later than the first business day
743 following the date of the closing. In refinancing transactions, the lender's funds must be
744 deposited as soon as possible, but no later than the first business day after the loan proceeds
745 are distributed. Proceeds are generally distributed three days after the closing date.

746
747 **SCR 20:1.15(g)(2) Record production.**

748 The duty of the lawyer to produce client trust account records for inspection under
749 SCR 20:1.15(g)(2) is a specific exception to the lawyer's responsibility to maintain the
750 confidentiality of the client's information as required by SCR 20:1.6.

751
752 **SCR 20:1.15(g)(3) Burden of proof.**

753 A lawyer's failure to comply with the record production requirements of SCR
754 20:1.15(g)(2) or to provide an accounting for trust property will result in a presumption that
755 the lawyer has failed to hold property in trust, contrary to SCR 20:1.15(b)(1). This
756 presumption can be rebutted by the lawyer's production of records or an accounting that
757 overcomes this presumption by clear, satisfactory, and convincing evidence. See, In re Trust
758 Estate of Martin, 39 Wis. 2d 437, 159 N.W.2d 660 (1968).

759
760 **SCR 20:1.15(j) Multi-jurisdictional practice.**

761 This rule does not prohibit a lawyer whose principal office is in another jurisdiction
762 and who permissibly represents clients in Wisconsin matters from using a trust account for
763 Wisconsin matters that is compliant with the rules of the other jurisdiction.

764 **SCR 20:1.15(k)(1) Segregation of fiduciary property.**

765 See comment to SCR 20:1.15(b)(1).

766
767 **SCR 20:1.15(k)(9) Burden of proof.**

768 A lawyer's failure to comply with the record production requirements of SCR 20:1.15(k)(8)
769 or to provide an accounting for fiduciary property will result in a presumption that the lawyer
770 has failed to hold fiduciary property in trust, contrary to SCR 20:1.15(k)(1). This presumption
771 can be rebutted by the lawyer's production of records or an accounting that overcomes this
772 presumption by clear, satisfactory, and convincing evidence. See, In re Trust Estate of Martin,

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773 39 Wis. 2d 437, 159 N.W.2d 660 (1968).