

## **Supreme Court re-creates trust account rule; amends related rules**

On April 4, 2016, the Wisconsin Supreme Court repealed and re-created SCR 20:1.15 – **Safekeeping property; trust accounts and fiduciary accounts**, and amended SCR 20:1.0, SCR 20:1.5 and SCR 22.39, effective July 1, 2016. The changes to SCR 20:1.15 will expand the use of electronic transactions in trust and fiduciary accounts beyond the current limits of accepting payments for legal fees and costs, and collecting debts.

In recognition of the fact that the shift from check-driven banking to electronic banking will make it more difficult for OLR to audit trust and fiduciary accounts, the Court agreed to impose on lawyers a rebuttable presumption that a lawyer has failed to hold funds in trust, in violation of SCR 20:1.15(b)(1) or (k)(1), when the lawyer fails to promptly deliver trust or fiduciary property to a client or third party entitled to the property, when the lawyer fails to promptly submit records to OLR, or when the lawyer fails to promptly provide an accounting of the property to OLR. See, amendments to SCR 22.39 – **Burden of proof**, and SCRs 20:1.15(e)(4), (g)(3) and (k)(9), each entitled – **Standard of proof**.

The amendments to SCR 20:1.5 **Fees** are limited to the transfer of several fee-related sections of the trust account rule to the fee rule. The sections of the trust account rule include SCR 20:1.15(b)(4) and (b)(4m), the requirement to hold fees in trust until earned or to utilize the alternative to holding fees in trust, which have been renumbered SCR 20:1.5(f) and (g). In addition, SCR 20:1.15(g) relating to the withdrawal of fees from the trust account, has been renumbered SCR 20:1.5(h)

The Court also eliminated the detailed record keeping requirements in SCR 20:1.15(f) in order to provide lawyers with more flexibility regarding their record keeping methods. However, the Court also stated: "This change does not relieve a lawyer of his or her obligation to maintain proper records . . . ." In lieu of the detailed requirements, OLR will publish guidelines for record keeping on its website.

The amendments to SCR 20:1.0 (terminology) are very limited and relate to the rules of professional conduct that are cross referenced in SCRs 20:1.0(ag) – **Advanced fees**, and SCR 20:1.0(dm) – **Flat fees**.

**Education:** OLR will present [Seminars](#) in Madison on April 29, 2016 and September 30, 2016 that include information regarding the new rules as well as electronic banking. In addition the State Bar will present a [Webcast](#) on the new rules on June 30, 2016, which will be replayed on July 8, 14, 19, and 27, 2016, and on August 4, 2016. Each webcast will run from 12:00 p.m. to 1:30 p.m.

Finally, OLR's Director, Keith Sellen, and its Trust Account Program Administrator, Mary Hoeft Smith, want to acknowledge the following

individuals who participated in the two-year process of researching and drafting the rules that have now been adopted by the Court:

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