

SUPREME COURT OF WISCONSIN

NOTICE

This order is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 14-07A

In the matter of corrections to Supreme Court
Order 14-07 amending Rules Relating to
Electronic Banking

FILED

DEC 7, 2016

Diane M. Fremgen
Clerk of Supreme Court
Madison, WI

The Office of Lawyer Regulation has identified the need for certain corrections or clarifications to the court's order issued April 4, 2016, amending and/or recreating supreme court rules (SCR) 20:1.0, 20:1.5, 20:1.15, and 22.39, (the "E-Banking" order). Accordingly,

IT IS ORDERED that effective the date of this order:

SECTION 1. SCR 20:1.15(a)(12) is amended to read:

20:1.15(a)(12) "Trust property" means funds or property of clients or 3rd parties, which is not fiduciary property, that is in the lawyer's possession in connection with a representation, ~~which is not fiduciary property.~~

SECTION 2. SCR 20:1.15(f)(3)c.2. is amended to read:

SCR 20:1.15(f)(3)c.2. The lawyer or law firm maintains a bond or crime insurance policy in an amount sufficient to cover the maximum daily account balance during the prior calendar year.

SECTION 3. SCR 20:1.15(f)(3)c.4. is created to read:

20:1.15(f)(3)c.4. The lawyer or law firm identifies the client matter and the reason for disbursement on the memo line of each check used to disburse funds; records in the financial institution's electronic payment system the date, amount, payee, client matter, and reason for the disbursement for each electronic transaction; and makes no disbursements by credit card, debit card, prepaid or other types of payment cards, or any other electronic payment system that does not generate a record of the date, amount, payee, client matter, and reason for the disbursement in the financial institution's electronic payment system.

SECTION 4. SCR 20:1.15(i)(1) is amended to replace the words "state" or "statement" with "certificate," "certify," or "certification" to reflect the language used in the previous version of this provision and for consistency with Wis. Stat. s. 757.293 (3), to read:

20:1.15(i)(1) A member of the state bar of Wisconsin shall file with the state bar of Wisconsin annually, with payment of the member's state bar dues or upon any other date approved by the supreme court, a ~~statement~~ certificate as to whether the member is engaged in the practice of law in Wisconsin. If the member is practicing law, the member shall ~~state~~ certify the name, address, and telephone number of each financial institution in which the member maintains a trust account, a fiduciary account, or a safe deposit box. The state bar shall supply to each member, with the annual dues statement, or at any other time directed by the supreme court, a form on which this ~~statement~~ certification shall be made.

SECTION 5. SCR 20:1.15(k)(3)a., b., c., d., and e. are re-lettered b., c., d., e., and f.

SECTION 6. A new SCR 20:1.15(k)(3)a. is created to read:

20:1.15(k)(3)a. A separate interest-bearing or dividend-paying fiduciary account on which interest or dividends shall be paid to the fiduciary entity or its beneficiary or beneficiaries, less any taxes and expenses of the fiduciary entity.

SECTION 7. SCR 20:1.15(k)(3)b. is amended to read:

20:1.15(k)(3)b. A pooled interest-bearing or dividend-paying fiduciary account with sub-accounting by the financial institution, the lawyer, or the law firm that will provide for computation of interest or dividends earned by each fiduciary entity's funds and the proportionate allocation of the interest or dividends to each of the fiduciary entities, less any ~~transaction costs~~ taxes and expenses of the fiduciary entity.

SECTION 8. SCR 20:1.15(k)(3)c. is amended to read:

20:1.15(k)(3)c. An income-generating investment vehicle, on which income shall be paid to the fiduciary entity or its beneficiary or beneficiaries, less any ~~transaction costs~~ taxes and expenses of the fiduciary entity.

SECTION 9. SCR 20:1.15(k)(7) is amended to read:

20:1.15(k)(7) A lawyer shall maintain and preserve complete records of fiduciary account funds, all deposits and disbursements, and other fiduciary property and shall preserve those records for the six most recent years during which the lawyer served as a fiduciary and shall preserve at a minimum, a summary accounting of all fiduciary funds and property for prior years during which the lawyer

served as a fiduciary. After the termination of the fiduciary relationship, the lawyer shall preserve the records required by this paragraph for at least six years. Electronic records shall be backed up by an appropriate storage device. The office of lawyer regulation shall publish guidelines for fiduciary account record-keeping.

SECTION 10. The Comment to SCR 20:1.15(f)(3)a. is amended to read:

WISCONSIN COMMENT

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

SECTION 11. The Comment to SCR 20:1.15(f)(3)c. is amended to read:

WISCONSIN COMMENT

As an alternative to establishing an E-Banking Trust Account for the purpose of making electronic deposits and disbursements, a lawyer may make electronic deposits and disbursements from an IOLTA account

when additional protections are in place. This alternative may reduce the expense of maintaining two accounts. On the other hand, the alternative requires that the lawyer prevent the electronic withdrawal of funds from the IOLTA account that could occur through chargebacks or reversals against a credit card deposit, or other electronic withdrawals. Specifically, the lawyer must either establish agreements with the lawyer's financial institution and with payment providers to deduct fees, surcharges, and chargebacks from the law firm business account or reimburse the account for such deductions with funds belonging to the lawyer or law firm within three business days after receiving notice of the deductions. In addition, the lawyer must establish an agreement with the financial institution to block debits from the IOLTA account.

SECTION 12. SCR 20:1.15(e)(4) (title), SCR 20:1.15(g)(3)(title), and SCR 20:1.15(k)(9)(title), and the captions of the three related comments to these rules are each amended to read as follows:

(title) ~~Standard~~ Burden of proof

SECTION 13. The Comment to SCR 20:1.15(e)(4) is amended to read:

WISCONSIN COMMENT

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

SECTION 14. The Comment to Supreme Court Rule SCR 20:1.15(g) (3) is amended to read:

WISCONSIN COMMENT

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

SECTION 15. The Comment to Supreme Court Rule SCR 20:1.15(k) (9) is amended to read:

WISCONSIN COMMENT

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

IT IS FURTHER ORDERED that the corrections adopted pursuant to this order shall apply to conduct occurring after the effective date of Supreme Court Order 14-07.

IT IS FURTHER ORDERED that notice of these corrections to SCR 20:1.15 be given by a single publication of a copy of this order in

the official publications designated in SCR 80.01, including the official publishers' online databases, and on the Wisconsin court system's web site. The State Bar of Wisconsin shall provide notice of this order.

Dated at Madison, Wisconsin, this 7th day of December, 2016.

BY THE COURT:

Diane M. Fremgen
Clerk of Supreme Court

¶1 SHIRLEY S. ABRAHAMSON, J. (*concurring*). I join the order but would have the following Wisconsin Comment added to SCR 20:1.15(i)(1) so that this information appears in the final version of the rule to inform readers:

Wisconsin Comment: SCR 20:1.15(i)(1) is amended to replace the words 'state' or 'statement' with 'certificate,' 'certify,' or 'certification' to reflect the language used in the previous version of this provision and for consistency with Wis. Stat. s. 757.293 (3) and other provisions in SCR 20:1.15.

¶2 I am authorized to state that Justice ANN WALSH BRADLEY joins this concurrence.

