

Protecting third party interests in trust property

Pursuant to SCR 20:1.15(d), lawyers are required to protect the interests of third parties, as well as clients, with respect to trust property. However, the rule limits the types of third party interests that a lawyer must protect to those that are identified by “a lien, court order, judgment, or contract.” The rule states:

(d) Prompt notice and delivery of property.

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

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

(3) **Disputes regarding trust property.** When the lawyer and another person or the client and another person claim ownership interest in trust property identified by a lien, court order, judgment, or contract, the lawyer shall hold that property in trust until there is an accounting and severance of the interests. If a dispute arises regarding the division of the property, the lawyer shall hold the disputed portion in trust until the dispute is resolved. Disputes between the lawyer and a client are subject to the provisions of sub. (g) (2).

A lawyer's obligations under SCR 20:1.15(d) are distinct from the law on assignments. [See, *Riegleman v. Krieg* (2004 WI App 85, 679 N.W.2d 857) and *Yorgan v. Durkin* (2006 WI 60, 715 N.W.2d 160), which discuss the lawyer's obligations under the law on assignments.] In *Disciplinary Proceedings against Barrock* (2007 WI 24, 727 N.W.2d 833), the Court found that, under SCR 20:1.15(d), a lawyer who had received notice of a third party's lien against a client's personal injury settlement was obligated to protect that third party's interest in the trust property, even though the lawyer's client had instructed the lawyer to disregard the lien. Based upon these decisions, the Office of Lawyer Regulation believes: 1) that SCR 20:1.15(d) requires a lawyer to protect third party interests in trust property when the lawyer has received notice of a third party interest that is identified by a lien, court order, judgment, or contract, and 2) that the lawyer's assent to protect that third party's interest is not required.

See also, State Bar Formal Ethics Opinion E-09-01.