

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

(Effective, 1/1/10)

(e) Operational requirements for trust accounts.

(4) Prohibited transactions.

a. **Cash.** No disbursement of cash shall be made from a trust account or from a deposit to a trust account, and no check shall be made payable to "Cash."

b. **Telephone transfers.** No deposits or disbursements shall be made to or from a pooled trust account by a telephone transfer of funds. This section does not prohibit any of the following:

1. wire transfers.
2. telephone transfers between non-pooled draft and non-pooled non-draft trust accounts that a lawyer maintains for a particular client.

c. **Internet transactions.** A lawyer shall not make deposits to or disbursements from a trust account by way of an Internet transaction.

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

e. **Credit card transactions.** A lawyer shall not authorize transactions by way of credit card to or from a trust account. However, earned fees may be deposited by way of credit card to a lawyer's business account.

f. **Debit card transactions.** A lawyer shall not use a debit card to make deposits to or disbursements from a trust account.

g. **Exception: Collection trust accounts.** Upon demonstrating to the office of lawyer regulation that a transaction prohibited by sub. (e)(4)c., e., or f., constitutes an integral part of the lawyer's practice, a lawyer may petition that office for a separate, written agreement, permitting the lawyer to continue to engage in the prohibited transaction, provided the lawyer identifies the excepted account, provides adequate account security, and complies with specific record-keeping and production requirements.

h. **Exception: Fee and cost advances by credit card, debit card or other electronic deposit.** A lawyer may establish a trust account, separate from the lawyer's IOLTA account, solely for the purpose of receiving advanced payments of legal fees and costs by credit card, debit card or other electronic deposit, subject to the following conditions:

1. the separate trust account shall be entitled: "Credit Card Trust Account";
2. lawyer and law firm funds, reasonably sufficient to cover all

monthly account fees and charges and, if necessary, any deductions by the financial institution or card issuer from a client's payment by credit card, debit card, or other electronic deposit, shall be maintained in the credit card trust account, and a ledger for account fees and charges shall be maintained;

3. each payment by credit card, debit card or other electronic deposit, including, if necessary, a reimbursement by the lawyer or law firm for any deduction by the financial institution or card issuer from the gross amount of each payment, shall be transferred from the credit card trust account to the IOLTA account immediately upon becoming available for disbursement; and

4. within 3 business days of receiving actual notice that a chargeback or surcharge has been made against the credit card trust account, the lawyer shall replace any and all funds that have been withdrawn from the credit card trust account by the financial institution or card issuer; and shall reimburse the account for any shortfall or negative balance caused by a chargeback or surcharge. The lawyer shall not accept new payments to the credit card trust account until the lawyer has reimbursed the credit card trust account for the chargeback or surcharge.

WISCONSIN COMMENT

SCR 20:1.15(e)(4)d. Electronic transfers by 3rd parties.

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

SCR 20:1.15(e)(4)g. Exception: Collection trust accounts.

This exception was adopted in response to concerns raised by members of the collection bar who presently rely on certain electronic banking practices that were not expressly prohibited prior to the adoption of this rule. The court acknowledges that electronic banking practices are increasingly used in the practice of law. However, the court also acknowledges that such transactions will require new approaches to alleviate legitimate concerns about the potential for fraud and risk of conversion with respect to their usage in connection with trust accounts. Collection lawyers may be able to satisfy these concerns because of security measures inherent in their practice. This exception is intended as a temporary measure, pending further consideration of the issue and eventual adoption of a rule that will permit electronic banking procedures in additional practice areas, conditioned upon the implementation of appropriate safeguards. The agreement referenced in the exception is available from the office of lawyer regulation.

SCR 20:1.15(e)(4)h.3. Exception: Fee and cost advances by credit card, debit card or other electronic deposit.

Financial institutions, as credit card issuers, routinely impose charges on vendors when a customer pays for goods or services with a credit card. That charge is deducted directly from the customer's payment. Vendors who accept credit cards routinely credit the customer with the full amount of the payment and absorb the charges. Before holding a client responsible for such charges, a lawyer needs to disclose this practice to the client in advance, and assure that the client understands and consents to the charges.

In addition, the lawyer needs to investigate the following concerns before accepting payments by credit card:

- 1. Does the credit card issuer prohibit a lawyer/vendor from requiring the customer to pay the charge?** If a lawyer intends to credit the client for anything less than the full amount of the credit card payment, the lawyer needs to assure that this practice is not prohibited by the credit card issuer's regulations and/or by the agreement between the lawyer and the credit card issuer. Entering into an agreement with a credit card issuer with the intent to violate this type of requirement may constitute conduct involving dishonesty, fraud, or deceit, in violation of SCR 20:8.4(c).
- 2. Does the credit card issuer require services to be rendered before a credit card payment is accepted?** If a lawyer intends to accept fee advances by credit card, the lawyer needs to assure that fee advances are not prohibited by the credit card issuer's regulations and/or by the agreement between the lawyer and the credit card issuer. Entering into an agreement with a credit card issuer with the intent to violate this type of requirement may constitute conduct involving dishonesty, fraud, or deceit, in violation of SCR 20:8.4(c).
- 3. By requiring clients to pay the credit cards charges, is the lawyer required to make certain specific disclosures to such clients and offer cash discounts to all clients?** If a lawyer intends to require clients to pay credit card charges, the lawyer needs to assure that the lawyer complies with all state and federal laws relating to such transactions, including, but not limited to, Regulation Z of the Truth in Lending Act, 12 C.F.R. s. 206.