

SPD (State Public Defender) payments

Lawyers who are appointed by the State Public Defender's Office are required to submit their hours to the SPD in order to receive payment. Since those fees have been earned upon receipt of the payment, SPD payments should not be deposited into the lawyer's trust account unless the payment includes funds owed to 3rd parties. **CAUTION:** If the payment includes funds owed to an investigator or anyone other than the lawyer, the SPD check must be deposited into the lawyer's trust account. The lawyer should disburse the legal fees as soon as the funds are available for disbursement. This may be one to two days following a deposit, depending upon fund availability policies of the lawyer's financial institution. Under these circumstances, a lawyer is not required to comply with 5 day waiting period required by SCR 20:1.15(g). Similarly, the lawyer should disburse the portion owed to the investigator to another 3rd party once the funds become available for disbursement.

In *Matter of Disciplinary Proceedings against Semancik*, (Opinion filed, October 14, 2005), the Wisconsin Supreme Court adopted the following findings of the referee relating to fees owed by an attorney to an investigator:

. . . by failing to deposit into her trust account four checks from the State Public Defender's office that contained funds belonging to [an investigator], Attorney Semancik failed to hold in trust, separate from her own property, that property of a third person that was in her possession in connection with a representation, in violation of **former SCR 20:1.15(a)**.¹ (Emphasis added).

. . . by failing to notify [the investigator] of the receipt of funds in which [he] had an interest, and by failing to deliver those funds to [the investigator], Attorney Semancik failed to notify [him] promptly in writing of her receipt of the funds and failed to promptly deliver to [him] funds to which he was entitled, in violation of **former SCR 20:1.15(b)**.² (Emphasis added).

Former SCR 20:1.15(a) has been superceded by SCR 20:1.15(b)(1), which provides as follows:

Separate account. 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.

¹ Former SCR 20:1.15(a) applies to misconduct committed prior to July 1, 2004. It provides in pertinent part:

A lawyer shall hold in trust, separate from the lawyer's own property, that property of clients and third persons that is in the lawyer's possession in connection with a representation or when acting in a fiduciary capacity. . . . All funds of clients and third persons paid to a lawyer or law firm shall be deposited in one or more identifiable trust accounts.

² Former SCR 20:1.15(b) provides:

Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person in writing. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall render a full accounting regarding such property.

Former SCR 20:1.15(b) has been superceded by SCR 20:1.15(d)(1), which provides as follows:

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.