
In the Matter of the Petition
For Amendment of Trust Account
Insurance and Safety Requirements

TO: Chief Justice Shirley S. Abrahamson
Justice Ann Walsh Bradley
Justice N. Patrick Crooks
Justice David T. Prosser, Jr.
Justice Patience D. Roggensack
Justice Annette Kingsland Ziegler
Justice Michael J. Gableman

Filed with the Clerk of Court David Schanker
Clerk of Supreme Court
110 E. Main Street
Suite 215
Madison, WI 53703

The Board of Administrative Oversight and Office of Lawyer Regulation hereby petition the Supreme Court of Wisconsin for an order amending Supreme Court Rule (SCR) 20:1.15(e)(2)a., and comments to SCR 20:1.15(cm)(3) and SCR 20:1.15(e)(2)a., to provide greater protection to the public when a lawyer holds trust property in a credit union.

Petitioners submit Appendix A (text of proposed amendments), Supporting Memorandum, and Cover Sheet in support of this request.

Respectfully submitted this ____ day of _____, 2010.

Steven J. Koszarek
Chairperson
Board of Administrative
Oversight

Keith L. Sellen
Director
Office of Lawyer Regulation
State Bar No. 1001088

APPENDIX A

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

(e) Operational requirements for trust accounts.

(2) Insurance and safety requirements.

a. Each trust account shall be maintained at a financial institution that is insured by the federal deposit insurance corporation, the national credit union share insurance fund, the securities investor protection corporation, or any other investment institution financial guaranty insurance. Except as provided in subsections (b)(6) and (cm)(3)b. and c., trust property shall be held in an account in which each individual owner's funds are eligible for insurance.

b. IOLTA accounts shall also comply with the requirements of sub. (cm) (3).

WISCONSIN COMMENT

SCR 20:1.15(cm)(3) Insurance and safety requirements.

Pursuant to SCR 20:1.15 (cm) (3), IOLTA accounts are required to be held in IOLTA participating institutions that are insured by the federal deposit insurance corporation (FDIC), the national credit union share insurance fund (NCUSIF), the securities investor protection corporation (SIPC) or any other investment institution financial guaranty insurance. However, since federal law dictates the amount of available insurance coverage available from the FDIC, the NCUSIF and the SIPC, funds in excess of the those limits are not insured. Federal law also limits the types of losses that are covered by SIPC insurance. Consequently, the purpose of the insurance and safety requirements is not to guarantee that all funds are adequately insured. Rather, it is to assure that trust funds are held in reputable IOLTA participating institutions and, as specified in subsection (e)(2)a., that the funds are eligible for the insurance that is available.

SCR 20:1.15(e)(2)a. requires a lawyer to hold funds in an account where each owner's funds are eligible for the financial institution's insurance coverage. Practitioners should exercise care when placing trust funds in an IOLTA or any other type of lawyer trust account at a credit union, because an individual owner of funds held in any type of lawyer trust account (i.e., a client or third party) is eligible for NCUSIF insurance only if that individual owner is a member of the credit union, or if the credit union is designated by the National Credit Union Administration (NCUA) as a "low-income" credit union. The exceptions to the SCR 20:1.15(e)(2)a. requirement relate to trust property other than funds and to IOLTA accounts that are subject to the safety requirements of SCR 20:1.15(cm)(3)b. and c.

SCR 20:1.15(e)(2) Insurance and safety requirements.

Pursuant to SCR 20:1.15(e)(2), trust accounts are required to be held in financial, investment, or IOLTA participating institutions that are insured by the federal deposit insurance corporation (FDIC), the national credit union share insurance fund (NCUSIF), the securities investor protection corporation (SIPC) or any other investment institution financial guaranty insurance. However, since federal law limits dictates the amount of available insurance coverage available from the FDIC, the NCUSIF and the SIPC, funds in excess of the those limits are not insured. Federal law also limits the types of losses that are covered by SIPC insurance. Consequently, the purpose of the insurance and safety requirements is not to guarantee that all funds are adequately insured. Rather, it is to assure that trust funds are held in reputable financial, investment, or IOLTA participating institutions; and, as specified in subsection (e)(2)a., that the funds are eligible for the insurance that is available.

SCR 20:1.15(e)(2)a. requires a lawyer to hold funds in an account where each owner's funds are eligible for the financial institution's insurance coverage. Practitioners should exercise care when placing trust funds in an IOLTA or any other type of lawyer trust account at a credit union, because an individual owner of funds placed in any type of lawyer trust account (i.e., a client or third party) is eligible for NCUSIF insurance only if that individual owner is a member of the credit union, or if the credit union is designated by the National Credit Union Administration (NCUA) as a "low-income" credit union. The exceptions to the SCR 20:1.15(e)(2)a. requirement relate to trust property other than funds and to IOLTA accounts that are subject to the safety requirements of SCR 20:1.15(cm)(3)b. and c.