

SUPPORTING MEMORANDUM 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 (BAO) and Office of Lawyer Regulation (OLR) provide the following memorandum in support of the petition to amend trust account insurance and safety requirements.

The petition seeks amendment to Supreme Court Rule (SCR) 20:1.15(e)(2)a. and its comment, and to the comment to SCR 20:1.15(cm)(3). The proposed amendments, which are at Appendix A, would allow lawyers to hold trust property in a credit union only when each individual owner's funds are eligible for insurance. Presently, an owner of trust funds held in a credit union is eligible for insurance only

if the 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.

Recent events in the mortgage and banking industries have raised concerns about the lawyer's fiduciary obligation to safeguard client and 3rd-party funds in trust accounts. In response, the Wisconsin Lawyer published an article in September 2008. Also, the Office of Lawyer Regulation sought a legal opinion from the NCUA regarding insurance coverage for trust funds deposited in a credit union. The NCUA opinion letter (Opinion No. 08-0840) confirmed that client funds in an IOLTA account are insured if the client is a member of the credit union, or if a credit union is designated as low-income. As of January 21, 2010, the NCUA website identified 242 credit unions in Wisconsin, only 12 of which are low-income credit unions.

Amendment of SCR 20:1.15(e)(2)a. would require a lawyer to deposit trust funds in a credit union only when each individual owner is eligible for insurance. The exceptions relate to trust property other than funds and to repurchase agreements and open-end money market funds authorized as a means to provide comparable interest for IOLTA accounts.

Amendment of the comments to SCR 20:1.15(cm)(3) and SCR 20:1.15(e)(2)a. adds helpful clarifying language, explains the new requirement, and provides information to lawyers regarding the rationale.

The proposed amendment would provide insurance eligibility for more owners of trust funds. The amendments should not affect funds held in banks and other FDIC-insured institutions. Based upon FDIC advisory opinions (Opinion Nos. FDIC-92-30 and FDIC 98-2), OLR understands that Federal Deposit Insurance covers all owners.

In 2008, the Washington State Supreme Court considered a proposal that credit unions be removed from the list of financial institutions in which trust funds may be deposited, and decided to allow credit unions to remain on the list.

Also in 2008, the Iowa Supreme Court amended its rule to allow interest-bearing trust funds to be held in trust in credit unions only to the extent each individual client's funds are eligible for insurance. This is similar to the proposed amendment in the petition.

Petitioners do not know of any substantial fiscal or administrative impacts caused by the adoption of the proposed rule amendments.

Petitioners do not believe there are any related petitions pending before the Court.

Petitioners have consulted the NCUA, the Wisconsin Credit Union League, and the Wisconsin State Bar Ethics Committee prior to submitting the petition.

Respectfully submitted this ___ day of _____, 2010.

Steven J. Koszarek
Chairperson
Board of Administrative
Oversight

Keith L. Sellen
Director
Office of Lawyer Regulation
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