
E-88-5 Client trust funds and property

Questions

1. SCR 20:1.15(c)(3)b requires a lawyer to make a determination whether a client would receive a positive net return after considering the cost of establishing and administering the account, including the costs of lawyer services. If a lawyer has a contingent fee arrangements, and puts the check in trust for the client for a period of 10 days only to assure that the check clears the bank before disbursing the funds, can the lawyer consider the cost of his or her services and office staff time to place the check in a separate trust account even if under the contingent fee arrangement the lawyer will not bill the client for those services of the lawyer and staff to open a separate account for the client's check for 10 to 12 days?

2. Regarding SCR 20:1.15(e), are these rules retroactive? For instance, if a lawyer had a pooled trust account without separate subsidiary ledgers for particular clients but with the balances for those clients as of Dec. 31, 1987, is it sufficient just to enter on the client's separate ledger sheet the amount held in the trust account for the client as of Jan. 1, 1988?

3. SCR 20:1.15(a) requires that other property of a client or a third person shall be identified as such and appropriately safeguarded. What is "other property"? Does it include abstracts, insurance policies, copies of tax returns or other documents needed in a divorce or an estate for preparing the case, which are not being held in an escrow capacity but are being used to obtain information or as evidence in the performance of services? Would records be required for this property; if so, what kind?

4. Finally, SCR 20:1.15(b) requires the lawyer to notify a client or third party in writing, upon receipt of property in which that person has an interest. If the client's property is subject to a lien or other interest of a third party, must the lawyer give notice to the third party upon receipt, and, upon request of the third person, render a full accounting regarding such property?

Opinion

1. Yes. *See* SCR 20:1.15(c)(3)b. *See also* SCR 20:1.15(c)(4), which relieves lawyers acting in good faith and in the exercise of sound judgment from disciplinary charges.

2. SCR chapter 20, containing the Rules of Professional Conduct for Attorneys, became effective Jan. 1, 1988. Regarding what accounting measures must be taken to bring trust account records into compliance with SCR 20:1.15(e) is not within the jurisdiction or expertise of this committee. Presumably the Board of Attorneys Professional Responsibility can provide some guidance regarding what it will require. *See, e.g., Wisconsin's New Rules of Professional Conduct: What Every Lawyer Should Know* (ATS-CLE, Nov. 1987) at 43 *et seq.*

3. This committee would construe the phrase "other property" as used in SCR 20:1.15 to include any and all property held by a lawyer in trust which property has any monetary value or legal or other importance to the person to whom it belongs. *See, e.g., Matter of Grubb*, 99 Wash. 2d 690 P.2d 1346 (1983).

4. The answer to both questions is yes.