



AMC 2023

Session 5

Are You Billing Ethically?

Aviva Meridian Kaiser and Christopher C. Shattuck, State Bar of Wisconsin, Madison

About the Presenters...

Aviva Meridian Kaiser is Ethics Counsel at the State Bar of Wisconsin. Prior to joining the State Bar in 2013, she taught at the University of Wisconsin Law School for 25 years. She taught Professional Responsibilities, Ethical and Professional Considerations in Writing, Problem Solving, and Risk Management. From 1992 until 2002, she was the Director of the Legal Research and Writing Program. Aviva received her B.A. in Chinese from the University of Pittsburgh and her J.D. from the State University of New York at Buffalo Law School. She clerked for the Honorable Louis B. Garippo in *People v. John Wayne Gacy* and clerked for the Honorable Maurice Perlin in the Illinois Appellate Court. She practiced law in Chicago before beginning her full-time teaching career at IIT Chicago/Kent College of Law. Aviva is a member of the State Bar of Wisconsin, a Wisconsin Law Fellow, an American Bar Foundation Fellow, and a frequent speaker on matters of professional ethics.

Christopher C. Shattuck has been the Law Practice Assistance Manager for the State Bar of Wisconsin since 2017. Mr. Shattuck previously managed a department and litigated cases at a creditors' rights firm in Milwaukee. In addition to providing confidential law practice consultations, he frequently writes and speaks on law practice management topics. He received his undergraduate and master of business administration degrees from the University of Wisconsin — Oshkosh and his law degree from the University of La Verne College of Law in southern California.

Are You Billing Ethically?

*State Bar of Wisconsin
Annual Meeting & Conference 2023*

By: Aviva Meridian Kaiser & Christopher C. Shattuck

Outline

1. Electronic Banking Options

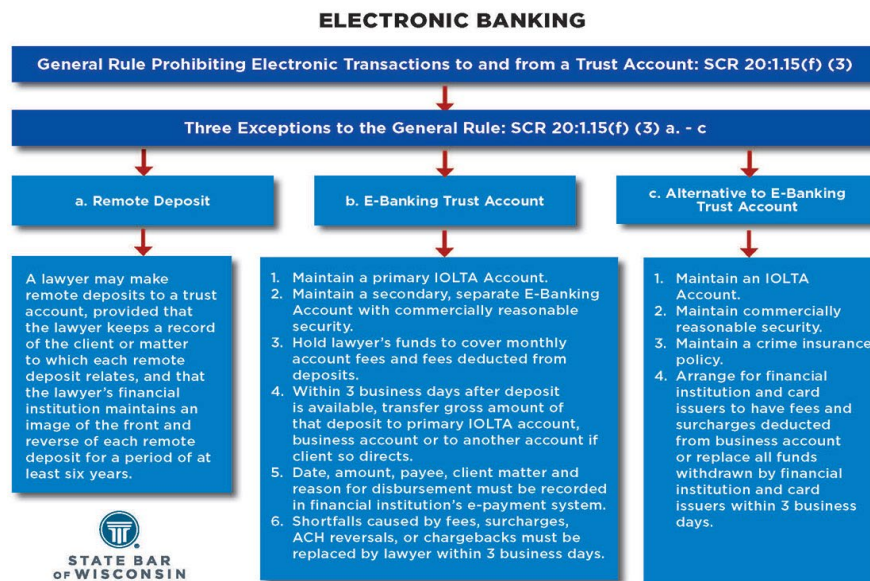
A. SCR 20:1.15(a)(2) – Electronic Transaction

- "Electronic transaction" means a paperless transfer of funds to or from a trust or fiduciary account. Electronic transactions do not include transfers initiated by voice or automated teller or cash dispensing machines.

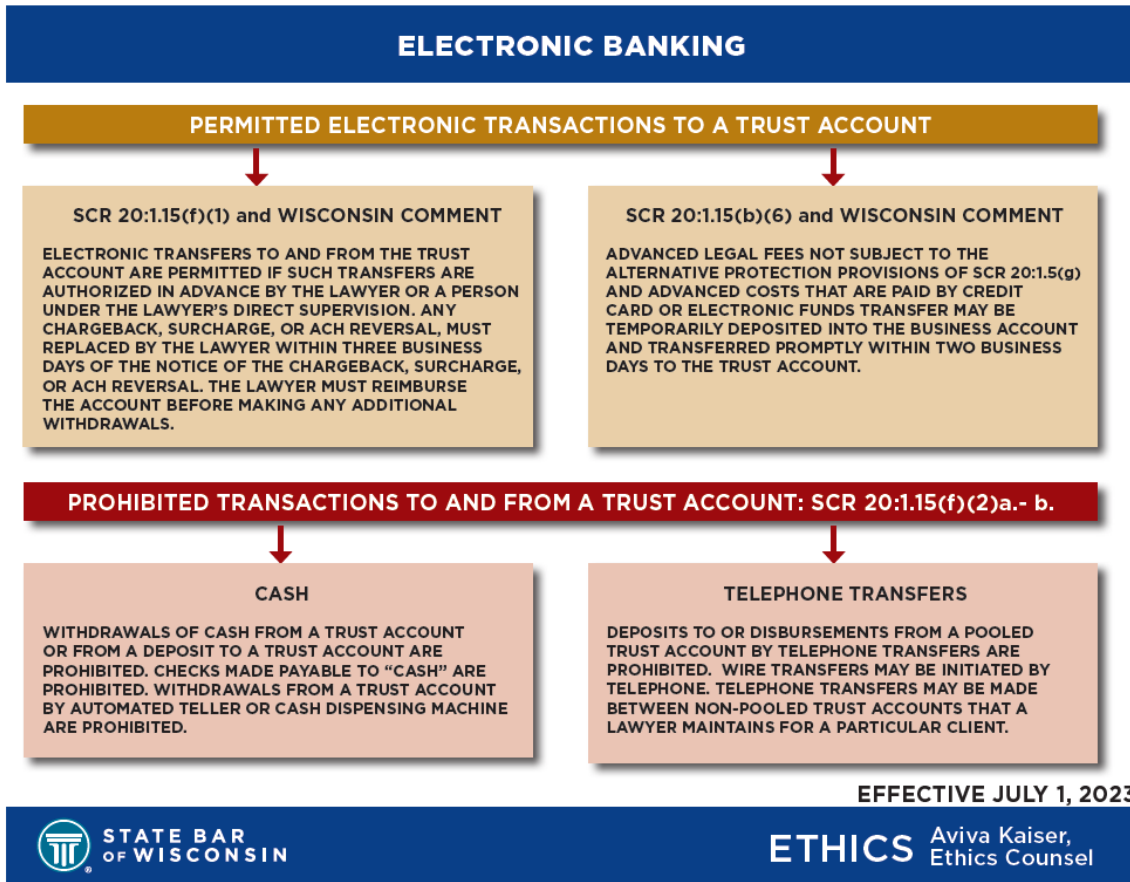
B. Overview of Rule Changes **Effective July 1, 2023**

- Standard IOLTA account can process electronic transactions, so long as commercially reasonable security measures are in place.
- No longer need a pass-through trust account, such as the E-Banking Trust Account.
- Transfers by 3rd parties are permitted, essentially allowing third parties to transfer and withdraw funds from a trust account.
- Advanced legal fees not subject to alternative protection provisions of SCR 20:1.5(g) and advanced costs that are paid by credit card or electronic funds transfer may be temporarily deposited into the business account and transferred promptly within two days to the trust account.
- No more cutting checks from your trust account into your business account. Again, electronic transactions are permitted.
- Although the E-Banking requirement is being eliminated, law firms can continue using the same accounts, provided they are processing trust funds correctly.
- No longer required to have a bond or crime insurance policy for All-in-One IOLTA.

C. **Prior to July 1, 2023**



D. Effective July 1, 2023



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E. Prior to July 1, 2023

TRUST ACCOUNT OPTIONS		STATE BAR OF WISCONSIN ETHICS Aviva Kaiser, Ethics Counsel
<div style="background-color: #0056b3; color: white; padding: 5px; text-align: center; font-weight: bold;">Traditional IOLTA Account + Required Business Account</div> <div style="background-color: #0056b3; color: white; padding: 5px; text-align: center; font-weight: bold;">Security Requirements</div> <ul style="list-style-type: none"> • Commercially reasonable measures [SCR 20:1.15(f)(1)] • Signatory authority limited to Wisconsin lawyer or person subject to SCR 20:5.3 supervision [SCR 20:1.15(f)(1)] <div style="background-color: #0056b3; color: white; padding: 5px; text-align: center; font-weight: bold;">Permitted Transactions</div> <ul style="list-style-type: none"> • Bank deposits [SCR 20:1.15(f)(3)] • Remote deposits [SCR 20:1.15(f)(3)a.] • Checks [SCR 20:1.15(f)(3)] • Wire transfers [SCR 20:1.15(f)(2)b.2.] <div style="background-color: #0056b3; color: white; padding: 5px; text-align: center; font-weight: bold;">Prohibited Transactions</div> <ul style="list-style-type: none"> • Transfers by voice or ATM [SCR 20:1.15(a)(2)] • Cash & ATM withdrawals [SCR 20:1.15(f)(2)a.] • Telephone transfers [SCR 20:1.15(f)(2)b.] • Electronic transfers by 3rd parties [SCR 20:1.15(f)(2)c.] • Electronic transactions, including credit, debit, prepaid and other payment cards, and ACH Transactions [SCR 20:1.15(f)(3)] 	<div style="background-color: #0056b3; 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(b)(6) Advanced legal fees and costs. A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, except as follows:

- a. The lawyer complies with the requirements of SCR 20:1.5(g).
- b. The lawyer may accept **credit card payments or electronic funds transfer payments of advanced legal fees and expenses** as temporary deposits in a non-trust account, so long as such funds are transferred promptly, and no later than two business days following receipt, into a client trust account. However, except as provided by SCR 20:1.5(g), a lawyer shall not accept any advance payment into a non-trust account if the lawyer has any reason to suspect that the funds will not be successfully transferred into the client trust account within two business days of receipt. **(Emphasis Added).**

COMMENT SCR 20:1.15 (b) (6) Advanced legal fee and costs. While the general rule is that a lawyer must hold trust property separate from the lawyer's own property, SCR 20:1.15(b)(6) **allows very limited short-term temporary commingling when accepting an electronic payment for advanced fees or costs.** Considering the expense of electronic payment processing providers, this allows a lawyer to maintain only one electronic payment processing provider service and to have it connected to just one bank account, e.g. the law firm's operating account. The lawyer may accept electronic payments for advanced fees or costs to that account without violating SCR 20:1.15(a), so long as any payments for advanced fees or costs are promptly transferred to the lawyer's trust account within two business days. **(Emphasis Added).**

D. Wire Transfers Are Permitted by the Trust Account Rule – Prior to July 1, 2023

- SCR 20:1.15(f)(2) prohibits cash transactions, telephone transfers, and electronic transfers by third parties.
- Bank wire transfers are distinguishable from the prohibited transactions noted above because:
 - 1) Wire transfers are not reversible by any party. It is a secure bank-to-bank transfer that is sent through the Fedwire or SWIFT banking networks.
 - 2) Banks produce traceable written records of wire transfer, usually through a written order and confirmation receipt.
- SCR 20:1.15(f)(3) prohibits a lawyer from making electronic transactions in the trust account, except for remote deposits, unless the lawyer maintains a second E-Banking Trust Account or complies with the requirements of an all-in-one trust account (alternative to the E-Banking Trust Account).

E. Wire Transfers Are Permitted by the Trust Account Rule – Effective July 1, 2023

- SCR 20:1.15(f)(2) prohibits cash transactions, telephone transfers, and electronic transfers by third parties.
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 - 2) Banks produce traceable written records of wire transfer, usually through a written order and confirmation receipt.
- SCR 20:1.15(f)(3) prohibits a lawyer from making electronic transactions in the trust account, except for remote deposits, unless the lawyer maintains a second E-Banking Trust Account or complies with the requirements of an all-in-one trust account.

F. Alternative Protection for Advanced Fees

- In brief, the **Alternative Protection for Advanced Fees requirements**, pursuant to SCR 20:1.5(g) include the following components:
 - a) Upon receiving an advanced fee, the lawyer must provide written notice to the client of the obligation to refund unearned fees, the availability of fee arbitration, and the availability of reimbursement by the Wisconsin Lawyers' Fund for Client Protection, as well as other information relating to the rate of the fee and the anticipated expenses.
 - b) Upon termination of the representation, the lawyer must account for any fees not previously accounted for and promptly refund any unearned fees. The lawyer must also notify the client that, if the client disputes the fee and wants to arbitrate that dispute, the client must provide the lawyer with written notice of such dispute within 30 days of the lawyer's mailing the accounting.
 - c) Upon receipt of timely notice that a client disputes the fee, the lawyer must either resolve the dispute or submit it to binding arbitration within 30 days, provided the client agrees to arbitration.
 - d) Upon receiving notice of an arbitration award in the client's favor, the lawyer must pay that award within 30 days.
- Source: OLR Trust Account Manual

G. Alternative Protection for Advanced Fees Requirements

COMMENT effective **July 1, 2023:**

SCR 20:1.5(g) applies only to advanced fees for legal services. Cost advances must be deposited into held in the lawyer's trust account pursuant to SCR 20:1.15(b)(1) and SCR 20:1.15(b)(6).

- Allowing for the lawyer to accept credit card payments or electronic funds transfer payments of advanced legal fees and expenses as temporary deposits in a non-trust account, so long as such funds are transferred promptly, and no later than two business days following receipt, into a

client trust account (unless lawyer has any reason to suspect the funds will not be successfully transferred within two business days of receipt).

- Cost advances are subject to SCR 20:1.15(b)(1) ~~or SCR 20:1.15(f)(3)b~~ and SCR 20:1.15(b)(6).

H. Overview of Adding Credit Card Fees to Client Bills – **Prior to July 1, 2023**

- Simply put, Wisconsin Supreme Court Rules only prohibit attorneys from adding credit card fees to client bills for payments processed through the **E-Banking Trust Account**, unless an exception applies.
- If you are not required to place the client payment into an E-Banking Trust Account and can instead route the payment through your operating account or All-in-One Trust Account, Wisconsin Supreme Court Rules do not prohibit you from adding credit card fees to client bills, provided: the client agrees in advance, the passing-on of fees does not violate the terms of service for the issuer, and the practice complies with any relevant state and federal laws and regulations.
- Sources: [E-Banking Account](#), [Operating Account](#), & [Alternative to E-Banking Trust Account](#).

I. Overview of Adding Credit Card Fees to Client Bills – **Effective July 1, 2023**

A Comment to Supreme Court Rule 20:1.15 (f) (1) is created to read:

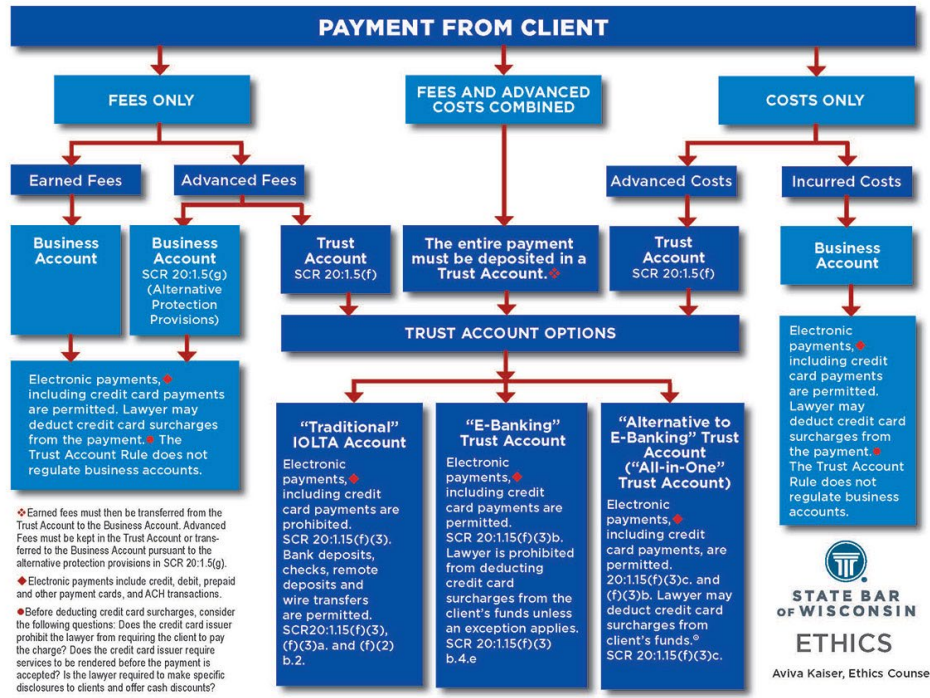
- **Costs associated with electronic payments**

Electronic payment systems, such as credit cards, routinely impose charges on vendors when a customer pays for goods or services. That charge may be 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 these charges, a lawyer should disclose this practice to the client in advance, and assure that the client understands and consents to the charges. This disclosure should be in writing if necessary to comply with SCR 20:1.5(b). In addition, the lawyer should ensure that holding the client responsible for transaction costs does not violate the terms of service of the payment system provider or other law.

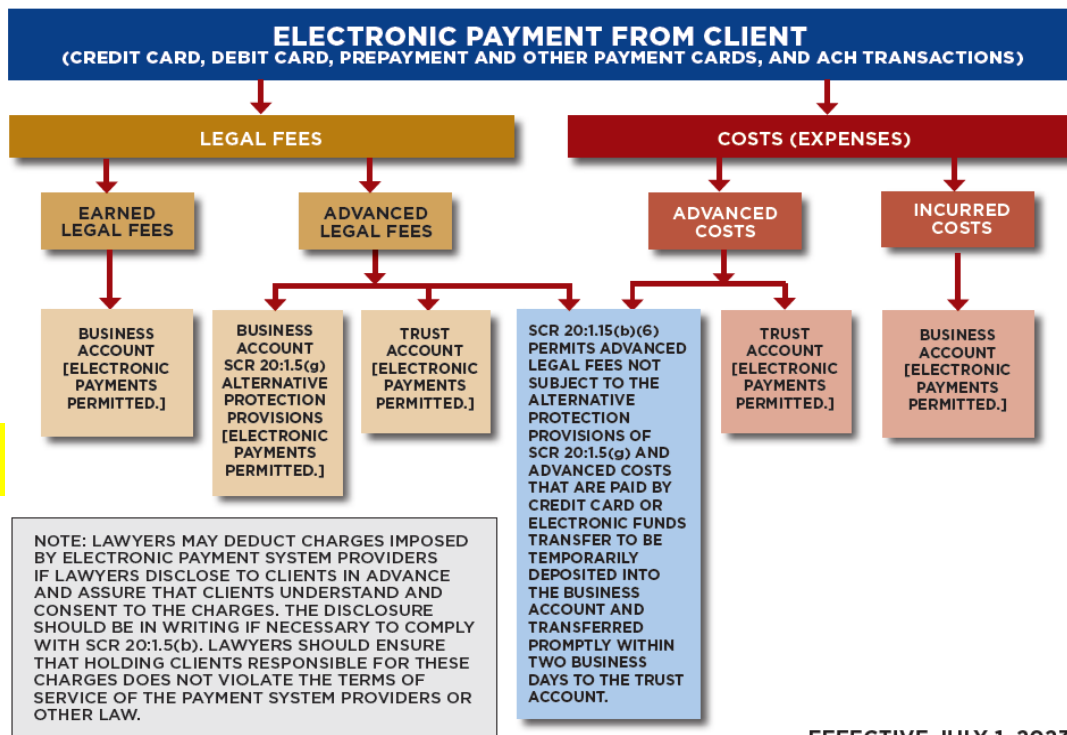
- Essentially, the new rule permits adding of fees to client bills, provided the client understands and consents to the charges and the charges do not violate contractual or other laws.

3. Flow Charts

A. Prior to July 1, 2023

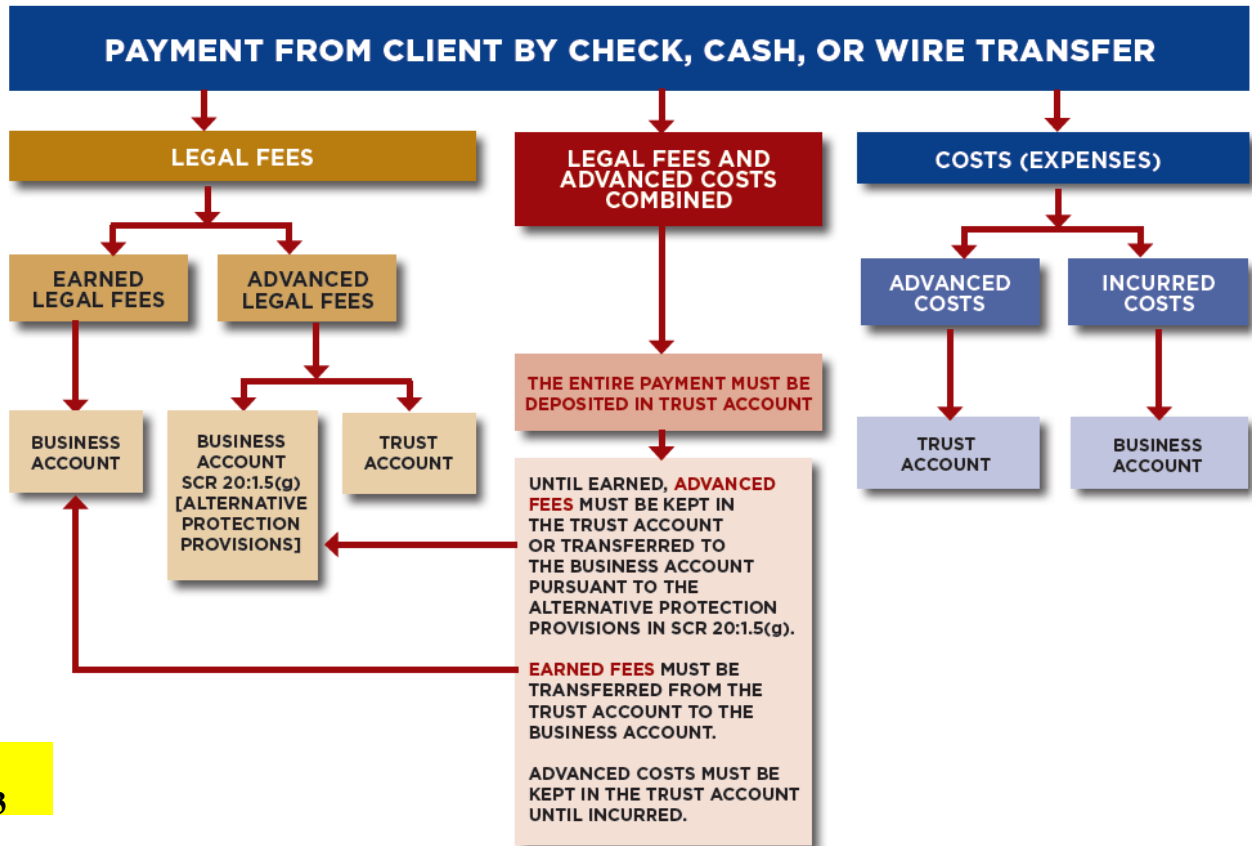


Prior to July 1, 2023



Effective July 1, 2023

EFFECTIVE JULY 1, 2023



Effective
 July 1, 2023

EFFECTIVE JULY 1, 2023

4. Examples

A. Common Scenarios That Are Not Allowed – **Prior to July 1, 2023**

- Using a business account as a “pass-through account” to process electronic payments that are required to be placed into an E-Banking Trust Account or an All-In-One Trust Account, and then placing those funds into a traditional IOLTA account.
- Placing a payment from a client that includes advanced fees that are subject to the alternative protection provisions of SCR 20:1.5(g) and advanced costs into a business account, by assuming incidental advanced costs do not need to be placed into trust.

B. Common Scenario Allowed – **Effective July 1, 2023**

- You may use a business account as a temporary “pass-through account” for credit card or electronic funds transfer payments of advanced legal fees and expenses payments, so long as such funds are transferred promptly, and no later than two business days following receipt, into a client trust account

(unless lawyer has any reason to suspect the funds will not be successfully transferred within two business days of receipt).

- Note the new change applies only to advanced legal fees or advanced costs paid by credit card or electronic funds transfer.

C. Example: Client A

- Client A pays Lawyer \$2000 (\$1500 Flat Fee and \$500 in Advanced Costs) by credit card. Lawyer is NOT using the Alternative Protection for Advanced Fee Provisions under SCR 20:1.5(g).
- Treatment Under the Rules:
 - a) **Prior to July 1, 2023**: The entire amount must be deposited into an All-in-One Trust Account OR an E-Banking Trust Account and then transferred into a standard IOLTA.
 - b) **Effective July 1, 2023**: The entire amount could be temporarily deposited into a Business Account and then transferred to an IOLTA Account within two business days OR deposited into a Trust Account.
 - c) **Effective July 1, 2023**: SCR 20:1.15(b)(6) permits **advanced legal fees not subject to the alternative protection provisions of SCR 20:1.5(g)** and **advanced costs** that are **paid by credit card or electronic funds transfer** to be temporarily deposited into the business account and transferred promptly within two business days to the trust account. The Comment to SCR 20:1.15(b)(6) explains: “While the general rule is that a lawyer must hold trust property separate from the lawyer’s own property, SCR 20:1.15(b)(6) allows very limited short-term temporary commingling when accepting an electronic payment for advanced fees or costs. Considering the expense of electronic payment processing providers, this allows a lawyer to maintain only one electronic payment processing provider service and to have it connected to just one bank account, e.g. the law firm’s operating account.”

D. Example: Client B

- Client B pays Lawyer \$2000 (\$1500 Flat Fee and \$500 in Advanced Costs) by credit card. Law firm is using Alternative Protection for Advanced Fee Provision.
- Treatment Under the Rules:
 - a) **Prior to July 1, 2023**: The entire amount must first be deposited into either the E-Banking Trust Account and then transferred to the standard IOLTA; or the entire amount must be deposited in the All-in-One Trust Account. The Advanced Fees must then be transferred from the standard IOLTA to the business account by check, or from the All-

in-One Trust Account to the business account by electronic transaction.

- b) **Effective July 1, 2023**: The entire amount must be deposited into a trust account, then the Advanced Fees must be transferred to the business account by either check or electronic transaction; OR the entire amount may be temporarily deposited into the business account and then the Advanced Costs transferred to a trust account within two days.

5. Accounting Recommendations

A. Supervision & Chargebacks

- Pursuant to amended SCR 20:1.15(f)(1), lawyers will be able to engage in electronic transactions so long as they are “directed by one or more lawyers authorized by the law firm or a person under the supervision of a lawyer having responsibility under SCR 20:5.3.” Written confirmation of authorization for electronic disbursements should be maintained as part of complete trust account records.
- Amended SCR 20:1.15(f)(1) further requires that in the event of any shortfall or negative balance caused by a chargeback, surcharge, or ACH reversal by a financial institution or card issuer, a lawyer must reimburse the trust account within three business days of receiving notice of such shortfall and must do so before disbursing any funds.
- Source: [Inside Track: Electronic Payments and Lawyer Trust Accounts: What to Know: \(wisbar.org\)](https://www.wisbar.org/inside-track/electronic-payments-and-lawyer-trust-accounts-what-to-know)

B. SCR 20:1.15(g) Record keeping requirements for all trust accounts.

1. Record retention. A lawyer shall maintain and preserve complete records of trust account funds, all deposits and disbursements, and other trust property and shall preserve those records for at least six years after the date of termination of the representation. Electronic records shall be backed up by an appropriate storage device. The office of lawyer regulation shall publish guidelines for trust account record keeping.

2. Record production. All trust account records have public aspects related to a lawyer's fitness to practice. Upon request of the office of lawyer regulation, or upon direction of the supreme court, the records shall be submitted to the office of lawyer regulation for its inspection, audit, use, and evidence under any conditions to protect the privilege of clients that the court may provide. The records, or an audit of the records, shall be produced at any disciplinary proceeding involving the lawyer, whenever material.

3. Burden of proof. A lawyer's failure to promptly deliver trust property to a client or 3rd party entitled to that trust property, promptly submit trust account records to the office of lawyer regulation, or promptly provide an accounting

of trust property to the office of lawyer regulation shall result in a presumption that the lawyer has failed to hold trust property in trust, contrary to SCR 20:1.15(b)(1). This presumption may be rebutted by the lawyer's production of records or an accounting that overcomes this presumption by clear, satisfactory, and convincing evidence.

C. **OLR's Published Guidelines** - (e) Disbursement records.

1. Checks. Checks should be pre-printed and pre numbered. The name and address of the lawyer or law firm, and the name of the account should be printed in the upper left corner of the check. Each check disbursed from the trust account should identify the client matter and the reason for the disbursement on the memo line.
2. Canceled checks. Canceled checks should be obtained from the financial institution. Imaged checks may be substituted for canceled checks.
3. Imaged checks. Imaged checks should provide both the front and reverse of the check. The information contained on the reverse side of imaged checks should include any endorsement signatures or stamps, account numbers, and transaction dates that appear on the original. Imaged checks should be of sufficient size to be readable without magnification and as close as possible to the size of the original check.
4. Wire transfers. Wire transfers should be documented by a written withdrawal authorization or other documentation, such as a monthly statement of the account that indicates the date of the transfer, the payee, and the amount.
5. Electronic transfers should be documented in a monthly statement of the account, and by a record of the transfer that is maintained by the lawyer or law firm, which includes the following: the payee, amount, date, client or matter, purpose, the lawyer authorizing the transfer, and the person or persons performing the transfer.

For more guidelines and sample forms, visit [Wisconsin Court System - For attorneys - Trust Account Program \(wicourts.gov\)](https://wicourts.gov).

6. Recommendations for Billing Policies

A. **Have a straightforward, standardized law firm billing policy. It saves time and improves accuracy.**

- Provide templates and guidelines for staff that include when to send invoices, how detailed the description of services should be, what expenses should be included or written off, and any introductory or closing information.
- Provide a flow chart or description of the entire billing process from start to finish. It should include who should review the bills and in what order, whether the bills will be sent by mail or electronically, and who in the firm should be informed when a bill is sent.
- Set requirements for invoice review to reduce errors and expedite the process.

- Include a standard process for disputes and collections.
 - a) “Don’t leave unpaid bills languishing for months. The longer you wait, the less likely your clients will pay, so have a straightforward collections process. Identify who needs to follow up on unpaid bills and when. Have a standard but personalized reminder email or letter you can easily send to clients. It’s okay to repeat the same phrasing, but the tone and message should feel friendly, calm, and kind. Paying for legal services is stressful enough; it’s important to empathize with and reassure your clients.
 - b) If a client disputes a bill, know who will review the dispute and provide frameworks for resolving the issue.”
- Provide the billing policy for clients so that clients will know when and how often bills will be sent, the different payments that are available, when the payment is due, and the consequences for late payment.
 - a) “Write this out clearly and provide it to all new clients, preferably right after their initial consultation. New clients might feel overwhelmed by new information and potential strife and uncertainty about their case. Having your attorney billing guidelines in writing will ensure clients can go back and review it at their convenience.”
- Source: [Law Firm Billing: Ultimate Guide and Best Practices for 2021 | Clio](#)



Are You Billing Ethically?

Annual Meeting & Conference 2023

State Bar of Wisconsin
Milwaukee, WI



STATE BAR OF WISCONSIN

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STATE BAR OF WISCONSIN

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Outline

Are You Billing Ethically?

- Part 1: Electronic Banking Options
- Part 2: Payment Processing Definitions
- Part 3: Flow Charts
- Part 4: Examples
- Part 5: Accounting Recommendations
- Part 6: Recommendations for Billing Policies



3

1. Electronic Banking Options

SCR 20:1.15(a)(2) – Electronic Transaction

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4

1. Electronic Banking Options

Overview of Rule Changes **Effective July 1, 2023**

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- No longer need a pass-through trust account, such as the E-Banking Trust Account.
- Transfers by 3rd parties are permitted, essentially allowing third parties to transfer and withdraw funds from a trust account.
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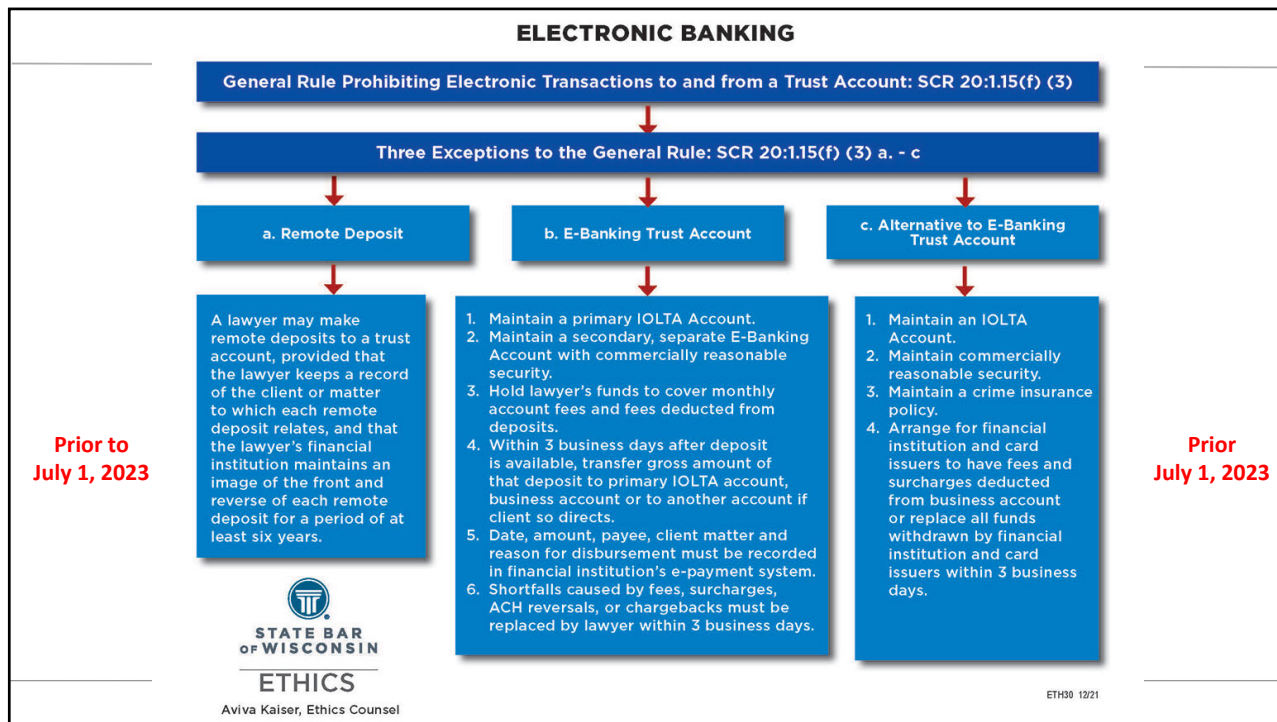


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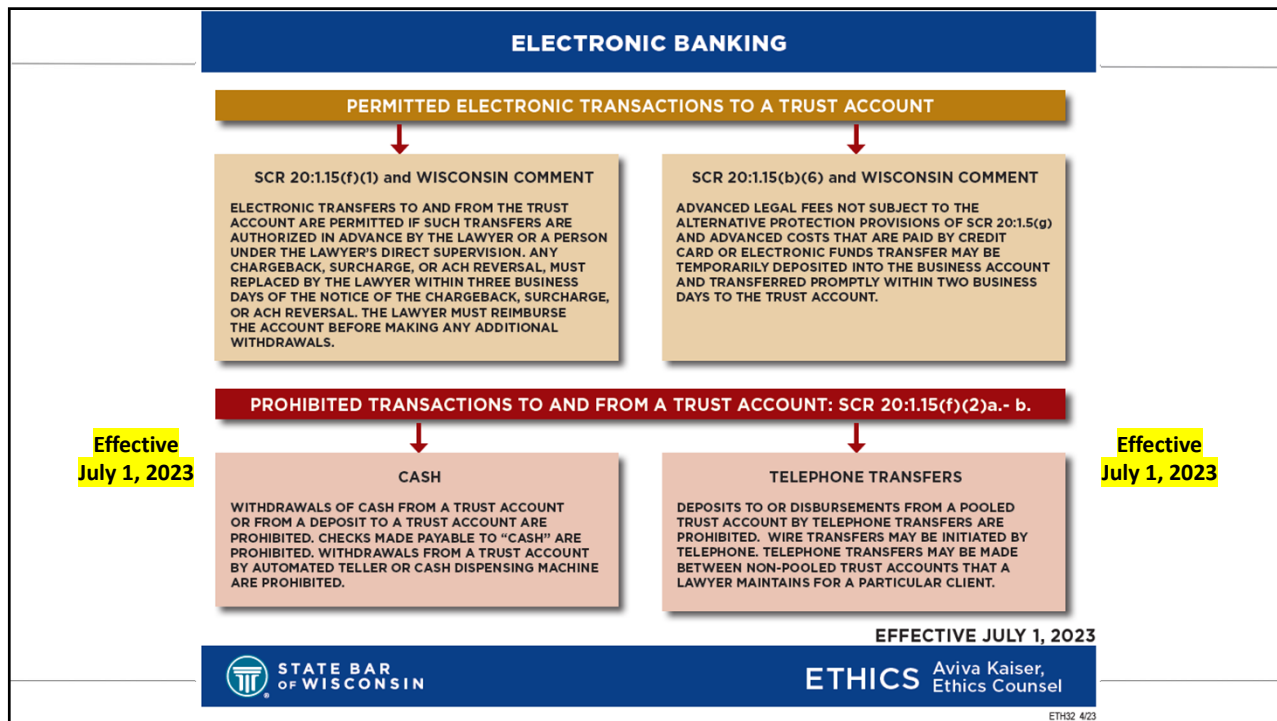
Overview of Rule Changes **Effective July 1, 2023 (continued)**

- No more cutting checks from your trust account into your business account. Again, electronic transactions are permitted.
- Although the E-Banking requirement is being eliminated, law firms can continue using the same accounts, provided they are processing trust funds correctly.
- No longer required to have a bond or crime insurance policy for All-in-One IOLTA.





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8



1. Electronic Banking Options

New Trust Account Options



TRUST ACCOUNT OPTIONS



Prior to July 1, 2023

Traditional IOLTA Account + Required Business Account

Security Requirements

- Commercially reasonable measures [SCR 20:1.15(f)(1)]
- Signatory authority limited to Wisconsin lawyer or person subject to SCR 20:5.3 supervision [SCR 20:1.15(f)(1)]

Permitted Transactions

- Bank deposits [SCR 20:1.15(f)(3)]
- Remote deposits [SCR 20:1.15(f)(3)a.]
- Checks [SCR 20:1.15(f)(3)]
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- Electronic transactions, including credit, debit, prepaid and other payment cards, and ACH Transactions [SCR 20:1.15(f)(3)]

E-Banking IOLTA Account + Traditional IOLTA Account + Required Business Account Security Requirements

Security Requirements

- Commercially reasonable measures [SCR 20:1.15(f)(1)]
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- Replacement of fees, surcharges, chargebacks, ACH reversals, shortfalls or negative balances within 3 business days [SCR 20:1.15(f)(3)b.6.]

Permitted Transactions

- Bank deposits [SCR 20:1.15(f)(3)]
- Remote deposits [SCR 20:1.15(f)(3)a.]
- Checks [SCR 20:1.15(f)(3)]
- Wire transfers [SCR 20:1.15(f)(2)b.2.]
- Electronic deposits & disbursements subject to the requirements of SCR 20:1.15(f)(3)b.

Prohibited Transactions

- Transfers by voice or ATM [SCR 20:1.15(a)(2)]
- Cash & ATM withdrawals [SCR 20:1.15(f)(2)a.]
- Telephone transfers [SCR 20:1.15(f)(2)b.]
- Electronic transfers by 3rd parties [SCR 20:1.15(f)(2)c.]
- Electronic Transfers that do not generate record of date, amount, payee, client matter and reason for disbursement [SCR 20:1.15(f)(3)b.5.]

All-In-One IOLTA Account (Alternative to the E-Banking IOLTA Account) + Required Business Account

Security Requirements

- Commercially Reasonable Security Measures [SCR 20:1.15(f)(1)]
- Signatory authority limited to Wisconsin lawyer or person subject to SCR 20:5.3 supervision [SCR 20:1.15(f)(1)]
- Bond or crime insurance policy [SCR 20:1.15(f)(3)c.3.]
- Deduction of fees, surcharges, chargebacks, and ACH reversals from the business account, or reimbursement of such deductions, shortfalls or negative balances within 3 business days [SCR 20:1.15(f)(3)c.3.]

Permitted Transactions

- Bank deposits [SCR 20:1.15(f)(3)]
- Remote deposits [SCR 20:1.15(f)(3)a.]
- Checks [SCR 20:1.15(f)(3)]
- Wire transfers [SCR 20:1.15(f)(2)b.2.]
- Electronic deposits & disbursements subject to the requirements of [SCR 20:1.15(f)(3)b.]

Prohibited Transactions

- Transfers by voice or ATM [SCR 20:1.15(a)(2)]
- Cash & ATM withdrawals [SCR 20:1.15(f)(2)a.]
- Telephone transfers [SCR 20:1.15(f)(2)b.]
- Electronic transfers by 3rd parties [SCR 20:1.15(f)(2)c.]
- Electronic Transfers that do not generate record of date, amount, payee, client matter and reason for disbursement [SCR 20:1.15(f)(3)c.4.]

TRUST ACCOUNT OPTIONS STATE BAR OF WISCONSIN | ETHICS Aviva Kaiser, Ethics Counsel

Traditional IOLTA Account + Required Business Account

Security Requirements

- Commercially reasonable measures [SCR 20:15(f)(1)]
- Signatory authority limited to Wisconsin lawyer or person subject to SCR 20:5.3 supervision [SCR 20:15(f)(1)]

+ Reimburse shortfalls or negative balance within 3 business days.

Permitted Transactions

- Bank deposits [SCR 20:15(f)(3)]
- Remote deposits [SCR 20:15(f)(3)a.]
- Checks [SCR 20:15(f)(3)]
- Wire transfers [SCR 20:15(f)(2)b.2.]

+ Permitted electronic transactions

Prohibited Transactions

- Transfers by voice or ATM [SCR 20:15(a)(2)]
- Cash & ATM withdrawals [SCR 20:15(f)(2)a.]
- Telephone transfers [SCR 20:15(f)(2)b.]

All-In-One IOLTA Account (Alternative to the E-Banking IOLTA Account) + Required Business Account

Security Requirements

- Commercially Reasonable Security Measures [SCR 20:15(f)(1)]
- Signatory authority limited to Wisconsin lawyer or person subject to SCR 20:5.3 supervision [SCR 20:15(f)(1)]

+ Reimburse shortfalls or negative balance within 3 business days.

Permitted Transactions

- Bank deposits [SCR 20:15(f)(3)]
- Remote deposits [SCR 20:15(f)(3)a.]
- Checks [SCR 20:15(f)(3)]
- Wire transfers [SCR 20:15(f)(2)b.2.]

+ Permitted electronic transactions

Prohibited Transactions

- Transfers by voice or ATM [SCR 20:15(a)(2)]
- Cash & ATM withdrawals [SCR 20:15(f)(2)a.]
- Telephone transfers [SCR 20:15(f)(2)b.]

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2. Payment Processing Definitions

No Trust Account Changes Are Needed, Provided You Were Already Processing Client Payments Correctly

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2. Payment Processing Definitions

The Requirement to Hold Property or Funds in Trust

SCR 20:1.15(b)(1) - 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. **(Emphasis Added).**



2. Payment Processing Definitions

Advanced Fees v. Advanced Costs

SCR 20:1.5(f) - "Except as provided in SCR 20:1.5(g), unearned fees and funds advanced by a client or 3rd party for payment of fees shall be held in trust until earned by the lawyer, and withdrawn pursuant to SCR 20:1.5(h). ***Funds advanced by a client or 3rd party for payment of costs shall be held in trust until the costs are incurred.***" (Emphasis Added).



2. Payment Processing Definitions

Effective July 1, 2023 Supreme Court Rule 20:1.15 (b) (6) Advanced fees and costs a., and b. are created to read:

- (b)(6) Advanced legal fees and costs. A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, except as follows:
- a. The lawyer complies with the requirements of SCR 20:1.5(g).



2. Payment Processing Definitions

Effective July 1, 2023, Supreme Court Rule 20:1.15 (b) (6) Advanced legal fees and costs a., and b. are created to read:

- b. The lawyer may accept credit card payments or electronic funds transfer payments of advanced legal fees and expenses as temporary deposits in a non-trust account, so long as such funds are transferred promptly, and no later than two business days following receipt, into a client trust account. However, except as provided by SCR 20:1.5(g), a lawyer shall not accept any advance payment into a non-trust account if the lawyer has any reason to suspect that the funds will not be successfully transferred into the client trust account within two business days of receipt. **(Emphasis Added).**



2. Payment Processing Definitions

Effective July 1, 2023 Supreme Court Rule 20:1.15 (b) (6) Advanced legal fees and costs a., and b. are created to read: (continued):

COMMENT SCR 20:1.15 (b) (6) Advanced legal fee and costs. While the general rule is that a lawyer must hold trust property separate from the lawyer's own property, SCR 20:1.15(b)(6) allows very limited short-term temporary commingling when accepting an electronic payment for advanced fees or costs. Considering the expense of electronic payment processing providers, this allows a lawyer to maintain only one electronic payment processing provider service and to have it connected to just one bank account, e.g. the law firm's operating account. The lawyer may accept electronic payments for advanced fees or costs to that account without violating SCR 20:1.15(a), so long as any payments for advanced fees or costs are promptly transferred to the lawyer's trust account within two business days. **(Emphasis Added)**.



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2. Payment Processing Definitions

Wire Transfers Are Permitted by the Trust Account Rule – Prior to July 1, 2023

- SCR 20:1.15(f)(2) prohibits cash transactions, telephone transfers, and electronic transfers by third parties.
- Bank wire transfers are distinguishable from the prohibited transactions noted above because:
 - 1) Wire transfers are not reversible by any party. It is a secure bank-to-bank transfer that is sent through the Fedwire or SWIFT banking networks.
 - 2) Banks produce traceable written records of wire transfer, usually through a written order and confirmation receipt.
- SCR 20:1.15(f)(3) prohibits a lawyer from making electronic transactions in the trust account, except for remote deposits, unless the lawyer maintains a second E-Banking Trust Account or complies with the requirements of an all-in-one trust account (alternative to the E-Banking Trust Account).



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2. Payment Processing Definitions

Wire Transfers Are Permitted by the Trust Account Rule – Effective July 1, 2023

- SCR 20:1.15(f)(2) prohibits cash transactions, telephone transfers, and electronic transfers by third parties.
- Bank wire transfers are distinguishable from the prohibited transactions noted above because:
 - 1) Wire transfers are not reversible by any party. It is a secure bank-to-bank transfer that is sent through the Fedwire or SWIFT banking networks.
 - 2) Banks produce traceable written records of wire transfer, usually through a written order and confirmation receipt.
- SCR 20:1.15(f)(3) prohibits a lawyer from making electronic transactions in the trust account, except for remote deposits, unless the lawyer maintains a second E-Banking Trust Account or complies with the requirements of an all-in-one trust account.

2. Payment Processing Definitions

In brief, the **Alternative Protection for Advanced Fees requirements**, pursuant to SCR 20:1.5(g) include the following components:

- Upon receiving an advanced fee, the lawyer must provide written notice to the client of the obligation to refund unearned fees, the availability of fee arbitration, and the availability of reimbursement by the Wisconsin Lawyers' Fund for Client Protection, as well as other information relating to the rate of the fee and the anticipated expenses.
- Upon termination of the representation, the lawyer must account for any fees not previously accounted for and promptly refund any unearned fees. The lawyer must also notify the client that, if the client disputes the fee and wants to arbitrate that dispute, the client must provide the lawyer with written notice of such dispute within 30 days of the lawyer's mailing the accounting.
- Upon receipt of timely notice that a client disputes the fee, the lawyer must either resolve the dispute or submit it to binding arbitration within 30 days, provided the client agrees to arbitration.
- Upon receiving notice of an arbitration award in the client's favor, the lawyer must pay that award within 30 days.

Source: Office of Lawyer Regulation – Trust Account Manual

2. Payment Processing Definitions

Alternative Protection for Advanced Fees Requirements

COMMENT effective **July 1, 2023:**

SCR 20:1.5(g) applies only to advanced fees for legal services. Cost advances must be **deposited into held in** the lawyer's trust account **pursuant to SCR 20:1.15(b)(1) and SCR 20:1.15(b)(6).**

- **Allowing for the lawyer to accept credit card payments or electronic funds transfer payments of advanced legal fees and expenses as temporary deposits in a non-trust account, so long as such funds are transferred promptly, and no later than two business days following receipt, into a client trust account (unless lawyer has any reason to suspect the funds will not be successfully transferred within two business days of receipt).**
- **Cost advances are subject to SCR 20:1.15(b)(1) or SCR 20:1.15(f)(3) and SCR 20:1.15(b)(6).**



2. Payment Processing Definitions

Overview of Adding Credit Card Fees to Client Bills – **Prior to July 1, 2023**

- Simply put, Wisconsin Supreme Court Rules only prohibit attorneys from adding credit card fees to client bills for payments processed through the **E-Banking Trust Account**, unless an exception applies.
- If you are not required to place the client payment into an E-Banking Trust Account and can instead route the payment through your operating account or All-in-One Trust Account, Wisconsin Supreme Court Rules do not prohibit you from adding credit card fees to client bills, provided: the client agrees in advance, the passing-on of fees does not violate the terms of service for the issuer, and the practice complies with any relevant state and federal laws and regulations.
- Sources: [E-Banking Account](#), [Operating Account](#), & [Alternative to E-Banking Trust Account](#).



2. Payment Processing Definitions

Overview of Adding Credit Card Fees to Client Bills – Effective July 1, 2023

A **Comment** to Supreme Court Rule 20:1.15 (f) (1) is created to read:

- **Costs associated with electronic payments**

Electronic payment systems, such as credit cards, routinely impose charges on vendors when a customer pays for goods or services. That charge may be 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 these charges, a lawyer should disclose this practice to the client in advance, and assure that the client understands and consents to the charges. This disclosure should be in writing if necessary to comply with SCR 20:1.5(b). In addition, the lawyer should ensure that holding the client responsible for transaction costs does not violate the terms of service of the payment system provider or other law.

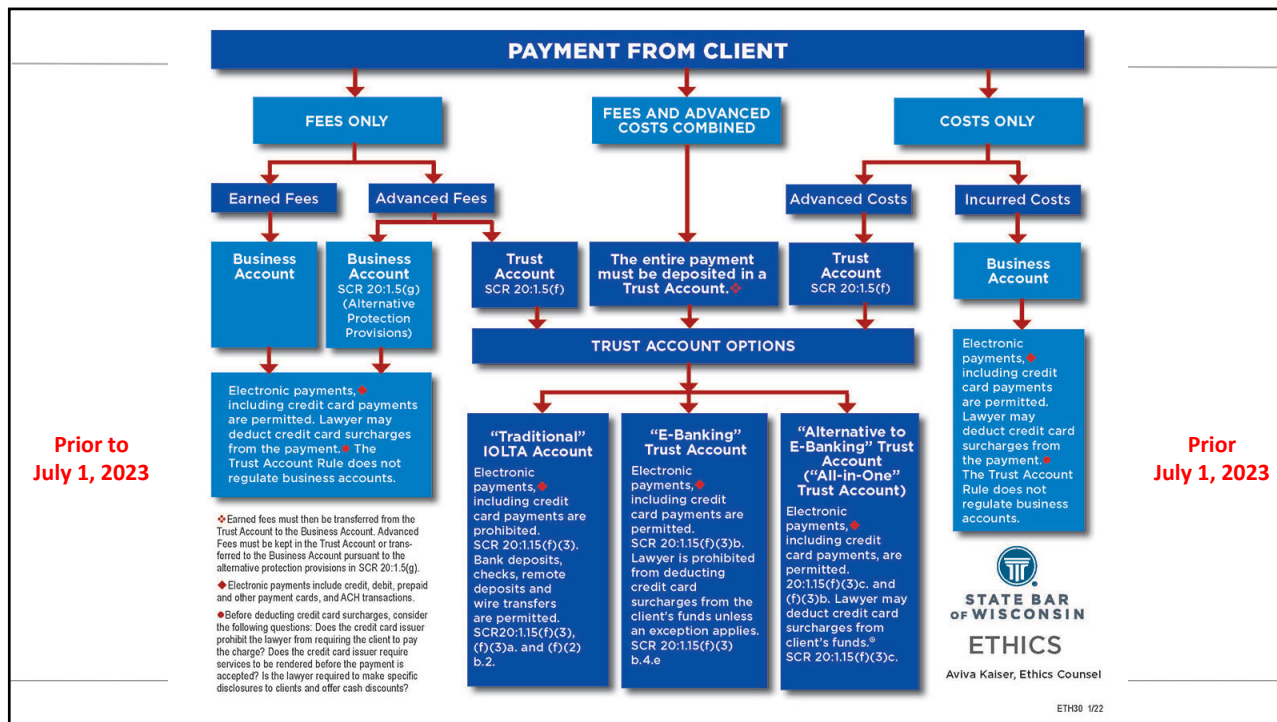
- Essentially, the new rule permits adding of fees to client bills, provided the client understands and consents to the charges and the charges do not violate contractual or other laws.



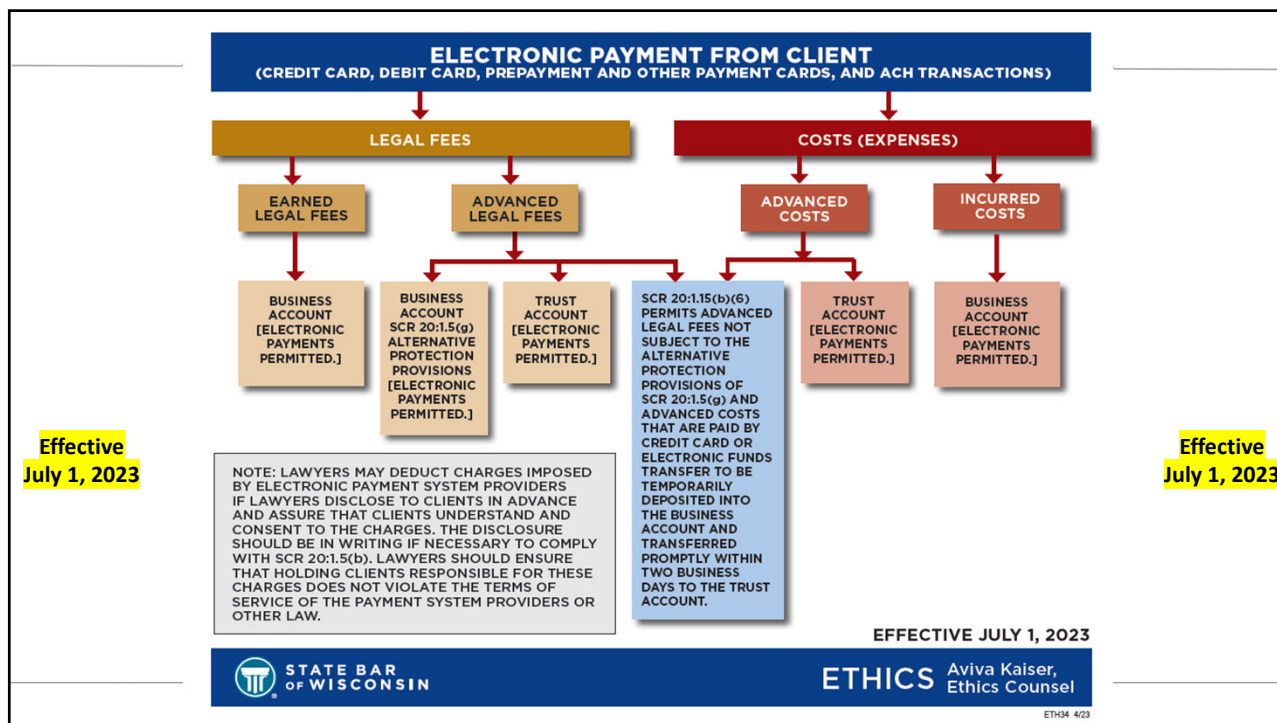
3. Flow Charts

**Ethically Traversing New SCRs,
Effective July 1, 2023**

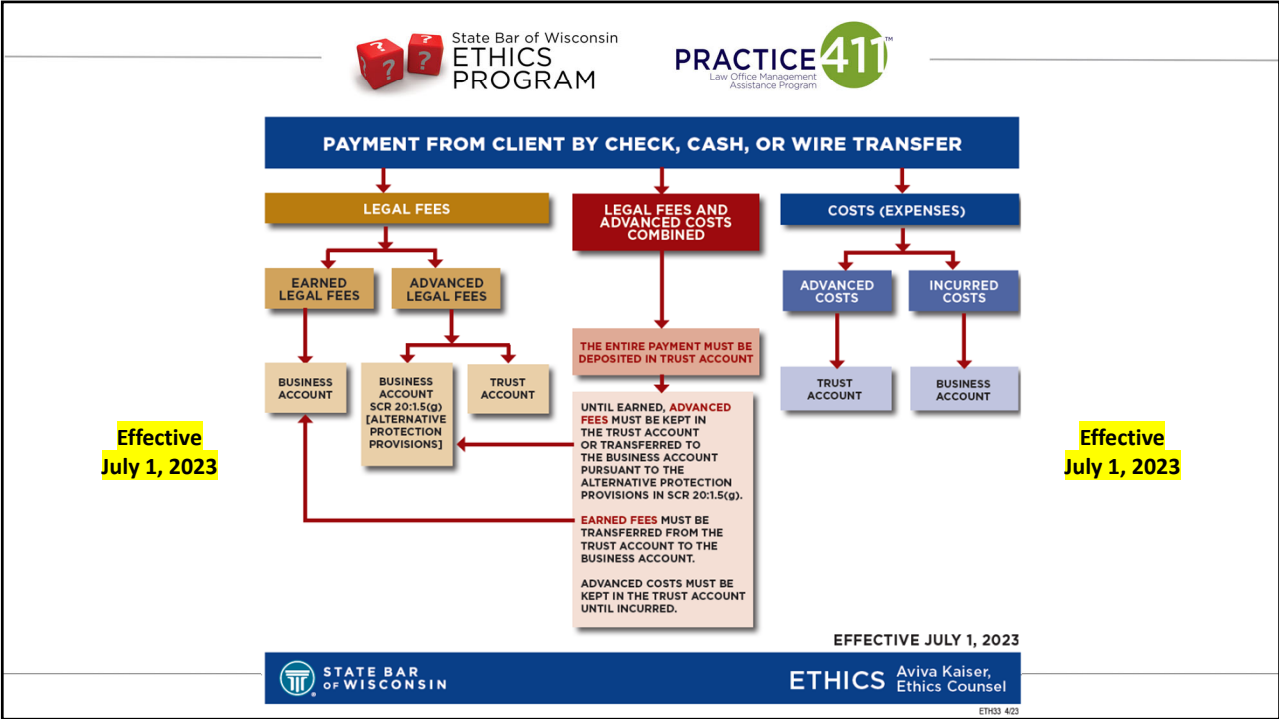




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4. Examples

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4. Examples

Common Scenarios That Are Not Allowed – Prior to July 1, 2023

- Using a business account as a “pass-through account” to process electronic payments that are required to be placed into an E-Banking Trust Account or an All-In-One Trust Account, and then placing those funds into a traditional IOLTA account.
- Placing a payment from a client that includes advanced fees that are subject to the alternative protection provisions of SCR 20:1.5(g) and advanced costs into a business account, by assuming incidental advanced costs do not need to be placed into trust.



4. Examples

Common Scenario Allowed – Effective July 1, 2023

- You may use a business account as a temporary “pass-through account” for credit card or electronic funds transfer payments of advanced legal fees and expenses payments, so long as such funds are transferred promptly, and no later than two business days following receipt, into a client trust account (unless lawyer has any reason to suspect the funds will not be successfully transferred within two business days of receipt).
- Note the new change applies only to advanced legal fees or advanced costs paid by credit card or electronic funds transfer.



4. Examples

Example: Client A

Client A pays Lawyer \$2000 (\$1500 Flat Fee and \$500 in Advanced Costs) by credit card. Lawyer is NOT using the Alternative Protection for Advanced Fee Provisions under SCR 20:1.5(g).

- Treatment Under the Rules:
 - **Prior to July 1, 2023:** The entire amount must be deposited into an All-in-One Trust Account OR an E-Banking Trust Account and then transferred into a standard IOLTA.
 - **Effective July 1, 2023:** The entire amount could be temporarily deposited into a Business Account and then transferred to an IOLTA Account within two business days OR deposited into a Trust Account.



4. Examples

Example: Client A (continued)

- **Effective July 1, 2023:** SCR 20:1.15(b)(6) permits **advanced legal fees not subject to the alternative protection provisions of SCR 20:1.5(g)** and **advanced costs** that are **paid by credit card or electronic funds transfer** to be temporarily deposited into the business account and transferred promptly within two business days to the trust account. The Comment to SCR 20:1.15(b)(6) explains: “While the general rule is that a lawyer must hold trust property separate from the lawyer’s own property, SCR 20:1.15(b)(6) allows very limited short-term temporary commingling when accepting an electronic payment for advanced fees or costs. Considering the expense of electronic payment processing providers, this allows a lawyer to maintain only one electronic payment processing provider service and to have it connected to just one bank account, e.g. the law firm’s operating account.”



4. Examples

Example: Client B

Client B pays Lawyer \$2000 (\$1500 Flat Fee and \$500 in Advanced Costs) by cash, check, or by wire transfer. Law firm is NOT using the Alternative Protection for Advanced Fee Provision.

- Treatment Under the Rules:
 - **Prior to July 1, 2023:** The entire amount must be deposited into an IOLTA.
 - **Effective July 1, 2023:** The entire amount must be deposited into an IOLTA.
- NOTE: Temporary use of business account only applies to electronic fund transfers or credit card transactions of advance legal fees and costs.



5. Accounting Recommendations

Update Firm Procedures



5. Accounting Recommendations

Supervision & Chargebacks

- Pursuant to amended SCR 20:1.15(f)(1), lawyers will be able to engage in electronic transactions so long as they are “directed by one or more lawyers authorized by the law firm or a person under the supervision of a lawyer having responsibility under SCR 20:5.3.” Written confirmation of authorization for electronic disbursements should be maintained as part of complete trust account records.
- Amended SCR 20:1.15(f)(1) further requires that in the event of any shortfall or negative balance caused by a chargeback, surcharge, or ACH reversal by a financial institution or card issuer, a lawyer must reimburse the trust account within three business days of receiving notice of such shortfall and must do so before disbursing any funds.

Source: [Inside Track: Electronic Payments and Lawyer Trust Accounts: What to Know: \(wisbar.org\)](https://www.wisbar.org/inside-track/electronic-payments-and-lawyer-trust-accounts-what-to-know)



5. Accounting Recommendations

SCR 20:1.15(g) Record keeping requirements for all trust accounts.

1. **Record retention.** A lawyer shall maintain and preserve complete records of trust account funds, all deposits and disbursements, and other trust property and shall preserve those records for at least six years after the date of termination of the representation. Electronic records shall be backed up by an appropriate storage device. The office of lawyer regulation shall publish guidelines for trust account record keeping.
2. **Record production.** All trust account records have public aspects related to a lawyer's fitness to practice. Upon request of the office of lawyer regulation, or upon direction of the supreme court, the records shall be submitted to the office of lawyer regulation for its inspection, audit, use, and evidence under any conditions to protect the privilege of clients that the court may provide. The records, or an audit of the records, shall be produced at any disciplinary proceeding involving the lawyer, whenever material.



5. Accounting Recommendations

SCR 20:1.15(g) Record keeping requirements for all trust accounts.

- 3. Burden of proof.** A lawyer's failure to promptly deliver trust property to a client or 3rd party entitled to that trust property, promptly submit trust account records to the office of lawyer regulation, or promptly provide an accounting of trust property to the office of lawyer regulation shall result in a presumption that the lawyer has failed to hold trust property in trust, contrary to SCR 20:1.15(b)(1). This presumption may be rebutted by the lawyer's production of records or an accounting that overcomes this presumption by clear, satisfactory, and convincing evidence.



5. Accounting Recommendations

OLR's Published Guidelines - (e) Disbursement records.

- 1. Checks.** Checks should be pre-printed and pre numbered. The name and address of the lawyer or law firm, and the name of the account should be printed in the upper left corner of the check. Each check disbursed from the trust account should identify the client matter and the reason for the disbursement on the memo line.
- 2. Canceled checks.** Canceled checks should be obtained from the financial institution. Imaged checks may be substituted for canceled checks.



5. Accounting Recommendations

OLR's Published Guidelines - (e) Disbursement records.

3. Imaged checks. Imaged checks should provide both the front and reverse of the check. The information contained on the reverse side of imaged checks should include any endorsement signatures or stamps, account numbers, and transaction dates that appear on the original. Imaged checks should be of sufficient size to be readable without magnification and as close as possible to the size of the original check.
4. Wire transfers. Wire transfers should be documented by a written withdrawal authorization or other documentation, such as a monthly statement of the account that indicates the date of the transfer, the payee, and the amount.



5. Accounting Recommendations

OLR's Published Guidelines - (e) Disbursement records.

5. Electronic transfers should be documented in a monthly statement of the account, and by a record of the transfer that is maintained by the lawyer or law firm, which includes the following: the payee, amount, date, client or matter, purpose, the lawyer authorizing the transfer, and the person or persons performing the transfer.

For more guidelines and sample forms, visit [Wisconsin Court System - For attorneys - Trust Account Program \(wicourts.gov\)](https://www.wicourts.gov).



6. Recommendations for Billing Policies

Review Billing Policies and Procedures



6. Recommendations for Billing Policies

Have a straightforward, standardized law firm billing policy. It saves time and improves accuracy.

- Provide templates and guidelines for staff that include when to send invoices, how detailed the description of services should be, what expenses should be included or written off, and any introductory or closing information.
- Provide a flow chart or description of the entire billing process from start to finish. It should include who should review the bills and in what order, whether the bills will be sent by mail or electronically, and who in the firm should be informed when a bill is sent.
- Set requirements for invoice review to reduce errors and expedite the process.

[Law Firm Billing: Ultimate Guide and Best Practices for 2021 | Clio](#)



6. Recommendations for Billing Policies (continued)

- Include a standard process for disputes and collections.

“Don’t leave unpaid bills languishing for months. The longer you wait, the less likely your clients will pay, so have a straightforward collections process. Identify who needs to follow up on unpaid bills and when. Have a standard but personalized reminder email or letter you can easily send to clients. It’s okay to repeat the same phrasing, but the tone and message should feel friendly, calm, and kind. Paying for legal services is stressful enough; it’s important to empathize with and reassure your clients.

If a client disputes a bill, know who will review the dispute and provide frameworks for resolving the issue.”

[Law Firm Billing: Ultimate Guide and Best Practices for 2021 | Clio](#)



6. Recommendations for Billing Policies (continued)

- Provide the billing policy for clients so that clients will know when and how often bills will be sent, the different payments that are available, when the payment is due, and the consequences for late payment.

“Write this out clearly and provide it to all new clients, preferably right after their initial consultation. New clients might feel overwhelmed by new information and potential strife and uncertainty about their case. Having your attorney billing guidelines in writing will ensure clients can go back and review it at their convenience.”

[Law Firm Billing: Ultimate Guide and Best Practices for 2021 | Clio](#)





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Questions



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