

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF AN AMENDMENT)
TO SDCL 16-18-20.2)

RULE 04-05

A hearing having been held on February 19, 2004, at Pierre, South Dakota, relating to the amendment of SDCL 16-18-20.2, and the Court having considered the proposed amendment, the correspondence and oral presentations relating thereto, if any, and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 16-18-20.2 be and it is hereby amended to read in its entirety as follows:

16-18-20.2. Attorney licensing - Trust accounting records and procedures. The provisions of this rule apply to all members of the State Bar of South Dakota concerning trust funds received or disbursed by them in the course of their professional practice of law within the State of South Dakota. However, these provisions shall not apply to (1) full-time members of the Judiciary, i.e., Supreme Court Justices, Circuit Court Judges and Magistrate Judges, (2) nonresident attorneys licensed to practice in South Dakota who comply with comparable trust accounting requirements in the state wherein they maintain their office, and (3) non-profit legal services organizations that file a copy of their annual independent audit with the State Bar, (4) non-resident attorneys licensed to practice in South Dakota who have not represented a South Dakota client during the reporting period, or (5) members who have been in an inactive status for the full reporting period. In addition, all lawyers required to disclose the absence of professional liability insurance as required pursuant to Rule 1.4(c) must sign the additional verification and certification of disclosure as reflected at the end of the Certificate of Compliance and Insurance Disclosure form.

MINIMUM TRUST ACCOUNTING RECORDS

The minimum trust accounting records which shall be maintained are:

(1) A separate bank account or accounts and, if utilized, a separate savings and loan association account or accounts. Such accounts shall be located in South Dakota unless the client otherwise directs in writing. The account or accounts shall be in the name of the lawyer or law firm and clearly labeled and designated as a "trust account."

(2) Original or duplicate deposit slips and, in the case of currency or coin, an additional cash receipts book, clearly identifying:

- (a) The date and source of all trust funds received; and
- (b) The client or matter for which the funds were received.

(3) Original cancelled checks, or copies of both sides of the original checks produced through truncation or check imaging, or the equivalent, all of which must be numbered consecutively.

(4) Other documentary support for all disbursements and transfers from the trust account.

(5) A separate trust accounts receipts and disbursements journal, including columns for receipts, disbursements, transfers, and the account balance, and containing at least:

- (a) The identification of the client or matter for which the funds were received, disbursed, or transferred;
- (b) The date on which all trust funds were received, disbursed, or transferred;
- (c) The check number for all disbursements; and
- (d) The reason, such as "settlement," "closing" or "retainer," for which all trust funds were received, disbursed, or transferred.

(6) A separate file, ledger or computer file with an individual card, page or computer document for each client or matter, showing all individual receipts, disbursements, or transfers and any unexpended balance, and containing:

- (a) The identification of the client or matter for which trust funds were received, disbursed, or transferred;
- (b) The date on which all trust funds were received, disbursed, or transferred;
- (c) The check number of all disbursements; and
- (d) The reason, such as "settlement," "closing" or "retainer," for which all trust funds were received, disbursed, or transferred. All bank or savings and loan association statements for all trust accounts.

MINIMUM TRUST ACCOUNTING PROCEDURES

The minimum trust accounting procedures which shall be followed by all attorneys practicing in South Dakota who receive or disburse trust money or property are:

- (1) The lawyer shall cause to be made monthly:
 - (a) Reconciliations of all trust bank or savings and loan association accounts, disclosing the balance per bank, deposits in transit, outstanding checks identified by date and check number, and any other items necessary to reconcile the balance per bank with the balance per the checkbook and the cash receipts and disbursements journal; and

(b) A comparison between the total of the reconciled balances of all trust accounts and the total of the trust ledger cards, pages, or computer documents, together with specific descriptions of any difference between the two totals and reasons therefore.

(2) At least annually, a detailed listing identifying the balance of the unexpended trust money held for each client or matter.

(3) The above reconciliations, comparisons, and listing shall be retained for at least six years.

(4) The lawyer shall file with the State Bar of South Dakota a trust accounting certificate showing compliance with these rules annually, which certificate shall be filed annually between December 1 and January 31 on a form approved by the Disciplinary Board.

AUDITS

The following shall be cause for the Disciplinary Board to order an audit of a lawyer's or law firm's trust accounts:

(1) Failure to file the trust account certificate required by this rule;

(2) A trust account check is returned for insufficient funds or for uncollected funds, absent bank error;

(3) A petition for creditor relief is filed on behalf of an attorney;

(4) Felony charges are filed against an attorney;

(5) An attorney is adjudged insane or mentally incompetent;

(6) A claim against the attorney is filed with the Clients' Security Fund;

(7) When authorized by statute or court rule; or

(8) Upon court order.

COST OF AUDIT

Audits conducted in any of the circumstances enumerated above shall be at the cost of the attorney audited only when the audit reveals that the attorney was not in substantial compliance with the trust accounting requirements or when the audit was precipitated by the failure to file the trust account compliance report. It shall be the obligation of any attorney who is being audited to produce all records and papers concerning property and funds held in trust and to provide such explanations as may be required for the audit. Records of general accounts are not required to be produced except to verify that trust money has not been deposited thereto. If it has been determined that trust money has been deposited into a general account, all of the transactions pertaining to any firm account will be subject to audit.

CERTIFICATE OF COMPLIANCE
INSURANCE DISCLOSURE

TO: The Secretary-Treasurer
The State Bar of South Dakota
222 East Capitol Avenue
Pierre, South Dakota 57501

Dear Sir:

I (We), _____, a member(s) of the State Bar of South Dakota certify that during the twelve-month period preceding the date of this report: (check the following items where applicable and/or fill in the blanks)

1. I have engaged in the private practice of law in South Dakota as:

_____ (a) a sole practitioner;

_____ (b) a partner or shareholder of a firm practicing under the name of _____;

_____ (c) an associate of a sole practitioner or of a firm, as the case may be, practicing under the name of _____

_____ and I maintain separate books, records and accounts showing all legal business performed by me.

_____ 2. I have not engaged in the practice of law in South Dakota, and I have neither handled nor been responsible for either clients' trust funds or clients' trust property in South Dakota.

_____ 3. I have practiced law in South Dakota exclusively as an employee of (designate name of government agency, corporation, or other nonmember of the Bar) _____, and I do not handle or become responsible for money or property in a lawyer-client relationship, other than money or property received in the course of official duties and disposed of in accordance with regulations and practices of (designate name of government agency) _____.

_____ (a) I (we) have served as a trustee in one or more cases under Title 11 of the United States Code, and I am accountable for all funds I handled in connection therewith to the Office of the United States Trustee, which office is statutorily charged with the responsibility for reviewing and supervising my trust operations; therefore, my handling of such funds is not separately accounted for herein in connection with my private practice of law, and I further certify that I am in compliance with all such accounting requirements of said Office.

_____ 4. I have engaged in the practice of law in South Dakota as an employee or as an associate of a sole practitioner or of a firm, as the case may be, practicing under the name of _____,

_____ to the best of my knowledge all legal business performed by me is shown in the books, records and

accounts of such sole practitioner or firm.

(Signature)

(Print or type the following information)

Full Name _____

Business Address _____

Date _____

5. My trust account(s) or the trust account(s) of the firm or association of which I am a partner or shareholder is at the _____ (name and address of banking institution) and bears the following name(s) and number(s) _____.

6. During the fiscal period ended _____ to the best of my knowledge I, or the firm of which I am a member, as the case may be, maintained books, records and accounts to record all money and trust property received and disbursed in connection with my/our practice, and as a minimum I/we maintained: Yes or No
(a) A separate bank account or accounts located in *South Dakota (_____), in the name of the lawyer or law firm and clearly labeled and designated a "trust account."

*An out of state member may strike "South Dakota" and insert the state where his/her trust account is located.

(b) Original or duplicate deposit slips and, in the case of currency or coin, an additional cash receipts book, clearly identifying the date and source of all trust funds received, and specific identification of the client or matter for whom the funds were received.

(c) Original cancelled checks or copies of both sides of the original checks produced through truncation or check imaging, or the equivalent, for all trust disbursements.

(d) Other documentary support for all disbursements and transfers from the trust account.

(e) A separate trust account receipts and disbursements journal, including columns for receipts, disbursements, and the account balance, disclosing the client, check number, and reason for which the funds were received, disbursed or transferred.

(f) A separate file or ledger, with an individual card or page for each client and matter, showing all individual receipts, disbursements and any unexpended balance.

(g) All bank statements for trust accounts.

(h) Complete records of all funds, securities and other properties of a client coming into my/our possession, and rendered appropriate accounts to my/our clients regarding them.

7. During the same fiscal period identified in section 6 above, I, or the firm of which I am a member, complied with the required trust accounting procedures, and as a minimum I/we prepared monthly trust comparisons, including bank reconciliations and an annual detailed listing identifying the balance of the unexpended trust money held for each client or matter.

8. In connection with section 7 above, I or the firm of which I am a member, have completed the following procedures during the fiscal period herein: compared each month the total of trust liabilities and the total of each trust bank reconciliation, and there were (check one of the following):

no differences between the totals, excepting those determined to be the result of bank error;

differences. (Give full particulars below, identifying the months in which there were differences, the amounts involved, and the reason for each item contributing to a difference. Attach additional pages if necessary.)

9. (A) *The undersigned lawyer(s) do not have professional liability insurance; or

(B) The undersigned lawyer(s) have professional liability insurance, the name of the insurance carrier, policy number and limits are as follows:

I am a member of the State Bar of South Dakota filing this report, and to the best of my knowledge and belief the facts as reported herein are accurate, and I certify that I have at all material times been in compliance with Rule 1.15 of the Rules of Professional Conduct entitled Safekeeping Property and SDCL 16-18-20.1 and 16-18-20.2.

All Responding Lawyers Signatures:

Date: _____

*Additional signature and attachment is needed if responding lawyer checked box 9(A): The undersigned lawyer(s) not having insurance, do hereby certify that pursuant to Rule 1.4(c), I have advised my clients of the lack of professional liability insurance during the reporting period and I have attached hereto a copy of my law office letterhead disclosing the lack of insurance, in the required format, pursuant to Rule 7.5 of the Rules of Professional Responsibility.

All Responding Lawyers Signatures:

Date: _____

*If you checked box 9(A), you must attach a representative copy of the letterhead you used to disclose the lack of insurance to your clients.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2004.

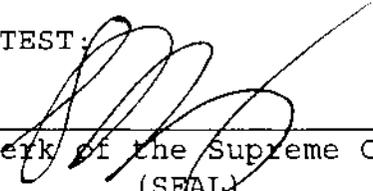
DATED at Pierre, South Dakota, this 26th day of February, 2004.

BY THE COURT:



David Gilbertson, Chief Justice

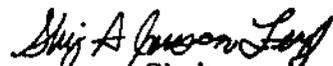
ATTEST:



Clerk of the Supreme Court
(SEAL)

**SUPREME COURT
STATE OF SOUTH DAKOTA
FILED**

FEB 26 2004


Clerk