

REGULATION OF THE LEGAL PROFESSION IN WISCONSIN

FISCAL YEAR 2015-2016

Report of the Lawyer Regulation System



Keith L. Sellen, Director
Office of Lawyer Regulation

Honorable Charles Dykman, Chairperson
Board of Administrative Oversight

110 East Main Street, Suite 315, Madison, WI 53703 (608) 267-7274

www.wicourts.gov/olr

Trust Account Program

The Trust Account Program is responsible for the administration of Wisconsin's overdraft notification rule, SCR 20:1.15(h), which requires attorneys to authorize their financial institutions to notify the Office of Lawyer Regulation of overdrafts on their trust accounts and fiduciary accounts. In addition, the Trust Account Program provides education and resources for lawyers and financial institutions regarding trust account regulations and the management of trust and fiduciary accounts.

OLR's Intake staff screens all incoming reports of overdrafts on lawyer trust and fiduciary accounts. Overdrafts reported to OLR due to bank errors and those that meet other criteria for closure without a full investigation are handled by that department. Overdrafts requiring full investigation are handled by Formal Investigators and the Trust Account Program Administrator.

OLR received a total of 73 reports of overdrafts on trust and fiduciary accounts of Wisconsin lawyers during Fiscal Year 2016. During that same period, overdraft notifications resulted in the following dispositions:

3 Year Suspension	1
4 Month Suspension	1
60 Day Suspension	1
Public Reprimand	1
Private Reprimand	3
Diversion	18
Dismissal after Diversion Program Successfully Completed	12
Dismissal after Investigation	18
Dismissal after Investigation/Advisory Letter	28
Closed without Investigation – Bank Errors	7
Closed without Investigation – Bank Errors/Advisory Letter	1
Closed without Investigation – Collection Account Exception	2
Special Investigator – Insufficient Evidence	1
Special Investigator – Dismissal	1

Overdraft investigations occasionally lead to the discovery of record-keeping deficiencies and other concerns that do not warrant the imposition of discipline. In such situations, an advisory letter is sent to the lawyer or law firm, explaining the concerns and providing information and guidance on the requirements of SCR 20:1.15 or another applicable rule. During Fiscal 2016, OLR sent 29 advisory letters, which included guidance on one or more of the following issues and record keeping requirements:

Availability of Funds for Disbursement	5
Checks/Deposit Slips: Distinguish/Memo/Signatory/Endorsement	14
Maintenance Account (for bank fees and surcharges)	9
Monthly Reconciliation Deficiencies	12
Transaction Register/Check Stubs; Client Ledger/Running Balances	17
Commingling of Funds: Fees/Costs	3
Prohibited Transactions: Internet/Telephone/Cash/3 rd Party	7
Other: Conflict	1

Mary Hoeft Smith, OLR's Trust Account Program Administrator, presented half-day seminars on trust account management on September 25, 2015, and April 29, 2016. Attorneys Edward Hannan (Waukesha) and Mark A. Peterson (Milwaukee) assisted OLR at these seminars. Atty. Hannan spoke regarding lawyers' fiduciary obligations and the burden-shifting rules, while Atty. Peterson spoke about the proper handling of legal fees and the alternative to holding unearned fees in trust. At the spring 2016 seminar, Mary Gilmeister, President of the Wisconsin ACH Association (WACHA) spoke about electronic banking. These seminars are open to lawyers and law office staff members, and are required in connection with trust account diversions.

On December 4, 2015, the Wisconsin Supreme Court held a public hearing on the Office of Lawyer Regulation's Petition for Amendments to Rules relating to Electronic Banking (Rule Petition 14-07). On April 4, 2016, the Court issued an order, re-creating SCR 20:1.15, and amending SCR 20:1.0, SCR 20:1.5 and SCR 22.39, *effective July 1, 2016*. The new rules enable lawyers to utilize electronic banking in connection with their trust accounts and include requirements to safeguard funds and provide auditable electronic records maintained by lawyers, law firms and financial institutions. In addition, the detailed, record-keeping requirements of former SCR 20:1.15(f) have been replaced by a requirement to maintain complete records and the establishment of record-keeping guidelines that are published on OLR's website. Furthermore, a lawyer's failure to promptly deliver trust property to a client or third party entitled to that property, or to promptly submit records or an accounting for trust or fiduciary property to the Office of Lawyer Regulation will result in a rebuttable presumption that the lawyer has failed to hold that property in trust, in violation of SCR 20:1.15(b)(1) or (k)(1) (*effective July 1, 2016*).

Following the Court's order re-creating the trust account rule and related rules, Mary Hoeft Smith began taking steps to educate lawyers and bankers regarding the changes by updating OLR's web page and making the following presentations:

6/16/2016: *Supreme Court Rules – 2016 Trust Account-Related Amendments*
OLR Staff Training

6/22/2016: *E-Banking in Lawyer Trust Accounts*
Wisconsin ACH Association Symposium: Wisconsin Dells

6/30/2016 *E-Banking under the Wisconsin Trust Account Rule*
State Bar Webcast: (Panel included Dean Dietrich, Aviva Kaiser, Tim Pierce and Mary Hoeft Smith)

Further information regarding the Trust Account Program is available on the Office of Lawyer Regulation's web page: www.wicourts.gov/olr.