

## TOPICS OF INTEREST TO LAWYERS

### OLR Trust Account Program and Investigations

- ◆ Audits by OLR
- ◆ Overdraft agreement – filing requirements
- ◆ Overdraft investigations
- ◆ Trust account management seminar and other dispositions

#### Audits by OLR

While SCR 20:1.15(e)(7) and (j)(7) require the production of trust and fiduciary account records upon request by the Office of Lawyer Regulation or the Supreme Court, OLR does not randomly audit trust accounts. However, OLR routinely reviews trust account records and procedures in conjunction with the investigation of overdrafts. In addition, the investigation of a grievance may also lead to the review or audit of a lawyer's trust account records.

#### **SCR 20:1.15(e) Operational requirements for trust accounts.**

(7) **Production of records.** 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. Failure to produce the records constitutes unprofessional conduct and grounds for disciplinary action.

#### **SCR 20:1.15(j) Fiduciary property.**

(7) **Production of records.** All fiduciary 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. Failure to produce the records constitutes unprofessional conduct and grounds for disciplinary action.

#### Overdraft agreement

An overdraft agreement [[Agreement to Notify Office of Lawyer Regulation of Overdrafts on Lawyer Trust Accounts and Fiduciary Accounts](#)] must be filed for every trust and fiduciary account that is a demand account. A demand account is an account from which the lawyer can make disbursements via check. For further information regarding the types of accounts that are subject to overdraft reporting requirements, [click here](#)

**SCR 20:1.15(h) Dishonored instrument notification; (Overdraft notices).**

All demand trust accounts and demand fiduciary accounts are subject to the following provisions on dishonored instrument notification:

**(1) Overdraft reporting agreement.** A lawyer shall maintain demand trust accounts only in a financial institution that has agreed to provide an overdraft report to the office of lawyer regulation under SCR 20:1.15 (h) (3).

New agreements do not have to be filed annually. A new agreement only needs to be filed with OLR and your financial institution under the following circumstances:

- ◆ When there is no Agreement on file with OLR and with your financial institution for an existing trust or fiduciary account, which has check writing privileges;
- ◆ When a new trust or fiduciary account, which has check writing privileges, is opened at a financial or investment institution;
- ◆ When the name of the financial institution changes and the existing Overdraft Notification Agreement does not cover successor institutions. [If the existing Agreement does not include a Paragraph (e), covering successor institutions, a new Agreement must be filed.]
- ◆ When the name of the law firm changes and the existing Overdraft Notification Agreement does not cover a successor firm that uses the existing trust account. [If the existing Agreement does not include a Paragraph (f), covering successor law firms that are using the trust/fiduciary accounts identified in an existing agreement, the firm must file a new Agreement.]

**Note – Exhibit A form:** As of December 1, 2003, the Exhibit A form was eliminated. Prior to December 2003, law firms were required to file an amended Exhibit A under a number of circumstances, which included the arrival or departure of an attorney from a law firm. For new filings, please be sure to use the current Agreement form. [See, **Overdraft agreement** section].

**Voided IOLTA trust account check**

Lawyers are required to attach a voided IOLTA trust account check to any Overdraft Notification Agreement that is filed with OLR. A voided check need not be attached to the financial institution's copy of the Agreement. OLR reviews the voided IOLTA check to confirm that the IOLTA account is properly identified [See, SCR 20:1.15(b)(2)] and that the checks are formatted as required by SCR 20:1.15(f)(1)e.1. **Starter checks are not acceptable.** Do not file the Overdraft Notification Agreement with OLR until the IOLTA account's printed checks are received. OLR recognizes that this frequently delays the filing of the Agreement by two to three weeks.

**Note:** This requirement relates solely to **IOLTA** Trust Accounts. Do not submit a check to OLR for a fiduciary account or for a trust account established for an individual client.

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**SCR 20:1.15(b) Segregation of trust property.**

(2) **Identification of account.** Each trust account shall be clearly designated as a "Client Account," a "Trust Account," or words of similar import. The account shall be identified as such on all account records, including signature cards, monthly statements, checks, and deposit slips. An acronym, such as "IOLTA," "IOTA," or "LTAB," without further elaboration, does not clearly designate the account as a client account or trust account.

**SCR 20:1.15(f)(1)e. Disbursement records.**

1. **Checks.** Checks shall be pre-printed and pre-numbered. The name and address of the lawyer or law firm, and the name of the account shall be printed in the upper left corner of the check. Trust account checks shall include the words "Client Account," or "Trust Account," or words of similar import in the account name. Each check disbursed from the trust account shall identify the client matter and the reason for the disbursement on the memo line.

## **Overdraft investigations**

Upon receipt of an overdraft notice, OLR staff sends letters to the attorney and to the financial institution, acknowledging receipt of the notice. The attorney is advised to check with the financial institution to determine whether the overdraft was caused by a bank error, and the bank is asked to notify the OLR within 10 business days if the overdraft notice was sent through inadvertence or mistake.

If the OLR receives a full, written explanation for the overdraft from the financial institution, which indicates that the overdraft was due to a "bank error," the matter will be closed without requiring a response from the attorney. The attorney will then be notified that the matter is closed.

**Note:** The use of the wrong deposit slip or a failure to properly endorse a deposit item are not considered to be "bank errors." Bank errors would include mistakes in posting the amounts of deposits or checks. For example, a bank error occurs when the bank posts a \$30,000 deposit as a \$3,000 deposit, thereby inadvertently reducing the actual amount of a deposit by \$27,000.

If the financial institution does not report to OLR that a bank error occurred, or, if the attorney notifies OLR that the overdraft was caused by a law office error, OLR staff will investigate the cause of the overdraft. The attorney will be asked to provide a written response to a variety of questions relating to the cause of the overdraft and will also be asked to produce various trust or fiduciary account records.

## **Trust account management seminar and other dispositions**

In most circumstances, when the overdraft is due to a math error or some other type of inadvertent human error, and the trust account records and procedures are in order, the investigation will be dismissed.

If OLR's review of the trust account records reveals only one or two minor record keeping violations, the investigation will generally result in an advisory letter to the attorney, outlining the requirements of the trust account rule and giving the attorney guidance on how to comply with the rule.

However, if there appear to be more than one or two significant recordkeeping violations, the attorney may be asked if he or she would be interested in participating in the alternatives to discipline program. If so, the attorney would most likely be asked to attend OLR's Trust Account Management Seminar. In some cases, the lawyer may also be required to provide OLR with trust account records for several months after attending the seminar in order to assure that the attorney understands the recordkeeping process and is maintaining the required records.

OLR's **Trust Account Management Seminar** provides basic information on the trust account rule, safeguarding client and third party funds, and keeping proper trust account records. It includes a workshop segment where trust account records are examined and a monthly account reconciliation is performed. The seminar also provides limited guidance on using computer software to maintain records. OLR presents this four-hour seminar semi-annually, normally in April and October. The seminar is held in Madison. Since it is an alternative to discipline, no CLE credit is available. The cost of the seminar is currently \$25.

If the attorney is willing to participate in such an alternatives program, he or she enters into a diversion agreement with OLR, which sets forth the terms of the diversion from discipline and the dates by which the attorney must comply with those terms.

Following a successful completion of the diversion process, OLR's Director will dismiss the matter, pursuant to SCR 22.10(6)(b)(ii). The file will then be expunged, pursuant to [SCR 22.45](#), and no discipline will be imposed in the matter. However, if the attorney fails to comply with one or more of the conditions of diversion, the Director may terminate the diversion and commence further proceedings, as provided in SCR 22.10(7)(a) and (b).

Finally, if OLR's review of the records leads to the discovery of serious violations, such as the conversion of client or 3<sup>rd</sup> party funds, OLR will seek discipline.