

Procedures in Overdraft Investigations

Upon receipt of an overdraft notice, OLR staff sends letters to the lawyer or law firm 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, indicating that the overdraft was due to a “bank error,” and explaining the nature of that error, the matter will be closed without requiring a response from the attorney. The attorney will then be notified that the matter is closed.

What constitutes a bank error? Examples of bank errors include:

- ◆ Errors in posting the amount of a deposit or a check. *For example, the bank posts a \$30,000 deposit as a \$3,000 deposit, inadvertently reducing the amount of the deposit by \$27,000.*
- ◆ Misidentifying a lawyer’s business account as the lawyer’s trust account and reporting the overdraft on the business account to OLR.
- ◆ Routinely withdrawing monthly service fees on an IOLTA a day before reversing the fees;
- ◆ Deducting check printing charges from the trust account after informing the lawyer the fees would be deducted from the business account;
- ◆ Charging analysis fees on a closed trust account

What does not constitute a bank error?

- ✓ Lawyer’s use of the wrong deposit slip;
- ✓ Lawyer’s failure to properly endorse a deposit item

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.

LETTER TO LAWYER OR LAW FIRM

PERSONAL AND CONFIDENTIAL

Attorney Name
Law Firm Name
Address
City, State, Zip

Re: Notice of Trust Account Overdraft
OLR Matter No. #

Pursuant to SCR 20:1.15(h)(3), your financial institution notified the Office of Lawyer Regulation (OLR) of an overdraft on a trust account maintained by your office. A copy of the overdraft notice is enclosed.

SCR 20:1.15(h)(7) requires OLR to hold this notice for ten (10) business days to enable your financial institution to withdraw the notice if it was sent through inadvertence or mistake.

Please note that SCR 20:1.15(h)(3) requires your financial institution to submit an overdraft report to this office whenever a “properly payable instrument is presented against a lawyer trust account containing insufficient funds, **whether or not the instrument is honored**” (*Emphasis added*). In addition, SCR 20:1.15(h)(7) specifies that “the deposit of additional funds by the lawyer or law firm shall not constitute reason for withdrawing an overdraft report.”

If you have any questions regarding this matter, please contact Janet Byrne at (608) 261-8296 Annette Smith at (608) 261-4318. Please refer to the above-referenced OLR Matter Number in any communication relating to this matter.

OFFICE OF LAWYER REGULATION

Enclosure
OD Notificatn Ltr-R 01/14/16

LETTER TO FINANCIAL INSTITUTION

CONFIDENTIAL

Operations Manager
(Name of Bank)
(Address)
(City, State, Zip Code)

Re: Lawyer's Client Trust Account - Overdraft Notice
Account Holder: (Name of Attorney or Firm)
OLR Matter No. #

The Office of Lawyer Regulation (OLR) received notice from your institution of an overdraft on a lawyer's trust account. A copy of the overdraft notice is enclosed for your reference. Wisconsin's Supreme Court Rule (SCR) 20:1.15(h)(7) requires OLR to hold this overdraft notice for ten (10) business days to enable your institution to withdraw the notice if it was sent through inadvertence or mistake.

SCR 20:1.15(h)(3) provides that financial institutions must submit an overdraft report to OLR whenever a "properly payable instrument is presented against a lawyer trust account containing insufficient funds, **whether or not the instrument is honored**" (*Emphasis added*). In addition, SCR 20:1.15(h)(7) specifies that "the deposit of additional funds by the lawyer or law firm shall not constitute reason for withdrawing an overdraft report."

If your institution sent this overdraft notice to OLR by mistake, please inform us of the error by calling Janet Byrne at (608) 261-8296 Annette Smith at (608) 261-4318 no later than **(TEN BUSINESS DAYS FROM DATE OF LETTER)**. We may request that you provide a written description of the nature of the error.

Finally, please refer to the above-referenced OLR Matter Number in any communication relating to this matter.

OFFICE OF LAWYER REGULATION

Enclosure
OD Ltr-Bank 01/14/16