

Procedures in 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. (See, attached letters.) 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.

LETTER TO LAWYER OR LAW FIRM

PERSONAL AND CONFIDENTIAL

ATTORNEY'S NAME
ADDRESS
CITY, STATE, ZIP

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

The Office of Lawyer Regulation (OLR) received an overdraft notice from the financial/investment institution where you maintain your client trust account. A copy of the overdraft notice is enclosed.

Pursuant to SCR 20:1.15(h)(7), OLR will wait up to ten (10) business days from the issuance of the notice in order to allow your financial/investment institution to advise us that the overdraft notice was sent as a result of a bank error. You should take this time to contact your financial/investment institution to determine whether a bank error occurred, and the overdraft report was provided by inadvertence or mistake.

SCR 20:1.15(h)(7) provides that a lawyer's or law firm's deposit of additional funds to cure any fund insufficiency does not constitute a reason to withdraw the overdraft report.

If you have any questions regarding this matter, please contact Sara Unruh at 608-261-8296. Please refer to the above-referenced Matter Number in any correspondence relating to this matter.

OFFICE OF LAWYER REGULATION

Enclosure
OD Notificatn Ltr-R 01/01/04

LETTER TO FINANCIAL INSTITUTION

CONFIDENTIAL

Operations Manager
(Name of Financial Institution)
(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) has received notice from your institution, pursuant to SCR 20:1.15(h)(3), that a lawyer's trust account has been overdrawn. A copy of the overdraft notice is enclosed for your reference. SCR 20:1.15(h)(7) requires that OLR hold the overdraft notice for up to ten (10) business days from the date of its issuance to allow your institution to withdraw a notice sent through inadvertence or mistake.

OLR does not consider the attempt to cure the insufficiency by the deposit of additional funds as a valid reason for withdrawing the notice. OLR further considers the application of an overdraft protection plan as contrary to the intent and purpose of the rule, which requires that OLR be notified of any overdraft, even if the instrument creating the overdraft is honored.

If you have any questions regarding this matter, please contact Sara Unruh at 608-261-8296. Please refer to the above-referenced Matter Number in any correspondence relating to this matter.

OFFICE OF LAWYER REGULATION

Enclosure
OD Ltr-Bank 01/01/12