TRUST ACCOUNT OVERDRAFT NOTIFICATION AGREEMENT FOR FINANCIAL INSTITUTIONS - ARTICLE IV, RULE 2

TO:
Clerk of the Rhode Island Supreme Court
Frank Licht Judicial Complex
250 Benefit Street – 7th Floor
Providence, RI 02903

The undersigned, being a duly authorized officer of the named financial institution and the person(s) specifically authorized to enter into this Agreement, hereby applies to be approved to receive Attorney Trust Accounts. In consideration of the Supreme Court's approval of the named financial institution, the institution agrees to comply with the reporting requirements for such institutions as set forth in Article IV, Rule 2, as may be amended from time to time.

Specifically, the named financial institution agrees:

1. To report to the Office of Disciplinary Counsel in the event any properly payable Attorney Trust Account instrument is presented against insufficient funds, irrespective of whether or not the instrument is honored.

2. That all such reports shall be substantially in the following form:

   (a) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor; and

   (b) In the case of instruments that are presented against insufficient funds, but which are honored, the report shall also include the date of presentation of the instrument for payment as well as the amount of the overdraft created thereby.

3. That all such reports shall be made within the following time periods:

   (a) In the case of a dishonored instrument, within the time provided by law for notice of dishonor; and

   (b) In the case of instruments that are presented against insufficient funds, but which are honored, within five (5) banking days of presentation for payment against insufficient funds.

This agreement shall apply to all branches of the named financial institution and shall not be cancelled except upon thirty (30) days' notice in writing to the Supreme Court Disciplinary Board, Noel Judicial Complex, 222 Quaker Lane – Room 1083, Warwick, RI 02886.

Name and Address of Main Branch of Financial Institution:

Date _____ _____

Name and designation of authorized officer

CORPORATE SEAL

_____

Signature of Officer

State of _____
County of _____

On this _____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____ ☐ personally known to me or ☐ proved to me through satisfactory evidence of identification, which was _____, to be the person who signed above in my presence, and who swore or affirmed to me that the contents of the document are truthful to the best of his or her knowledge.

Notary Public: _____
My commission expires: _____
Notary identification number: _____

COPY TO:
Office of Disciplinary Counsel
Noel Judicial Complex
222 Quaker Lane – Room 1083
Warwick, RI 02886

FREQUENTLY ASKED QUESTIONS

OVERDRAFT IMPLEMENTATION GUIDELINES FOR FINANCIAL INSTITUTIONS

Question: What is the policy of the Supreme Court Disciplinary Board with respect to the financial institutions who occasionally fail to report overdrafts to the Board through error?

Answer: Occasional simple negligence in failing to report to the Disciplinary Board will not cause removal from the list of approved institutions. However, a pattern of neglect or showing of bad faith in not complying with the rule may cause the Supreme Court to revoke its approval.

Question: Can financial institutions charge attorneys a fee for providing this notice?

Answer: Yes, there is nothing in the rule to prevent charging a fee. Charging fees is a matter of contract between the institution and the depositor.

Question: Must <u>all</u> overdrafts be reported?

Answer: Yes, all overdrafts must be reported irrespective of the cause, unless the financial institution is certain at the time notice is required to be given that the institution's own error caused that matter to be considered an overdraft. Overdraft reporting must not be delayed simply because the financial institution is uncertain as whether it has committed an error which has resulted in an overdraft status. If, <u>after notification is given</u>, however, the financial institution discovers that the institution's error caused the overdraft, it should provide the attorney with a written explanation which the attorney can submit to the Disciplinary Board. The attorney will then be requested to explain. Doubtless by the time the attorney receives written inquiry from the Disciplinary Board, the attorney will have already communicated with the financial institution to determine the cause of the problem. Naturally any explanation from the financial institution to verify any error that may have caused the overdraft will be helpful if received as soon as possible.

Question: If the instrument creates an overdraft but is honored by the financial institution, must the fact that it was presented against insufficient funds still be reported?

Answer: Yes. It is improper for an attorney to have "overdraft privileges" or any other arrangement for a personal loan to cover a <u>trust or client's account</u>. Therefore, all such instruments presented against insufficient funds must be reported. Overdraft privileges, however, for an attorney business account are permissible.

Question: Is there some type of pre-approved report form to be sent to the Disciplinary Board concerning overdrafts?

Answer: Where instruments are dishonored, a copy of the notice of dishonor customarily sent to the depositor is enough. Where instruments are presented against insufficient funds but are paid by financial institutions then the rule sets out a list of specific items to be furnished to the Disciplinary Board.

Question: What is classified as a financial institution?

Answer: All banks (national, federal, or state), trust companies, loan and investment banks, credit unions, and any other financial institutions where an attorney maintains trust accounts.

Question: Does the rule require notice of instruments presented against uncollected funds?

Answer: No. The rule does not address the "collectability of funds" but only requires reporting where a check is presented against "insufficient funds." Members of the bar are reminded, however, that drawing on any funds that have been deposited in a trust account or any other account exposes the attorney to financial risks if for any reason the "uncollected item" does not clear.

Question: Is the provision in the rule requiring attorney trust accounts to be maintained in Rhode Island new?

Answer: No. Rhode Island Disciplinary Rule 9-102 has contained this requirement since 1975. The requirement is also under Rule 1.15 of the Rules of Professional Conduct.

Question: Must instruments be reported which are returned unpaid due to incompleteness?

Answer: No. Only properly payable instruments which are returned for insufficient funds need be reported.

Question: Since all attorney trust accounts are required by Article IV, Rule 2 be clearly identified as "trust," "client," or "escrow accounts" and since instruments presented against insufficient funds on these accounts form the basis for the overdraft notification obligations on the part of financial institutions to the Disciplinary Board, should financial institutions uniformly require all attorneys

and law firms who open trust accounts to include the designation "Attorney Trust Account?"

Answer: Article IV, Rule 2 allows flexibility in designating trust or clients' accounts. Reference to "trust accounts" in this rule is for the collective purpose of making general reference to all such accounts however identified but does not require that all accounts be so designated. Since the account designation is a requirement under the Supreme Court rule which further states that all attorneys are conclusively deemed to have consented to the provisions, all attorney trust accounts must be so designated when opened and financial institutions should insist upon this in all cases. Many attorney "trust accounts" have been opened under the designation of "client account" or "escrow account." Those are also permissible designations.

Question: Is executor, guardian, trustee, receiver, or any other similar fiduciary account included within Article IV, Rule 2?

Answer: Fiduciary accounts are excepted from the definition "attorney trust account" in Article IV, Rule 2 and you are not required to report overdrafts drawn on these accounts.

Rule 2. Trust account overdraft notification.

(1)(a) Lawyers and law firms who practice law in this state shall deposit all funds held in trust in accordance with Rule 1.15 of the Rules of Professional Conduct (Article V of the Supreme Court Rules) in accounts clearly identified as "trust," "client" or "escrow" accounts, collectively referred to herein as "trust accounts," and shall take all steps necessary to inform the depository institution in which the trust accounts are deposited of the purpose and identity of such accounts. For the purposes of this Rule 2, trust accounts shall not include funds held by a lawyer as trustee under an inter vivos or testamentary trust, guardian, executor, receiver or similar fiduciary capacity. Trust accounts shall be maintained only in financial institutions approved by this Court or this Court's Disciplinary Board. The names of financial institutions in which such trust accounts are maintained and identification numbers of each such account shall be recorded on the annual lawyer registration form filed with this Court. Trust accounts, and the maintenance thereof, shall be subject to the following additional provisions.

(b) A financial institution shall be approved as a depository for trust accounts if it shall file with this Court or this Court's Disciplinary Board an agreement, in a form provided by the Court or Disciplinary Board, to report to the Disciplinary Board in the event any properly payable instrument is presented against a trust account containing insufficient funds, irrespective of whether the instrument is honored. This Court or Disciplinary Board shall establish rules governing approval and termination of approved status for financial institutions, and shall annually publish a list of approved financial institutions. No trust account shall be maintained in any financial institution which does not agree to make such reports. Any such agreement shall apply to all branches of the financial institution and shall not be cancelled except upon thirty (30) day's notice in writing to this Court or Disciplinary Board.

(c) The overdraft notification agreement shall provide that all reports made by financial institutions shall be in the following format:

(1) In the case of dishonored instrument, the report shall be identical to the overdraft notice furnished to the depositor;

(2) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall be in similar form as in the case of a dishonored instrument and shall also include the date of presentation of the instrument for payment, as well as the amount of the overdraft created thereby.

Such reports shall be made simultaneously with, and within the time provided by law for notice of dishonor, if any, to depositors. If an instrument presented against insufficient funds is honored, then the report shall be made within five (5) banking days of the date of presentation for payment against insufficient funds.

(d) Every lawyer or law firm practicing or admitted to practice in this state shall, as a condition thereof, release a participating financial institution from any cause of action resulting from a report provided to the Court or the Court's Disciplinary Board and be conclusively

deemed to have consented to the reporting and production requirements by financial institutions mandated by this rule.

(e) Nothing herein shall preclude a financial institution from charging a lawyer or law firm for the reasonable cost of producing the reports and records required by this rule.

Rule 1.15. Safekeeping property.

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(f) A lawyer or law firm shall deposit clients' funds, which are nominal in amount or to be held for a short period of time, in one or more interest bearing trust accounts in accordance with the following provisions. For purposes of this rule, such accounts are referred to as Interest on Lawyers' Trust Accounts (IOLTA):

(1) Earnings from such IOLTA accounts shall not be available to a lawyer or law firm.

(2) Whether clients' funds are nominal in amount or to be held for a short period of time shall be determined solely by each attorney or law firm.

(3) Notification to clients whose funds are deposited in IOLTA accounts shall not be necessary.

(4) Such IOLTA accounts may be established with any financial institution authorized by federal or state law to do business in Rhode Island, the deposits in which are insured by insurance entities regulated by the United States and/or the State of Rhode Island or any agency or instrumentality thereof. Funds deposited in such accounts shall be available for withdrawal immediately upon demand.

(5) The rate of interest payable on any IOLTA account shall not be less than the highest interest rate or dividend available from the financial institution to its non-IOLTA customers when the IOLTA account meets the same minimum balance or other eligibility qualifications. Lawyers or law firms making such deposits shall direct the depository institution:

(i) To remit interest or dividends on such deposits, net of any service or fees, at least quarterly, to the Rhode Island Bar Foundation (the "Foundation"). Revised June 2017

(ii) To transmit to the Foundation and the depositor with each remittance statements showing the name of the depositor, the amount remitted, and the rate(s) at which the interest was computed.

(g) Interest paid to the Foundation shall be used for any of the following purposes: providing legal services to the poor of Rhode Island; improving the delivery of legal services; promoting knowledge and awareness of the law; improving the administration of justice; and for the reasonable costs of administration of IOLTA accounts under this Rule.

(h) Nothing in this Rule shall preclude a lawyer or law firm from depositing any funds of a client other than those funds described in paragraph (f) of this Rule in an interest-bearing account and accounting for the interest to such client. (As adopted by the court on February 16, 2007, eff. April 15, 2007; as amended December 11, 2008.)