

RULE 4-1.15 SAFEKEEPING PROPERTY

OVERDRAFT REPORTING

Advisory Committee Regulation

(a) The advisory committee shall only approve a financial institution that files with the advisory committee an agreement in a form provided by the advisory committee.

(b) The financial institution shall agree:

(1) To report to the chief disciplinary counsel whenever any properly payable instrument or other debit is presented against a lawyer's client trust account containing insufficient funds, irrespective of whether or not the instrument or debit is honored;

(2) To cooperate with the chief disciplinary counsel's investigation related to a report;

(3) To maintain a copy of all records related to a report for a period of five years. Any such agreement shall apply to all branches of the financial institution and shall not be cancelled except upon 30 days notice in writing to the advisory committee. If a bank or branch changes ownership, the new owner must seek approval from the advisory committee or provide notice of cancellation within 30 days, unless the new owner is a financial institution that is already approved;

(4) To make all reports within five days after the financial institution knows of the overdraft, in the following format:

(A) In the case of a dishonored instrument or debit, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of any dishonored instrument, if such a copy is normally provided to depositors;

(B) In the case of instruments or debits that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of overdraft created thereby.

(c) The advisory committee shall annually publish a list of approved financial institutions, shall update the list seasonably, and shall provide a copy of the updated list to any Missouri lawyer upon written request. The advisory committee shall promptly publish notification of revocation of the approval of a financial institution and shall promptly notify the foundation.

(d) The report of an overdraft to the chief disciplinary counsel does not automatically result in disciplinary action. The lawyer shall be given an opportunity to explain the report, including providing evidence that the report resulted from an error by the financial institution.

(e) Nothing herein shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this rule. No charges or fees related to an overdraft shall be removed from funds to be remitted to the foundation.

(f) Approval of a financial institution shall be revoked and the financial institution removed from the list of approved financial institutions if it is found to have engaged in a pattern of neglect or to have acted in bad faith in noncompliance with its obligations under the written agreement.

(1) The chief disciplinary counsel shall communicate any decision to seek revocation of approval to the financial institution in writing by certified mail at the address given on the agreement. The revocation notice shall state the specific reasons for which revocation is sought and advise of any right to reconsideration. The financial institution shall have 15 days from the date of receipt of the written notice to file a written request with the chief disciplinary counsel seeking reconsideration of the chief disciplinary counsel's decision. Failure of the financial institution to timely seek reconsideration, in writing, after receipt of notification is acceptance of revocation.

(2) If, after reconsideration, the chief disciplinary counsel notifies the financial institution of the intent to seek revocation, the financial institution shall accept or reject the revocation, in writing, within 15 days of the receipt of the notice. Failure of the financial institution to timely reject revocation, in writing, is acceptance of revocation. If revocation is rejected, the chief disciplinary counsel shall prepare an information. The procedures shall be the same as those set forth in Rule 5 for a disciplinary hearing on a lawyer. The approved status of the financial institution shall continue until such time as this process is final.

(3) Once revocation of the approval of the financial institution is final, the institution shall not thereafter be approved as a depository for attorney trust accounts

until such time as the financial institution petitions the advisory committee for new approval, including in the petition a plan for curing any deficiencies that resulted in the prior revocation and for periodically reporting compliance with the plan in the future.

(g) Within 15 days of the date revocation becomes effective or of notification that the financial institution is canceling the agreement, a financial institution shall give written notification of the revocation action to all holders of lawyer trust accounts on deposit with the financial institution, and file a report with the chief disciplinary counsel of such notification contacts within 30 days.

(h) Any lawyer or law firm receiving notification from a financial institution that the institution's approval as a trust account depository has been revoked or that the financial institution is canceling its agreement shall remove all trust accounts from the financial institution within 30 days of receipt of such notice or by such later date as is required for the payment of all outstanding items payable from the trust account, and shall send written notice of compliance to the chief disciplinary counsel, including the name and address of the new trust account depository institution.