

Info ▼

RULE CURRENT TO: 2019-01-01

SECTION 28. ATTORNEY TRUST ACCOUNT AND AUTOMATIC "OVERDRAFT" NOTIFICATION PROCEDURE.

A. Consent By Lawyers. Every lawyer practicing or admitted to practice in Arkansas shall, as a condition thereof, be conclusively deemed to have consented to the trust account overdraft reporting and production requirements mandated by this Section.

B. Overdraft Notification Agreement Required. A financial institution shall be approved as a depository for lawyer trust accounts only if it files with the Arkansas Supreme Court Office of Professional Conduct (the "Office") an agreement, in a form provided by the Office, to report to that Office whenever any properly payable instrument is presented against any lawyer trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The Office may establish additional procedures, to be approved by the Supreme Court, governing approval and revocation of approved status for financial institutions. The Office shall annually file with the Supreme Court Clerk and the Arkansas Access to Justice Foundation, and post on the Court's website, not later than January 1, a current list of approved financial institutions. No attorney or law firm trust account shall be maintained in any financial institution that does not agree to so report and is not approved by the Office. Any such agreement shall apply to all branches of the financial institution and shall not be canceled except upon thirty (30) days written notice to the Office.

C. Overdraft Reports. The overdraft notification agreement shall provide that all reports made by the financial institution to the Office shall be in the following format: (1) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors; (2) In the case of instruments 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.

D. Timing of Reports. Reports under subsection 28(C) shall be made simultaneously with, and within the time provided by law for, notice of dishonor, if any. 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.

E. Costs. 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 Section.

F. Trust Accounts. Lawyers who practice law in Arkansas shall deposit all funds held in trust in Arkansas in accordance with Rule 1.15(a) of the Arkansas Rules of Professional Conduct in accounts clearly identified as "trust" or "escrow" accounts, referred to herein as "trust accounts," and shall take all steps necessary to inform the depository institution of the purpose and identity of the accounts. Funds held in trust include funds held in any fiduciary capacity in connection with a representation, whether as trustee, agent, guardian, executor, or otherwise. Lawyer trust accounts shall be maintained only in financial institutions approved by the Office.

G. Account Records. Every lawyer engaged in the practice of law in Arkansas shall maintain and preserve for a period of at least five years, after final disposition of the underlying matter, the records of the accounts, including checkbooks, canceled checks, check stubs, vouchers, ledgers, journals, closing statements, accountings, or other statements of disbursements rendered to clients or other parties with regard to trust funds

or similar equivalent records clearly and expressly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries, and disbursements of the funds or other property of a client.

H. Definitions. For purposes of this Section: (1) "Financial institution" includes a bank, savings and loan association, credit union, savings bank, and any other business or person that accepts for deposit funds held in trust by lawyers. (2) "Properly payable" refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of Arkansas. (3) "Notice of dishonor" refers to the notice that a financial institution is required to give, under Arkansas law, upon presentation of an instrument, that the institution dishonors. (4) "Office" means the Office of Professional Conduct of the Arkansas Supreme Court.

I. Form of Overdraft Reporting Agreement. The form of the "Attorney Trust Account Overdraft Reporting Agreement" attached hereto, and as may be subsequently revised, is approved for use.

J. Disapproval or Revocation of Approval of Financial Institutions. (1) Refusal of the Office to approve a financial institution due to failure of the financial institution to timely submit an initial properly executed written agreement on the form approved by the Court or the Office is not appealable or otherwise subject to challenge, including by civil action in any court. (2) Approval of a financial institution shall be revoked and the financial institution removed from the list of approved financial institutions if it is found by the Executive Director to have engaged in a pattern of neglect or to have acted in bad faith in not complying with its obligations under the written agreement. (3) The Executive Director shall communicate any decision to revoke 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 the revocation decision and advise of any right to reconsideration or review. The financial institution shall have thirty (30) days from the date of receipt of the written notice to file a written request with the Executive Director seeking reconsideration of the Executive Director's decision or a review of that decision by a panel of the Committee on Professional Conduct. The financial institution may request a review by either ballot vote of a panel or a public hearing before a panel, following the Procedures. The decision of the panel shall be final and not subject to any review. The approved status of the financial institution shall continue until such time as this review process is final. (4) Once the approval of the financial institution has been finally revoked, the institution shall not thereafter be approved as a depository for attorney trust accounts until such time as the financial institution petitions the Office for new approval, including in the petition a plan for curing any deficiencies that caused its earlier revocation and for periodically reporting compliance with the plan in the future, and approval is granted. (5) Within fifteen (15) days of receipt of the notice of revocation, or final order of revocation if reviewed by a panel, of its approved status, a financial institution shall give written notification of the revocation action to all holders of attorney trust accounts on deposit with the financial institution, and file a report with the Office of all such attorney notification contacts within thirty (30) days of the date of receipt by the financial institution of the notice or final order of revocation. (6) Any attorney or law firm receiving notification from a financial institution that the institution's approval as a trust account depository has been revoked shall remove all trust accounts from the financial institution within thirty (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 Office, including the name and address of the new trust account depository institution. (7) Failure of any financial institution, attorney, or law firm to comply with the provisions of Section 28 may be treated as contempt of the Arkansas Supreme Court upon petition by the Office, and punished as such upon a finding of contempt.

ATTORNEY TRUST ACCOUNT OVERDRAFT REPORTING AGREEMENT

To: Arkansas Supreme Court Office of Professional Conduct (the "Office") Justice Building, Room 110 625
Marshall Street Little Rock, AR 72201-1054

The undersigned, being a duly authorized officer of (name of institution) _____, a financial institution doing business in the State of Arkansas, and the agent of the named financial institution specifically authorized to enter into this

agreement, hereby applies to receive attorney trust accounts in the State of Arkansas. In consideration of approval by the Office of this financial institution, the financial institution agrees to comply with the overdraft reporting requirements for such financial institutions as set forth in Section 28 of the Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law (Rev. 2011) (the "Procedures"), which is incorporated herein by reference, and any other rules or procedures for overdraft reporting promulgated by the Arkansas Supreme Court or the Office, and any later amendments to such rules or procedures.

Specifically, the named financial institution agrees to report to the Office all events involving trust account instruments, and to report in the following format:

- (1) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors;
- (2) In the case of instruments 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.

All reports shall be made within the following time periods:

- (1) In the case of a dishonored instrument, simultaneously with, and within the time provided by law for, notice of dishonor;
- (2) In the case of an instrument that is presented against insufficient funds but which instrument is honored, within five (5) banking days of the date 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 written notice to the Executive Director of the Office at the address listed above. Name and address of financial institution:

Date: _____

Signature of Authorized Official

(Corporate Seal)

Printed or Typed Name of Authorized Official _____

Title or Position of Authorized Official _____

ACKNOWLEDGMENT

On this _____ day of _____, 2 _____, before me, a Notary Public for the State of Arkansas, appeared the above-named individual, known to me to be the person executing this instrument, and acknowledged and executed this instrument as his/her free and voluntary act.

Notary Public (signature)

My Commission Expires: _____

ACCEPTANCE

The above-named financial institution is hereby approved by the Arkansas Supreme Court Office of Professional Conduct as a depository for attorney trust accounts in the State of Arkansas until such time as this agreement is cancelled by the financial institution upon thirty (30) days written notice to the Office, or is revoked by action of the Executive Director of the Office.

Date _____

Executive Director, Office of Professional Conduct