

Oh no! The trust account is overdrawn. Time to panic?

**by**  
**Patrick R. Burns, First Assistant Director**  
**Minnesota Office of Lawyers Professional Responsibility**

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In terms of letters that lawyers don't want to receive, the second worst (the worst is that personal and confidential letter from the Office of Lawyers Professional Responsibility) is the letter from the bank informing you that your trust account has become overdrawn. While this is not good news, it is not necessarily the end of the world. Here is what is likely to happen.

First, a copy of the overdraft notice you received will have been sent to the Office of Lawyers Professional Responsibility (OLPR). Rule 1.15(j), Minnesota Rules of Professional Conduct (MRPC), requires that lawyer trust accounts may only be maintained in "eligible financial institutions." In order for a bank to become an eligible financial institution, it must agree in writing with the OLPR to the effect that it will notify the OLPR "in the event any properly payable instrument is presented against a lawyer trust account containing insufficient funds, irrespective of whether the instrument is honored." Rule 1.15(k), MRPC. A list of banks that have entered into such an agreement and are thus considered eligible financial institutions may be found at the OLPR's Web site, <http://lprb.mncourts.gov>.

Upon receipt of the overdraft inquiry by the OLPR, a letter will go out to you (yes, in an envelope marked personal and confidential). It is not yet time to panic. The letter is not initiating a disciplinary investigation. It will, however, ask for some basic information and documentation. It will ask for:

- (1) A copy of the trust account check causing the overdraft and the name of the attorney who is responsible for issuance of said check.
- (2) The identity of the client on whose behalf the check was issued and a copy of that client's subsidiary ledger.
- (3) A complete description of the reason(s) that the balance in the trust account at the time the check was presented was insufficient to cover that check.
- (4) Copies of your monthly trust account bank statements for the month in which the overdraft occurred and the two previous months.

(5) If funds have been deposited to cover the overdraft and any resultant bank charges, copies of the relevant deposit slip or credit memo, the bank statement reflecting the deposit, and a full description of the funds comprising the deposit.

(6) If funds have not been deposited to cover the overdraft and bank charges, an explanation as to why no such deposit has been made.

(7) Copies of your client subsidiary ledgers for each client with funds in the trust account during the month in which the overdraft occurred and the two previous months.

(8) Copies of your trust account checkbook register, trial balances and reconciliations for the month in which the overdraft occurred and the two previous months.

If the overdraft was caused solely by bank error, a letter from the bank specifying the exact nature of the error may be sufficient. Bank error typically means that the bank, perhaps, deposited a settlement check to the wrong account or some such thing. It does not mean that the bank erred by paying the trust account check when there was not enough money in the trust account to cover the check. That is your error, not the bank's.

When you get the letter from the OLPR, be sure to respond promptly. If you need more time to respond, call and ask for more time. That will be considered a response.

What we look for in reviewing responses to trust account overdraft inquiries are basically two things – is client money being properly handled and are the proper trust account books and records being maintained?

It is still not time to panic. Typically, over 80 percent of all trust account overdraft inquiries are closed out without a disciplinary investigation. If it appears that there are shortages in client funds that should be on deposit or serious deficiencies in the books and records (or if you fail to respond), a disciplinary investigation may be initiated. If the books and records problems are slight and there is no indication of a shortage in the account, most likely we will work with you to ensure that proper books and records are kept in the future.

The best advice is to familiarize yourself with the requirements of maintaining a client trust account (*see* our web site) and to be diligent in keeping proper records and reconciling the account. If you do these things, the odds of an overdraft are slight and, even if one occurs, it is not likely to result in discipline.