

Dishonored/Overdraft Check Reporting Rule

Banks in New York State which offer fiduciary accounts to attorneys are required to report all instances of bounced checks and overdrafts on attorney trust, special and escrow accounts. The reports are forwarded to the New York Lawyers' Fund for Client Protection, which serves as a statewide clearing house for these reports. Banks have 10 days to withdraw reports that have been issued in error. If not withdrawn, the reports are sent to the appropriate Attorney Grievance Committee for investigation. A bounced-check and overdraft report generally triggers an audit of the attorney's trust, special or escrow account. The Appellate Divisions' uniform court rule is reported at 22 NYCRR Part 1300.1.

Dishonored Check and Overdraft Reporting Rules for Attorney Special, Trust and Escrow Accounts (22 NYCRR 1300.1):

(a) Special bank accounts required by Disciplinary Rule 9-102 (22 NYCRR 1200.46) shall be maintained only in banking institutions which have agreed to provide dishonored check and overdraft reports in accordance with the provisions of this section.

(b) An agreement to provide dishonored check and overdraft reports shall be filed with the Lawyers' Fund for Client Protection, which shall maintain a central registry of all banking institutions which have been approved in accordance with this section, and the current status of each such agreement. The agreement shall apply to all branches of each banking institution that provides special bank accounts for attorneys engaged in the practice of law in this State, and shall not be cancelled by a banking institution except on 30 days' prior written notice to the Lawyers' Fund for Client Protection.

(c) A dishonored check and overdraft report by a banking institution shall be required whenever a properly payable instrument is presented against an attorney special, trust or escrow account which contains insufficient available funds, irrespective of whether the instrument is honored. A properly payable instrument means an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of the State of New York.

(d) A dishonored check and overdraft report shall be substantially in the form of the notice of dishonor which the banking institution customarily forwards to its customer, and may include a

photocopy or a computer generated duplicate of such notice.

(e) Dishonored check and overdraft reports shall be mailed to the Lawyers' Fund for Client Protection, 119 Washington Avenue, Albany, NY 12210, within five banking days after the date of presentment against insufficient available funds.

(f) The Lawyers' Fund for Client Protection shall hold each dishonored check and overdraft report for 10 business days to enable the banking institution to withdraw a report provided by inadvertence or mistake; except that the curing of an insufficiency of available funds by a lawyer or law firm by the deposit of additional funds shall not constitute reason for withdrawing a dishonored check and overdraft report.

(g) After holding the dishonored check and overdraft report for 10 business days, the Lawyers' Fund for Client Protection shall forward it to the attorney disciplinary committee for the judicial department or district having jurisdiction over the account holder, as indicated by the law office or other address on the report, for such inquiry and action that attorney disciplinary committee deems appropriate.

(h) Every lawyer admitted to the Bar of the State of New York shall be deemed to have consented to the dishonored check and overdraft reporting requirements of this section. Lawyers and law firms shall promptly notify their banking institutions of existing or new attorney special, trust, or escrow accounts for the purpose of facilitating the implementation and administration of the provisions of this section.