

**INVITATION TO COMMENT ON
PROPOSED RULES PRINCIPALLY CONCERNING
TRUST ACCOUNT OVERDRAFT NOTIFICATION**

A trust account overdraft notification rule would require banks to notify the Office of Disciplinary Counsel of overdrafts on attorney trust accounts. A principal perceived benefit of such a rule would be a reduction in the number of instances in which client funds are misappropriated.

In the 2005 Regular Session, the Louisiana Legislature passed [2005 La. Acts 249](#). The new law recognizes the Supreme Court of Louisiana's rulemaking authority in the area of trust account overdraft notification. The Louisiana State Bar Association (LSBA) has asked the Court to adopt trust account overdraft notification rules. The LSBA also supported the passage of 2005 La. Acts 249.

Two sets of draft rules have been suggested to facilitate trust account overdraft notification. Draft Court Order 1 amends the Rules for Lawyer Disciplinary Enforcement to provide for trust account overdraft notification. In conjunction with Order 1, a draft Agreement has been created that attorneys and their banks would execute to facilitate overdraft notification. Draft Court Order 2 suggests three ancillary rule changes to complement the trust account overdraft notification rule.¹ Both draft Court Orders and the Attorney/Bank Agreement follow this Notice.

Before taking definitive action concerning these rule changes, the Court decided to place the draft Orders on its website for comment. Suggested new language is noted through the use of underlining and **boldface** type. The deletion of presently existing language is noted through the use of ~~strikethrough~~.

Persons interested in commenting on the proposed rule changes may forward written comments to:

Tim Averill
Deputy Judicial Administrator/General Counsel
Office of the Judicial Administrator
Supreme Court of Louisiana
400 Royal Street, Suite 1190
New Orleans, LA 70130-8101

or via e-mail to: rulecomments@lajao.org

¹ The Rules for Lawyer Disciplinary Enforcement (La. S. Ct. Rule XIX) and the Louisiana Rules of Professional Conduct can be accessed from the "Court Rules" link on the Supreme Court's home page.

Comments should be forwarded no later than the close of business on Monday, March 6, 2006. **Please be advised that any comments which are forwarded constitute matters of public record and are subject to public inspection.**

DRAFT ORDER 1

[TRUST ACCOUNT OVERDRAFT NOTIFICATION]

SUPREME COURT OF LOUISIANA

ORDER

Acting in accordance with Article V, Sections 1 and 5 of the Louisiana Constitution of 1974, and the inherent power of this Court, and considering the recommendations of the Louisiana State Bar Association, as well as the Louisiana Legislature's promulgation of 2005 La. Acts No. 249,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

Section 1. Louisiana Supreme Court Rule XIX, §28 be and is hereby amended to change the Section title and to enact a Subpart D, to read as follows:

Section 28. Maintenance of Trust Accounts by Lawyers; Access to Lawyers' Financial Account Records; Overdraft Notification.

* * *

D. Overdraft Notification. Any lawyer who maintains a client trust or escrow account in accordance with this rule and Rule 1.15 of the Louisiana Rules of Professional Conduct shall execute an agreement with the federally-insured financial institution or its affiliate that holds the attorney's trust or escrow account

trust or escrow accounts on the effective date of this rule change shall confect agreements with their financial institution(s) so that the overdraft notification procedure shall become effective on [] and thereafter. Attorneys who open trust or escrow accounts in accordance with La. S. Ct. Rule XIX, §28 and Rule 1.15 of the Rules of Professional Conduct between [] and [] shall confect agreements with their financial institutions so that the overdraft notification procedure shall become effective on [] and thereafter. Any attorney who opens a client trust or escrow account on or after [] shall not deposit funds in any such account until an agreement in conformance with these rules is executed between the attorney and the financial institution(s) in which the trust or escrow account funds are to be placed.

New Orleans, Louisiana, this _____ day of _____, 2006.

FOR THE COURT:

Pascal F. Calogero, Jr., Chief Justice

Supreme Court Of Louisiana
Authorization To Financial Institution

Pursuant to the inherent, plenary and Constitutional authority of the Supreme Court of Louisiana to regulate the practice of law, and in accordance with Rule 19 of the Supreme Court Rules, every attorney licensed to practice law in Louisiana who maintains a trust or escrow account as required by the Rules of Professional Conduct is required to maintain such accounts with a federally insured financial institution with whom the attorney has executed an agreement which authorizes the financial institution to provide written or electronic notification to the Office of Disciplinary Counsel of any overdraft created on such accounts. This authorization complies with the requirements of the Louisiana Supreme Court.

Trust Account Affidavit:

State of Louisiana

Parish of _____

_____, BEING FIRST DULY SWORN, DID STATE:

(Print Name Here)

I am an attorney duly licensed to practice law in the State of Louisiana, and I am familiar with the provisions of the Louisiana Supreme Court Rules regarding trust accounts:

1. that all lawyers holding funds of clients or third persons must maintain a separate account for such funds (commonly referred to as a trust account or escrow account);
2. that every lawyer maintaining a trust or escrow account must participate in the Interest on Lawyer's Trust Account (IOLTA) Program unless a written notice is issued by the Louisiana Bar Foundation exempting an attorney's account from participation;
3. that all lawyers are required to maintain trust and escrow accounts with federally insured financial institutions with which they have executed an agreement requiring the financial institution to provide written or electronic notification to the Office Of Disciplinary Counsel of any overdraft created on such accounts.

_____ I am exempt from the provisions of these rules because I do not maintain a trust account and I handle no funds of clients or third persons, and I do not expect to receive funds of clients or third persons within the next twelve (12) months.

_____ I, or my firm, do maintain one or more trust or escrow accounts for the deposit of funds from clients or third persons. I certify that the following information pertaining to said accounts is true, accurate and complete, and further grant the following authorization:

<u>BANK NAME & ADDRESS</u>	<u>NAME ON ACCOUNT</u>	<u>ACCOUNT #</u>
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_____	_____	_____
_____	_____	_____
_____	_____	_____

(If additional space is required to list additional accounts or information, attach a separate sheet)

Authorization To Financial Institution

I hereby consent to the release by the financial institution in which I maintain a trust account for client or third person funds of written and/or electronic notification to the **Office of Disciplinary Counsel** of any instance of overdraft occurring on such account(s) in accordance with the rules of the Louisiana Supreme Court and Act 249 of the Louisiana Legislature (regular session 2005). Notification shall be sent to: **Office of Disciplinary Counsel, 4000 S. Sherwood Forest Blvd. Suite 607, Baton Rouge, La. 70816 (phone: 225-293-3900 fax: 225-293-3300 e-mail: overdraft@ladb.org)**

Attorney or Firm Name: _____ Signature: _____

Address: _____ Bar Number: _____

Sworn to and subscribed before me this _____ day of _____, 20__.

(Notary Public)

Authorization Accepted: _____

Date: _____ (Bank Officer)

(Notice To Financial Institutions: Pursuant to Legislative Act 249 of the 2005 regular session, notice to the Office of Disciplinary Counsel shall be provided 5 days after notification is provided to the attorney, and shall not issue where the overdraft was created solely by bank charges imposed or when charges are imposed thru bank error. Costs associated with providing this notice may be charged to the attorney and deducted from the interest created on the trust or escrow account. The Act provides that no civil or criminal action may be based upon a disclosure or a non-disclosure of financial records made pursuant to the Act.)

(Notice To Law Firms: A law firm may complete one affidavit signed by an authorized partner and accompanied by a listing of all attorneys to whom the affidavit applies together with their bar roll numbers.)

DRAFT ORDER 2

[COMPLEMENTARY RULE CHANGES]

SUPREME COURT OF LOUISIANA

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ORDER
—————

Acting in accordance with Article V, Sections 1 and 5 of the Louisiana Constitution of 1974, the inherent power of this Court, and considering the need to make amendments to the Rules of Professional Conduct, as well as to the Rules for Lawyer Disciplinary Enforcement,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

Part 1. Louisiana Supreme Court Rule XIX, §7(i) shall be amended to read as follows:

Section 7. Roster of Lawyers.

The Disciplinary Board shall maintain or have ready access to current information relating to all lawyers subject to the jurisdiction of the Board including:

* * *

- (i) Location and ~~identification~~ **account** numbers and IOLTA status of bank accounts in which clients' funds or funds of a third person are held by the lawyer, copies of which are to be furnished to the Louisiana Bar

Foundation **and the Louisiana Attorney Disciplinary Board;**

* * *

Part 2. Louisiana Supreme Court Rule XIX, §8C, third paragraph, be and is hereby enacted to read:

Section 8. Periodic Assessment of Lawyers.

* * *

C. Registration Statement.

* * *

The registration statement mandated by these rules shall include provisions for the identification of all trust or escrow account information as required by Section 7(i). If there has been no change in the trust account information previously identified, the lawyer shall certify that such information remains correct. Where a change has occurred in the trust or escrow account information previously submitted, the lawyer shall disclose that fact and submit the required trust or escrow account information on the approved form located in Appendix F of these rules. Each lawyer shall file with the Louisiana Bar Foundation and Louisiana Attorney Disciplinary Board any change or addition to trust or escrow account information within thirty (30) days of the change or addition.

Part 3. Rule 1.1(c) of the Louisiana Rules of Professional Conduct be and is hereby enacted to read:

Rule 1.1. Competence

* * *

(c) A lawyer is required to comply with all of the requirements of the Supreme Court's rules regarding annual registration, including payment of Bar dues, payment of the disciplinary assessment, timely notification of changes of address, and proper disclosure of trust account information or any changes therein.

These rule changes shall become effective on _____, 2006, and shall remain in full force and effect thereafter until amended or changed through future Orders of this Court.

New Orleans, Louisiana, this _____ day of _____, 2006.

FOR THE COURT:

Pascal F. Calogero, Jr., Chief Justice