

Rule 78.5. Maintenance of trust funds in approved financial institutions; overdraft notification.

1. Clearly identified trust accounts in approved financial institutions required.

(a) Active members of the State Bar of Nevada shall deposit all funds held in trust in this jurisdiction in accordance with S.C.R. 165 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 State Bar.

(b) Every lawyer engaged in the practice of law in the State of Nevada 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, cancelled 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, and make such records available to the State Bar for inspection upon request.

2. Overdraft notification agreement required. A financial institution shall be approved as a depository for lawyer trust accounts if it files with the State Bar an agreement, in a form provided by the State Bar, to report to the State Bar counsel whenever any properly payable instrument is presented against a lawyer trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The State Bar shall establish rules governing approval and termination of approved status for financial institutions, and shall annually publish a list of approved financial institutions. No trust account shall be maintained in any financial institution that does not agree to so report. Any such agreement shall apply to all branches of the financial institution and shall not be cancelled except upon thirty days notice in writing to the State Bar.

3. Overdraft reports. The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the following format:

(a) 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;

(b) 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.

4. Timing of reports. Reports under paragraph 3 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 banking days of the date of presentation for payment against insufficient funds.

5. Consent by lawyers. Every active member of the State Bar shall, as a condition of maintaining active membership in the State Bar, be conclusively deemed to have consented to the reporting and production requirements mandated by this Rule.

(a) Certification of compliance with this Rule and consent shall be acknowledged as part of every active member’s annual licensing form. A member shall immediately file with the State Bar an updated certificate of compliance and consent upon:

(1) any change of law firm affiliation;

(2) opening of any trust account with a financial institution; or

(3) the utilization of any trust account for which there is no certification and consent on file with the State Bar for said active member.

6. Costs. Nothing herein shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable costs of producing the reports and records required by this Rule.

7. Financial institution immunity. A financial institution shall not be liable for damages to any person or entity for any erroneous overdraft report filed in good faith or for the unintentional failure to comply with this Rule.

8. Definitions. For purposes of this Rule:

(a) “Financial institution” includes a bank, savings and loan association, credit union, savings bank, and any other business or person located in this state that accepts for deposit funds held in trust by lawyers.

(b) “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 this jurisdiction.

9. Suspension for non-compliance. All active members shall meet the certification and consent requirements of this rule within forty-five days of the effective date of this Rule or of becoming an active member of the State Bar. Active members who fail to meet the requirements of this Rule shall be notified of their non-compliance, in writing, by the State Bar. Upon the expiration of forty-five days from the date the State Bar sends the member notice of non-compliance, said member shall be suspended from membership in the State Bar, but may be reinstated upon filing the certificate of compliance and consent with the State Bar.

[Added; effective February 10, 1991.]