

TAON: A Positive Opportunity to Protect Client Funds

By Dawn M. Evans

As a result of the Michigan Supreme Court's adoption of new Rule 1.15A of the Michigan Rules of Professional Conduct (MRPC), Michigan's lawyers will join the ranks of lawyers in 41 states who already have such a rule in place. Also known as the Trust Account Overdraft Notification (TAON) rule, MRPC 1.15A will take effect on September 15, 2010, and applies to lawyers practicing and licensed to practice in Michigan. The intent of the TAON rule is to provide an early warning system to lawyers and the Attorney Grievance Commission when activity in a lawyer trust account results in an overdraft.

The genesis of TAON was a desire on the part of client protection fund administrators nationwide to develop a mechanism that could potentially prevent the loss of fiduciary funds through early reporting of overdrafts in a lawyer's trust account. To the extent that a lawyer might be unaware the trust account is overdrawn or perhaps unaware of bookkeeping problems within the firm, receipt of a TAON notice could be the wake-up call to prompt necessary changes to office protocols. Should an overdraft occur, the TAON rule triggers no automatic consequence to a lawyer's ability to practice law. However, a lawyer who receives a TAON notice can expect to receive a communication from the Attorney Grievance Commission seeking an explanation of the overdraft. The experience of many other states with comparable rules is that in excess of 85 percent of TAON notices are found to be the result of an inadvertent lawyer error or administrative banking errors; as a result, no disciplinary action is taken against the lawyer.

Beginning September 15, Michigan lawyers will be required to maintain their client or third-person trust accounts at financial institutions that have been approved by the

State Bar of Michigan. To obtain approved status, a financial institution must sign and deliver to the State Bar a written agreement committing to notify the grievance administrator of the Attorney Grievance Commission and the account holder of overdrafts on lawyer trust accounts within five banking days, providing information sufficient to identify the dishonored instrument.

The State Bar's list of approved financial institutions will be posted on its website at <http://www.michbar.org/opinions/TAON.cfm>¹ beginning this summer as agreements are

Receipt of a TAON notice could be the wake-up call to prompt necessary changes to office protocols.

received. As a result of a cooperative effort among the State Bar, the Michigan State Bar Foundation, the Michigan Bankers Association, and the Attorney Grievance Commission, information about TAON has already been disseminated to Michigan financial institutions. The State Bar has published "Guidelines for Approval of Financial Institutions to Serve as a Depository for Lawyer Trust Accounts" to explain the TAON financial institution approval process to banks, which can be viewed or downloaded at <http://www.michbar.org/opinions/TAON.cfm>. A link to this site is also being posted on banking-related websites. Because of these efforts to educate financial institutions, lawyers should not have to do anything to make their banks aware of the new TAON require-

ments. However, any lawyer who discovers that his or her bank is not informed about TAON may have that bank contact the State Bar by telephone at (517) 346-6333 or via e-mail to TAON@mail.michbar.org.

Many lawyers maintain both IOLTA (Interest on Lawyer Trust Accounts) and non-IOLTA trust accounts as those terms are defined in MRPC 1.15. (Additional information about IOLTA accounts is contained in the Michigan Supreme Court-approved IOLTA attorney guidelines, located at <http://www.msbf.org/iolta/IOLTAAttorneyBrochure102005.pdf>.) Once lawyers have determined that their financial institutions are on the State Bar's list of TAON-approved banks, lawyers must provide written notice to their financial institution of each trust account. Lawyers having existing IOLTA accounts in TAON-approved banks do not need to take further action to comply with the TAON notice rule because the IOLTA "Notice to Eligible Financial Institution" form that has already been used to establish the IOLTA account suffices as notice to the financial institution that the account is a trust account. Lawyers seeking to open new IOLTA accounts must use the "Notice to Eligible Financial Institution" form, which will automatically provide the notice as required by the TAON rule. That form can be obtained at <http://www.msbf.org/iolta/IOLTANoticeForm.pdf>.

For both existing and new non-IOLTA trust accounts, lawyers must take specific action to notify their financial institution as required by the TAON rule. The State Bar has developed a "Non-IOLTA Lawyer Trust Account Notice to Financial Institutions" form that lawyers should use to provide notice to financial institutions for existing or new non-IOLTA trust accounts, which can be downloaded blank or filled out and saved at <http://www.michbar.org/opinions/TAON.cfm>.

Before completing this form, however, lawyers must ensure that their non-IOLTA account name contains the word “trust” or “escrow.” This requirement relates *only* to the name of the account from the financial institution’s standpoint and does not require lawyers to buy new checks that reflect a new name before a current supply of checks is exhausted. Lawyers needing to change the name of their non-IOLTA account to comport with the TAON rule should consult with their financial institution to determine its requirements for effectuating the change. IOLTA accounts are sufficiently identified as lawyer trust accounts without the requirement of the word “trust” or “escrow” in the account name.

Lawyers wishing to refresh their knowledge about IOLTA and non-IOLTA accounts and their usage can find more information through <http://www.michbar.org/pmrc/articles/0000145.pdf>. Additional information about TAON, including the list of approved financial institutions, can be found at <http://www.michbar.org/opinions/TAON.cfm>. Additional information about IOLTA accounts is available at <http://www.msbf.org/iolta/IOLTAlawyerinfo.htm>. ■



Dawn M. Evans is director of professional standards with the State Bar of Michigan. She spent eighteen years in attorney discipline with the State Bar of Texas—the last five of those as chief disciplinary counsel. Before her public service, she was in private practice for six years in Huntsville, Texas. She is the immediate past president of the National Organization of Bar Counsel and was formerly a member of the Texas Young Lawyers Association Board of Directors.

Ten TAON Fast Facts for Lawyers

- (1) “TAON” stands for Trust Account Overdraft Notification, the short name for MRPC 1.15A, recently adopted by the Michigan Supreme Court and effective September 15, 2010.
- (2) The purpose of TAON is to provide an early warning system when overdrafts occur in a lawyer trust or escrow account.
- (3) Beginning September 15, Michigan lawyers must maintain IOLTA and non-IOLTA trust accounts in banks that have agreed to be bound by TAON.
- (4) The State Bar will maintain a list of banks that have been approved as TAON financial institutions at <http://www.michbar.org/opinions/TAON.cfm>.
- (5) Working in conjunction with the Michigan State Bar Foundation, the Michigan Bankers Association, and the Attorney Grievance Commission, the State Bar has developed materials that have already been distributed to financial institutions doing business in Michigan to educate them about the need to obtain approval under TAON to continue to maintain lawyer trust accounts.
- (6) Lawyers must identify in writing all trust accounts to their financial institutions. Non-IOLTA trust accounts must include the word “trust” or “escrow” in the name of the account. A form to be used in notifying a bank of a non-IOLTA trust is available through the State Bar’s TAON webpage at http://www.michbar.org/opinions/TA_notice_fillable.pdf. IOLTA trust accounts are already adequately identified as lawyer trust accounts by the existing “IOLTA Notice to Eligible Financial Institution” form used when IOLTA accounts are opened. Lawyers need take no further steps to make their banks aware that IOLTA accounts are subject to TAON.
- (7) If an overdraft occurs in an IOLTA or non-IOLTA trust account subject to TAON, the financial institution must send information identifying the transaction to the grievance administrator of the Attorney Grievance Commission and the lawyer account holder within five banking days of when the item was paid or returned unpaid.
- (8) There is no automatic disciplinary consequence associated with a lawyer’s receipt of a TAON notice. The grievance administrator will afford the lawyer an opportunity to explain the overdraft.
- (9) For more detailed information about TAON, visit <http://www.michbar.org/opinions/TAON.cfm>. For information about IOLTA, visit <http://www.msbf.org/iolta/IOLTAlawyerinfo.htm>.
- (10) For information about the ethical use of IOLTA and non-IOLTA trust accounts, visit <http://www.michbar.org/pmrc/articles/0000145.pdf>.

FOOTNOTE

1. Being an “approved” financial institution under MRPC 1.15A allows lawyers to place either non-IOLTA or IOLTA trust accounts at that financial institution. In addition to being approved, financial institutions that wish to hold IOLTA accounts must also meet the “eligible financial institution” status under MRPC 1.15 related to complying with comparable rate and other requirements regarding IOLTA accounts. The Michigan State Bar Foundation, which administers the IOLTA program, works with banks regarding “eligible financial institution” status. For more information, contact the Foundation at IOLTA@msbf.org.