

## **FORMAL OPINION NO 2005-145**

### **Trust Accounts: “Cushions” to Avoid Overdrafts**

#### **Facts:**

Oregon lawyers must maintain their Lawyer Trust Accounts only in financial institutions that agree to notify the Oregon State Bar if any properly payable instrument is presented against such account having insufficient funds, whether or not the instrument is honored. Lawyer wishes to deposit a “cushion” of Lawyer’s money in the Lawyer Trust Account to prevent notification to the Oregon State Bar if a bank error or a good-faith bookkeeping error causes a check to be presented when there might be insufficient funds to honor it because of the error.

#### **Question:**

May Lawyer deposit a “cushion” of Lawyer’s own funds in Lawyer’s Lawyer Trust Account to prevent notification to the Oregon State Bar of a check presented against insufficient funds caused by a bank or a good-faith bookkeeping error?

#### **Conclusion:**

No.

#### **Discussion:**

Oregon RPC 1.15-1(b) provides:

(b) A lawyer may deposit the lawyer’s own funds in a lawyer trust account for the sole purposes of paying bank service charges or meeting minimum balance requirements on that account, but only in amounts necessary for those purposes.

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The rule contains no exception that allows “cushions,” and the placement of such funds in a lawyer trust account would therefore constitute impermissible commingling. *Cf. In re Mannis*, 295 Or 594, 668 P2d 1224 (1983); *In re Holman*, 297 Or 36, 682 P2d 243 (1984).

**Approved by Board of Governors, August 2005.**

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COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* § 12.3-6(a) (client retainers), § 12.3-6(d) (exceptions and limitations to rules regarding funds in trust accounts), § 12.6 (trust-account-overdraft notification) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* § 44 (2000) (supplemented periodically); and ABA Model RPC 1.15(b).