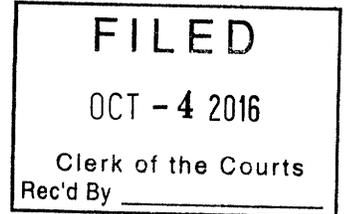


IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: PETITION TO AMEND TENNESSEE SUPREME COURT RULE 8,
RPC 1.15 AND RULE 43

No. ADM2016-01404

ORDER



On July 13, 2016, the Board of Professional Responsibility of the Supreme Court of Tennessee (“BPR”) and the Tennessee Bar Foundation filed a petition asking the Court to amend Rule 8, RPC 1.15 and Rule 43 of the Rules of the Tennessee Supreme Court to allow attorneys to deposit trust funds in federally insured credit unions.

On August 18, 2016, the Court filed an order soliciting public comments on the proposed amendments. The deadline for submitting written comments was Monday, September 19, 2016. The Court received only one written comment during the comment period, a comment from the Tennessee Credit Union League supporting the proposed amendments and suggesting that the Court also amend Rule 9, section 35.2(a) of the Rules of the Tennessee Supreme Court to create consistency among the rules.

After due consideration, the Court hereby adopts the amendments to Rule 8, RPC 1.15, Rule 9, section 35.2(a), and Rule 43 of the Rules of the Tennessee Supreme Court, as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order.

The Clerk shall provide a copy of this Order, including the Appendix, to LexisNexis and to Thompson Reuters. In addition, this Order, including the Appendix, shall be posted on the Tennessee Supreme Court’s website.

IT IS SO ORDERED.

PER CURIAM

APPENDIX

***AMENDMENTS TO
TENN. SUP. CT. R. 8, RPC 1.15;
TENN. SUP. CT. R. 9, § 35.2(a);
and TENN. SUP. CT. R. 43***

[Amend Rule 8, RPC. 1.15 as indicated below; deleted text is indicated by overstriking, and new text is indicated by underlining:]

Rule 1.15. Safekeeping Property and Funds.

....

(b) Funds belonging to clients or third persons shall be deposited in a separate account maintained in a financial institution, deposits of which are insured by the Federal Deposit Insurance Corporation (FDIC) and/or National Credit Union Association (NCUA), having a deposit-accepting office located in the state where the lawyer's office is situated (or elsewhere with the consent of the client or third person) and which participates in the required overdraft notification program as required by Supreme Court Rule 9, Section 35.1. A lawyer may deposit the lawyer's own funds in such an account for the sole purpose of paying financial institution service charges or fees on that account, but only in an amount reasonably necessary for that purpose. Other property shall be identified as such and appropriately safeguarded. Complete records of such funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

[Amend Rule 9, section 35.2(a) as indicated below; deleted text is indicated by overstriking, and new text is indicated by underlining:]

35.2. Verification of BankFinancial Institution Accounts.

(a) Generally. Whenever Disciplinary Counsel has probable cause to believe that bankfinancial institution accounts of an attorney that contain, should contain or have contained funds belonging to clients have not been properly maintained or that the funds have not been properly handled, Disciplinary Counsel shall request the approval of the Chair or Vice-Chair of the Board to initiate an investigation for the purpose of verifying the accuracy and integrity of all bankfinancial institution accounts maintained by the attorney. If the Chair or Vice-Chair approves, Disciplinary Counsel shall proceed to verify the accuracy of the bankfinancial institution accounts.

[Amend Rule 43, section 9 as indicated below; new text is indicated by underlining:]

Section 9. Deductions by the financial institution from interest earned may only be for allowable reasonable service charges or fees calculated in accordance with the

institution's standard practice for non-IOLTA customers. For purposes of this Rule, "allowable reasonable service charges or fees" are defined as:

- (a) per check or electronic debit charges;
- (b) per deposit or electronic credit charges;
- (c) a fee in lieu of minimum balance;
- (d) FDIC insurance fees or FDIC account guarantee fees [and/or NCUA insurance fees or NCUA account guarantee fees](#);
- (e) a sweep fee; and
- (f) a reasonable IOLTA account administrative fee.

Other financial institution service charges or fees shall not be deducted from IOLTA account interest and shall be the responsibility of, and may be charged to, the lawyer or law firm maintaining the IOLTA account. Nothing in this Rule shall be construed to require that a financial institution charge fees on an IOLTA account, nor does anything in this Rule prohibit a financial institution from waiving or discounting fees associated with an IOLTA account.