

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

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IN RE: PETITION TO AMEND TENNESSEE SUPREME COURT RULE 8, RPC 1.15
AND RULE 43, SECTION 9(d)

No. ADM2016-01404

The Tennessee Credit Union League (League) by and through its Counsel, Nathan H. Ridley files this comment in support of the petition filed by the Board of Professional Responsibility and the Tennessee Bar Foundation and respectfully petitions this Court to amend Tennessee Supreme Court Rule 8, RPC 1.15 and Rule 43, Section 9(d) to permit the maintenance of a lawyer's trust account in a credit union.

BACKGROUND

Credit unions provide a vital array of financial services to their members. Established as not-for-profit financial institutions owned and operated for the benefit of their members, credit unions differ from banks, which produce profits for investors and creditors. On the issue of deposit insurance, however, credit unions and banks are afforded identical deposit coverage. As a result, creating parity between the coverage provided by the National Credit Union Share Insurance Fund (NCUSIF) and the Federal Deposit Insurance Corporation (FDIC) on all types of deposits and accounts has been a longstanding goal of state and national credit union leagues.

In December 2014, the Credit Union Share Insurance Fund Parity Act, (P.L. 113-252) and now codified at 12 U.S.C. § 1787(k), (the Act) became law. The Act directs the National Credit Union Administration (NCUA) to expand federal deposit insurance to trust accounts, including Interest on Lawyers Trust Accounts (IOLTAs) and similar escrow accounts managed by credit unions. The passage of the act signals congressional intent to create share and deposit insurance parity with banks for credit unions, thereby establishing that there is no difference in coverage between types of depository financial institutions in the marketplace.

Before the federal law was enacted, the NCUA provided coverage of IOLTA accounts in credit unions only if the client was a member of the credit union or if the credit union was a low income-designated credit union. By contrast, in banks, IOLTAs receive FDIC insurance that provides \$250,000 in protection per client per institution. Under the new law, credit unions now have parity with banks, and lawyers can have their trust accounts fully insured up to \$250,000 for each owner of the funds. Now, an attorney who is a member of a credit union in which the trust account is opened has a choice of financial institutions for that account. Moreover, because the federal share and deposit insurance programs administered by NCUA and the FDIC are now substantially similar, the country will have enhanced public confidence both in banks and the credit union system.

Since the enactment of the federal law, twelve states have approved or are in the process of approving IOLTA coverage in credit unions. These states include Florida, Georgia, Idaho, Iowa, Maine, Michigan, New Hampshire, North Carolina, Pennsylvania, South Carolina, Vermont, and Washington.

In Tennessee, there are 150 credit unions in the Tennessee Credit Union League, delivering financial services to over two million members. Rule 8, RPC 1.15 and Rule 43, Section 9(d) of the Tennessee Supreme Court Rules, however, conflict with the new Act, preventing Tennessee attorneys from using credit unions for IOLTAs. The Act thus paves the way for a change in Tennessee's rules, ensuring that funds in IOLTAs have the same level of protection in both credit unions and banks.

THE SUPREME COURT'S RULES SHOULD REFLECT THE CHANGE IN THE FEDERAL LAW

Under an IOLTA program, an attorney or law firm establishes an account at a financial institution to hold client funds to pay for legal services or other purposes where the funds are held in trust until needed. The interest on the Tennessee accounts then flows to the Tennessee Bar Foundation. The Court's present rules require the funds to be held in a participating bank with the benefit of deposit insurance provided by the FDIC.

The new federal law, Public Law 113-252, grants parity to the credit unions and their federal share insurance program that banks have with their federal deposit insurance. Before the enactment of the Act, the credit union insurance protection was not available to nonmembers whose funds may have been held in trust by an attorney. Now the federal insurance will only look to the attorney's status as a credit union member and will provide full insurance protection to each client whose funds are held in trust regardless of their credit union membership status.

The changes sought by the petition would also make the present rules more consistent with the definition used in Rule 9, Section 35.1(h) where the definition section already defines a "financial institution" to include a credit union.

This change in the federal law is salutary one that provides more options to an attorney when choosing which financial institution to use for the placement of trust funds. A byproduct of greater competition in the choice of financial services providers should be greater interest and dividend income from the attorney trust accounts for the benefit of the greater legal community served by the Tennessee Bar Foundation.

CONCLUSION

For the foregoing reasons, the League fully supports the petition filed by the Board of Professional Responsibility and the Tennessee Bar Foundation and respectfully petitions this Court to amend Tennessee Supreme Court Rule 8, RPC 1.15 and Rule 43, Section 9(d) to permit the maintenance of a lawyer's trust account in a credit union.

While not included in the petition, as a house keeping provision, the Court may also wish to consider revising Rule 9, Section 35.2(a) by replacing the language "bank accounts" with the

language “financial institution accounts” wherever the language may appear. This revision is not essential to achieve the purposes of the petition, but simply adds internal consistency within the Court’s rules. See Exhibit A.

Respectfully Submitted,

TENNESSEE CREDIT UNION LEAGUE

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Exhibit A

Supreme Court Rule 9, Section 35.2(a) provides:

35.2 Verification of ~~Bank Accounts~~ Financial Institution Accounts

(a) Generally. Whenever Disciplinary Counsel has probable cause to believe that ~~bank accounts~~ financial 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 ~~bank accounts~~ financial institution accounts maintained by the attorney. If the Chair or Vice-Chair approves, Disciplinary Counsel shall proceed to verify the accuracy of the ~~bank accounts~~ financial institution accounts.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing petition has been served upon the individuals and organizations identified below by regular first class U.S. Mail, postage prepaid, this 16 day of September, 2016.

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