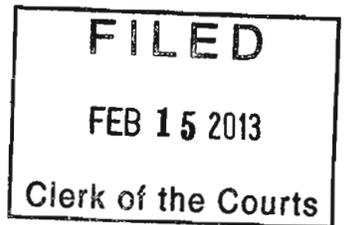


IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE



IN RE: PROPOSED AMENDMENT TO SUPREME COURT RULE 43

No. M2013-00391-SC-RL1-RL - Filed: February 15, 2013

ORDER

On February 7, 2013, the Board of Professional Responsibility (“BPR”) filed a petition asking the Court to amend Rule 43, Sections 15 and 16, of the Rules of the Tennessee Supreme Court, *nunc pro tunc* to January 1, 2012, to make the timelines in Rule 43 consistent with Rule 9 of the Rules of the Tennessee Supreme Court.

After due consideration, the Court hereby amends Rule 43, Sections 14, 15, and 16, of the Rules of the Tennessee Supreme Court by repealing the existing Sections in their entirety and replacing them with the new Sections set out in the attached appendix to this order. This Order is entered *nunc pro tunc* to January 1, 2012, and the effective date of these amendments is January 1, 2012.

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

IT IS SO ORDERED.

PER CURIAM

APPENDIX

Tenn. Sup. Ct. R. 43 Interest on Lawyers' Trust Accounts

[Delete the existing Sections 14, 15, and 16 in their entirety, and replace them with the following new Sections:]

Section 14. Unless exempt under this Section 14, every lawyer admitted to practice in Tennessee shall certify in the lawyer's annual registration statement required by Tennessee Supreme Court Rule 9, as a condition of licensure, that all funds in the lawyer's possession that are required pursuant to RPC 1.1 5(b) to be held in an IOLTA account are, in fact, so held and shall list the name(s) of the financial institution(s) and account number(s) where such funds are deposited. This certification shall be made on a form provided by the Board of Professional Responsibility and shall be submitted by the lawyer within the time period set forth in Rule 9 for the annual registration statement.

A lawyer licensed in Tennessee is exempt, and shall so certify on the lawyer's annual registration statement, if:

- (a) the lawyer is not engaged in the private practice of law in the State of Tennessee;
- (b) the lawyer serves as a Judge, Attorney General, Public Defender, U.S. Attorney, District Attorney, in-house counsel, teacher of law, on active duty in the armed forces or employed by state, local or federal government and not otherwise engaged in the private practice of law;
- (c) the lawyer does not have an office in Tennessee; however, for purposes of this Rule, a lawyer who practices, as a principal, employee, of counsel, or in any other capacity, with a firm that has an office in Tennessee shall be deemed for purposes of this Rule to have an office in Tennessee if the lawyer utilizes one or more offices of the firm located in Tennessee more than the lawyer utilizes one or more offices of the firm located in any other single state;
- (d) under regulations adopted by the Board of Professional Responsibility under criteria established upon recommendation of the Tennessee Bar Foundation, the lawyer or law firm is exempted from maintaining an IOLTA account because such an IOLTA account has not and cannot reasonably be expected to produce interest or dividends in excess of allowable reasonable fees; or
- (e) the lawyer is exempted by the Tennessee Bar Foundation from the application of this Rule following a written request for exemption by the lawyer and determination by the Tennessee Bar Foundation that no eligible financial institution (as defined and determined in accordance with this Rule 43) is located within reasonable proximity of that lawyer.

Section 15. As a part of the annual birth month registration process, as provided in Supreme Court Rule 9, the Board of Professional Responsibility shall receive and review a

lawyer's certification required by Section 14. In the event a lawyer fails to submit the required certification or should the certification be facially defective, such noncompliance with this Rule will result in the following action:

(a) On or before the 15th day following the end of each month's birth month registration cycle, the Board of Professional Responsibility shall serve such lawyer a Notice of Noncompliance requiring the lawyer to remedy any deficiencies identified in the Notice within 30 days following the mailing of the Notice. Each lawyer to whom a Notice of Noncompliance is issued shall pay to the Board of Professional Responsibility a Noncompliance Fee of One Hundred Dollars (\$100.00). Such Noncompliance Fee shall be paid on or before the 30th day following the mailing of the Notice, unless the lawyer shows to the satisfaction of the Chief Disciplinary Counsel that the Notice of Noncompliance was erroneously issued, in which case no such fee shall be due.

(b) On or before the 30th day following the mailing of the Notice, each lawyer on whom a Notice of Noncompliance is served also shall submit to the Board of Professional Responsibility the lawyer's completed certification. In the event a lawyer fails to timely submit the lawyer certification required by this Rule and payment of the \$100.00 Noncompliance Fee by the 30th day following the mailing of the Notice, the lawyer shall pay to the Board of Professional Responsibility, in addition to the Noncompliance Fee, a Delinquent Compliance Fee of Two Hundred Dollars (\$200.00).

(c) On or before the 45th day following the mailing of each month's Notices of Noncompliance, the Board of Professional Responsibility shall:

(i) prepare a proposed Suspension Order listing all lawyers who were issued Notices of Noncompliance for that month's birth month registration cycle and who failed to remedy timely their deficiencies;

(ii) submit the proposed Suspension Order to the Supreme Court; and

(iii) serve a copy of the proposed Suspension Order on each lawyer named in the Order.

The Supreme Court will review the proposed Suspension Order and enter such order as the Court may deem appropriate suspending the law license of each lawyer deemed by the Court to be not in compliance with the requirements of this Rule.

(d) Each lawyer named in the Suspension Order entered by the Court shall submit to the Board of Professional Responsibility the lawyer certification required by the Rule and shall pay to the Board of Professional Responsibility, in addition to the Noncompliance Fee and the Delinquent Compliance Fee, a Five Hundred Dollar (\$500.00) Suspension Fee as a condition of reactivation of his or her law license. Submission of the lawyer certification and payment of all fees imposed by this section shall be a requirement for compliance with this Rule and for reactivation of a license. The Board of Professional Responsibility shall not reactivate the license of any lawyer whose license is suspended pursuant to this Rule until the Chief Disciplinary Counsel certifies compliance with the requirements of this Rule.

(e) Upon receipt of the lawyer's certification required by this Rule and payment of all

fees imposed, the Board of Professional Responsibility shall forward the lawyer's completed certification to the Tennessee Bar Foundation.

(f) All notices required or permitted to be served on a lawyer under the provisions of this Rule shall be served by United States Postal Service Certified Mail, return receipt requested, at the preferred address shown in the most recent registration statement filed by the lawyer pursuant to Supreme Court Rule 9 and shall be deemed to have been served as of the postmark date shown on the Certified Mail Receipt.

Section 16. Upon its receipt of a lawyer's certification under Section 14 of this Rule, the Tennessee Bar Foundation shall report monthly to the Board of Professional Responsibility any evidence of the lawyer's noncompliance known by the Tennessee Bar Foundation. Noncompliance with this Rule will result in the following action:

(a) On or before the 15th day of following the end of each month's birth month registration cycle, pursuant to Supreme Court Rule 9, the Board of Professional Responsibility shall serve each such lawyer a Notice of Noncompliance requiring the lawyer to remedy any deficiencies identified in the Notice within 30 days. Each lawyer to whom a Notice of Noncompliance is issued shall pay to the Board of Professional Responsibility a Noncompliance Fee of One Hundred Dollars (\$100.00). Such Noncompliance Fee shall be paid on or before the 30th day following the mailing of the Notice, unless the lawyer shows to the satisfaction of the Chief Disciplinary Counsel that the Notice of Noncompliance was erroneously issued, in which case no such fee shall be due.

(b) On or before the 30th day following the mailing of the Notice, each lawyer on whom a Notice of Noncompliance is served also shall file with the Board of Professional Responsibility an affidavit, in the form specified by the Board of Professional Responsibility, attesting that any identified deficiencies have been remedied. In the event a lawyer fails to timely remedy any such deficiency or fails to timely file such affidavit, the lawyer shall pay to the Board of Professional Responsibility, in addition to the Noncompliance Fee, a Delinquent Compliance Fee of Two Hundred Dollars (\$200.00).

(c) On or before the 45th day following the mailing of each month's Notices of Noncompliance, the Board of Professional Responsibility shall:

(i) prepare a proposed Suspension Order listing all lawyers who were issued Notices of Noncompliance for that month's birth month registration cycle and who failed to remedy timely their deficiencies;

(ii) submit the proposed Suspension Order to the Supreme Court; and

(iii) serve a copy of the proposed Suspension Order on each lawyer named in the Order.

(d) The Supreme Court will review the proposed Suspension Order and enter such order as the Court may deem appropriate suspending the law license of each lawyer deemed by the Court to be not in compliance with the requirements of this Rule.

(e) Each lawyer named in the Suspension Order entered by the Court shall file with the Board of Professional Responsibility an affidavit in the form specified by the Board of

Professional Responsibility, attesting that any identified deficiencies have been remedied and shall pay to the Board of Professional Responsibility, in addition to the Noncompliance Fee and the Delinquent Compliance Fee, a Five Hundred Dollar (\$500.00) Suspension Fee as a condition of reactivation of his or her law license. Payment of all fees imposed by this section shall be a requirement for compliance with this Rule and for reactivation of a license. The Board of Professional Responsibility shall not reactivate the license of any lawyer whose license is suspended pursuant to this Rule until the Chief Disciplinary Counsel certifies compliance with the requirements of this Rule.

(f) All notices required or permitted to be served on a lawyer under the provisions of this Rule shall be served by United States Postal Service Certified Mail, return receipt requested, at the preferred address shown in the most recent registration statement filed by the lawyer pursuant to Supreme Court Rule 9 and shall be deemed to have been served as of the postmark date shown on the Certified Mail Receipt.