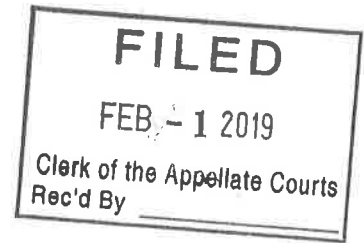




February 1, 2019

VIA E-Mail: appellatecourtclerk@tncourts.gov



Knoxville Bar Association
505 Main Street, Suite 50
P.O. Box 2027
Knoxville, TN 37901-2027
PH: (865) 522-6522
FAX: (865) 523-5662
www.knoxbar.org

James Hivner, Clerk of Appellate Courts
Tennessee Supreme Court
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

Re: Amendments to Tennessee Supreme Court Rule 43; No. ADM2018-02187

Dear Mr. Hivner:

Officers

- Wynne du Mariau Caffey-Knight, President
Hanson R. Tipton, President-Elect
Cheryl G. Rice, Treasurer
Jason H. Long, Secretary
Keith H. Burroughs, Immediate Past President

Board of Governors

- Hon. Suzanne H. Bauknight
Jamie Ballinger-Holden
Loretta G. Cravens
Kathrya St. Clair Ellis
Elizabeth B. Ford
Rachel P. Hurt
Allison S. Jackson
Stephen Ross Johnson
Elizabeth K.B. Meadows
Mary D. Miller
T. Mitchell Panter
Robert E. Pryor Jr.
Mikel A. Towe

Executive Director
Marsha S. Watson
mwatson@knoxbar.org

Pursuant to the Tennessee Supreme Court's Order referenced above, the Knoxville Bar Association ("KBA") Professionalism Committee ("Committee") has carefully considered the proposed change to Tennessee Supreme Court Rule 43. Proposed changes to Rule 43 section 15(a) would provide that attorneys be notified of their failure to certify compliance with IOLTA trust account provisions by electronic means only. Finally, proposed changes to Rule 43 section 15(d) would make discretionary reinstatement of an attorney who is suspended due to technical noncompliance with the IOLTA provisions and subsequently becomes compliant. At the KBA Board of Governors' (the "Board") meeting held on January 16, 2019, the Committee presented a report of its review of the Order. Following the Committee's presentation and thorough discussion by the Board, the Board as a whole unanimously voted to adopt the Committee's recommendation to oppose the proposed amendment to Rule 43 as currently drafted.

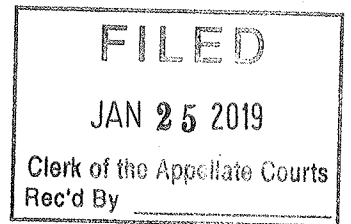
The Board engaged in extended discussion regarding the proposed changes and is concerned that notification only by electronic mail presents due process and notice implications, particularly given reliability issues with electronic mail. The KBA opposes the proposed change on the grounds that no disciplinary sanction should be imposed on an attorney under the Rule 43 unless notice has been provided to an attorney by a form of U.S. mail. The KBA also opposes the proposed amendment to Rule 43, Section 15(d) because no need for this change has been identified, and the organization is not aware of such a need.

As always, the KBA appreciates the opportunity to comment on proposed Rules and changes to such Rules promulgated by the Tennessee Supreme Court.

Sincerely,

Wynne Caffey-Knight, President
Knoxville Bar Association

cc: Marsha Watson, KBA Executive Director (via e-mail)
KBA Executive Committee (via e-mail)



IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

**IN RE: AMENDMENTS TO RULE 43  
RULES OF THE TENNESSEE SUPREME COURT**

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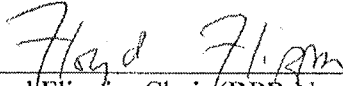
No. ADM2018-02187

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**COMMENT OF THE BOARD OF PROFESSIONAL  
RESPONSIBILITY TO AMENDMENTS TO TENNESSEE  
SUPREME COURT RULE 43**

Comes now the Board of Professional Responsibility (the Board), pursuant to the Order filed December 6, 2018, and relies on the Board's filed Comment In Re: Amendments to Rule 9, Section 10 of the Tennessee Supreme Court, No. ADM2018-02186 in support of the amendments to Tennessee Supreme Court Rule 43.

RESPECTFULLY SUBMITTED,

  
\_\_\_\_\_  
Floyd Flippin, Chair (BPR No. 010442)  
Board of Professional Responsibility of the  
Supreme Court of Tennessee

1302 Main Street  
PO Box 160  
Humboldt, TN 38343

Sandy Garrett

SANDY GARRETT (#013863)  
Chief Disciplinary Counsel,  
Board of Professional Responsibility  
of the Supreme Court of Tennessee

10 Cadillac Drive, Suite 220  
Brentwood, TN 37027

**Certificate of Service**

I certify that the foregoing has been mailed to Joycelyn Ashanti Stevenson, Esq., Executive Director, Tennessee Bar Association, 221 4<sup>th</sup> Avenue North, Suite 400, Nashville, Tennessee by U.S. mail, on this the 25<sup>th</sup> day of January, 2019.

By: Floyd Flippin  
Floyd Flippin, Chair (BPR No. 010442)  
Chairman of the Board

By: Sandy Garrett  
Sandy Garrett (#013863)  
Chief Disciplinary Counsel

**FILED**

**JAN 10 2019**

Clerk of the Appellate Courts  
Rec'd By LM

**JOSEPH H. VAN HOOK  
ATTORNEY AT LAW  
(865) 435-1145 (Voice)  
(865) 435-9639 (Facsimile)**

Mailing Address:  
Post Office Box 613  
Oliver Springs, Tennessee 37840

Street Address:  
1042 East Tri County Boulevard  
Oliver Springs, Tennessee 37840

January 8, 2019

James M. Hivner, Clerk  
Re: Tenn. Sup. Ct. R43  
Tennessee Appellate Courts  
100 Supreme Court Building  
401 Seventh Avenue North  
Nashville, Tennessee 37219-1407

Re: Amendments to Rule 43  
No. ADM2018-02187

Dear Mr. Hivner:

This letter is offering written comments as to amendments to Rule 43 wherein the Supreme Court wishes to require an electronic form to be submitted as to compliance with Rule 43 dealing with lawyer's trust accounts.

I am totally opposed to any form of mandatory electronic filing. There are still a substantial number of (probably older) attorneys that do not necessarily wish to conduct all their business electronically over the internet. I am one of those attorneys.

I am not comfortable with the electronic communication system as it gives rise to opportunities for identity theft and other forms of electronic data breaches and problems.

I do not pay any of my bills (except in unusual situations) electronically. I always demand an invoice and pay by check.

I am also the City Judge and Recorder for the Town of Oliver Springs (municipal and general sessions criminal jurisdiction by private act). As an elected official, I have to file an ethics disclosure in January of every year, which is, generally speaking, a mandatory electronic filing. Several of those years, I have attempted to file in early January, but the computer system at the appropriate office in Nashville was down, and my paralegal and I spent several hours of my valuable time attempting to file a one page form. This computer filing requirement became a waster of my time. Note that I said "my paralegal and I," as I depend on my paralegal for all of my electronic communication and internet activities, as I am "computer illiterate." I had been able to file a paper document, I would have taken ten or fifteen minutes, filed out the paper, and mailed it.

January 8, 2019

Page Two

I just do not trust electronic filing and I am not comfortable with mandatory electronic filing.

I would respectfully request that the rule be modified to allow either a paper form filing or an electronic form filing.

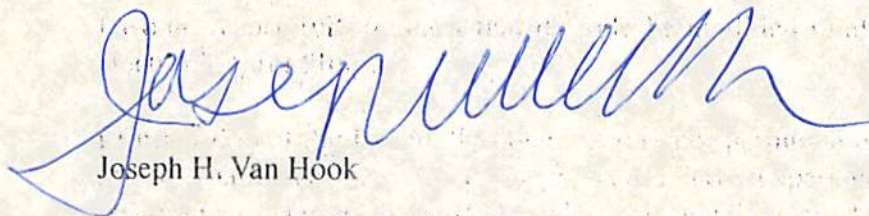
I further do not think that all notices required or permitted to be served, be served electronically, for the same reasons. My paralegal and I have experienced numerous occasions where the electronic communication is "sent" but is not "received." In view of the problems I have experienced, if I send something electronically of great importance, I generally follow it up with a written mail transmission also.

I believe the correct solution is to **allow both a paper document filing and an electronic filing.**

If you have any questions, please feel free to call me.

I shall appreciate any kind consideration that you will give my views in this letter.

Sincerely,



Joseph H. Van Hook

JHV:nmw

Hivner Letter (1.8)