

# CHATTANOOGA BAR ASSOCIATION

Established in 1897

EXECUTIVE DIRECTOR  
*Lynda Minks Hood*

July 9, 2018

EXECUTIVE COMMITTEE  
MARC HARWELL  
*President*

STEVEN M. JACOWAY  
*President-Elect*

JOHN C. HARRISON  
*Secretary*

ROBIN L. MILLER  
*Treasurer*

WILLIAM G. COLVIN  
*Past President*

BOARD OF GOVERNORS  
LEE ANN ADAMS  
SHERI FOX

GEORGE G. HIXSON  
THOMAS M. HORNE  
JEFFREY W. MADDUX  
JIMMY RODGERS

DREW H. REYNOLDS,  
*YLD Representative*

EX-OFFICIO MEMBER  
THE HONORABLE J. B. BENNETT  
*Judicial Representative*

B. PAUL HATCHER  
*Past Presidents Chair*

THE PIONEER BUILDING, SUITE 420  
801 BROAD STREET  
CHATTANOOGA, TN 37402  
(423) 756-3222  
FAX: (423) 265-6602  
WWW.CHATTANOOGABAR.ORG

VIA E-Mail: [appellatecourtclerk@tncourts.gov](mailto:appellatecourtclerk@tncourts.gov)

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

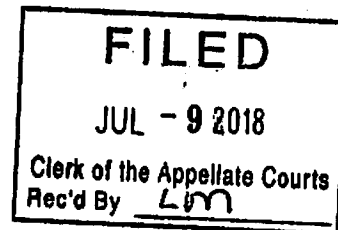
Re: Petition for the Adoption of Amended Tennessee  
Supreme Court Rule 25, No. ADM2018-00844

Dear Mr. Hivner:

The Chattanooga Bar Association ("CBA"), through Board of Governors, has carefully considered the proposed change to Tennessee Supreme Court Rule 25. The CBA review sought the opinions of its members with significant experience as receiver attorneys.

After discussion, the CBA Board of Governors (the "Board"), voted that the Board endorse the proposed amendments to Rule 25.

However, the discussion of the proposed amendments, and review of comments made by others promotes the CBA to encourage further changes to Rule 25. There are circumstances where an attorney's disability/suspension stymies clients' efforts to be reimbursed. There is a situation in Chattanooga involving attorney Matthew Fitzharris, that has brought this dilemma to light. Mr. Fitzharris's law license has been suspended by the BPR due to a determination in a Georgia criminal proceeding that he is incompetent to assist in his defense. A Receiver Attorney was appointed for Mr. Fitzharris pursuant to Supreme Court Rule 9. The Receiver Attorney has found substantial proof that Matthew Fitzharris is guilty of "dishonest conduct," as that term is defined in



Rule 25, Section 1.03. For example, in the review of Fitzharris' files, the Receiver Attorney found scant or no information about retainers he took - no fee agreements, and no statements for services which justify withdrawal of funds from his IOLTA account for his fees. In fact, the IOLTA account shows that Fitzharris was making cash withdrawals from his IOLTA account from bank tellers, with no corresponding memorandum of what the cash was for, or from whose funds the withdrawal was being made.

Under the current BPR's rules, once a lawyer's license has been suspended, the BPR ceases its investigative efforts and moves on to other reports of alleged misconduct. The BPR will not act further on Fitzharris' case unless they find he is practicing law without a license. Thus, there is at present, no investigative report or finding of misconduct by the BPR, and therefore no way for the client's whose trust funds have been misappropriated to be reimbursed through the Lawyers' Fund for Client Protection.

As it now stands, there is NO RELIEF for the clients of Matthew Fitzharris. Neither civil nor criminal proceedings can be instituted due to the finding of incompetency. This is a problem that cries for a solution.

Attorney Terry Cox provided comment suggesting lawyers be required to maintain some minimum limit of professional liability insurance as is required to operate an automobile. The CBA supports that idea. At a minimum, the CBA suggests that Tennessee adopt a rule requiring disclosure of the existence, or non-existence, of professional liability insurance similar to that adopted in many other states.

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

Sincerely,

*Marc Harwell, by Lynda Hood  
with expressed permission*

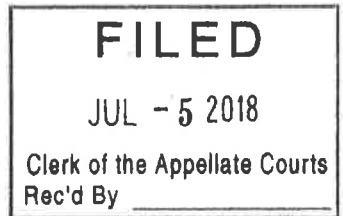
Marc Harwell  
CBA President

cc. Lynda Minks Hood, CBA Executive Director



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

July 5, 2018



VIA E-Mail: appellatecourtclerk@tncourts.gov

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

**Officers**

Keith H. Burroughs  
*President*

Wynne du Mariau Caffey-Knight  
*President-Elect*

Hanson R. Tipton  
*Treasurer*

Cheryl G. Rice  
*Secretary*

Amanda M. Busby  
*Immediate Past President*

**Board of Governors**

Charme P. Allen

Maha M. Ayesh

Jamie Ballinger-Holden

E. Michael Brezina III

Kathryn St. Clair Ellis

Stephen Ross Johnson

Elizabeth K.B. Meadows

Mary D. Miller

Carrie S. O'Rear

T. Mitchell Panter

M. Samantha Parris

Robert E. Pryor, Jr.

Mikel A. Towe

Re: Petition to Amend Tennessee Supreme Court Rule 25; No. ADM2018-00844

Dear Mr. Hivner:

Pursuant to the Tennessee Supreme Court's Order referenced above, the Knoxville Bar Association ("KBA") Professionalism Committee ("Committee") has carefully considered the proposed changes to Tennessee Supreme Court Rule 25 regarding the Tennessee Lawyers' Fund for Client Protection (TLFCP). At the KBA Board of Governors' (the "Board") meeting held on June 20, 2018, the Committee presented a report of its review of the Petition. Following the Committee's presentation and thorough discussion by the Board, the Board as a whole unanimously adopted the Committee's recommendation to file this comment in support of the Petition.

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

Sincerely,

A handwritten signature in black ink that reads "Keith H. Burroughs". The signature is written in a cursive style with a large, sweeping "K" and "B".

Keith H. Burroughs, President  
Knoxville Bar Association

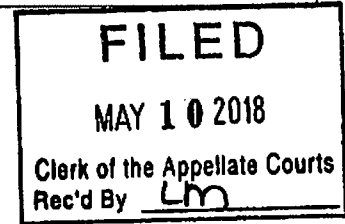
Executive Director  
Marsha S. Watson  
mwatson@knoxbar.org

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

**Lisa Marsh - Proposed changes to Rule 25 - comments**

Adm2018-00844

**From:** Terry Cox <terrycox@coxelderlaw.com>  
**To:** <appellatecourtclerk@tncourts.gov>  
**Date:** 5/10/2018 9:45 AM  
**Subject:** Proposed changes to Rule 25 - comments  
**Cc:** staff coxelderlaw <staff@coxelderlaw.com>



1. The failure to reveal the amount which lawyers will be required to pay is objectionable.
2. The absence of a cap on the amount which will be required of lawyers to pay is objectionable.
3. The limitation on attorney fee for representing an aggrieved consumer regardless of the complexity of the matter is objectionable.
4. The implied authority of the Board to compel an attorney to represent an aggrieved consumer for a nominal fee is objectionable.
5. A better scheme would be to require lawyers to maintain certain minimum limits of liability coverage similar to the compulsory automobile liability insurance scheme in Tennessee. This would remove a considerable administrative burden from the Board and would place the burden for financing bad acts on the perpetrator rather than all lawyers.
6. A better entity to consider and process claims would be the mechanism already in place for the Criminal Injuries Compensation Fund.
7. A better means of promoting public confidence in lawyers and in facilitating the efficient and competent delivery of legal services would be to require all attorneys to have limited licenses in only one or two practice areas. Segregating the delivery of legal services among practitioners who are specially licensed in a given practice area would allow consumers to shop for legal services as they do for medical services, i.e. by specialty area of practice.

--

Terry C. Cox  
Attorney  
149 South Rowlett  
Collierville, Tennessee 38017  
901-853-3500  
901-853-3525 (fax)