

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED
03/11/2022
Clerk of the
Appellate Courts

**IN RE: PETITION TO AMEND
TENNESSEE SUPREME COURT RULE 9 AND RULE 25**

No. ADM2022-00281

ORDER

On March 3, 2022, the Board of the Tennessee Lawyers’ Fund for Client Protection (“TLFCP”) filed a petition asking this Court to consider adopting amendments to Rule 9 and Rule 25 of the Rules of the Tennessee Supreme Court. If adopted, the proposed amendments will increase the annual attorney registration fee from \$170 to \$185, increase the portion TLFCP receives from the annual registration fee from \$10 to \$25, modify the limitations on payments that TLFCP may make, and require TLFCP to publicize information about claims that are paid.

The Court hereby publishes TLFCP’s petition for public comment and solicits written comments on the proposed amendments from judges, lawyers, bar associations, members of the public, and all interested parties. The deadline for submitting written comments is June 10, 2022. Written comments should reference the docket number above and may be emailed to appellatecourtclerk@tncourts.gov or mailed to:

James Hivner, Clerk
RE: Tennessee Supreme Court Rules 9 and 25
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

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

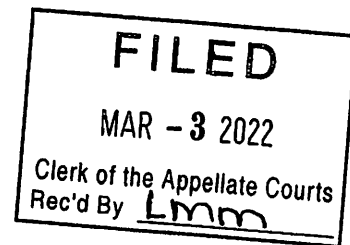
It is so ORDERED.

PER CURIAM

APPENDIX

Petition of the Board of the Tennessee Lawyers' Fund for Client Protection to Amend Tennessee Supreme Court Rules 9 and 25

[New text is indicated by underlining/Deleted text is indicated by strikeout]



IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: PETITION TO AMEND TENN. SUP. CT. R. 9 and R. 25

No. ADM 2022-00281

**PETITION OF THE TENNESSEE LAWYERS' FUND FOR CLIENT
PROTECTION BOARD TO AMEND TENN. SUP. CT. R. 9 AND R. 25**

The Board of Tennessee Lawyers' Fund for Client Protection (TLFCP) petitions this Court to amend Tennessee Supreme Court Rules 9 and 25 to increase attorney registration fees and modify limitations on payments thereby improving TLFCP's ability to reimburse claimants for losses caused by dishonest attorneys. The proposed redline amendments are attached as Exhibit A.

Increase Attorney Registration Fees

Tennessee Supreme Court Rule 9 Section 10.2(c) provides that ten dollars of the \$170 annual fee assessed against attorneys shall be earmarked for TLFCP. Tennessee's current annual fee of \$170 was set in 2008 and has remained consistent for the last 13 years. Tennessee's annual fee of \$170 is one of the lowest assessed fees in the United States, notwithstanding the \$400 professional privilege tax assessed annually by the Tennessee Department of Revenue.¹

The attorney annual assessment is the primary revenue source for TLFCP. Tennessee is one of four jurisdictions with the lowest reported assessed attorney registration fee of \$10.00.² Other jurisdictions with similar numbers of active attorneys have a slightly higher annual fee for their Lawyers' Fund, ranging from \$20 to \$25.³

Claims paid by TLFCP have consistently exceeded revenue, except for the fiscal year 2019-2020 when the Board approved claims but delayed payment of those claims anticipating the filing of additional claims.⁴

¹ American Bar Association 2019 Survey on Lawyer Discipline Systems, Chart VIII.

² American Bar Association 2017-2019 Survey on Lawyers' Fund for Client Protection, Appendix D.

³ Id. Appendix A and D.

⁴ Tennessee Lawyers' Fund for Client Protection Annual Reports (2017-2021).

To adequately endow the fund that promotes public confidence in the integrity of the legal profession by reimbursing losses caused by the rare dishonest conduct of attorneys, the Board petitions this Court to amend Tennessee Supreme Court Rule 9 Section 10.2 to increase the attorney annual registration fee to \$185 and the allotted portion for TLFCP to \$25.

Revise Existing TLFCP Caps

Tennessee Supreme Court Rule 25 Section 13.01 states: “No payment shall exceed \$100,000 per any one claimant nor the aggregate sum of \$250,000 with respect to losses caused by any one lawyer or former lawyer, unless otherwise determined by the Board and approved by the Court. No payment shall exceed \$250,000 per transaction . . . unless otherwise determined by the Board and approved by the Court. No payment shall exceed ten percent of the assets of the fund at the time it is made” While the limitations for each individual claimant, attorney and transaction may be exceeded upon recommendation of the Board and with approval of the Court, Tennessee Supreme Court Rule 25 Section 13.01 does not include any exception to the ten percent limitation on the assets of the fund.

Tennessee is one of the twenty-eight jurisdictions which has a cap for each attorney.⁵ Tennessee’s cap of \$250,000 per attorney is slightly less than the average cap of \$271,500.⁶ However, seven jurisdictions have attorney caps higher than \$271,500 and twenty jurisdictions have no attorney cap.⁷ Only four jurisdictions other than Tennessee have any aggregate cap.⁸ In the last five years, the TLFCP Board has approved 202 claims against seven attorneys which have exceeded the \$250,000 cap per attorney as set forth in Tennessee Supreme Court Rule 25 Section 13. The majority of these claimants could not be paid the full amount of their claim due to the limitations of the Rule, but instead were paid a percentage of their claim, ranging from 10.9% to 98.1%.⁹

To allow for more timely and complete restitution to claimants whose losses were caused by an attorney’s dishonest conduct, TLFCP petitions to amend the existing limitations in Tennessee Supreme Court Rule 25 Section 13.01 to raise the attorney cap from \$250,000 to \$400,000 upon recommendation of the Board and with approval of the Court and expand the

⁵ American Bar Association 2017-2019 Survey on Lawyers’ Fund for Client Protection, Appendix G.

⁶ Id.

⁷ Id.

⁸ Id.

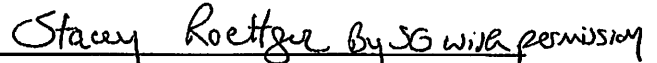
⁹ Tennessee Lawyers’ Fund for Client Protection Annual Reports (2017-2021).

aggregate cap to allow the Board to recommend and the Court to approve exceeding the ten percent aggregate limitation.

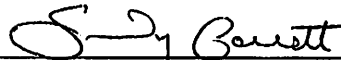
Issue Public Announcements of Approved Claims

Tennessee Supreme Court Rule 25 Section 6.01(c) provides that the TLFCP Board shall publicize TLFCP activities to the public and the Bar. Similarly, Lawyers' Fund for Client Protection Model Rule 18 states, "After payment of the reimbursement, the Board shall publicize the nature of the claim, the amount of reimbursement, and the name of the lawyer." TLFCP petitions the Court to amend Tennessee Supreme Court Rule 25 Section 6.01(c) to publicize payment of claims to all state judges, the Bar, and the public.

Respectfully submitted,

 Stacy E. Roettger By SG with permission

Stacy E. Roettger, Chair (BPR No. 017969)
Tennessee Lawyer's Fund for Client Protection
The Trust Company Tennessee
4823 Old Kingston Pike, Suite 100
Knoxville, TN 37919



Sandy Garrett, (BPR No. 013863)
Chief Disciplinary Counsel
Board of Professional Responsibility
10 Cadillac Drive, Suite 220
Brentwood, TN 37027
(615) 361-7500

CERTIFICATE OF SERVICE

I certify that the foregoing has been emailed to Joycelyn Stevenson, Esq., Executive Director, Tennessee Bar Association, 221 4th Avenue North, Suite 400, Nashville, Tennessee by U.S. mail, on this the 3rd day of March, 2022.

By: Stacy Roettger By SB with permission
STACY E. ROETTGER (#017969)
Chairman of the Board

By: Sandy Garrett
SANDY L. GARRETT (#013863)
Chief Disciplinary Counsel

Exhibit A

RULE 9: DISCIPLINARY ENFORCEMENT

Section 10. Periodic Assessment of Attorneys.

- 10.2.** (a) Every attorney admitted to practice before the Court, except those exempt under Section 10.3, shall pay to the Board on or before the first day of the attorney's birth month an annual fee.
- (b) All funds collected hereunder shall be deposited by the Board with the State Treasurer; all such funds, including earnings on investments and all interest and proceeds from said funds, if any, are deemed to be, and shall be designated as, funds belonging solely to the Board. Withdrawals from those funds shall be made by the Board only for the purpose of defraying the costs of disciplinary administration and enforcement of this Rule, and for such other related purposes as the Court may from time to time authorize or direct.
- (c) The annual fee for each attorney shall be ~~One Hundred Seventy Dollars (\$170)~~ One Hundred Eighty Five Dollars (\$185), consisting of a One Hundred Forty Dollar (\$140) Board of Professional Responsibility annual registration fee, a ~~Ten Dollar (\$10)~~ Twenty Five Dollar (\$25) annual fee due under Tenn. Sup. Ct. R. 25, Section 2.01(a) (Tennessee Lawyers' Fund for Client Protection), and a Twenty Dollar (\$20) annual fee due under Tenn. Sup. Ct. R. 33.01C (Tennessee Lawyer Assistance Program), and shall be payable on or before the first day of the attorney's birth month, and a like sum each year thereafter until otherwise ordered by the Court. If an attorney chooses to pay or submit annual registration by mail, rather than online, that attorney shall pay an additional \$5 for processing.
- (d) In connection with the payment of the annual fee, every attorney shall have the opportunity to make a financial contribution to support access-to-justice programs. Funds raised through optional contributions will be distributed to access-to-justice programs which provide direct legal services to low income Tennesseans.

RULE 25: TENNESSEE LAWYERS' FUND FOR CLIENT PROTECTION

Section 6. Duties and Responsibilities of the Board.

- 6.01.** The Board shall have the following duties and responsibilities:
- (a) To receive, evaluate, determine and pay approved claims;
- (b) To promulgate rules of procedure not inconsistent with these Rules and subject to prior approval by the Supreme Court of Tennessee;
- (c) To provide a full report at least annually to the Supreme Court of Tennessee and make other reports and publicize the activities to the public and the Bar by providing a notice of payment of the claim, including the nature of the claim, the amount of reimbursement and the name of the lawyer, to all state judges and the Tennessee Bar Association, and shall cause the same to be published in a newspaper of general circulation in each county where the attorney maintained an office and to be published in other publications as the Board may determine to be appropriate.

- (d) The staff and physical resources of the Board of Professional Responsibility will assist in the Board's performance of its functions effectively and without delay; the Board will compensate the staff for its services;
- (e) To retain and compensate consultants, actuaries, agents, legal counsel and other persons as necessary; this authority to contract for professional services as needed by the Board shall not be construed to authorize the Board to hire employees of the Board;
- (f) To prosecute claims for restitution to which the Fund is entitled;
- (g) To submit an annual budget for approval by the Supreme Court of Tennessee;
- (h) To perform all other acts necessary or proper for the fulfillment of the purposes and effective administration of the Fund.

Section 13. Limitations on Amount of Reimbursements.

13.01. No payment shall exceed the sum of \$100,000 for loss sustained by any one claimant nor the aggregate sum of ~~\$250,000~~ \$400,000 with respect to losses caused by any one lawyer or former lawyer, unless otherwise determined by the Board and approved by the Court. No payment shall exceed ~~\$250,000~~ \$400,000 per transaction regardless of the number of persons aggrieved or the amount of loss in such transaction unless otherwise determined by the Board and approved by the Court. No payment shall exceed ten percent of the assets of the Fund at the time it is made, ~~exclusive of funds received for Life Memberships~~ unless otherwise determined by the Board and approved by the Court. Where joint liability of wrongdoers exists, the Board has discretion to allocate payments as it deems appropriate within these limits. Payments may be in lump sum or installments as the Board may determine.