

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED

12/13/2019

Clerk of the
Appellate Courts

**IN RE: AMENDMENTS TO RULE 9, SECTION 10
RULES OF THE TENNESSEE SUPREME COURT**

No. ADM2018-02186

ORDER

On December 6, 2018, this Court entered an order soliciting written comments on proposed amendments to Tennessee Supreme Court Rule 9, section 10, regarding annual registration and payments by attorneys. After the expiration of the public-comment period, the Court has considered further revisions to the proposed amendments. The revised proposed amendments are set out in the attached Appendix to this Order.

The Court hereby publishes the proposed amendments for public comment and solicits written comments from the bench, the bar, and the public. The deadline for submitting written comments is January 30, 2020. Written comments may be emailed to appellatecourtclerk@tncourts.gov or mailed to:

James M. Hivner, Clerk
Re: Tenn. Sup. Ct. R. 9, section 10
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

and should reference the docket number set out above.

The Clerk shall provide a copy of this Order, including the Appendix, to LexisNexis and to Thomson Reuters. In addition, this Order, including the Appendix, shall be posted on the Court's website.

It is so ORDERED.

PER CURIAM

TENN. SUP. CT. R. 9, SECTION 10

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

Section 10. Periodic Assessment of Attorneys

10.1. Every attorney admitted to practice before the Court, except those exempt under Section 10.3(b) and (c), shall, on or before the first day of their birth month, file with the Board at its central office an annual registration statement, on a form prescribed by the Board, setting forth the attorney's current residence, office, and email addresses, and such other information as the Board may direct. The attorney's residence address, cellular telephone number, home telephone number, and personal non-government issued e-mail address are confidential and not public records. If, however, (1) the attorney failed to provide an office address, office telephone number, or office e-mail address; or (2) the attorney listed the residence address, cellular telephone number or home telephone number, or personal non-government issued e-mail address as the attorney's office address, office telephone number, or office e-mail address respectively, then the attorney's nonpublic information of the same category shall no longer be subject to the protection afforded under this Rule. The attorney may designate the primary or preferred address for receipt of correspondence from the Board. In addition to such annual statement, every attorney shall file electronically with the Board through the Board's Attorney Portal as necessary a supplemental statement of any change in information previously submitted within thirty days of such change.

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), consisting of a One Hundred Forty Dollar (\$140) Board of Professional Responsibility annual registration fee, a Ten Dollar (\$10) 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. 33.01 C (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.

10.3. Upon Application for status change pursuant to Section 10.7, there ~~There~~ shall be exempted from the application of this rule:

(a) Attorneys who serve as a justice, judge, or magistrate judge of a court of the United States of America or who serve in any federal office in which the attorney is prohibited by federal law from engaging in the practice of law.

(b) Retired attorneys.

(c) Attorneys on ~~temporary~~ active duty with the armed forces.

(d) Faculty members of Tennessee law schools who do not practice law.

(e) Attorneys not engaged in the practice of law in Tennessee. The term “the practice of law” shall be defined as any service rendered involving legal knowledge or legal advice, whether of representation, counsel, or advocacy, in or out of court, rendered in respect to the rights, duties, regulations, liabilities, or business relations of one requiring the services. It shall encompass all public and private positions in which the attorney may be called upon to examine the law or pass upon the legal effect of any act, document, or law.

10.4. Within thirty days of the ~~receipt of a statement or supplement thereto filed~~ completion of the required annual registration by an attorney in accordance with the provisions of Section 10.1, the Board, acting through Disciplinary Counsel, shall acknowledge receipt thereof, on a form prescribed by the Court in order to enable the attorney on request to demonstrate compliance with the requirements of Sections 10.1 and 10.2

10.5 The Board ~~monthly shall~~ shall monthly compile lists of attorneys who have failed to timely file the annual registration statement required by Section 10.1 or have failed to timely pay the annual registration fee required by Section 10.2. The Board shall send to each attorney listed thereon an Annual Registration Fee/Statement Delinquency Notice (the “Notice”). The Notice shall state that the attorney has failed to timely ~~file~~ complete the annual registration ~~statement~~ required by Tenn. Sup. Ct. R. 9, Section 10.1, or has failed to timely pay the annual registration fee required by Tenn. Sup. Ct. R. 9, Section 10.2, and that the attorney’s license therefore is subject to suspension pursuant to Tenn. Sup. Ct. R. 9, Section 10.6. The Notice shall be sent to the attorney by a form of United States mail providing delivery confirmation, at the primary or preferred address shown in the attorney’s most recent registration statement filed pursuant to Section 10.1 or at the attorney’s last known address, and at the email addresses shown in the attorney’s most recent registration statement filed pursuant to Section 10.1, ~~or at the attorney’s last known email address.~~

10.6. (a) Each attorney to whom a Notice is sent pursuant to Section 10.5 shall file with the Board within thirty days of the date of delivery of the Notice an affidavit or declaration under penalty of perjury with supporting documentation demonstrating that the attorney has paid the annual registration fee or has filed the annual registration statement, and has paid a delinquent compliance fee of One Hundred Dollars (\$100.00) to defray the Board’s costs in issuing the Notice; or, alternatively, demonstrating that the Notice was sent to the attorney in error, the attorney having timely paid the annual registration fee or having timely filed the annual registration statement.

(b) ~~Within~~ Upon the expiration of thirty days ~~of the expiration of the time for an attorney to respond to the~~ from the date of the Notice pursuant to Subsection (a) hereof, the Chief Disciplinary Counsel shall submit to the Court a proposed Suspension Order. The proposed Suspension Order shall list all attorneys who were sent the Notice and who failed to respond; failed to demonstrate to the satisfaction of the Board that they had paid the delinquent annual registration fee or had filed

the delinquent annual registration statement, and had paid the One Hundred Dollar (\$100.00) delinquent compliance fee; or, failed to demonstrate to the satisfaction of the Board that the Notice had been sent in error. The proposed Suspension Order shall provide that the license to practice law of each attorney listed therein shall be suspended upon the Court's filing of the Order and that the license of each attorney listed therein shall remain suspended until the attorney pays the delinquent annual registration fee or files the delinquent annual registration statement, and pays the One Hundred Dollar (\$100.00) delinquent compliance fee and a separate reinstatement fee of Two Hundred Dollars (\$200.00), and is reinstated pursuant to Subsection (d).

(c) Upon the Court's review and approval of the proposed Suspension Order, the Court will file the Order summarily suspending the license to practice law of each attorney listed in the Order. The suspension shall remain in effect until the attorney completes all delinquent registration requirements, pays the delinquent registration fees or files the delinquent registration statement, and pays the One Hundred Dollar (\$100.00) delinquent compliance fee and the Two Hundred Dollar (\$200.00) reinstatement fee, and until the attorney is reinstated pursuant to Subsection (d). An attorney who fails to resolve the suspension within thirty days of the Court's filing of the Suspension Order shall comply with the requirements of Section 28.

(d) Reinstatement following a suspension pursuant to Subsection (c) shall require an order of the Court but shall not require a reinstatement proceeding pursuant to Section 30.4, unless ordered by the Court.

(1) An attorney suspended by the Court pursuant to Subsection (c) who wishes to be reinstated and who has remained suspended for one year or less before the filing of a petition for reinstatement shall file with the Board a petition for reinstatement of the attorney's license to practice law demonstrating that the attorney has paid all delinquent annual registration fees or has filed the delinquent registration statement, and has paid the One Hundred Dollar (\$100.00) delinquent compliance fee and the Two Hundred Dollar (\$200.00) reinstatement fee; or, alternatively, demonstrating that the Suspension Order was entered in error as to the attorney. If the petition is satisfactory to the Board and if the attorney otherwise is eligible for reinstatement, the Board, or the Chief Disciplinary Counsel acting on its behalf, shall promptly submit to the Court a proposed Reinstatement Order. The proposed Reinstatement Order shall provide that the attorney's reinstatement is effective as of the date of the attorney's payment of all delinquent registration fees or the date of the attorney's filing of the delinquent registration statement, and the attorney's payment of the One Hundred Dollar (\$100.00) delinquent compliance fee and the Two Hundred Dollar (\$200.00) reinstatement fee; or, alternatively, as of the date of entry of the Suspension Order if that Order was entered in error. An attorney resolves a suspension within thirty days for purposes of Section 10.6(c) if a proposed Reinstatement Order has been submitted to the Court within thirty days of the Court's filing of the Suspension Order.

(2) An attorney suspended by the Court pursuant to Subsection (c) who wishes to be reinstated and who has remained suspended for more than one year before the filing of a petition for reinstatement shall file with the Court a petition for reinstatement of the attorney's license to practice law demonstrating that the attorney has paid all delinquent annual registration fees or has filed the delinquent registration statement, and has paid the One Hundred Dollar (\$100.00) delinquent compliance fee and the Two Hundred Dollar (\$200.00) reinstatement fee; or, alternatively, demonstrating that the Suspension Order was entered in error as to the attorney. The petitioner shall serve a copy of the petition upon Disciplinary Counsel, who shall investigate the matter and file an answer to the petition within thirty days. The Court shall review the record and

determine whether to grant or deny the petition for reinstatement. If the Court grants the petition, the Reinstatement Order shall provide that the attorney's reinstatement is effective as of the date of the attorney's payment of all delinquent registration fees or the date of the attorney's filing of the delinquent registration statement, and the attorney's payment of the One Hundred Dollar (\$100.00) delinquent compliance fee and the Two Hundred Dollar (\$200.00) reinstatement fee; or, alternatively, as of the date of entry of the Suspension Order if that Order was entered in error.

10.7. (a) An attorney who claims an exemption under Section 10.3 (a), (b), (d), or (e) shall file with the Board an application to assume inactive status and discontinue the practice of law in this state. In support of the application, the attorney shall file an affidavit or declaration under penalty of perjury stating that the attorney is not delinquent in paying the privilege tax imposed on attorneys by Tenn. Code Ann. § 67-4-1702, is not delinquent in meeting any of the reporting requirements imposed by Rules 9, 21, and 43, is not delinquent in the payment of any fees imposed by those rules, and is not delinquent in meeting the continuing legal education requirements imposed by Rule 21. The Board shall approve the application if the attorney qualifies to assume inactive status under Section 10.3 and is not delinquent in meeting any of the obligations set out in the preceding sentence. If it appears to the Board that the applicant is delinquent in meeting any of those obligations, the Board shall notify the applicant of the delinquency and shall deny the application unless, within ninety days after the date of the Board's notice, the applicant demonstrates to the Board's satisfaction that the delinquency has been resolved. Upon the date of the Board's written approval of the application, the attorney shall no longer be eligible to practice law in Tennessee. The Board shall act promptly on applications to assume inactive status and shall notify the applicant in writing of the Board's action. If the Board denies an application to assume inactive status, the applicant may request the Court's administrative review by filing in the Nashville office of the Clerk of the Supreme Court a Petition for Review within thirty days of the Board's denial. The Court's review, if any, shall be conducted on the application, the supporting affidavit or declaration under penalty of perjury, and any other materials relied upon by the Board in reaching its decision.

(b) An attorney who assumes inactive status under an exemption granted by Section 10.3(a), (d), or (e) shall pay to the Board, on or before the first day of the attorney's birth month, an annual inactive-status fee in an amount equal to one-half of the total annual fee set forth in Section 10.2(c) for each year the attorney remains inactive. Inactive attorneys who fail to timely pay the annual inactive fee and submit the registration form prescribed by the Board will be mailed a Delinquency Notice and will be subject to delinquent compliance fees and suspension as provided in Sections 10.5 and 10.6. If an attorney chooses to pay or submit annual registration by mail, rather than online, that attorney shall pay an additional \$5 for processing.

(c) An attorney who assumes inactive status under the exemption granted by Section 10.3 (e) and who is licensed to practice law in another jurisdiction shall not be eligible to provide any legal services in Tennessee pursuant to Tenn. Sup. Ct. R. 8, RPC 5.5(c) or (d).

10.8. (a) Upon the Board's written approval of an application to assume inactive status, the attorney shall be removed from the roll of those classified as active until and unless the attorney requests and is granted reinstatement to the active rolls.

(b) Reinstatement following inactive status, other than reinstatement from disability inactive status pursuant to Section 27.7, which has continued for five years or less before the filing of a petition for reinstatement to active status shall not require an order of the Court or a reinstatement

proceeding pursuant to Section 30.4. The attorney shall file with the Board a petition for reinstatement to active status. Reinstatement shall be granted unless the attorney is subject to an outstanding order of suspension or disbarment, upon the payment of any assessment in effect for the year the request is made and any arrears accumulated prior to transfer to inactive status.

(c) Reinstatement following inactive status, other than reinstatement from disability inactive status pursuant to Section 27.7, which has continued for more than five years before the filing of a petition for reinstatement to active status shall require an order of the Court but shall not require a reinstatement proceeding pursuant to Section 30.4, unless ordered by the Court. The attorney shall file with the Court a petition for reinstatement to active status. The petitioner shall serve a copy of the petition upon Disciplinary Counsel, who shall investigate the matter and file an answer to the petition within thirty days. The Court shall review the record and determine whether to grant or deny the petition for reinstatement. If the Court grants the petition, the Reinstatement Order shall provide that the attorney's reinstatement is effective as of the date of the attorney's payment of any assessment in effect for the year the request is made and any arrears accumulated prior to transfer to inactive status.

10.9. The courts of this State are charged with the responsibility of insuring that no disbarred, suspended, or inactive attorney be permitted to file any document, paper or pleading or otherwise practice therein.

10.10. (a) Every attorney who is required by Section 10.1 to file an annual registration statement with the Board is requested to also file a pro bono reporting statement, reporting the extent of the attorney's pro bono legal services and activities during the previous calendar year. The pro bono reporting statement shall be in substantially the format provided in Appendix A hereto, and shall be provided to the attorney by the Board with the attorney's annual registration statement.

(b) In reporting the extent of the attorney's pro bono legal services and activities, the attorney is requested to state whether or not the attorney made any voluntary financial contributions pursuant to RPC 6.1(c), but the attorney need not disclose the amount of any such contributions.

(c) The Board may promulgate such forms, policies and procedures as may be necessary to implement this Section.

(d) The individual information provided by attorneys in the pro bono reporting statements filed pursuant to this Section shall be confidential and shall not be a public record, unless the attorney waives confidentiality on the reporting statement solely to be considered for recognition by the Tennessee Supreme Court for pro bono work the attorney completed in the previous calendar year. The Board shall not release any individual information contained in such statements, except as directed in writing by the Court or as required by law. The Board, however, may compile statistical data derived from the statements, which data shall not identify any individual attorney, and may release any such compilations to the public.