

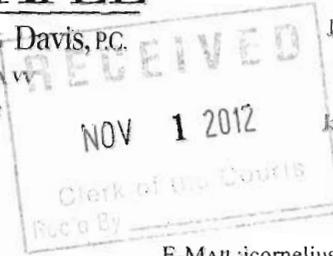
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October 30, 2012

A handwritten signature in cursive script, appearing to read "James M. Cornelius, Jr."

Mr. Michael W. Catalano
Appellate Court Clerk
401 Seventh Avenue, North
100 Supreme Court Building
Nashville, Tennessee 37219

VIA FEDERAL EXPRESS
(615) 741-2681

Re: In re: The Adoption of Amended Tennessee Supreme Court Rule 9, Docket No. M2012-01648-SC-RL2-RL – Comments of the Tennessee Lawyer Assistance Program

Dear Mr. Catalano:

As Chairman of the Commission of the Tennessee Lawyer Assistance Program ("TLAP"), I am writing to provide you with the comments of the TLAP Commission on proposed new Tennessee Supreme Court Rule 9 ("New Rule 9"). After careful review and consideration of New Rule 9, the TLAP Commission recommends that certain revisions be made to Sections 12, 13, 14 and 36 of New Rule 9 to facilitate the work of TLAP in conjunction with the Tennessee Board of Professional Responsibility during the disciplinary process. The TLAP Commission's proposed revisions are set forth on the enclosed comparative draft of Sections 12, 13, 14 and 36 of New Rule 9.

If you have any questions regarding the enclosed comments of the TLAP Commission on New Rule 9, or if we need to further discuss this matter, please do not hesitate give me a call.

Yours truly,

A handwritten signature in cursive script, appearing to read "James M. Cornelius, Jr."

James M. Cornelius, Jr.

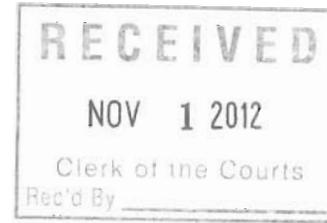
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Enclosure

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TLAP Proposed Rule Changes to Rule 9, October 30, 2012

Rule 9. Disciplinary Enforcement.



Section 12. Types of Discipline

12.3. (a) Temporary Suspension. On petition of Disciplinary Counsel and supported by an affidavit demonstrating facts personally known to affiant showing that an attorney has misappropriated funds to the attorney's own use, has failed to respond to the Board or Disciplinary Counsel concerning a complaint of misconduct has failed to substantially comply with a Tennessee Lawyer Assistance Program monitoring agreement requiring mandatory reporting to the BPR contract entered into with the Tennessee Lawyer Assistance Program pursuant to Section 36.1, or otherwise poses a threat of substantial harm to the public, the Court may issue an order with such notice as the Court may prescribe imposing temporary conditions of probation on said attorney or temporarily suspending said attorney, or both.

Section 13. Diversion of Disciplinary Cases

13.1 Authority of Board. The Board is hereby authorized to establish practice and professionalism enhancement programs to which eligible disciplinary cases may be diverted as an alternative to disciplinary sanction. The Board is also

authorized to require a respondent attorney to enter into a Tennessee Lawyer Assistance Program monitoring agreement requiring mandatory reporting to the BPR as a condition of diversion under this section. Further, such monitoring agreement may in the board's discretion qualify as a practice and professionalism enhancement program or a part thereof.

Section 14. Probation

(a) Probation. In the discretion of the hearing panel or a reviewing court, the imposition of a suspension for a fixed period (Section 12.2) may be deferred in conjunction with a fixed period of probation. The conditions of probation shall be stated in writing in the judgment of the hearing panel or court. The conditions of probation may require the respondent attorney to enter into an agreement with the Tennessee Lawyer Assistance Program requiring mandatory reporting to the BPR.

Probation shall be used only in cases where there is little likelihood that the respondent attorney will harm the public during the period of rehabilitation and where the conditions of probation can be adequately supervised. The hearing panel or reviewing court may require as a condition of probation the assignment of a practice monitor for the purposes and pursuant to the procedures set forth in Section 12.9. The respondent attorney shall pay the costs associated with probation, including but not limited to a reasonable fee to the practice monitor.

Section 36. Tennessee Lawyer Assistance Program

The Tennessee Lawyers Assistance Program (TLAP) was established by the Court to provide immediate and continuing help to attorneys, judges, bar applicants, and law students who suffer from physical or mental disabilities that result from disease, disorder, trauma, or age and that impair their ability to practice or serve.

36.1. Referrals to TLAP.

(a) Pursuant to Rule 33.07(A) of the Rules of the Tennessee Supreme Court, the Board, its hearing panels or Disciplinary Counsel may provide a written referral to TLAP of any attorney who the Board, hearing panel, or Disciplinary Counsel (collectively, “the BPR”) determines:

- (1) has failed to respond to a disciplinary complaint;
- (2) has received three or more complaints within a period of twelve months;
- (3) has received a complaint that includes multiple failures to appear or to respond or to take any other action in compliance with established rules or time guidelines;
- (4) has pleaded impairment or disability as a defense to a complaint;

(5) has exhibited behavior or has engaged in behavior that, in the BPR's determination, warrants consultation and, if recommended by TLAP, further assessment, evaluation, treatment, assistance, or monitoring;

(6) is seeking readmission or reinstatement where there is a question of either prior or present impairment or disability; or

(7) is requesting TLAP's involvement.

(b) The Executive Director of TLAP shall review any referral by the BPR. If the Executive Director of TLAP deems that assistance and monitoring of an attorney is appropriate, the Executive Director will make reasonable efforts to enter into a ~~Monitoring/Advocacy~~ Agreement ("Agreement") with the attorney pursuant to Rule 33.05(E) of the Rules of the Tennessee Supreme Court. If the Executive Director of TLAP determines that TLAP assistance is not appropriate, for whatever reason, the Executive Director shall report that determination to the BPR, without further elaboration and without disclosure of information otherwise confidential under Rule 33.10.

(c) The BPR will provide written notification to the Executive Director of TLAP that TLAP's assistance will be or has been recommended in any matter pending before the BPR or when TLAP has an ongoing relationship with an attorney who has a matter pending before the BPR. The BPR will provide such notification prior to the date of any hearing and will further provide notice of any

hearing date. The Executive Director of TLAP or his or her representative may attend any such hearing.

(d) The BPR will provide written notification to the Executive Director of TLAP of any provision concerning the participation of TLAP included in any proposed order submitted by the BPR to the Court or any other agreement between the Respondent and the BPR and its disciplinary counsel, informal or otherwise, in which TLAP is required. The Executive Director of TLAP will notify the BPR of any requested modification of the order and may decline involvement. If the Executive Director of TLAP declines involvement of TLAP, the BPR shall not include TLAP's participation in any proposed order submitted to the Court. Neither the BPR nor any hearing panel of the BPR shall include TLAP in any proposed order submitted by the BPR to the Tennessee Supreme Court unless TLAP has given notice to BPR disciplinary counsel or the Respondent or Respondent's counsel that TLAP will accept involvement in the matter. In any proposed order submitted by the BPR to the Tennessee Supreme Court that includes TLAP involvement, the proposed order shall specifically state that TLAP has been consulted and that TLAP has accepted involvement in the matter, and the proposed order shall contain a certificate of service stating the date and manner in which the proposed order was served upon the Executive Director of TLAP.

(e) Pursuant to Rule 33.07-(B) of the Rules of the Tennessee Supreme Court, TLAP will provide the BPR with the following information:

(1) TLAP will notify the BPR of a referred attorney's failure to establish contact with TLAP or enter into a recommended Agreement.

(2) If the attorney enters into an Agreement with TLAP which requires mandatory reporting to the BPR, TLAP will provide a copy of the Agreement to the BPR. Such Agreement will provide for notification by TLAP to the BPR of substantial non-compliance with any of the terms or conditions of the Agreement. Contemporaneously with any such notification, the Executive Director of TLAP may make such recommendation to the BPR as TLAP deems appropriate.

(3) Upon request of the BPR, TLAP will provide the BPR with a status report of monitoring and compliance pursuant to the Agreement. When appropriate, the BPR will obtain from TLAP's Executive Director a recommendation concerning the attorney's compliance with any Agreement.