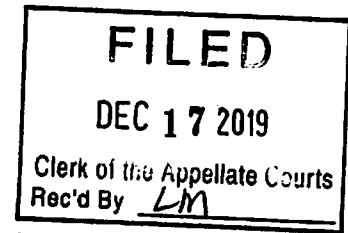


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ADM2019-01685

December 12, 2019  
RE: Docket No. ADM2019-01685

Dear Sirs and Madams;

My name is David Steele. I am an attorney licensed in Mississippi and Tennessee. I am writing today to give comments on the above proposed rule change. I do not believe changes are necessary, and the proposed changes could be harmful if enacted.

Currently, a disbarred attorney may reapply for admission in 5 years. The proposed rule permanently bans attorneys from any future consideration for readmission. While there are undoubtedly many cases where an attorney is disbarred and needs to remain disbarred, change is not necessary because the current rule allows this. An attorney who applies for admission after having been disbarred would have their record examined and, if the Court was not satisfied that they are rehabilitated, could deny the application. The proposed rule eliminates any discretion the Court would have to see if the attorney was rehabilitated and could successfully practice again. This amounts to a life sentence.

The proposed rule only gives the Court the information at the time of the act committed to decide on the punishment. This takes away any information about rehabilitative efforts, changes in character, changes in circumstances, or other important information that could be useful in deciding whether an attorney deserves a life sentence for their act.

Additionally, it places a tougher burden on the Court when deciding whether to disbar because the punishment is so much greater. Judging someone entirely by current actions, without taking into consideration any rehabilitative efforts over the next few years, seems unduly harsh. As an attorney, I have seen people make mistakes that they regretted, but become productive citizens again. Giving someone a life sentence despite successful efforts to rehabilitate themselves seems overly harsh, and places a heavier burden on the Court when handing out this sentence.

It is true the Court could hand out more suspensions and fewer disbarments to lessen the problem. Raising the suspension time does give more leeway to hand out suspensions. It certainly doesn't feel quite right to defend people as a group who have committed bad enough acts to get disbarred. However, no matter how bad someone once was, it is still possible to be saved. I would always hold out hope that they would be redeemed. I think the Court should allow that option to exist. Whether it would be allowed in any particular situation would ultimately be up to the Court.

While someone may argue that the deterrent effect may increase, I would doubt it. Increasing punishment does not always lead to considerable drops in crime, especially when the current punishment is fairly punitive. A disbarment costs you your license for a minimum of 5 years, and depending on your circumstances, could be longer. Additionally, there is a loss of reputation, and sometimes criminal charges associated with the acts that led to disbarment. A better deterrent effect would be more education and training, not just for

attorneys, but others, such as court clerks, legal secretaries, the general public, etc. Programs to help people spot trouble in others could be helpful.

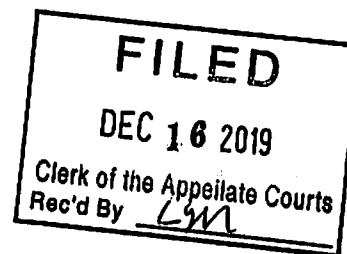
In conclusion, I believe the current rules are fine. Changing to a rule that eliminates any discretion from the Court would hinder the Court from ensuring fairness in the future in cases where a disbarred attorney has been rehabilitated.

Respectfully Submitted,

David Steele, Esq.

Attorney, Silver Arrow Legal

**||| TENNESSEE  
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December 16, 2019

The Honorable James M. Hivner  
Clerk, Tennessee Appellate Courts  
100 Supreme Court Building  
401 7th Avenue North  
Nashville, TN 37219-1407

IN RE: Tenn. Sup. Ct. R. 9, sections 8, 12 & 30  
NO. ADM2019-01685

Dear Mr. Hivner:

In response to the Court's September 18, 2019 Order seeking public comment regarding proposed revisions to Rule 9, the Tennessee Bar Association submits this comment to respectfully oppose the proposed revisions.

The proposed revisions in question would add Tennessee to a small number of U.S. jurisdictions having a "permanent disbarment" form of disbarment rather than the current approach, which provides a lawyer who has been disbarred a chance, though not a guarantee, of reinstatement in the future. The proposed revision would also extend the maximum length of a disciplinary suspension from the current five years to ten years.

The TBA opposes the proposed revisions for a number of different reasons as set forth below, but the overriding sentiment guiding them was expressed by one member of the TBA Ethics Committee that initially evaluated the proposed revisions for the TBA: "We believe in second chances, but not third chances." Tennessee already has a way for a lawyer to be permanently disbarred, but it requires him or her to be disbarred a second time after having been reinstated. The TBA believes that such an approach is fair and works.

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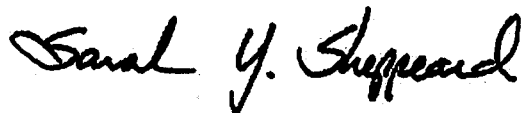
The TBA's view is also guided in part by the lack of available statistics of a significant problem with lawyers' being disbarred and then being reinstated too easily, which would justify the need for the proposed revision. The last three years of available annual reports from the Board of Professional Responsibility indicate that there have been sixty-seven orders of disbarment, sixty-four disciplinary suspensions ranging between 30 days and five years, and only twenty-six lawyers granted reinstatement. Now, admittedly given that the statistics cover a three-year period, any of the orders reinstating previously disbarred lawyers would involve lawyers other than the sixty-seven disbarred over the course of the three-year period. But still, the statistics appear to align with what is known about the reinstatement process under the existing rules – it is not simple to accomplish.

Lawyers who are disbarred in Tennessee must wait five-years at minimum before they can apply for reinstatement. If they seek reinstatement, then they have the burden of proving that they meet all of the necessary requirements to resume practice, including proving that allowing them to practice law again in Tennessee would not be detrimental to the public and the profession. Unless and until they can do that, then they stay disbarred. In the reinstatement process, disciplinary counsel has the opportunity to oppose the reinstatement request and marshal available evidence, obtainable through discovery or otherwise, to undercut any arguments by the disbarred lawyer that they have actually reformed their conduct and learned from their errors and should be given another opportunity to have the privilege of practicing law. Further, the Court has itself made clear its power, even in the face of what might convince others that sufficient grounds for reinstatement has been demonstrated, to deny reinstatement to a disbarred lawyer. Hughes v. Board of Professional Responsibility, 259 S.W.3d 631 (Tenn. 2008). Obviously, for some lawyers, this means that disbarment under the current structure ends up being permanent, but the TBA believes that disbarred lawyers should continue under the rules to have at least the opportunity for a second chance.

The TBA also presumes that the proposal to extend the maximum length of a suspension is tied to the proposed disbarment change and that there does not appear to be any reason to extend the length of a maximum suspension, unless disbarment was transformed into something that is always permanent. The TBA submits that a maximum length of five years for a suspension, on its face, remains a sound approach as well because of the fact that those lawyers must also surmount the burden of proving a right to be reinstated at the end of that period and, if they cannot, can remain suspended for much longer than five years already.

Thank you for your consideration. Please let us know if you have any questions.

Sincerely,



Sarah Y. Sheppard  
TBA President

cc: Joycelyn A. Stevenson, TBA Executive Director  
Berkley Schwarz, TBA Director of Public Policy & Government Affairs  
TBA Executive Committee

**FILED**  
DEC 13 2019  
Clerk of the Appellate Courts  
Rec'd By LM

**IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE**

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

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**No. ADM2019-01685**

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**COMMENT OF THE BOARD OF PROFESSIONAL  
RESPONSIBILITY TO AMENDMENTS TO TENNESSEE  
SUPREME COURT RULE 9, SECTIONS 8, 12 AND 30**

Comes now the Board of Professional Responsibility (the Board), pursuant to the Supreme Court Order filed September 18, 2019, and submits the following Comment to proposed amendments to Tennessee Supreme Court Rule 9, Sections 8, 12 and 30:

The Board supports the proposed amendments to Tennessee Supreme Court Rule 9, Sections 8, 12 and 30. Tennessee Supreme Court Rule 9, Section 12 provides that disbarment is a type of discipline which may be imposed against an attorney. Tennessee Supreme Court Rule 9, Section 30.2 currently allows disbarred attorneys to petition for reinstatement after five years. However, an attorney who has been disbarred, reinstated and then disbarred a second time may not petition for reinstatement. The Court's purposed amendment to Tennessee Supreme Court Rule 9, Section 30.2 would prohibit any attorney disbarred after July 1, 2020 from petitioning for reinstatement.

Legal commentary suggests permanent disbarment prevents misleading the public, improves the perception of lawyers, and prevents a danger to the public. Brian Finkelstein,

Should Permanent Disbarment be Permanent, 20 Geo. J. Legal Ethics 587, 594 (2007). In its mission statement, the Board affirms its duty to assist the Court in protecting the public from harm by unethical lawyers by administrating the disciplinary process.

In Hughes v. Board of Professional Responsibility, this Court denied a disbarred attorney's petition for reinstatement, finding "Even though thirteen years have passed since the crimes and eleven since years since the disbarment, it is our view that the preservation of the integrity of the bar and our interests in the protection of the public outweigh the totality of Hughes' rehabilitation efforts.... The practice of law is a distinct privilege – the more serious the abuse of that privilege, the more onerous the burden of atonement". Hughes v. Bd. of Prof'l Responsibility, 259 S.W. 3d 631, 651 (2008).

The Board of Professional Responsibility supports the Court's proposed amendments to Tennessee Supreme Court Rule 9, Section 12.2(2) extending the available suspension period to ten years. Tennessee Supreme Court Rule 9, Section 15.4(a) requires a hearing panel to determine the appropriate discipline by considering the applicable provisions of the *ABA Standards for Imposing Lawyer Sanctions*. However, a Hearing Panel may choose between several acceptable ABA Standards. If a Hearing Panel is considering sanction standards, the Panel may elect to recommend a longer suspension instead of disbarment to give the attorney an opportunity for rehabilitation and reinstatement.

RESPECTFULLY SUBMITTED,

*Floyd S. Flippin*

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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 13<sup>th</sup> day of December, 2019.

By:

*Floyd S. Flippin*

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

By:

*Sandy Garrett*

---

Sandy Garrett (#013863)  
Chief Disciplinary Counsel

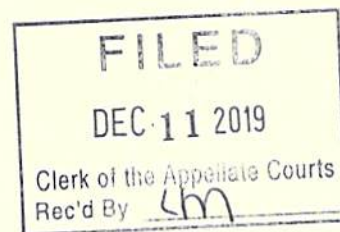
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Admitted in  
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Pennsylvania

December 11, 2019

Mr. James M. Hivner, Clerk  
Tennessee Appellate Courts  
100 Supreme Court Building  
401 7th Avenue North  
Nashville, TN 37219-1407

**Re: No. ADM2019-01685  
Tenn. Sup. Ct. R. 9, sections 8, 12, & 30**

Dear Mr. Hivner:

I appreciate the opportunity to submit the following comments on the Court's proposed changes to the above-referenced rules.

## Permanent Disbarment

I encourage the Court to *not* adopt the proposed changes to Rules 30.2 and 30.4(d). Such changes would prohibit an attorney from reapplying to practice law, if such person is disbarred after July 1, 2020.

It has been my experience that the disciplinary process is frequently abused by attorneys (and sometimes sitting judges) who are seeking to obtain an advantage over their adversary in pending litigation.

I have found the board and its counsel to be very professional in the handling of such bad faith disciplinary complaints. However, mistakes can be made. It is possible that an unjustified sanction could be imposed against an attorney who is not well-represented in the disciplinary process. I am particularly concerned about young or minority attorneys. These people could be particularly vulnerable to a bad faith complaint, where more politically-connected opposing counsel is seeking a large monetary payment from the subject attorney's client. I know of at least two instances where African-American attorneys were improperly suspended from courts, based on political and/or racial motives.

I see no benefit from making a disbarment order permanent. Such a rule would make it difficult or impossible for the Court to correct or mitigate improper, political sanctions entered under the rule. In addition, people change over time. Over the course of five years, an attorney



Mr. James M. Hivner  
December 11, 2019

subject to a prior sanction order could plausibly warrant reinstatement to the bar. Thus, the *existing* language in the order is appropriate.

Duration of Suspension

I encourage the Court to not adopt the proposed change to Rule 12.2(a)(2). Such change would increase the period of suspension from five years to ten years.

I believe that the appropriate duration for a suspension order would be for up to five years. Beyond that, the Court should consider disbarment, with the opportunity to reapply for admission to the Court.

Thank you for consideration of these comments. If you have any questions, feel free to contact me at the above number or by e-mail.

Very truly yours,



Elliott J. Schuchardt

Encl.



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FILED  
DEC - 4 2019  
Clerk of the Appellate Courts  
Rec'd By LM

December 4, 2019

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

Re: Amendments to Tennessee Supreme Court Rule 9, Sections 12 and 30;  
No. ADM2019-01685

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 9, Sections 12 and 30, related to attorney disciplinary action. The Committee presented a report of its review of the Order at the October 16, 2019 meeting of the KBA Board of Governors (the "Board"). Following the Committee's presentation and thorough discussion by the Board, the Board voted to adopt the Committee's recommendation and hereby comments that it opposes the proposed amendments to Rule 9, Sections 12 and 30. The Board believes that the penalties are too severe and the rigid disbarment rule would remove room for both reasoned decision-making and an attorney's incentive for attempting redemption.

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)