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

**IN RE: AMENDMENT TO)
RULE 9, SECTION 34,)
RULES OF THE) No. M2009-02505-SC-RL2-RL
TENNESSEE SUPREME)
COURT)**

**COMMENTS OF THE BOARD OF PROFESSIONAL
RESPONSIBILITY TO PROPOSED AMENDMENTS TO
TENN. SUP. CT. R. 9, § 34**

Pursuant to this Court’s Order filed June 28, 2013, the Board of Professional Responsibility of the Supreme Court of Tennessee (“Board”), respectfully submits the following comments to proposed Section 34¹ of Tenn. Sup. Ct. R. 9, regarding suspension of attorneys for delinquent student loans.

The purpose of Section 34 is similar in many respects to Section 26 of Tenn. Sup. Ct. R. 9 which addresses suspension of attorneys for delinquent privilege tax payments. Section 34 includes a show cause provision which is not found in Section 26; however, the notice provisions in both Section 34 and Section 26 are consistent. Another variation between Sections 26 and 34 is found in the reinstatement procedures. Specifically, Section 26.4(d)(1) and (2) provide that the Reinstatement Order for a privilege tax suspension is effective as of the date of the attorney’s payment of delinquent taxes and

¹ The Board refers to Section 34 as captioned while recognizing the Court may designate a different section number when Rule 9 is comprehensively revised.

fees or alternatively, as of the date of the entry of the Order if that Order was entered in error. Section 34 does not specify the effective date of any Reinstatement Order for student loan suspensions. The Board respectfully submits that making notice, reinstatement and fee requirements in Section 34 consistent with similar provisions in Section 26 promotes clarity and uniformity in Rule 9.

Respectfully submitted,

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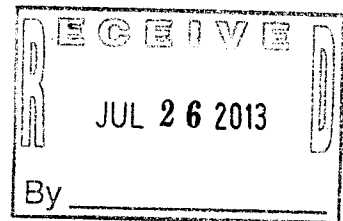
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CERTIFICATE OF SERVICE

I certify that the foregoing has been mailed to Allan F. Ramsaur, Esq., Executive Director, Tennessee Bar Association, 221 4th Ave. N., Ste. 400, Nashville, Tennessee, 37219, by U.S. mail, on this the 24th of July, 2013.

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

**IN RE: AMENDMENT TO RULE 9,) No. M2009-02505-SC-RL2-RL
RULES OF THE TENNESSEE)
SUPREME COURT)
)**

COMMENT OF THE TENNESSEE BAR ASSOCIATION

Comes the Tennessee Bar Association ("TBA"), by and through its President, Cynthia Richardson Wyrick; General Counsel, Paul C. Ney; and Executive Director, Allan F. Ramsaur, and offers its recommendations regarding adoption of provisions in the Court's disciplinary process regarding lawyers found to be delinquent or in default on payment of student loan or service obligations.

I. BACKGROUND

In December 2009, this Court published a proposed amendment to Rule 9, Section 34 "to provide for the suspension, denial or revocation of license or taking such other appropriate disciplinary action against any person who has defaulted on repayment or service obligation under certain student loan programs."

The TBA, joined by the Board of Professional Responsibility, requested additional time to file a comment until March 1, 2010. On March 1, 2010, the TBA, joined once again by the Board of Professional Responsibility, recommended the suspension of the rulemaking pending administrative and legislative action which would address the process for determinations of delinquency and default by lawyers.

As part of that process, we suggested that the statutory provisions were necessary to authorize regulatory action to make a determination of default with respect to lawyers licensed by the Tennessee Supreme Court. Legislation was introduced and pending at the time of that recommendation for suspension of rulemaking. In 2012, legislation was adopted which addressed this issue. The Tennessee Student Assistance Corporation ("TSAC") has since undertaken the administrative procedures rulemaking and adopted a regulatory scheme for the due process necessary to make its determination with regard to delinquency or default.

TSAC has now petitioned this Court to adopt a rule with respect to discipline of lawyers who are found to be in default at the end of such a due process proceeding. While the TBA has consistently expressed its grave reservations regarding the wisdom of elevating student loan debt to such a status that failure to repay student loan debt eclipses all other obligations, the Tennessee General

Assembly has made its view regarding such public policy well known through statutory enactments and provisions which encourage this Honorable Court to discipline lawyers who become delinquent or default on student loan obligations. We will leave it to our elected representatives and members of this Honorable Court to make such public policy determinations, so this comment addresses itself only to the manner in which the Court would address findings by TSAC that a lawyer was delinquent or in default in their loan repayment or service obligations.

In this regard, the TBA offers a different approach than the show cause procedure set forth in the Appendix to the Order reactivating the rulemaking process in this matter and, alternatively, a number of changes to that show cause procedure if the Court does not wish to adopt the alternative approach suggested. Both of these alternatives to the pending proposed rule would better maintain the important and distinct roles and responsibilities of the Board of Professional Responsibility, its Chief Disciplinary Counsel and this Honorable Court, giving each the discretion to determine the sanction which would arise from delinquency or default in such obligations.

II. THE COURT SHOULD ADOPT A PROCEDURE WHICH ALLOWS DISCRETION AND WHICH IS LIKE THE PROCEDURE ADDRESSING NON-PAYMENT OF PRIVILEGE TAXES

The TBA strongly favors the approach to this matter set forth in attached Exhibit A, which would more closely resemble existing Rule 9, Section 32 and proposed Rule 9, Section 26 with respect to discipline for lawyers who fail to pay their Professional Privilege Taxes for two years. The process involves notice by an agency of the executive branch to the Chief Disciplinary Counsel. The Chief Disciplinary Counsel then investigates the matter and makes a recommendation for appropriate sanctions. The Court then allows the lawyer an opportunity for input regarding the possible sanction and exercises its discretion to determine whether the recommended action is appropriate or what other or different action should be taken.

One does not have to speculate too much to think about situations, which might demand a sanction less harsh than strict suspension. For instance, Chief Disciplinary Counsel may already have a lawyer's conduct under investigation and/or may have knowledge of potentially mitigating circumstances regarding a lawyer's situation through confidential contact from the Tennessee Lawyers

Assistance Program. This information could be an important factor in determining the level of the lawyer's culpability and the sanction appropriate in that particular circumstance. Allowing the Chief Disciplinary Counsel to exercise this discretion in bringing the action and for those representing the lawyer the opportunity to present extenuating facts and circumstances would lead to a more well informed and fair decision than can be provided with one-size-fits-all suspension approach.

III. IF THE COURT PREFERS THE SHOW CAUSE PROCEDURE PROPOSED, THE RULE SHOULD PROVIDE FOR GREATER DISCRETION IN DETERMINING SANCTIONS

The TBA also offers a redline of the proposal published by the Court which would retain the show cause procedure but would modify it to provide for the same level of discretion in determining the discipline to be imposed, as set forth in Exhibit A . The Court's proposed show cause procedure does not permit the intervention of the Chief Disciplinary Counsel nor does it involve the Board of Professional Responsibility in recommendations regarding reinstatement. The TBA believes that the changes it suggests to the show cause approach, as set forth in attached Exhibit B would provide the Court with the critically important latitude necessary to fairly address each individual case, as these matters are sure to

involve the same diversity of circumstances as other types of disciplinary issues with which the Court is presented.

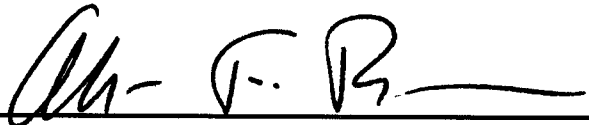
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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing has been served upon the individuals and organizations identified in Exhibit "C" by regular U.S. Mail, postage prepaid within seven (7) days of filing with the Court.



Allan F. Ramsaur

EXHIBIT A

Section 3__ Lawyers in Default on Student Loan or Service Obligations¹

3 __.01. Consistent with Public Chapter 519, Section 6, of the Public Acts of 2012 and with Tenn. Comp. R. & Regs. 1640-01-23 (2013), this Section governs action regarding a lawyer licensed under this rule when a Notice of Default has been issued under any federal family education loan program, a student loan guaranteed or administered by the Tennessee Student Assistance Corporation ("TSAC"), or any other state or federal educational loan or service-conditional scholarship program.

3 __.02. The Court designates the Chief Disciplinary Counsel as the official to whom TSAC shall send a Notice of Default for lawyers licensed in Tennessee.

3 __.03. Upon receipt of the Notice of Default from TSAC, the Chief Disciplinary Counsel shall send the lawyer listed thereon a Student Loan or Service Obligation Delinquency Notice (the "Notice"), stating that TSAC has informed the Chief Disciplinary Counsel that a Notice of Default has issued and that the lawyer is therefore subject to discipline. The Notice shall be sent to the lawyer by a form of United States mail providing delivery confirmation, at the primary address shown in the lawyer's most recent registration statement filed pursuant to Section 10.3

¹ As noted in the Appendix to the order dated June 28, 2013, the Court presently has under consideration adoption of a complete revision to Rule 9. This proposal is an alternative to that proposal and the numbering and cross-references may need to be changed for consistency.

and at the lawyer's last known address, if those are different, as well as to the email address shown in the lawyer's most recent registration statement filed pursuant to Section 10.3, and to the lawyer's last known email address, if those are different.

3 ____.04. (a) Each lawyer to whom a Notice is sent pursuant to Section 3 ____.03 shall file with the Board within thirty days of the date of delivery of the Notice an affidavit or declaration under penalty of perjury, supported by documentary evidence, responding to the Notice of Default.

(b) Within thirty days following the expiration of the time for the lawyer to respond to the Notice pursuant to Section 3 ____.04(a), the Chief Disciplinary Counsel may file in the Nashville office of the Clerk of the Supreme Court a Notice of Submission with an attached copy of a proposed Disciplinary Order. The proposed Disciplinary Order shall indicate that the lawyer was sent the Notice of Default, and the manner in which it was provided, and that the lawyer failed to respond; or, failed to demonstrate to the satisfaction of the Chief Disciplinary Counsel that action on the Notice of Default should not be taken. The Notice of Submission shall include the response, if any, filed by the lawyer under Section 3 ____.04(a). The proposed Disciplinary Order shall provide that the license to practice law of the lawyer therein may be subject to the proposed discipline upon the Court's determination of whether the proposed Order should be entered, and that the license of the lawyer listed therein shall remain under discipline until reinstated pursuant to Subsection (d). A copy of the Notice of Submission shall also be provided to the Director of TSAC.

(c) Upon the Court's review of the Notice of Default, the Notice of Submission, the response and any other additional facts and circumstances that the Court deems is appropriate to consider, the Court may take such action under Section 4 or Section 21 that it deems appropriate. If a lawyer is suspended pursuant to this provision, the suspension may remain in effect for such time as set forth in the order or until the lawyer is reinstated pursuant to Subsection (d). A lawyer who fails to resolve the discipline within thirty days of the Court's entry of a Suspension Order shall comply with the requirements of Section 28.

(d) A lawyer suspended by the Court pursuant to Subsection (c) shall file with the Board an application for reinstatement of the lawyer's license to practice law demonstrating that TSAC has issued a Notice of Compliance under Tenn. Comp. R. & Regs. R1640-01-23-06. The lawyer shall also serve a copy of the application for reinstatement upon the Director of TSAC. If the application is satisfactory to the Chief Disciplinary Counsel and if the lawyer otherwise is eligible for reinstatement, the Chief Disciplinary Counsel shall promptly file in the Nashville office of the Clerk of the Supreme Court a Notice of Submission with an attached copy of a proposed Reinstatement Order. The proposed Reinstatement Order shall provide that the lawyer's reinstatement is effective as of the date that the Notice of Submission is filed, provided that the lawyer has paid to the Board the One Hundred Dollar (\$100.00) delinquent compliance fee, and if not, then on the date that payment is made.

(e) If the application for reinstatement is denied by the Chief Disciplinary Counsel, the lawyer seeking reinstatement may appeal to the Board, or a committee of no fewer than three of its members, within fifteen days of notice of the denial. The Board, or a committee of its members,

shall review the documentation provided by the lawyer and approve or reverse the determination of the Chief Disciplinary Counsel. There shall be no petition for rehearing.

(f) A lawyer suspended by the Court pursuant to Subsection (c) and whose suspension continues for one year or more must seek reinstatement under Section 30.

EXHIBIT B

TENN. SUP. CT. R. 9, PROPOSED NEW SECTION 34¹

~~Section 34. Suspension of Law License for Default on Student Loan or Service—Conditional Scholarship Program~~Action Following Notice of Default from Tennessee Student Assistance Corporation. - Consistent with Chapter 519, Section 6, of the Public Acts of 2012 and with Tenn. Comp. R. & Regs. 1640-01-23 (2013), this Section 34 governs action regarding an attorney licensed under this rule ~~the suspension of an attorney's license to practice law when a Notice of Default has been issued~~ ~~the attorney has been determined to be in default on a repayment or service obligation under any federal family education loan program, a student loan guaranteed or administered by the Tennessee Student Assistance Corporation ("TSAC"), or any other state or federal educational loan or service-conditional scholarship program.~~

34.01. Notice of Default; Show Cause Order. Any Notice of Default issued by TSAC pursuant to Tenn. Comp. R. & Regs. R. 1640-01-23-.05(4) and pertaining to an attorney licensed to practice law in Tennessee shall be transmitted to the Tennessee Supreme Court by sending the Notice of Default to the Nashville office of the Clerk of the Supreme Court. Upon the Court's receipt of a ~~Notice of Default advising the Court that TSAC has determined that an attorney is in default on a repayment or service obligation under any federal family education loan program, a student loan guaranteed or administered by TSAC, or any other state or federal educational loan or service-~~

¹ The Court currently has under advisement a comprehensive revision of Rule 9, and that revision will result in the renumbering of various existing sections of Rule 9. For that reason, the proposed new Section 34 set out above, if ultimately adopted by the Court, will receive a different section designation than "Section 34." Additionally, the section cross-references contained above in the proposed new Section 34 are cross-references to the current section numbers in Rule 9; those cross-references also would be changed to correspond to the new section numbers adopted in the revised version of Rule 9.

~~conditional scholarship program, the Court will promptly issue a show cause order directing the attorney to show cause within thirty days why disciplinary action regarding the attorney's license issued under this rule ~~the attorney's law license should not be suspended~~ taken by the Court based on the attorney's default.~~

34.02. Service of Show Cause Order. A show cause order issued pursuant to Section 34.01 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 20.5 ~~and~~ at the attorney's last known address, if those are different, as well as ~~at~~ the email address shown in the attorney's most recent registration statement filed pursuant to Section 20.5 or at the attorney's last known email address, or both if those are different. A copy of the order also shall be sent to the Chief Disciplinary Counsel ~~of the Board of Professional Responsibility~~ and to the Executive Director of TSAC.

34.03. Response to Show Cause Order; Disposition. The attorney shall serve a copy of his or her response to the show cause order, if any, on the Chief Disciplinary Counsel ~~of the Board~~ and on the Executive Director of TSAC. Based on the attorney's response, if any, and the facts presented in the Notice of Default, the Court may take such action under Section 4 or Section 21 as it deems appropriate. If the attorney's response demonstrates to the satisfaction of the Court that the attorney has remedied the default upon which the Notice of Default was based, the Court may ~~file~~ enter an order ~~continuing~~ dismissing the show-cause proceeding, ~~and allowing the attorney a reasonable period within which to seek a Notice of Compliance from TSAC.~~ If the attorney's response fails to demonstrate to the satisfaction of the Court that the attorney has

remedied the default, or if the attorney fails to timely file a response to the show cause order, the Court will file an order suspending the attorney's license to practice law. Any order filed pursuant to this Section 34.03 shall be served on the attorney, the Chief Disciplinary Counsel of the Board, and the Executive Director of TSAC.

34.04. Term of Suspension; Notice of Compliance. ~~Upon~~ If the Court's issuance issues of a Suspension Order pursuant to Section 34.03, the attorney's law license shall ~~may~~ remain suspended until reinstated by the Court. Upon TSAC's issuance of a Notice of Compliance pursuant to Tenn. Comp. R. & Regs. R. 1640-01-23-.06, and if the attorney otherwise is eligible for reinstatement, the attorney may seek reinstatement pursuant to Section 34.06.

34.05. ~~Suspended~~ Disciplined Attorney Required to Notify Clients, Adverse Parties, and Other Counsel. An attorney as to whom action is taken ~~whose license is suspended~~ pursuant to this Section ~~34~~ shall comply with the applicable provisions of Rule 9, Section 28.

34.06. Reinstatement. Reinstatement following a suspension pursuant to this Section shall require an order of the Court but shall not require a reinstatement proceeding pursuant to Rule 9, Section 19. An attorney suspended by the Court pursuant to this Section may seek reinstatement of his or her law license by filing with the ~~Board~~ Court an application for reinstatement; the attorney must submit with the application a Notice of Compliance issued by TSAC, stating that the attorney has remedied the default upon which the Notice of Default and ~~subsequent~~ Suspension Order ~~discipline~~ were based. The attorney shall serve a copy of his or her application for reinstatement upon the Chief Disciplinary Counsel and the Director of TSAC. If the

application is satisfactory to the Chief Disciplinary Counsel of the Board and if the attorney otherwise is eligible for reinstatement, the Chief Disciplinary Counsel shall submit to the Supreme Court a proposed Reinstatement Order. With respect to attorneys who have been suspended under this Section for over five years before filing an application for reinstatement, the Court may require the attorney to establish proof of competency and learning in law, which proof may include certification by the Board of Law Examiners of the successful completion of an examination for admission to practice subsequent to the date of suspension.

If the application for reinstatement is ~~denied by~~not satisfactory to the Chief Disciplinary Counsel, the attorney seeking reinstatement may seek a hearing before the Court~~appeal to the Board within fifteen days of notice of the denial. The Board, or a committee of no fewer than three of its members, shall review the documentation provided by the attorney and shall approve or reverse the determination of the Chief Disciplinary Counsel. There shall be no petition for rehearing.~~

34.07. Fees. Upon the filing of a ~~Suspension-Disciplinary~~ Order pursuant to Section 34.03, the costs of the show-cause proceeding shall may be taxed to the ~~suspended-disciplined~~ attorney. An attorney suspended under this Section 34 who later files an application for reinstatement shall pay to the Board, at the time the application is filed, a reinstatement fee in the amount of \$200.00.

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