

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED
MAR 09 2011
Clerk of the Courts

**IN RE: AMENDMENTS TO RULE 9, SECTIONS 1.3, 8.3, 13.7 AND 16.1,
RULES OF THE TENNESSEE SUPREME COURT**

No. M2011-00527-SC-RL2-RL - Filed: March 9, 2011

ORDER

Tennessee Supreme Court Rule 9, section 1.3 governs the procedure for judicial review of the judgment of a hearing panel of the Board of Professional Responsibility of the Tennessee Supreme Court. The Court is considering an amendment to section 1.3 and related amendments to sections 8.3, 13.7, and 16.1 concerning judicial review of the judgment of a hearing panel. The proposed amendments are set out in the attached appendix.

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 Friday, April 8, 2011. Written comments should be addressed to:

Michael W. Catalano, Clerk
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

and should reference the docket number set out above.

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

It is so ORDERED.

PER CURIAM

APPENDIX

Proposed Amendments to Tenn. Sup. Ct. R. 9

(deletions from the current text are indicated by overstriking
and additions are indicated by underlining)

1.3 The respondent-attorney (hereinafter “respondent”) or the Board may have a review of the judgment of a hearing panel ~~in the manner provided by Tenn. Code Ann. § 27-9-101 et seq., except as otherwise provided herein~~ by filing a petition for review in accordance with Section 1.4. The review shall be on the transcript of the evidence before the hearing panel and its findings and judgment. If allegations of irregularities in the procedure before the panel are made, the trial court is authorized to take such additional proof as may be necessary to resolve such allegations. The court may affirm the decision of the panel or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the panel’s findings, inferences, conclusions or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the panel’s jurisdiction; (3) made upon unlawful procedure; (4) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (5) unsupported by evidence which is both substantial and material in the light of the entire record.

In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the panel as to the weight of the evidence on questions of fact. Either party dissatisfied with the decree of the circuit or chancery court may prosecute an appeal directly to the Supreme Court where the cause shall be heard upon the transcript of the record from the circuit or chancery court, which shall include the transcript of evidence before the hearing panel. Prior decisions of this Court holding that appeal of disciplinary proceedings must be taken to the Court of Appeals because Tenn. Code Ann. § 16-4-108 so requires are expressly overruled.

* * * *

8.3. The hearing panel shall, in every case, submit its findings and judgment, in the form of a final decree of a trial court, to the Board within 15 days after the conclusion of its hearing. The Board shall immediately serve a copy of the findings and judgment of the hearing panel upon the respondent and the respondent's counsel of record. Any petition for review certiorari therefrom must be filed in the circuit or chancery court having jurisdiction within 60 days of the mailing or service of such judgment.

13.7. With the approval of the hearing panel, testimony may be taken by deposition by interrogatories if the witness is not subject to service or subpoena or is unable to attend testify at the hearing because of age, illness or other infirmity. A complete record of the testimony so taken shall be made and preserved, but need not be transcribed unless needed for judicial review ~~appeal or certiorari~~.

* * * *

16.1. An attorney against whom formal charges have been served may at any stage of the proceedings before the Board, hearing panel or trial court, thereafter tender a conditional guilty plea to the petition or to a particular count thereof in exchange for a stated form of punishment. Such a tendered plea shall be submitted to Disciplinary Counsel and approved or rejected by the Board upon recommendation of the hearing panel if the matter has been assigned for hearing, or shall be approved or rejected by the trial court if a petition for review ~~certiorari~~ has been filed; subject, however, in either event, to final approval or rejection by this Court if the stated form of punishment includes disbarment, suspension or public reprimand.

(End of Appendix)