

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

**IN RE: PROPOSED AMENDMENTS TO RULE 9, SECTION 28,
AND TO RULE 33, SECTION 33.08,
RULES OF THE TENNESSEE SUPREME COURT**

M2005-02674-SC-OT-RL - Filed: December 2, 2005

ORDER

The Tennessee Lawyer Assistance Program and the Board of Professional Responsibility have jointly petitioned the Court to adopt certain amendments to Tennessee Supreme Court Rule 9, Section 28, and to Rule 33, Section 33.08.

The Court hereby publishes for public comment proposed amendments to Rule 9, Section 28, attached hereto as Appendix A, and to Rule 33, Section 33.08, attached hereto as Appendix B, and solicits written comments on the proposed amendments from the bench, the bar, and the public. The deadline for submitting written comments is December 30, 2005. Written comments should be addressed to:

Michael W. Catalano, Clerk
Re: Comments to Rule 9 and to Rule 33
200 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

The Clerk shall provide a copy of this order to the media, to the Tennessee Lawyer Assistance Program, and to the Board of Professional Responsibility, and shall post this Order, with Appendices, on the Tennessee Supreme Court's website.

It is so ORDERED.

PER CURIAM

**EXHIBIT A
(AMENDED JOINT PROPOSAL)**

Sec. 28 Tennessee Lawyer Assistance Program

The Tennessee Lawyers Assistance Program (TLAP) was established by the Tennessee Supreme Court to provide immediate and continuing help to lawyers, 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.

Section 28.1 Referral to TLAP

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

- (1) has not responded to a disciplinary complaint;
- (2) has received three or more complaints within a period of 12 months;
- (3) has 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) pleads impairment or disability as a defense to a complaint;
- (5) has exhibited behavior or 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 and there is a question of either prior or present impairment or disability; or
- (7) requests TLAP's involvement or in whose case TLAP’s formal involvement is proposed by BPR.

(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.

(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 Tennessee Supreme Court. 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 Supreme Court.

(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, 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.

Section 28.4 Autonomy

The BPR and TLAP shall remain completely independent, and the activities of one shall in no way be construed to limit or impede the activities of the other.

EXHIBIT B
(AMENDED JOINT PROPOSAL)

Rule 33.08 Local Impaired Lawyer Assistance Programs

Subject to this rule and approval by TLAP, any bar association or other approved entity may establish an impaired lawyer program for the purpose of assisting lawyers with substance abuse problems, mental illness, or other impairments that may affect the lawyer's professional conduct. These programs are not agents of TLAP and have no authority to bind TLAP by their actions. Such approved programs shall operate as follows:

- (a) The program shall be governed by a committee which consists of not less than five (5) members, one of whom shall be designated as chair and one as vice-chair.
- (b) No member of the impaired lawyer program shall be a member of a district committee of the Board of Professional Responsibility of the Tennessee Supreme Court.
- (c) The program may investigate and evaluate allegations of substance abuse or mental impairment brought to its attention. Should the investigation or evaluation indicate that the lawyer does in fact suffer from substance abuse or mental impairment, the program may confer with the lawyer who is the subject of such allegation and make a recommendation to such lawyer. Such recommendation may include the sources of help for such problems.
- (d) The program may create and facilitate lawyer support groups and meetings.
- (e) The program shall provide peer assistance only and shall not accept referrals for monitoring as a probationary or provisional condition imposed upon a lawyer by any court or disciplinary authority. The program shall refer lawyers in need of monitoring to TLAP. However, any monitoring contract executed by a local impaired lawyer program prior to the effective date of this amendment may continue until the end of the term of the contract.
- (f) The program shall maintain statistics of the number of referrals it receives. These statistics shall be reported in writing to the Director of the Tennessee Lawyers Assistance Program not later than July 31 of each calendar year.

(g) Information received and actions taken by the impaired lawyers program shall be privileged and held in strictest confidence among the members of the committee. The committee may in its discretion release such information to the impaired lawyer's family or other persons as in its judgment will be in best interest of the impaired lawyer.

(h) Members, staff, and agents of the impaired lawyers committee shall have the same privileges and immunities as provided in Rule 33.11. Lawyers serving in such capacities are relieved of the duty of disclosure of information to authorities as imposed by Tennessee Supreme Court Rule 8, RPC 8.3(a) for information obtained in the scope of their service.