

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

IN RE:)
)
RULE 9, SECTION 30)
RULES OF THE SUPREME COURT)
DIVERSION OF DISCIPLINARY CASES)

No. 01-S-01-9608-OT-00155

FILED

March 26, 1997

Cecil W. Crowson
Appellate Court Clerk

O R D E R

On January 9, 1997, the Court amended Rule 9 by adding "Section 30. Diversion of Disciplinary Cases." After further review, the Court determined that several technical amendments were necessary. These technical amendments having been made, the Court vacates Rule 9, Section 30 in its entirety and replaces it with Rule 9, Section 30 as follows:

SECTION 30. DIVERSION OF DISCIPLINARY CASES

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

30.2 Types of Disciplinary Cases Eligible for Diversion. Disciplinary cases that otherwise would be disposed of by a private informal admonition or a private reprimand are eligible for diversion to practice and professionalism enhancement programs.

30.3 Limitation on Diversion. A respondent who has been the subject of a prior diversion within five (5) years shall not be eligible for diversion.

30.4 Approval of Diversion. The Board of Professional Responsibility shall not offer a respondent the opportunity to divert a disciplinary case to a practice and professionalism enhancement program unless the Board or a combination of Disciplinary Counsel and a Hearing Committee Member concur.

30.5 Contents of Diversion Recommendation. If a diversion recommendation is approved as provided in Section 30.4, the recommendation shall state the practice and professionalism enhancement program(s) to which the respondent shall be diverted, shall state the general

purpose for the diversion, and that the costs thereof shall be paid by the respondent.

30.6 Service of Recommendation on and Review by Respondent. If a diversion recommendation is approved as provided in Section 30.4, the recommendation shall be served on the respondent who may accept or reject a diversion recommendation in the same manner as provided for in Section 8 of Rule 9. The respondent shall not have the right to reject any specific requirement of a practice and professionalism enhancement program.

30.7 Effect of Rejection of Recommendation by Respondent. In the event that a respondent rejects a diversion recommendation the matter shall be returned for further proceedings under these rules.

30.8 Diversion at Trial Level.

(a) *Agreement of the Parties.* A Hearing Committee may recommend diversion of a disciplinary case to a practice and professionalism enhancement program if the Board of Professional Responsibility approves diversion and the respondent and Disciplinary Counsel agree. Under these circumstances a conditional plea, as otherwise authorized by these rules, may be submitted to the Board of Professional Responsibility for review and approval.

(b) *After Submission of Evidence.* A Hearing Committee may recommend diversion of a disciplinary case to a practice and professionalism enhancement program if, after submission of evidence, but before a finding of unethical conduct, the Hearing Committee determines that, if proven, the conduct alleged to have been committed by the respondent is not more serious than that deserving private discipline.

(c) *Costs of Practice and Professionalism Enhancement Program.* A Hearing Committee's recommendation of diversion to a practice and professionalism enhancement program shall state that the costs thereof are to be paid by the respondent.

(d) *Appeal of Diversion Recommendation.* The respondent and the Board of Professional Responsibility shall have the right to appeal a Hearing Committee's recommendation of diversion.

(e) *Authority of Hearing Committee to Refer a Matter to a Practice and Professionalism Enhancement Program.* Nothing in this rule shall preclude a Hearing Committee from referring a disciplinary matter to a practice and professionalism enhancement program as a part of a disciplinary sanction.

30.9 Effect of Diversion. When the recommendation of diversion becomes final, the respondent shall enter the practice and professionalism enhancement program(s) and complete the requirements thereof. Upon respondent's completion of the practice and professionalism enhancement program(s), the Board of Professional Responsibility shall terminate its investigation into the matter and its disciplinary files shall be closed indicating the diversion unless the diversion is ordered in addition to other discipline. Diversion into the practice and professionalism enhancement program shall not constitute a disciplinary sanction and shall remain confidential.

30.10 Effect of Failure to Complete the Practice and Professionalism Enhancement Program. If a respondent fails to fully complete all requirements of the practice and professionalism enhancement program(s) to which the respondent was diverted, including the payment of costs thereof, the Board of Professional Responsibility may reopen its disciplinary file and conduct further proceedings under these rules. Failure to complete the practice and professionalism enhancement program shall be considered as a matter of aggravation when imposing a disciplinary sanction.

It is so ORDERED this the 26th day of March, 1997.

FOR THE COURT:

ADOLPHO A. BIRCH, JR., Chief Justice