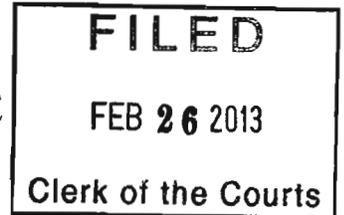


IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE



**IN RE: PETITION TO AMEND RULE 33  
OF THE RULES OF THE SUPREME COURT**

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**No. M2012-01897-SC-RL1-RL - Filed: February 26, 2013**

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**ORDER**

On September 6, 2012, the Commission of the Tennessee Lawyer Assistance Program (“Commission”) filed a petition asking the Court to amend Rule 33, Sections 33.02, 33.05, and 33.07 of the Rules of the Tennessee Supreme Court. On October 15, 2012, the Court filed an order soliciting public comments on the Commission’s proposed amendments. The public comment period expired on November 30, 2012.

After due consideration of the Commission’s proposed amendments and the public comments received by the Court, the Court hereby adopts the amendments to Rule 33 set out in the Appendix to this Order, effective March 1, 2013.

The amendments set out in the Appendix include the amendments originally proposed by the Commission, as modified by the Court. The amendments also include the substitution of the name “Board of Judicial Conduct” for the now obsolete references to the “Court of the Judiciary” in various parts of Rule 33. *See* 2012 Tenn. Pub. Acts, Ch. 819 (dissolving the Court of the Judiciary and replacing it with the Board of Judicial Conduct, effective July 1, 2012).

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*

### *AMENDMENTS TO TENN. SUP. CT. R. 33, SECTIONS 33.02, 33.05, 33.07, and 33.10, and Appendix A (Policy and Procedures of the Tennessee Lawyer Assistance Program)*

*(effective March 1, 2013)*

(New text indicated by underlining; deleted text indicated by overstriking.  
The other sections of Rule 33 are unchanged.)

#### **33.02 TLAP Commission**

**A. Members.** The Tennessee Supreme Court shall appoint commission members to administer the TLAP. Officers of the commission shall consist of a chair, vice chair and secretary-treasurer. The chair shall be appointed by the Supreme Court. Each of the other officers shall be elected by the members of the commission annually.

**B. Composition.** The commission shall consist of fifteen (15) members, chosen on the basis of geography and diversity and shall include three (3) citizens who are not members of the legal profession. The members shall have diverse experience, knowledge and demonstrated competence in the problems of addiction and other common difficulties that impair members of the legal profession.

**C. Terms.** Members shall be appointed for a three-year term. Appointments shall be staggered so that the number of terms expiring shall be the same each year. No member shall be appointed for more than two consecutive, full three (3) year terms.

**D. Duties of the Commission.** The commission shall have the following powers and duties:

- (1) To establish TLAP policy and procedures consistent with this rule. Such policies and procedures shall be established after reasonable notice to the Tennessee bench and bar and opportunity for comment.
- (2) To operate the program to achieve its purposes.
- (3) To assure the duties listed under Rule 33.03 are carried out in the absence of a director of the program.

(4) To establish and administer a revolving loan fund as provided under Rule 33.09.

(5) To make reports to the Tennessee Supreme Court annually or as otherwise required.

**E. Meetings.** The commission shall meet quarterly, upon call of the chair or upon the request of five (5) or more members. The Commission may invite non-Commission members, including representatives from other branches of government, lawyers, and members of the public, to attend meetings and to participate as members of advisory committees to help further the work of the Commission.

**F. Advisory Committees:** The Commission may create advisory committees to study specific issues identified by the Commission and to make such recommendations to the Commission as the members of the advisory committees deem appropriate.

### **33.05 Services**

TLAP shall provide the following services:

**A.** Immediate and continuing assistance to members of the legal profession who suffer from physical or mental disabilities that result from disease, disorder, trauma or age and that impair their ability to practice;

**B.** Planning and presentation of educational programs to increase the awareness and understanding of members of the legal profession to recognize problems in themselves and in their colleagues; to identify the problems correctly; to reduce stigma; and, to convey an understanding of appropriate ways of interacting with affected individuals;

**C.** Investigation, planning and participation in interventions with members of the legal profession in need of assistance;

**D.** Aftercare services upon request, by order, or under contract that may include the following: assistance in structuring aftercare and discharge planning; assistance for entry into appropriate aftercare and professional peer support meetings; and assistance in obtaining a primary care physician or local peer counselor; and

**E.** Monitoring services under Rule 33.07 or under contract that may include the following: alcohol and/or drug screening programs; tracking aftercare, peer support and

twelve step meeting attendance; providing documentation of compliance; and providing such reports concerning compliance by those participating in a monitoring program as may be required by the terms of that program. There are three types of monitoring agreements.

(1) Voluntary Monitoring Agreement with no reporting party listed in the agreement.

The contract participant may request from TLAP letters of compliance addressed to the contract participant for the participant to provide to outside sources as he or she deems appropriate. TLAP or the contract participant may terminate the monitoring agreement at any time.

(2) Voluntary Monitoring Agreement with reporting to a non-disciplinary authority.

A contract participant may request monitoring with reporting to a non-disciplinary authority as the reporting designee. The reporting designee will receive a copy of the monitoring agreement and may request a status report at any time. The reporting designee will be notified if the client becomes substantially noncompliant. The contract participant, reporting designee, or TLAP may terminate the agreement at anytime. If TLAP or the contract participant terminates the agreement, the reporting designee will be notified immediately.

(3) Monitoring Agreement requiring mandatory reporting to disciplinary or licensing authority.

A disciplinary or licensing authority, such as the Board of Law Examiners, Board of Professional Responsibility, or Board of Judicial Conduct, may request TLAP to conduct an evaluation of a law student, attorney or judge. The request shall be in writing from the disciplinary authority or licensing authority to both TLAP and the referred attorney, and may be by court order. Following the evaluation, TLAP will provide the disciplinary or licensing authority with a written summary of TLAP's recommendations. If monitoring is recommended by TLAP, the disciplinary or licensing authority will be listed as the reporting designee. The disciplinary or licensing authority shall be notified if the referred law student, attorney or judge becomes substantially noncompliant with the terms of the agreement. The disciplinary or licensing authority may request a status update concerning substantial noncompliance at any time. TLAP shall provide an affidavit upon request of any party to the proceedings. Upon conclusion of a proceeding of any licensing or disciplinary authority, the monitoring agreement shall end, unless continued monitoring is specifically required in writing for a specified period of time following the conclusion of a proceeding.

### **33.07 Referrals From Board of Professional Responsibility, ~~Court of the Judiciary~~ Board of Judicial Conduct, Board of Law Examiners or Other Disciplinary Agencies**

**A. Referrals.** TLAP may accept referral of lawyers, judges or bar applicants under investigational, provisional or probational status with the Tennessee Board of Professional Responsibility, Tennessee ~~Court of the Judiciary~~ Board of Judicial Conduct, Tennessee Board of Law Examiners or any disciplinary agency with disciplinary authority

**B. Progress Reports.** When TLAP accepts a referral under Rule 33.07(A), which results in a recommendation for a monitoring agreement, with a disciplinary agency as a reporting party, TLAP ~~may~~ shall provide progress reports or reports of substantial non-compliance. Notwithstanding Rule 33.10, these reports may be used as evidence in any proceeding or appeal relating to such referral from the Tennessee Board of Professional Responsibility, the Tennessee ~~Court of the Judiciary~~ Board of Judicial Conduct, the Tennessee Board of Law Examiners or a disciplinary agency with disciplinary authority.

### **33.10. Confidentiality**

**A.** Information and actions taken by TLAP or by local impaired lawyer assistance programs approved under Rule 33.08 shall be privileged and held in strictest confidence and shall not be disclosed or required to be disclosed to any person or entity outside of TLAP or the local impaired lawyer assistance program approved under Rule 33.08, unless such disclosure is authorized by the member of the legal profession to whom it relates or as provided in Rule 33.07(B). Except as provided in Rule 33.07(B), such information and actions shall be excluded as evidence in any complaint, investigation or proceeding before the Tennessee Board of Professional Responsibility, Tennessee ~~Court of the Judiciary~~ Board of Judicial Conduct, Tennessee Board of Law Examiners or other disciplinary agency with jurisdiction.

**B.** Commission members, employees, and agents, including volunteers recruited under Rule 33.04, and committee members, employees, and agents, including volunteers of local impaired lawyer assistance programs approved under Section 33.08, shall be deemed to be participating in “a lawyers assistance program approved by the Tennessee Supreme Court” as provided in T.C.A. § 23-4-103(1), and all information furnished to the program shall be governed by T.C.A. §§ 23-4-104 and 23-4-105.

## Appendix A. Policy and Procedures of the Tennessee Lawyer Assistance Program

### I. Definitions

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J. "Official Referral" means a referral of a Member to the Program by (i) the Tennessee Board of Professional Responsibility, (ii) the Tennessee Board of Law Examiners, or (iii) the Tennessee ~~Court of the Judiciary~~ Board of Judicial Conduct.

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*(end of Appendix)*