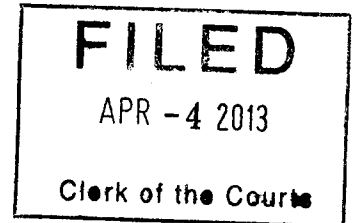


IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: THE ADOPTION OF AMENDED TENNESSEE SUPREME COURT
RULE 9

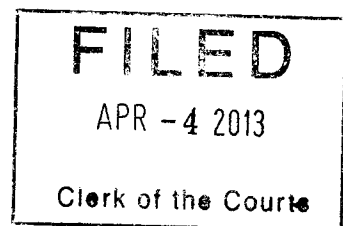
No. M2012-01648-SC-RL2-RL



ORDER

By Order entered August 8, 2012, the Court solicited public comment on the above-styled proposal and established February 8, 2013 as the deadline for submitting written comments. The Board of Professional Responsibility submitted comments prior to this deadline. On March 28, 2013, the Board filed a motion for permission to late file supplemental comments on the above-styled proposal, together with its supplemental comments. Upon due consideration, the Board's motion is granted and the supplemental comments are deemed filed. This Order shall be posted to the Court's website.

PER CURIAM



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

IN RE: THE ADOPTION OF)
AMENDED TENNESSEE)
SUPREME COURT) No. M2012-01648-SC-RL2-RL
RULE 9)

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

The Board of Professional Responsibility of the Supreme Court of Tennessee (“Board”), pursuant to the Order filed August 8, 2012, respectfully submits the following supplemental rule changes and comments.

The Board appreciates the consideration and comments by the Tennessee Bar Association regarding proposed changes to Tenn. Sup. Ct. R. 9. The Board responds herein to two comments made by the Tennessee Bar Association. The lack of reference to any other comment made by the Tennessee Bar Association is not intended as an endorsement of nor opposition to those comments.

Rule 9. Disciplinary Enforcement.

Section 15. The Tennessee Bar Association proposed as follows:

(g) If Disciplinary Counsel recommends disposition by private informal admonition or private reprimand, and if that recommended disposition is approved by the reviewing member of the district committee in the

appropriate disciplinary district, and if the respondent attorney does not demand a formal hearing, then the complainant shall be provided notice that the complaint has been resolved in a manner that is confidential under Section 32. This same notice will be provided to the complainant in the event of disposition by private reprimand. The complainant has no right to appeal a disposition by private informal admonition or private reprimand under this Section.

Comment: The Tennessee Bar Association has proposed that “private reprimand” be inserted in and added to Sec. 15(g). The addition of “private reprimand” in this section is inconsistent with the structure of the disciplinary process provided by these rules. The addition of a “private reprimand” to this section would reflect that “private reprimand...is approved by the reviewing member of the district committee...” A recommendation of a private reprimand is not reviewed by a district committee member. A recommendation of private informal admonition is reviewed by a district committee member. See Sec. 6.3 and 15.1(g). A recommendation for private reprimand is reviewed by the Board of Professional Responsibility. See Sec. 15.1(d). If the intent of the addition is to provide for notice to complainants who file complaints which result in private reprimand, the change could be made in Sec. 15.1(d).

Section 15.3. The Tennessee Bar Association proposed as follows:

(b) The ~~hearing panel~~Board shall file its findings and judgment with the Board and immediately serve a copy of ~~the hearing panel's findings and judgment~~ upon Disciplinary Counsel and the respondent attorney's counsel of record (or and the respondent attorney if unrepresented)'s ~~counsel of record~~ pursuant to Section 18.2. There shall be no petition for rehearing. Any appeal pursuant to Section 33 must be filed within sixty days of the entry of the hearing panel's judgment.

Comment: The Board opposes a requirement that the hearing panel serve copies of their judgment to the parties. Hearing committee members are volunteers who serve an important function. The filing and serving of findings and judgment are administrative tasks which can be performed by individuals employed by the Board.

Section 32.1. All matters, investigations, or proceedings involving allegations of misconduct by or the disability of an attorney, including all hearings and all information, records, minutes, files or other documents of the Board, district committee members and Disciplinary Counsel shall be confidential and privileged, and shall not be public records, until or unless:

- (a) A recommendation for the imposition of public discipline, without the initiation of a formal disciplinary proceeding pursuant to Section 15.2, ~~is filed with the Court by the Board;~~ or

Comment: When the Board imposes public discipline without the initiation of a formal disciplinary proceeding, that public discipline is not filed with the Court by the Board.

Section 34.3. (a) Except as otherwise provided in this rule, the Tennessee Rules of Civil Procedure and the Tennessee Rules of Evidence apply in disciplinary case proceedings before the hearing panel.

(b) Regardless of the forum in which the proceeding is pending, Disciplinary Counsel's work product shall not be required to be produced, nor shall a member of the

hearing panel or the Board, the Chief Disciplinary Counsel, or the staff be subject to deposition, including Tenn.R.Civ.P.30.02(6) depositions, or compelled to give testimony, unless ordered by the trial court upon a showing by the requesting party of substantial need and an inability to obtain substantially equivalent materials by other means without undue hardship during an appeal pursuant to Section 33.

Comment: This proposed change clarifies that the prohibitions provided in the rule are applicable in proceedings before a hearing panel as well as trial court. Without the added language, it might be asserted that the prohibitions are not applicable in proceedings before the hearing panel.

Respectfully submitted,

Lela Hollabaugh By SG w/ permission
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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 28th day of March, 2013.

Lela Hollabaugh By SG w/ permission

LELA HOLLABAUGH (#014894)
Chair

Sandy Garrett

SANDY L. GARRETT (#013863)
Chief Disciplinary Counsel