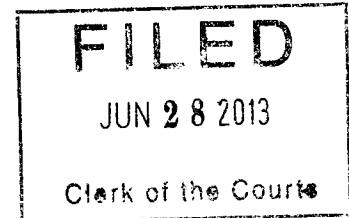


IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE AMENDMENT TO RULE 9, SECTION 34,
RULES OF THE TENNESSEE SUPREME COURT

No. M2009-02505-SC-RL2-RL



ORDER

On March 11, 2010, the Court temporarily suspended this rulemaking proceeding at the joint recommendation of the Tennessee Bar Association, the Chief Disciplinary Counsel of the Tennessee Board of Professional Responsibility, and the Counsel for the Tennessee Student Assistance Corporation (“TSAC”) (collectively, “Recommending Parties”). On August 3, 2010, the Recommending Parties filed a joint “Recommendation for Continued Suspension of Rulemaking.” In an order filed on August 30, 2010, the Court accepted that recommendation and continued the suspension of the rulemaking proceeding “pending the completion of further legislative and administrative action which will address adequately the process for determination by TSAC of delinquency or default by lawyers as a predicate to possible suspension of their law licenses.” That order also stated: “The Recommending Parties are directed to advise the Court when these processes are complete.”

In a letter dated June 4, 2013, Counsel for the Tennessee Student Assistance Corporation notified the Chief Justice that TSAC has “adopted Rules governing the process of license suspension for defaulted student loans[,]” that the rules have been approved by the Attorney General & Reporter and the Government Operations Committee of the General Assembly, and that the rules are now set out in Tenn. Comp. R. & Regs. 1640-01-23. Counsel’s letter concluded by stating:

We believe that all legislative and administrative actions addressing the process for determination by TSAC of delinquency or default by lawyers as a predicate to possible suspension of their law licenses are now complete. However, TSAC will not proceed with the determination of default by lawyers until an amendment to Supreme Court rules is finalized authorizing such process.

Based upon the foregoing notification from TSAC, the Court hereby lifts the suspension of this rulemaking proceeding.

The Court is considering the adoption of a new Section 34¹ of Tenn. Sup. Ct. R. 9 authorizing the Court to suspend the law license of any lawyer who is determined by TSAC, pursuant to Chapter 1640-01-23, Tennessee Comprehensive Rules and Regulations, to be delinquent or in default on a repayment or service obligation under any student loan covered by that Chapter. The proposed amendment is set out in the appendix to this order.

The Court hereby publishes the proposed amendment and solicits written comments concerning the proposal from judges, lawyers, bar organizations, members of the public, and any other interested parties. The deadline for submitting written comments is Monday, July 29, 2013. Written comments should be addressed to:

Michael W. Catalano, Clerk
Re: Rule 9, Section 34
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.

PER CURIAM

¹ Although the caption of this proceeding is *In Re Amendment to Rule 9, Section 34, Rules of the Tennessee Supreme Court* (emphasis added), the Court currently has under advisement a comprehensive revision of Rule 9, and that revision will result in the renumbering of various existing sections of Rule 9. For that reason, the proposed amendment set out in the Appendix to this order, if ultimately adopted by the Court, would receive a different section designation than "Section 34."

APPENDIX

TENN. SUP. CT. R. 9, PROPOSED NEW SECTION 34²

Section 34. Suspension of Law License for Default on Student Loan or Service-Conditional Scholarship Program. – Consistent with Chapter 519, Section 6, of the Public Acts of 2012 and with Tenn. Comp. R. & Regs. 1640-01-23 (2013), this Section 34 governs the suspension of an attorney’s license to practice law when the attorney has been determined to be in default on a repayment or service obligation under any federal family education loan program, a student loan guaranteed or administered by the Tennessee Student Assistance Corporation (“TSAC”), or any other state or federal educational loan or service-conditional scholarship program.

34.01. Notice of Default; Show Cause Order. Any Notice of Default issued by TSAC pursuant to Tenn. Comp. R. & Regs. R. 1640-01-23-.05(4) and pertaining to an attorney licensed to practice law in Tennessee shall be transmitted to the Supreme Court by sending the Notice to the Nashville office of the Clerk of the Supreme Court. Upon the Court’s receipt of a Notice of Default advising the Court that TSAC has determined that an attorney is in default on a repayment or service obligation under any federal family education loan program, a student loan guaranteed or administered by TSAC, or any other state or federal educational loan or service-conditional scholarship program, the Court will promptly issue a show cause order directing the attorney to show cause within thirty days why the attorney’s law license should not be suspended by the Court based on the attorney’s default.

34.02. Service of Show Cause Order. A show cause order issued pursuant to Section 34.01 shall be sent to the attorney by a form of United States mail providing delivery confirmation, at the primary or preferred address shown in the attorney’s most recent registration statement filed pursuant to Section 20.5 or at the attorney’s last known address, and at the email address shown in the attorney’s most recent registration statement filed pursuant to Section 20.5 or at the attorney’s last known email address. A copy of the order also shall be sent to the Chief Disciplinary Counsel of the Board and to the Executive Director of TSAC.

34.03. Response to Show Cause Order; Disposition. The attorney shall serve a copy of his or her response to the show cause order, if any, on the Chief Disciplinary Counsel

² The Court currently has under advisement a comprehensive revision of Rule 9, and that revision will result in the renumbering of various existing sections of Rule 9. For that reason, the proposed new Section 34 set out above, if ultimately adopted by the Court, will receive a different section designation than “Section 34.” Additionally, the section cross-references contained above in the proposed new Section 34 are cross-references to the *current* section numbers in Rule 9; those cross-references also would be changed to correspond to the new section numbers adopted in the revised version of Rule 9.

of the Board and on the Executive Director of TSAC. If the attorney's response demonstrates to the satisfaction of the Court that the attorney has remedied the default upon which the Notice of Default was based, the Court may file an order continuing the show-cause proceeding and allowing the attorney a reasonable period within which to seek a Notice of Compliance from TSAC. If the attorney's response fails to demonstrate to the satisfaction of the Court that the attorney has remedied the default, or if the attorney fails to timely file a response to the show cause order, the Court will file an order suspending the attorney's license to practice law. Any order filed pursuant to this Section 34.03 shall be served on the attorney, the Chief Disciplinary Counsel of the Board, and the Executive Director of TSAC.

34.04. Term of Suspension; Notice of Compliance. Upon the Court's issuance of a Suspension Order pursuant to Section 34.03, the attorney's law license shall remain suspended until reinstated by the Court. Upon TSAC's issuance of a Notice of Compliance pursuant to Tenn. Comp. R. & Regs. R. 1640-01-23-.06, and if the attorney otherwise is eligible for reinstatement, the attorney may seek reinstatement pursuant to Section 34.06.

34.05. Suspended Attorney Required to Notify Clients, Adverse Parties, and Other Counsel. An attorney whose license is suspended pursuant to this Section 34 shall comply with the applicable provisions of Rule 9, Section 18.

34.06. Reinstatement. Reinstatement following a suspension pursuant to this Section shall require an order of the Court but shall not require a reinstatement proceeding pursuant to Rule 9, Section 19. An attorney suspended by the Court pursuant to this Section may seek reinstatement of his or her law license by filing with the Board an application for reinstatement; the attorney must submit with the application a Notice of Compliance issued by TSAC, stating that the attorney has remedied the default upon which the Notice of Default and subsequent Suspension Order were based. If the application is satisfactory to the Chief Disciplinary Counsel of the Board and if the attorney otherwise is eligible for reinstatement, the Chief Disciplinary Counsel shall submit to the Supreme Court a proposed Reinstatement Order. With respect to attorneys who have been suspended under this Section for over five years before filing an application for reinstatement, the Court may require the attorney to establish proof of competency and learning in law, which proof may include certification by the Board of Law Examiners of the successful completion of an examination for admission to practice subsequent to the date of suspension.

If the application for reinstatement is denied by the Chief Disciplinary Counsel, the attorney seeking reinstatement may appeal to the Board within fifteen days of notice of the denial. The Board, or a committee of no fewer than three of its members, shall review the

documentation provided by the attorney and shall approve or reverse the determination of the Chief Disciplinary Counsel. There shall be no petition for rehearing.

34.07. Fees. Upon the filing of a Suspension Order pursuant to Section 34.03, the costs of the show-cause proceeding shall be taxed to the suspended attorney. An attorney suspended under this Section 34 who later files an application for reinstatement shall pay to the Board, at the time the application is filed, a reinstatement fee in the amount of \$200.00.

(end of Appendix)