No. 24-

IN THE

Supreme Court of the United States

FRANK L. SLAUGHTER, JR.,

Petitioner,

v.

BOARD OF PROFESSIONAL RESPONSIBILITY OF THE SUPREME COURT OF TENNESSEE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TENNESSEE

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Tennessee Supreme Court erred in failing to hold that Tennessee Supreme Court Rule 9, the enforcement provision for alleged ethical violations of attorneys, violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

   A. Whether this Court should exercise its supervisory authority to cull Tennessee's Supreme Court, which has a history of misapprehending federal Due Process in licensure cases, out of its unconstitutional morass to proper adherence with long-standing holdings of this Court.

   B. Whether this Court should exercise its discretion to grant certiorari to consider a novel question of law as to Rule 9's facial unconstitutionality in that it confers plenary power on one person, determining without review or a written standard to apply as the sole decision-maker, whether or not to initiate disciplinary actions against an attorney when the issuance of the license to practice law in the first instance confers a federal Due Process liberty and property interest to the holder.

PARTIES TO THE PROCEEDINGS

The caption of this Petition contains the complete names of all parties involved in this Petition.

STATEMENT OF RELATED PROCEEDINGS

This matter began with a disciplinary complaint filed by the Respondent, Tennessee Board of Professional Responsibility, against the Petitioner. After a hearing before a Hearing Panel of three attorneys, which entered a final ruling on the matter on October 28, 2022, the Petitioner sought review by way of right in the Sullivan County Tennessee Chancery Court. The Chancery Court thereafter entered a final Order, finding the Petitioner had violated certain provisions of the ethical rules applicable to attorneys in Tennessee, Tenn. Sup. Ct. R. 8, and thereafter entered a final order of public censure against Petitioner on August 24, 2023. The Petitioner appealed as of right directly to the Tennessee Supreme Court which reversed in part and affirmed in part on February 6, 2025. A copy of the Tennessee Supreme Court's opinion is attached hereto in Appendix A. A copy of the Findings of Facts and Conclusions of Law by the Hearing Panel of three attorneys of the Tennessee Board of Professional Responsibility is attached hereto in Appendix C. A copy of the Chancery Court Order is attached hereto in Appendix D.

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The lower reports of the courts and administrative agencies are attached hereto in Appendix.

CONCISE STATEMENT OF BASIS FOR JURISDICTION IN THIS COURT

The Tennessee Supreme Court's failure to find its disciplinary enforcement rule, Tenn. R. Sup. Ct. R. 9, to be in facial violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution serves as the sole basis for this appeal and thus confers jurisdiction on this Court.

The Tennessee Supreme Court's opinion was filed on February 6, 2025, and it is attached in the Appendix.

THE CONSTITUTIONAL PROVISIONS ETC. APPLICABLE IN THIS PETITION

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, § 1.

STATEMENT OF THE CASE

This case presents a novel question for this Court to review and also presents a question as to whether this Court should exercise is supervisory authority to correct decisions of the Tennessee Supreme Court incongruent with decisions of this Court regarding federal Due Process of law.

Frank L. Slaughter, Jr. in the course of representing a client, received ethical complaints from a third-party, averring, inter alia, improper contact. Eventually, after the initial investigatory period, the Tennessee Board of Responsibility, through disciplinary counsel, filed a petition for discipline that proceeded to a hearing before Hearing Panel of three attorneys. At the conclusion of the administrative hearing, the panel recommended a public censure on two counts to be the final punishment for the Petitioner. The Petitioner perfected an appeal, as of right after exhausting his administrative remedies, with the Chancery Court for Sullivan County, Tennessee. After the Chancery Court entered a final appealable order, finding the Petitioner had violated two specific provisions of Tennessee Supreme Court Rule 8 (the ethical rules for attorneys), and affirming the public censure, the Petitioner timely appealed as of right directly to the Tennessee Supreme Court.

The Petitioner first raised the issue that Rule 9 of the Tennessee Supreme Court facially and as applied to him violates the first prong of the Fourteenth Amendment (liberty and property prongs of Due Process) in the Tennessee Supreme Court. In so doing, he argued the Rule's provisions, allowing a single individual with no

supervisory review, no evidentiary standard, and no written guideposts to determine whether an ethical complaint is summarily dismissed, whether the same is sent to investigatory counsel for investigation or whether an *ex parte* petition for temporary suspension is immediately filed, to violate his right to Due Process of law.

In so doing, the Petitioner argued that the Rule facially, and as applied, was so egregious as to constitute fundamental and perhaps structural error and that the issue could therefore not be subject to the common law doctrine of waiver.

The Tennessee Supreme Court in its memorandum opinion and corresponding Order, addressed the federal due process issue on the merits, denying the Petitioner relief on that issue, but affording him relief on another. Most importantly, it held this issue had not been waived but failed to address the fundamental or structural error arguments on the merits, choosing instead to look to its own rules, as it often does as opposed to federal constitutional law, to determine the outcome. In so doing, it noted a challenge to its rule regarding enforcement could be raised for the first time on appeal.

The Petitioner now seeks this Court cull this case from the Tennessee Supreme Court, which has developed erroneous law affording professional license holders either no Due Process or some, in derogation of this Court's prior decisions and pronouncements of the issue, and (1) correct the lower court's prior erroneous decisions while simultaneously (2) holding Tennessee Supreme Court Rule 9, the enforcement provision for alleged ethical violations

of attorneys, violates federal Due Process of law as to the licensure holder's liberty and property rights.

STATEMENT OF THE FACTS

Although facts were disputed in the administrative hearing and in the Chancery Court, the Petitioner did not seek review by the Tennessee Supreme Court on factual disputes, and certainly does not before this Court. Therefore, the brief recitation of facts by the Tennessee Supreme Court in its memorandum opinion will suffice:

> Frank L. Slaughter, Jr. has been licensed to practice law in Tennessee since 1997. This disciplinary matter arises from disclosures Mr. Slaughter made concerning a client in one case to his client, another attorney, and the attorney's client in another case. Due to the juvenile status of some of the individuals involved in both cases and the sensitive nature of the facts, much of the record of this disciplinary proceeding is sealed. As a result, our recitation of the facts and subsequent analysis will be general in nature and more truncated than in some prior opinions.
>
> In February 2020, Mr. Slaughter was retained as counsel in a juvenile case involving allegations of sexual assault ("Case A"). A few months later, Mr. Slaughter was retained as counsel in a dependency and neglect case ("Case B").

At some point in the early stages of Case B, Mr. Slaughter met jointly with his Case B client, another party in Case B, and that party's attorney. During the meeting, Mr. Slaughter expressed concerns about working with another attorney involved in Case B due to that attorney's connection with Case A. In expressing these concerns, Mr. Slaughter revealed information about his Case A client, other individuals involved in Case A, and the case itself. The disclosures identified individuals involved in Case A, including the juvenile victim. The other attorney, who was attending the Case B meeting by telephone, stated that the disclosures were inappropriate and immediately ended the phone call. This attorney subsequently filed a complaint with the Board of Professional Responsibility ("Board").

During the Board's investigation of the complaint, Mr. Slaughter stated that he had not been given permission by his Case A client to make the disclosures during the Case B meeting, but he asserted that he did not need permission because the information he disclosed was not confidential and could not have been used to identify his Case A client. For this same reason, Mr. Slaughter stated that he had not informed his Case A client about his disclosures during the Case B meeting.

Following its investigation, the Board determined that Mr. Slaughter's actions constituted ethical misconduct warranting

imposition of a public censure, and it advised Mr. Slaughter of his right to demand a formal hearing within twenty days. Mr. Slaughter rejected the public censure and demanded a formal hearing. In June 2021, the Board filed a petition for discipline against Mr. Slaughter.

Before the Hearing Panel, Mr. Slaughter did not dispute the factual allegations of the petition. However, he argued that his Case A client had given him consent to make the disclosures. After a hearing, the Hearing Panel entered its findings of fact and conclusions of law. The Hearing Panel concluded that Mr. Slaughter did not have his Case A client's informed consent to make the disclosures based on the definition of "informed consent" in Rule 1.0(e) of the Tennessee Rules of Professional Conduct ("RPCs"). Accordingly, the Hearing Panel concluded that Mr. Slaughter violated RPC 1.6(a), which prohibits attorneys from "reveal[ing] information relating to the representation of a client unless ... the client gives informed consent ... [or] the disclosure is impliedly authorized in order to carry out the representation." Tenn. Sup. Ct. R. 8, RPC 1.6(a). The Hearing Panel also concluded that Mr. Slaughter violated RPC 4.4(a)(1), which prohibits lawyers from "us[ing] means that have no substantial purpose other than to embarrass, delay, or burden a third person or knowingly us[ing] methods of obtaining evidence that violate the legal rights of such a person." Tenn. Sup. Ct. R. 8, RPC

> 4.4(a)(1). Based on its findings of fact and conclusions of law and the American Bar Association Standards for Imposing Lawyer Sanctions ("ABA Standards"), the Hearing Panel determined that Mr. Slaughter should receive a public censure as punishment.

Appx. A at 2(a)-5(a).[1]

The remaining facts relevant to this Petition for Writ of Certiorari concern solely Tennessee Supreme Court Rule 9, a complete copy of which is attached to Appendix B of this Petition.

Rule 9, in pertinent part, appoints one individual as Chief Disciplinary Counsel and it is this person's sole responsibility to determine, after the Board of Professional Responsibility receives a complaint of alleged attorney unethical conduct, to either summary dismiss it, send it to an associate disciplinary counsel for investigation or seek an immediate suspension by way of an *ex parte* restraining order. This, however, is exacerbated by the fact Rule 9 sets forth no evidentiary basis of review and no independent person or entity reviews the decision of Chief Disciplinary Counsel before the charge is brought. *See* Appx. B.

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1. *Slaughter v. Tenn. Bd. of Prof'l Responsibility*, 706 S.W.3d 326, 329-30 (Tenn. 2025) (footnotes omitted).

REASONS FOR GRANTING THE WRIT

A. THE TENNESSEE SUPREME COURT ERRED IN AFFIRMING ITS OWN RULE REGARDING ENFORCEMENT OF ALLEGED ATTORNEY MISCONDUCT AND ITS RULE SHOULD EITHER BE VACATED BY THIS COURT AS FACIALLY INVALID OR GIVEN ITS HISTORY OF MISAPPREHENDING DUE PROCESS DECISIONS OF THIS COURT, THE CASE SHOULD BE REVERSED AND REMANDED.

1. The Tennessee Supreme Court's error in this Case is likely a result of its long-standing failure to simply apply the law of minimum mandatory federal Due Process as set forth by this Court.

This Court is the final arbiter of federal constitutional law, unless one of the several states determines to extend greater protections to the individual. In contrast, especially when it concerns federal Due Process rights in civil cases, especially professional licensure cases, the Tennessee Supreme Court either ignores the precedents of this Court or it grossly misconstrues them.

In Petitioner's brief to the Tennessee Supreme Court on his appeal as of right, he recognized and noted he had failed to raise this precise issue in either the administrative proceeding or the Chancery Court. Because a fundamental or structural Due Process violation in most instances is not subject to waiver, the Petitioner addressed the prior and recent cases of the Tennessee Supreme Court and contrasted those with decisions of this Court.

Beginning with federal constitutional law, this Court has previously held that a state's issuance of a professional license in the context of an attorney confers a liberty and property interest under the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *United States v. Robel*, 389 U.S. 258, 265 n.11 (1967); *accord In re Ruffalo*, 390 U.S. 544, 550 (1968). Indeed, a state cannot disbar an attorney without due process of law. *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974).

Conversely, the Tennessee Supreme Court has repeatedly held that a license to practice law only confers a privilege on the holder, but not a liberty or property right under federal Due Process law. *See Brooks v. Tenn. Bd. of Prof'l Responsibility*, 578 S.W.3d 421 (Tenn. 2019) (erroneously holding procedural due process applied to Brooks' disciplinary enforcement proceedings, but substantive due process did not, and further holding an attorney has no liberty or property due process right to a law license because it is a privilege afforded attorneys by the state). In so holding, the Tennessee Supreme Court completely ignored a Tennessee Attorney General's Opinion[2] that an attorney does have a liberty and property interest under the first prong of the 14th Amendment, citing this Court's prior precedents.

This Court in the early Twentieth Century in numerous cases began analyzing Due Process substantively (laws that are an affront to liberty) and procedurally (fair notice, fair hearing), depending on the facts of the case—sometimes addressing both. *See*, *infra*, at 19-21, 21 n.5. However, this Court has never held or so much

2. Tenn. Op. Att'y Gen. No. 12-22 (February 22, 2012).

as noted in dicta that procedural Due Process applies to a case but substantive Due Process does not. Yet again, the Tennessee Supreme Court has recently decided an attorney is entitled to some federal Due Process (procedural) but not all (substantive) in a decision that, charitably put, is utterly quixotic. Appx. A at 2-10

The Tennessee Supreme Court has also differentiated, substantively not procedurally, between civil and criminal cases, where Due Process challenges to the state's law are raised. *Id.* Petitioner readily admits greater protections apply in certain contexts in criminal cases, yet he would note some of the greatest decisions in the history of this Court were decided on substantive Due Process challenges in civil cases. *See infra*. Apparently, the Tennessee Supreme Court has forgotten those cases or has chosen to ignore them. In any event, as to substantive Due Process, it strains credulity to suggest different standards as the evil complained of in such cases is the law itself. Whether the king takes his subject's life or land because his subject did not laugh sufficiently at the court jester should not be differentiated in legal minutiae but both deemed repugnant to a well-ordered system of liberty.

In the Tennessee Supreme Court's opinion below, it failed to cite its prior decisions contradicting this Court's holdings, despite the Petitioner having analyzed them, requesting them to be overturned, in support of its decision to deny Petitioner's facial challenge to its enforcement rule. More importantly, it misstated the issue raised by Petitioner and ignored its own prior decisions he challenged, let alone overturn or criticize them. In so doing, the Tennessee Supreme Court cited its own prior decisions in other cases and those of sister states, but

it failed to cite a single federal case—not one! It seems passing strange indeed that it did not cite one federal case given the federal Due Process argument raised by the Petitioner.

The *sine qua non* of this Court's supervisory authority is to issue corrective instructions to the several states, while in engaging in their limited but unique laboratories of liberty, in order that they maintain mandatory minimum compliance with applicable federal law, and especially federal constitutional law.

Without this Court granting this Petition and correcting the course of the lower court, attorneys in Tennessee will either be entitled to no federal Due Process in disciplinary proceedings concerning their licenses, or just some (procedural but not substantive).

2. The precise challenge in this Case is a novel question of law which this Court has never addressed.

This Court has never addressed the precise question whether a state supreme court's enforcement provision rule for attorney ethical violations violates federal Due Process on its face, specifically, the standard by which a disciplinary action may be prosecuted in the first instance. Due process, whether reviewed substantively or procedurally, finds its inception in the Magna Carta, as it is the bringing of the charge by a sole arbiter without sufficient written notice or evidentiary standards, that offends traditional notions of liberty in an organized civil society.

The Hallmark of English common law is due process, a concept first invoked by King John II's Lords against him in 1215, resulting in the King's acquiescence to a limitation of his powers which (1) precluded his ability to decree or proclaim certain actions as offenses against the Crown as being offenses in their genesis in violation of long-standing liberty rights of landed gentry, and (2) further limited said King's power in instances, where his laws were devoid of facial repugnance, to require for the enforceability of the same, said laws provided fair notice (of offenses against the Crown) and fair hearing (by a putative third-party neutral) on any charges brought by proper notice on the Crown's behalf. *See generally* Blackstone, W., *Commentaries on the Laws of England* Vols I-IV (Oxford Press 1765-69); *accord* Story, J., *Commentaries on the Constitution of the United States,* Vols. I-III (Hilliard, Gray and Co. 1833). However, it was not until King Edward III's reaffirmation of the Magna Carta in 1334 that the term "due process" makes its appearance, replacing the term "law of the land" from the 1215 original. *See Magna Carta: Muse and Mentor, Due Process of Law*, Library of Congress, https://www.loc.gov/exhibits/magna-carta-muse-and-mentor/due-process-of-law (last checked May 6, 2025).

Although the Crown did not always pay fealty to the promises made by Kings John II and Edward III, due process was the well-settled law of England by the time of the American Revolution and the formation of the Constitution of the United States, at least as the same applied to subjects of the Crown in England.

Although Jefferson's Declaration of Independence does not utilize the phrase "due process," the fifty-six

signatories to the same's list of grievances were based on the fact the subjects of the Crown of England in the thirteen colonies were not being afforded their right to due process as Englishmen. *Declaration of Independence*, Jefferson, T, (Second Continental Congress 1776). However, the Constitution of the United States is replete with the term itself, or its inherent underlying principles. U.S. Const., amend. I, II, IV, V, VI, XIV.

As the Renaissance reopened learning centers across Europe, the evil perpetuated by the feudal system remained firmly ensconced on the European Continent unabated (an earlier onset of the Enlightenment and the deconstruction of the feudal system would have benefitted Cromwell) to allow John Locke in his Second Treatise on Government to declare that which the Lords likely said in private to King John II, certain rights do not come from the King, the Crown or the State, they come from the a higher power. Locke, J., *Second Treatise on Government*, (1689). It is more likely than not that Mr. Locke had Mr. Cromwell's demise in mind when authorizing his Second Treatise on Government.

The fundamental principle buttressing western civilization, regardless of how specified, emanates from the Magna Carta—the King cannot usurp rights by acting arbitrarily or capriciously, without written notice of actions which can subject a right holder to sanction, and once an offense occurs against the King, he cannot act alone as bringer of the charge or the arbiter of the evidentiary bases sufficient to sustain the same. Indeed, it is hard to fathom the true meaning of *ipse dixit* without an understanding of English law before the Magna Carta.

As the Constitution's efficacy was being debated in the numerous presses, both the federalists and the anti-federalists agreed on one point above all: due process of law was not a triviality; it was the bedrock of a just form of government. *See* Madison, J., Hamilton, A., Jay, J., *The Federalist Papers* (collectively under the pseudonym of "Publius") (numerous presses 1788-89); *cf.* Jefferson, T., Mason, G., et al., *Letters from the Federal Farmer to a Republican* (numerous presses 1788-89). The grand compromise between the Federalists, the less virulent in their opprobrium for centralized authority than their anti-Federalist brethren, *compare* Paine, T., *Common Sense*, *with* (Madison, J.), *Federalist 10* ("The Utility of the Union as a Safeguard Against Domestic Faction and Insurrection"), and the anti-Federalists ultimately resulted in the Bill of Rights[3]—cementing in the founder's building blocks irrefutable evidence of their approbation for due process of law and the principles underlying the same.

It is beyond cavil certain actions taken by either the King or Crown in English common law pre-dating the Constitution of the United States would in and of themselves be abhorrent to the rights of the subjects of said Crown. Thus, certain laws can be deemed impermissible, whether in existence and in writing and containing procedural fairness, because they are, quite simply, offensive to an organized system of liberty or individual rights and autonomy. This concept ultimately has been delineated by the Supreme Court of the United States as substantive Due Process rights.

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3. *But see* Hamilton, A., *Federalist 84*, (arguing the Bill of Rights was unnecessary to safeguard individual liberty and due process of law).

If neither King John II nor King Edward III could usurp the landed gentry's ancestral rights to title of estates granted centuries or more before the birth, let alone reign, of said King, on an arbitrary and capricious basis, with no written standard providing notice to the subjects of said Crown of actions in the nature of *malum in se* or *malum prohibitum*, without further containing an established standard of proof needed to demonstrate to a third-party neutral that the accused had indeed run afoul of the law, the "law of the land" clause in 1215 and later the "due process" clause in the 1334 reaffirmation would have been considered by all Englishmen as repugnant. Given this, then how can any state of this federal union, let alone the federal government, be allowed to violate a citizen's fundamental rights to life, liberty or property in a fashion that would offend the Lords of England in the thirteenth and fourteenth centuries?

While this Court should ponder that question, and before considering the offensiveness of Rule 9, it should take note of the long line of substantive Due Process cases regarding laws that in and of themselves are offensive and illegal. *See Obergefell v. Hodges*, 576 U.S. 644 (2015) (applying the underlying rationale of *Loving*, *infra*, to same sex marriages); *Lawrence v. Texas*, 539 U.S. 558 (2003) (overruling *Bowers v. Hardwick*, 478 U.S. 186 (1986)); *Loving v. Virginia*, 388 U.S. 1 (1967) (vacating laws against interracial marriage as offensive to an organized system of liberty); *Chapman v. California*, 386 U.S. 18 (1967) (holding that because use of an illegal substance is not the evil sought to be proscribed, criminal sanction for use without possession, sale, etc. was a substantive due process violation); *Pierce v. Society of*

Sisters, 269 U.S. 510 (1925) (vacating state laws prohibiting religious-based and taught education), *Meyers v. Nebraska*, 262 U.S. 390 (1923) (striking down Nebraska's mandatory public in-school attendance requirements as a violation of substantive due process). At bottom, substantive Due Process violations must in some manner concern federal or state laws usurping or infringing on an individual's rights to life, liberty or property, U.S. Const., amend. V, XIV, which constitute an affront to an organized system of liberty,[4]

4. As the Court noted in *Washington* concerning this issue:

> The Due Process Clause guarantees more than fair process, and the "liberty" it protects includes more than the absence of physical restraint. *Collins v. Harker Heights*, 503 U.S. 115, 125 (1992) (Due Process Clause "protects individual liberty against 'certain government actions regardless of the fairness of the procedures used to implement them'") (quoting *Daniels v. Williams*, 474 U.S. 327, 331 (1986)). The Clause also provides heightened protection against government interference with certain fundamental rights and liberty interests. *Reno v. Flores*, 507 U.S. 292, 301–302 (1993); *Casey*, 505 U.S., at 851. In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the "liberty" specially protected by the Due Process Clause includes the rights to marry, *Loving v. Virginia*, 388 U.S. 1 (1967); to have children, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942); to direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); to marital privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965); to use contraception, *ibid.*; *Eisenstadt v. Baird*, 405 U.S. 438 (1972); to bodily integrity, *Rochin v. California*, 342 U.S. 165 (1952), and to abortion, *Casey*, *supra*. We have also assumed, and strongly suggested, that the Due Process Clause protects the traditional right to refuse

Washington v. Glucksberg, 521 U.S. 702, 719–21 (1997).

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unwanted lifesaving medical treatment. *Cruzan*, 497 U.S., at 278–279.

But we "ha[ve] always been reluctant to expand the concept of substantive due process because guideposts for responsible decision-making in this unchartered area are scarce and open-ended." *Collins*, 503 U.S., at 125. By extending constitutional protection to an asserted right or liberty interest, we, to a great extent, place the matter outside the arena of public debate and legislative action. We must therefore "exercise the utmost care whenever we are asked to break new ground in this field," *ibid.*, lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences of the Members of this Court, *Moore*, at 502 (plurality opinion).

Our established method of substantive-due-process analysis has two primary features: First, we have regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, "deeply rooted in this Nation's history and tradition," *id.*, at 503 (plurality opinion); *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934) ("so rooted in the traditions and conscience of our people as to be ranked as fundamental"), and "implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if they were sacrificed," *Palko v. Connecticut*, 302 U.S. 319 (1937). Second, we have required in substantive-due-process cases a "careful description" of the asserted fundamental liberty interest. *Flores*, *supra*, at 302; *Collins*, *supra*, at 125; *Cruzan*, *supra*, at 277–278. Our Nation's history, legal traditions, and practices thus provide the crucial "guideposts for responsible decision-making," *Collins*, *supra*, at 125 that direct and restrain our exposition of the Due Process Clause. As we stated recently in Flores, the Fourteenth Amendment "forbids the government to infringe . . . 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." 507 U.S., at 302.

Due Process, at its genesis, does not concern itself with immoral or illegal actions of a judicial officer, but rather with the concept that without fair notice of a wrong—which written warning must further not run afoul of the long traditions of an ordered system of liberty—is the evil to be eradicated because the charge alone can result in one's name being "Mudd."[5]

In addition to the substantive due process federal common law, the Due Process Clause of both the Fifth and Fourteenth Amendments requires the United States or a singular member thereof to provide a citizen it seeks to deprive of life, liberty or property with procedural Due Process, which this Court has explained requires fair notice and fair hearing. *See, e.g.*, *In re Oliver*, 333 U.S. 257, 275–76 (1948). In this matter, the Petitioner is not asserting any procedural Due Process violation based upon the hearing, either administrative or judicial, but does assert the fair notice provision is, charitably put, problematic when one peruses Rules 8 and 9 of the Tennessee Supreme Court *in pari materia*.

Many of the Tennessee Supreme Court's decisions regarding Rule 9's enforcement of Rule 8 are hard to harmonize when considering its prior decisions and Tennessee Attorney General Opinions directly in contrast. In *Brooks v. Tenn. Bd. of Prof'l Responsibility*, the lower court, albeit with a respectful but nevertheless stringent dissent, took the most incredible of all positions in the context of interpreting federal due process jurisprudence:

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5. Samuel A. Mudd, the convicted co-conspirator of the assassination of President Lincoln, ultimately pardoned but conviction not overturned by President Johnson.

the appellant, whose main issue was monetary payment for reinstatement of a suspended license, raised "Due Process" as his issue, without differentiating between substantive and procedural due process and if the latter, notice or hearing (but likely notice). The lower Court somehow determined that although Brooks was entitled to procedural due process for the Board's actions against him and his monetary issue, because it had declared *ipse dixit* a lawyer's license is a privilege and not a right, it held he had no substantive due process right in his privilege of a license to practice law.

The Tennessee Supreme Court's holding in *Brooks* is incomprehensible; indeed, as it was not interpreting or reviewing state primary, statutory or common law but rather simply applying federal Supreme Court precedent to the facts in *Brooks* and other cases. What authority did the lower court rely on to support its holding in *Brooks* that one can have procedural due process rights but not substantive due process rights, as the due process rights arise out of a deprivation of rights to life, liberty, or property and as no federal court has ever said that? Instead, it relied on its own internal rules and precedents.

On another note, the modern terms of "substantive" and "procedural," as qualifiers as to the "type," "kind," "efficacy," "applicability," etc. of "Due Process" do not appear in either Blackstone's *Commentaries on the Laws of England* or Justice Story's *Commentaries on the Constitution of the United States*. Simply stated, the original understanding of federal Due Process when the Fourteenth Amendment was passed and ratified did not differentiate between substantive and procedural but rather encapsulated both within the original meaning

and understanding of "due process of law" originating in "the law of the land."

Indeed, the entire dichotomy is no dichotomy at all. There simply is no such thing as "substantive" and "procedural" Due Process, but rather simply Due Process. However, assuming the contrary is true, a "following" court cannot possibly "find" some Due Process applies but some does not. Perhaps it is time for this Court to reconsider its cases differentiating Due Process into two separate categories, as that was not the original understanding in 1868 and as it has clearly created confusion in the highest courts of the several states.

Turning to the case *sub judice*, to suggest a citizen is entitled to "procedural" Due Process rights in his "privilege" of a professional license but not to "substantive" Due Process is analogous to the law without lawyers.

The entire assertion of the existence of two, heterogenous Due Process rights, not found anywhere from the Magna Carta until this Court's early to mid-Twentieth Century incorporation jurisprudence as separate parts of the whole is perhaps something that should be reconsidered or more fully explained as the original understanding of due process did not incorporate separate qualifiers. The Tennessee Supreme Court is simply incorrect in holding lawyers have no due process right to their licenses and in determining procedural due process (as it sees fit to interpret under its own standards) applies to disciplinary hearings for lawyers but substantive due process does not. This Court should correct this error.

In anomalous Tennessee authority to its *Brooks*' decision, the Tennessee Attorney General, although he is not, nor could he be, ensconced with plenary power to determine "what the law is," when considering the federal constitution, *see*, *e.g.*, *Marbury v. Madison*, 5 U.S. 137 (1803), directly refuted the novel proposition of two separate concepts of federal Due Process, one that applies here and there but not everywhere. Either Attorney Brooks was entitled to Due Process or he was not. There is no middling place. The fallacy of the argument to the contrary does not require one to exhaustively peruse English Common Law from King John II to King George III and our common law thereafter; rather, as this Court MUST, at a bare minimum, follow federal Supreme Court Due Process jurisprudence, it begs credulity to apprehend how it ran so afoul of nearly one thousand years of English Law and two-hundred and fifty years of ours.

However, assuming arguendo, Attorney Brooks was entitled to "some" Due Process and not "all," would the lower court have held the same if the "privilege" in question were a marriage license, clearly a privilege this Court understands conferring due process rights to liberty. *See generally Loving*, *Obergefell*. Just as one has a fundamental Due Process right to marry who one chooses, an attorney has a fundamental Due Process liberty and property right to his license once issued.

To the apparent collective consternation of the *Brooks*' court's majority opinion members, "substantive" Due Process applies whether the issue is a privilege or a fundamental right, the only difference being issues of waiver and structural error. There are just some laws,

like this one, *see infra*, that are abhorrent in English speaking countries.

Turning to the merits of this matter, Rule 9, enforcing Rule 8, which has so many loosely-defined and delineated "guideposts" (e.g., how much an attorney is allowed to charge as a "reasonable fee") so as to allow a reasonable observer to conclude it is just up to Chief Disciplinary Counsel of the lower court's enforcement office to determine what constitutes an attorney's proper and ethically-permissible fee in the first instance (fair notice) based on his or her mood-of-the-day when deciding, without any established evidentiary basis what fee is "excessive," Tenn. Sup. Ct. R. 8, RPC 1.5; *accord Id.*, cmt. [1], [5a], [6], and thereafter decide whether to dismiss, charge or move the lower court *ex parte* for an Order, *per curiam* in nature, granting the immediate suspension of an attorney based on, perhaps, said Chief Disciplinary Counsel's mood-of-the-day, not subject to appeal or a third-party neutral's review of said Chief's then existing decision-making paradigm, assuming, and of course in good faith, *arguendo*, his or her material "shifts," are more analogous to work-related employee transitions (easily predictable) as opposed to a criminal accused's corporeal emanations when being questioned in a murder case.[6]

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6. As applicable to the foregoing hypothesis, "shift," in its use as a noun, means, *inter alia*,

> "a deceitful or underhand scheme: DODGE,"
>
> . . . .
>
> "**a change in direction**,"
>
> . . . .
>
> "a change in emphasis, ***judgment, or attitude.***"

The Petitioner could set forth in intricate detail the line and verse of the problems with Rule 9, but the main problem is once a complaint against an attorney is made, the Chief Disciplinary Counsel of the lower court's investigative and enforcement arm is given more authority to act arbitrarily and capriciously than King John II was after he signed the Magna Carta. A true refutation of the concept of progressivism in the law. Unless, however, one finds solace in the contention the Constitution of the United States and the Bill of Rights are, collectively, merely a written homily of "negative rights."

In this case, the specific issues regarding the Petitioner's violation, or not, of certain provisions of Rule 8 of this Court are utterly immaterial as the facial unconstitutionality of the charging process violates "Due Process," regardless of which era, post the "Gilded Age," the qualifiers first originated.

As such, Rule 9, as noted, violates "Due Process" of law applicable to the Tennessee Supreme Court's Rules and the State of Tennessee by way of the first prong of the Fourteenth Amendment to the United States Constitution. Because Rule 9 is analogous to entire Chapters passed uniformly and simultaneously, such as the Uniform Commercial Code, as a single section of written code and as it is devoid of a severability clause, this Court should deem the entire rule unconstitutional and remand for further consideration, while simultaneously reversing the Tennessee Supreme Court and dismissing the case against the Petitioner since the Respondent initiated

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https://www.merriam-webster.com/dictionary/shift (last checked May 6, 2025).

disciplinary proceeding under an unconstitutional rule of the Tennessee Supreme Court.

It is imperative that this Court correct the continuing misapplication of federal Due Process; otherwise, the ongoing constitutional violations occurring in Tennessee will not be abated.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted, this the 7th day of May, 2025.

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APPENDIX A — OPINION OF THE SUPREME COURT OF TENNESSEE, AT KNOXVILLE, FILED FEBRUARY 6, 2025

SUPREME COURT OF TENNESSEE
AT KNOXVILLE

No. E2023-01567-SC-R3-BP

FRANK L. SLAUGHTER, JR.,

v.

BOARD OF PROFESSIONAL RESPONSIBILITY OF THE SUPREME COURT OF TENNESSEE.

June 20, 2024, Assigned on Briefs
February 6, 2025, Filed

A hearing panel of the Board of Professional Responsibility found that a Sullivan County attorney violated Rules 1.6, 4.4, and 8.4 of the Tennessee Rules of Professional Conduct after the attorney disclosed confidential information about a client's case to third parties in a separate case. The hearing panel imposed a public censure as punishment. The attorney appealed, and the chancery court affirmed the hearing panel's decision. The attorney now appeals to this Court, arguing that Tennessee Supreme Court Rule 9 violates his due process rights and that his actions did not amount to violations of Rules 1.6 and 4.4. After careful review, we affirm the judgment of the chancery court with regard to Rule 1.6. However, we reverse the chancery court's judgment upholding the hearing panel's finding that the attorney violated Rule 4.4.

Appendix A

Tenn. Sup. Ct. R. 9, § 33.1(d); Judgment of the Chancery Court Affirmed in Part and Reversed in Part.

JEFFREY S. BIVINS, J., delivered the opinion of the Court, in which HOLLY KIRBY, C.J., ROGER A. PAGE, SARAH K. CAMPBELL, and DWIGHT E. TARWATER, JJ., joined.

OPINION

I. Factual and Procedural Background

Frank L. Slaughter, Jr. has been licensed to practice law in Tennessee since 1997. This disciplinary matter arises from disclosures Mr. Slaughter made concerning a client in one case to his client, another attorney, and the attorney's client in another case. Due to the juvenile status of some of the individuals involved in both cases and the sensitive nature of the facts, much of the record of this disciplinary proceeding is sealed. As a result, our recitation of the facts and subsequent analysis will be general in nature and more truncated than in some prior opinions.[1]

In February 2020, Mr. Slaughter was retained as counsel in a juvenile case involving allegations of sexual assault ("Case A"). A few months later, Mr. Slaughter was retained as counsel in a dependency and neglect case ("Case B").

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1. We have carefully and fully reviewed the entire record in this matter.

Appendix A

At some point in the early stages of Case B, Mr. Slaughter met jointly with his Case B client, another party in Case B, and that party's attorney. During the meeting, Mr. Slaughter expressed concerns about working with another attorney involved in Case B due to that attorney's connection with Case A. In expressing these concerns, Mr. Slaughter revealed information about his Case A client, other individuals involved in Case A, and the case itself. The disclosures identified individuals involved in Case A, including the juvenile victim. The other attorney, who was attending the Case B meeting by telephone, stated that the disclosures were inappropriate and immediately ended the phone call. This attorney subsequently filed a complaint with the Board of Professional Responsibility ("Board").

During the Board's investigation of the complaint, Mr. Slaughter stated that he had not been given permission by his Case A client to make the disclosures during the Case B meeting, but he asserted that he did not need permission because the information he disclosed was not confidential and could not have been used to identify his Case A client. For this same reason, Mr. Slaughter stated that he had not informed his Case A client about his disclosures during the Case B meeting.

Following its investigation, the Board determined that Mr. Slaughter's actions constituted ethical misconduct warranting imposition of a public censure, and it advised Mr. Slaughter of his right to demand a formal hearing within twenty days. Mr. Slaughter rejected the public censure and demanded a formal hearing. In June 2021, the Board filed a petition for discipline against Mr. Slaughter.

Before the hearing panel, Mr. Slaughter did not dispute the factual allegations of the petition. However, he argued that his Case A client had given him consent to make the disclosures. After a hearing, the hearing panel entered its findings of fact and conclusions of law. The hearing panel concluded that Mr. Slaughter did not have his Case A client's informed consent to make the disclosures based on the definition of "informed consent" in Rule 1.0(e) of the Tennessee Rules of Professional Conduct ("RPCs").[2] Accordingly, the hearing panel concluded that Mr. Slaughter violated RPC 1.6(a), which prohibits attorneys from "reveal[ing] information relating to the representation of a client unless . . . the client gives informed consent . . . [or] the disclosure is impliedly authorized in order to carry out the representation."[3] Tenn. Sup. Ct. R. 8, RPC 1.6(a). The hearing panel also concluded that Mr. Slaughter violated RPC 4.4(a)(1), which prohibits lawyers from "us[ing] means that have no substantial purpose other than to embarrass, delay, or burden a third person or knowingly us[ing] methods of obtaining evidence that violate the legal rights of

2. RPC 1.0(e) defines "informed consent" as "the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct." Tenn. Sup. Ct. R. 8, RPC 1.0(e).

3. RPC 1.6(a) contains two other exceptions to the prohibition on revealing information relating to representation of a client. However, these exceptions are not relevant to this appeal.

such a person."[4] Tenn. Sup. Ct. R. 8, RPC 4.4(a)(1). Based on its findings of fact and conclusions of law and the American Bar Association Standards for Imposing Lawyer Sanctions ("ABA Standards"), the hearing panel determined that Mr. Slaughter should receive a public censure as punishment.

Mr. Slaughter filed a petition for review in the Sullivan County Chancery Court pursuant to Tennessee Supreme Court Rule 9, section 33.1(a). After a hearing, the chancery court denied relief and affirmed the hearing panel's decision regarding Mr. Slaughter's violations of the RPCs. With regard to Mr. Slaughter's punishment, the chancery court held that the hearing panel erred by failing to specify which ABA Standard it relied on in imposing a public censure. However, the chancery court concluded that this error was harmless because Mr. Slaughter ultimately received a public censure—the least severe sanction a hearing panel may impose upon finding a violation of a disciplinary rule. Accordingly, based on

4. The hearing panel also determined that, by violating RPC 1.6 and 4.4, Mr. Slaughter violated RPC 8.4(a), which provides, in pertinent part, that it is professional misconduct to "violate or attempt to violate the Rules of Professional Conduct." Tenn. Sup. Ct. R. 8, RPC 8.4(a). However, in making this finding, the hearing panel quoted the text of RPC 8.4(d), which prohibits attorneys from "engag[ing] in conduct that is prejudicial to the administration of justice." Tenn. Sup. Ct. R. 8, RPC 8.4(d). Although the quoted material does not comport with the hearing panel's finding that Mr. Slaughter violated RPC 8.4(a), this discrepancy is immaterial, as it has no impact on the outcome of this case.

ABA Standard 4.23,[5] the chancery court affirmed the public censure.[6]

Mr. Slaughter now appeals to this Court pursuant to Tennessee Supreme Court Rule 9, section 33.1(d) and raises three issues, which we restate as follows:

1. Whether Tennessee Supreme Court Rule 9 is Unconstitutional and Violates Mr. Slaughter's Procedural and Substantive Due Process Rights.

2. Whether the Chancery Court Erred in Affirming the Hearing Panel's Finding that Mr. Slaughter Violated RPC 1.6.

3. Whether the Chancery Court Erred in Affirming the Hearing Panel's Finding that Mr. Slaughter Violated RPC 4.4.

II. Standard of Review

Under the applicable standard of review in this case, we may modify or reverse the hearing panel's judgment if its findings, inferences, conclusions, or decisions are:

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5. ABA Standard 4.23 provides that "[r]eprimand is generally appropriate when a lawyer negligently reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed and this disclosure causes injury or potential injury to a client."

6. The chancery court modified the wording of the public censure to specify that Mr. Slaughter lacked "effective" consent from his Case A client.

> (1) in violation of constitutional or statutory provisions; (2) in excess of the panel's jurisdiction; (3) made upon unlawful procedure; (4) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (5) unsupported by evidence which is both substantial and material in light of the entire record.

Tenn. Sup. Ct. R. 9, § 33.1(b).

A hearing panel's decision is supported by substantial and material evidence when the evidence "furnishes a reasonably sound factual basis for the decision being reviewed." *Sneed v. Bd. of Pro. Resp.*, 301 S.W.3d 603, 612 (Tenn. 2010). "A reasonably sound basis is less than a preponderance of the evidence but more than a scintilla or glimmer." *Harris v. Bd. of Pro. Resp.*, 645 S.W.3d 125, 137 (Tenn. 2022) (quoting *Beier v. Bd. of Pro. Resp.*, 610 S.W.3d 425, 438 (Tenn. 2020)). A hearing panel's decision is arbitrary or capricious when it "is not based on any course of reasoning or exercise of judgment, or . . . disregards the facts or circumstances of the case without some basis that would lead a reasonable person to reach the same conclusion." *Bd. of Pro. Resp. v. Parrish*, 556 S.W.3d 153, 163 (Tenn. 2018) (quoting *Hughes v. Bd. of Pro. Resp.*, 259 S.W.3d 631, 641 (Tenn. 2008)). A hearing panel abuses its discretion when it "appl[ies] an incorrect legal standard or reach[es] a decision that is against logic or reasoning that causes an injustice to the party complaining." *Id.* (alteration in original) (quoting *Sallee v. Bd. of Pro. Resp.*, 469 S.W.3d 18, 42 (Tenn. 2015)).

We review questions of law de novo without a presumption of correctness. *Harris*, 645 S.W.3d at 136. However, we defer to the hearing panel with regard to the weight of the evidence on questions of fact. *Long v. Bd. of Pro. Resp.*, 435 S.W.3d 174, 178 (Tenn. 2014).

III. Analysis

A. Constitutional Challenge to Tennessee Supreme Court Rule 9

Mr. Slaughter argues that Tennessee Supreme Court Rule 9, which establishes the system for enforcing the RPCs, violates his due process rights. Mr. Slaughter acknowledges that he did not raise this issue before the hearing panel or the chancery court. However, he contends that the issue is not waived because it constitutes "fundamental error" and can be raised at any time.

The general rule is that "a party may not raise an issue on appeal that was not raised in the trial court." *Jackson v. Burrell*, 602 S.W.3d 340, 344 (Tenn. 2020). However, the general rule does not apply in these circumstances because, as we explained in *Long v. Board of Professional Responsibility*, "only the Tennessee Supreme Court may determine the facial validity of its rules." 435 S.W.3d 174, 184 (Tenn. 2014). A party may bring a facial constitutional challenge to a Tennessee Supreme Court rule by either filing a petition directly with this Court or raising the issue in an appeal to this Court. *Id.* at 184-85. Mr. Slaughter has chosen the second route. As such, the issue is not waived, and we will address it on the merits.

Mr. Slaughter's complaint is that Rule 9 violates his due process rights by investing Chief Disciplinary Counsel for the Board with investigative, prosecutorial, and adjudicative authority. The Board responds that Rule 9 comports with due process and relies on several decisions from this Court as support for its position. *See Bd. of Pro. Resp. v. Reguli*, 489 S.W.3d 408, 425-26 (Tenn. 2015); *Walwyn v. Bd. of Pro. Resp.*, 481 S.W.3d 151, 168-71 (Tenn. 2015); *Long*, 435 S.W.3d at 186-88; *Moncier v. Bd. of Pro. Resp.*, 406 S.W.3d 139, 156 (Tenn. 2013).

Our decision in *Long* again proves instructive. Like Mr. Slaughter, the respondent attorney in *Long* argued that Rule 9 violated his due process rights by combining investigative, prosecutorial, and adjudicative functions in the same agency. 435 S.W.3d at 185. We rejected this argument, noting that, unlike the norm in criminal proceedings, "due process does not require the strict adherence to separation of functions in civil matters." *Id.* (quoting *Heyne v. Metro. Nashville Bd. of Pub. Educ.*, 380 S.W.3d 715, 735 (Tenn. 2012)). We explained that more is required to give rise to a due process violation "than a simple combination of functions within the Board." *Id.* at 186. We cited a number of cases from other jurisdictions in which appellate courts had rejected due process challenges grounded on the combination of investigative, enforcement, and adjudicative functions in a single entity. *Id.* (citing *In re Hanson*, 532 P.2d 303, 306 (Alaska 1975); *People v. Varallo*, 913 P.2d 1, 4 (Colo. 1996); *In re Zoarski*, 227 Conn. 784, 632 A.2d 1114, 1121 (Conn. 1993); *In re Baun*, 395 Mich. 28, 232 N.W.2d 621, 623-24 (Mich. 1975); *Goldstein v. Comm'n on Prac. of Sup. Ct.*, 2000 MT 8, 297

Mont. 493, 995 P.2d 923, 928 (Mont. 2000)). Finally, we explained that, although investigative, enforcement, and adjudicative functions all fall within the purview of the Board, these functions are performed by different groups of individuals within the Board. *Id.* "The Board's Office of Chief Disciplinary Counsel investigates allegations of misconduct by Tennessee attorneys and then, when warranted, initiates formal disciplinary proceedings." *Id.* at 186-87. Those proceedings subsequently are adjudicated by hearing panels, which consist of independent attorneys appointed by the Board. *Id.* at 187. Any risk of bias is mitigated by the fact that this Court holds the "ultimate power of review" in disciplinary matters. *Id.* (quoting *Varallo*, 913 P.2d at 5). Therefore, for all of the reasons we provided in *Long*, we hold that Mr. Slaughter's constitutional challenge to Rule 9 lacks merit.

B. RPC 1.6

RPC 1.6(a) prohibits attorneys from "reveal[ing] information relating to the representation of a client unless . . . the client gives informed consent . . . [or] the disclosure is impliedly authorized in order to carry out the representation." Tenn. Sup. Ct. R. 8, RPC 1.6(a). Mr. Slaughter argues that, contrary to the hearing panel's finding, he did not violate RPC 1.6 because he did not reveal enough information during the Case B meeting to attribute the facts of Case A to his Case A client. Therefore, according to Mr. Slaughter, he did not subject his client to harm. Alternatively, Mr. Slaughter argues that he had informed consent from his Case A client to make the disclosures during the Case B meeting. The

Board responds that, based on Comment 4 of RPC 1.6, Mr. Slaughter's disclosures involved confidential information. Comment 4 provides:

> Paragraph (a) prohibits a lawyer from revealing confidential information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person.

Tenn. Sup. Ct. R. 8, RPC 1.6(a) cmt. 4. The Board argues that Mr. Slaughter disclosed confidential Case A information during the Case B meeting to third parties who were not under a duty to maintain confidentiality and that Mr. Slaughter negligently failed to take measures to ensure that the Case B meeting participants would not repeat the disclosures. The Board further argues that Mr. Slaughter lacked informed consent from his Case A client to make the disclosures, as Mr. Slaughter failed to communicate adequate information to his client about the risks of disclosing confidential information and the alternatives to disclosure.

The hearing panel agreed with the Board, and based on our review of the record, we conclude that the hearing panel's findings are supported by substantial and material evidence. During Mr. Slaughter's Case B meeting, he disclosed detailed, confidential information about Case A. The information he revealed reasonably could have led to the identification of Mr. Slaughter's Case A client and

other individuals involved in Case A, including the juvenile victim. *See* Tenn. Sup. Ct. R. 8, RPC 1.6(a) cmt. 4. Thus, Mr. Slaughter's disclosures clearly revealed "information relating to the representation of a client." *See* Tenn. Sup. Ct. R. 8, RPC 1.6(a); *see also* Tenn. Sup. Ct. R. 8, RPC 1.6 cmt. 3 (explaining that RPC 1.6(a) "applies not only to matters communicated in confidence by the client but also to *all information relating to the representation, whatever its source*" (emphasis added)).

In addition, the disclosures were not permitted under any relevant exception to RPC 1.6(a)—they were not "impliedly authorized in order to carry out the representation" of Mr. Slaughter's Case A client, and Mr. Slaughter did not have informed consent from his Case A client as defined by RPC 1.0(e).[7] Tenn. Sup. Ct. R. 8, RPC 1.6(a)(1)-(2). Thus, we hold that the chancery court did not err in affirming the hearing panel's finding that Mr. Slaughter violated RPC 1.6(a).

C. RPC 4.4

RPC 4.4(a)(1) prohibits lawyers from "us[ing] means that have no substantial purpose other than to embarrass, delay, or burden a third person or knowingly us[ing] methods of obtaining evidence that violate the legal

7. It is not clear from the record whether Mr. Slaughter received permission from his Case A client to make the disclosures. However, the record shows that any such consent could not have been "informed consent" under RPC 1.0(e) given the lack of discussion between Mr. Slaughter and his Case A client about the "risks of and reasonably available alternatives to [disclosure]." Tenn. Sup. Ct. R. 8, RPC 1.0(e).

rights of such a person." Tenn. Sup. Ct. R. 8, RPC 4.4(a)(1). Mr. Slaughter argues that he did not violate RPC 4.4 because his disclosures during the Case B meeting had a substantial purpose and were not intended to embarrass or burden anyone. Mr. Slaughter explains that his disclosures were intended to protect his Case B client's interests.

Upon our review of the record, we hold that substantial and material evidence does not support a finding that Mr. Slaughter violated RPC 4.4(a)(1). Therefore, the chancery court erred in upholding the hearing panel's finding that Mr. Slaughter violated this disciplinary rule. Accordingly, we reverse the judgment of the chancery court as to RPC 4.4(a)(1).

CONCLUSION

We hold that Tennessee Supreme Court Rule 9 does not violate Mr. Slaughter's due process rights. We affirm the chancery court's judgment upholding the hearing panel's finding that Mr. Slaughter's disclosures violated RPC 1.6(a) and the hearing panel's imposition of a public censure, as modified. We reverse the chancery court's judgment upholding the hearing panel's finding that Mr. Slaughter violated RPC 4.4(a)(1). Costs of this appeal are taxed to Mr. Slaughter, for which execution may issue if necessary.

/s/_____
JEFFREY S. BIVINS, JUSTICE

APPENDIX B — TENNESSEE SUPREME COURT RULES

TENNESSEE SUPREME COURT RULES

Rule 9: Disciplinary Enforcement.

Section 1. Preamble

The license to practice law in this State is a continuing proclamation by the Supreme Court of the State of Tennessee (hereinafter the "Court") that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and as an officer of the Court. It is the duty of every recipient of that privilege to act at all times, both professionally and personally, in conformity with the standards imposed upon members of the bar as conditions for the privilege to practice law.

Section 2. Definitions

Board: The Board of Professional Responsibility of the Supreme Court of Tennessee.

Complainant: A person who alleges misconduct by an attorney, including misconduct by Disciplinary Counsel and attorney members of the Board and members of the district committees.

Court: The Supreme Court of Tennessee.

Declaration under Penalty of Perjury: A declaration under penalty of perjury meeting the requirements of Tenn. R. Civ. P. 72.

Appendix B

Disciplinary Counsel: The Chief Disciplinary Counsel selected by the Court and staff Disciplinary Counsel employed by the Chief Disciplinary Counsel, with the approval of the Board, pursuant to the provisions of this Rule.

District committees: Committees of attorneys appointed by the Court pursuant to provisions of this Rule.

Hearing panels: Panels of three district committee members selected by the Chair of the Board, or in the absence of the Chair selected by the Vice-Chair of the Board, to hear matters pursuant to provisions of this Rule.

Panel: A panel of three members selected by the Chair of the Board, or, in the Chair's absence, the Vice-Chair. At least two of the members of the panel shall be members of the Board, only one of whom may be a non-lawyer; and, one of the members of the panel may be a district committee member from the same disciplinary district as the respondent or petitioning attorney.

Practice monitor: An attorney licensed to practice law in the State of Tennessee designated by the Board to supervise an attorney as a condition of public discipline, probation or reinstatement pursuant to the provisions of this Rule.

Protocol memorandum: A memorandum prepared by Disciplinary Counsel and provided to the Court pursuant to the provisions of this Rule which addresses the following: 1) The basis for the Petition for Discipline;

2) The proposed disposition; 3) The procedural history; 4) The prior history of discipline; and, 5) The reasons for the proposed discipline, including: a) application of the ABA Standards for Imposing Lawyer Sanctions; b) comparative Tennessee discipline in similar cases; and, c) aggravating and mitigating circumstances of the kind and character set forth in the ABA Standards for Imposing Lawyer Sanctions.

Retired: For purposes of this Rule, an attorney is "retired" if the attorney is at least sixty-five years of age and is not actively engaged in the practice of law; or, the attorney is at least fifty years of age, is inactive with the Tennessee Commission on Continuing Legal Education and Specialization, and has not engaged in the practice of law for at least fifteen years.

RPC: The Rules of Professional Conduct as adopted by Rule 8 of the Rules of the Tennessee Supreme Court.

Rule: Rule 9 of the Rules of the Tennessee Supreme Court.

Section: A section of Rule 9 of the Rules of the Tennessee Supreme Court.

Serious crime: The term "serious crime" as used in Section 22 of this Rule shall include any felony and any other crime a necessary element of which, as determined by the statutory or common law definition of such crime, involves improper conduct as an attorney, interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income

tax returns, willful tax evasion, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

Serve or service: The method of serving pleadings or other papers as specified in Section 18 of this Rule or otherwise in the provisions of this Rule.

Section 3. Disciplinary Districts

Disciplinary jurisdiction in this State shall be divided into the following districts:

District I – the counties of Johnson, Carter, Cocke, Greene, Hancock, Grainger, Jefferson, Sullivan, Washington, Unicoi, Hawkins, Claiborne, Hamblen and Sevier.

District II – the counties of Campbell, Anderson, Roane, Blount, Morgan, Union, Knox, Loudon and Scott.

District III – the counties of Polk, Hamilton, Sequatchie, Bledsoe, Meigs, Monroe, Bradley, Marion, Grundy, Rhea and McMinn.

District IV – the counties of White, Van Buren, Pickett, Putnam, Overton, Clay, Franklin, Moore, Bedford, Rutherford, Wilson, Trousdale, Warren, Fentress, Cumberland, Smith, Jackson, Coffee, Lincoln, Marshall, Cannon, DeKalb and Macon.

District V – the county of Davidson.

Appendix B

District VI – the counties of Giles, Wayne, Lewis, Maury, Humphreys, Cheatham, Montgomery, Robertson, Lawrence, Perry, Hickman, Dickson, Houston, Stewart, Sumner and Williamson.

District VII – the counties of Henry, Carroll, Henderson, Hardeman, Hardin, Benton, Decatur, Chester, Fayette, McNairy and Madison.

District VIII – the counties of Weakley, Lake, Gibson, Haywood, Tipton, Obion, Dyer, Crockett and Lauderdale.

District IX – the county of Shelby.

Section 4. The Board of Professional Responsibility of the Supreme Court of Tennessee

4.1. The Court shall appoint a twelve member Board to be known as "The Board of Professional Responsibility of the Supreme Court of Tennessee" (hereinafter the "Board") which shall consist of:

(a) Three resident attorneys admitted to practice in this state and one public (non-attorney) member appointed for an initial term of three years; and

(b) Three resident attorneys admitted to practice in this state and one public member appointed for an initial term of two years; and

(c) Three resident attorneys admitted to practice in this state and one public member appointed for an initial term of one year.

Subsequent terms of all members shall be for three years. A member may serve a maximum of any remaining portion of a three-year term created by a vacancy filled by such member, plus two consecutive three-year terms. A member who has served the maximum term shall be eligible for re-appointment after the expiration of three years. Vacancies shall be filled by the Court. There shall be one attorney member from each disciplinary district. There shall be one public member from each of the three grand divisions of the state.

4.2. The Court shall designate one member as Chair of the Board and another member as Vice-Chair.

4.3. Seven members of the Board shall constitute a quorum. Unless otherwise permitted by this Rule, an affirmative vote of seven members of the Board shall be necessary to authorize any action. If time restraints are such that a regular or special meeting of the Board is impractical, Disciplinary Counsel shall circulate to the members of the Board in writing the reasons for the recommendation of a particular action supported by a factual report. Board members may communicate their vote for or against the recommendation by telephone, facsimile, regular mail, or electronic means. Any member of the Board may request that Disciplinary Counsel convene a telephone conference of the Board, whereupon such conference must be convened with at least a quorum so conferring.

4.4. Members shall receive no compensation for their services but may be reimbursed for their travel and other expenses incidental to the performance of their duties in

accordance with the schedule for judicial reimbursement promulgated by the Administrative Office of the Courts.

4.5. The Board shall exercise the powers conferred upon it by this Rule, including the power:

(a) To consider and investigate any alleged ground for discipline or alleged incapacity of any attorney called to its attention, or upon its own motion, and to take such action with respect thereto as shall be appropriate to effectuate the purposes of this Rule. The Board is authorized to investigate information from a source other than a signed written complaint if the Board deems the information sufficiently credible or verifiable through objective means.

(b) To adopt written internal operating procedures to ensure the efficient and timely resolution of complaints, investigations, and formal proceedings, which operating procedures shall be approved by the Court, and to monitor Disciplinary Counsel's and the hearing panels' continuing compliance with those operating procedures. The Board shall quarterly send to each Member of the Court and shall post on the Board's website a report demonstrating substantial compliance with the operating procedures.

(c) The powers and duties set forth in this Section are not duties owed to or enforceable by a respondent or petitioning attorney by means of claim, or defense, or otherwise.

(d) To review, upon application by Disciplinary Counsel, a determination by the reviewing member of a district

committee that a matter should be concluded by dismissal or by private informal admonition without the institution of formal charges.

(e) To privately reprimand, publicly censure or authorize the filing of formal charges against attorneys for misconduct.

(f) To delegate to a committee of its members, or to the Chief Disciplinary Counsel, any administrative, non-adjudicatory function authorized by this Rule.

4.6. A Board member shall not undertake or participate in any adjudicative function when doing so would violate either federal or Tennessee constitutional due process requirements for administrative adjudications. *See Withrow v. Larkin*, 421 U.S. 35 (1975); *Moncier v. Board of Professional Responsibility*, 406 S.W.3d 139, 2013 WL 2285183 (Tenn. 2013). The procedures set out in Tenn. Sup. Ct. R. 10B are not applicable to motions to disqualify or for recusal in matters under this Rule.

Section 5. Ethics Opinions

5.1. The Board shall be responsible for issuing ethics opinions from time to time. The Board may, in its discretion, accomplish this by dividing itself into three geographic ethics committees.

5.2. In performing its responsibility under Section 5.1, the Board shall act under rules which the Board may from time to time promulgate, including rules relating

to the procedures to be used in considering inquiries and expressing opinions, clarifying opinions or declining requests for opinions.

5.3. In performing its responsibilities under Section 5.1, the Board shall exercise the powers and perform the ordinary and necessary duties usually carried out by ethics advisory bodies. The Board shall:

(a) By the concurrence of a majority of its members, or of the members of any committees established by the Board pursuant to Section 5.1, issue and distribute Formal Ethics Opinions on proper professional conduct, either on the Board's own initiative or when requested to do so by a member of the bar or by an officer or a committee or any other state or local bar association, except that an opinion may not be issued in a matter that is known to the Board to be pending before a court or in a pending disciplinary proceeding;

(b) Periodically distribute its issued Formal Ethics Opinions to the legal profession in summary or complete form;

(c) On request, advise or otherwise help any state or local bar associations in their activities relating to the interpretation of the Rules of Professional Conduct;

(d) Recommend appropriate amendments to or clarification of the Rules of Professional Conduct, if it considers them advisable.

5.4. (a) A Formal Ethics Opinion issued and distributed by the Board shall bind the Board and the person requesting the opinion and shall constitute a body of principles and objectives upon which members of the bar may rely for guidance in many specific situations.

(b) Requests for Formal Ethics Opinions shall be addressed to the Board in writing, shall state the factual situation in detail, shall be accompanied by a short brief or memorandum citing the Rules of Court or Professional Conduct involved and any other pertinent authorities, and shall contain a certification that the matters are not pending in any court or disciplinary proceeding.

(c) An advisory ethics opinion may be issued by Disciplinary Counsel when there is readily available precedent. The advisory opinion shall not be binding on the Board and shall offer no security to the person requesting it. All requests for advisory opinions, oral and written, and any response by Disciplinary Counsel shall be confidential and shall not be public records or open for public inspection except as subject to waiver by the requesting attorney or as otherwise provided in Section 32.

Section 6. District Committees

6.1. The Court shall appoint one district committee within each disciplinary district. Each district committee shall consist of not fewer than five members of the bar of this state who maintain an office for the practice of law within that district or, if not actively engaged in the practice of law, reside within that district. Members of district

committees may be recommended by the Board, or by the president or board of directors of any local bar associations in each district.

6.2. Terms of members of each district committee shall be for three years, and such terms shall be staggered so that one third of the members rotate off the committee each year; provided that shorter terms may be designated where necessary to observe the above rotation practice. A member may serve a maximum of two consecutive three-year terms. Members whose terms have expired shall continue to serve with respect to any formal hearing commenced prior to the expiration of their terms until the conclusion of such hearing, regardless of whether their successors have been appointed. A member who has served the maximum term may be reappointed after the expiration of one year.

6.3. A member of the district committee acting as the reviewing member shall approve or modify recommendations by Disciplinary Counsel for dismissals and private informal admonitions. In no event may a member of the district committee acting as the reviewing member impose a sanction greater than private informal admonition. Nor may a district committee member acting as the reviewing member offer diversion except as provided in Section 13.4.

6.4. Formal hearings upon charges of misconduct shall be conducted by a hearing panel consisting of three district committee members selected by the Chair of the Board, or in the absence of the Chair by the Vice-Chair of the Board,

pursuant to Section 15.2. The hearing panel shall submit its findings and judgment to the Board. Each hearing panel shall elect its own Chair. The hearing panel shall act only with the concurrence of a majority of its members.

6.5. A district committee member shall not take part in any matter in which a judge, similarly situated, would have to recuse himself or herself in accordance with Tenn. Sup. Ct. R. 10. However, the procedures set out in Tenn. Sup. Ct. R. 10B are not applicable to motions to disqualify or for recusal in matters under this Rule.

Section 7. Disciplinary Counsel

7.1. The Court shall appoint an attorney admitted to practice in the State to serve as Chief Disciplinary Counsel, who shall serve at the pleasure of the Court. Following his or her appointment by the Court, the Chief Disciplinary Counsel shall report to the Board, which shall conduct performance evaluations of the Chief Disciplinary Counsel every two years and shall report such evaluations to the Court. Neither the Chief Disciplinary Counsel nor full-time staff Disciplinary Counsel shall engage in the private practice of law; however, the Board and the Court may agree to a reasonable period of transition after appointment.

7.2. Chief Disciplinary Counsel shall have the power with the approval of the Board:

(a) To employ and supervise staff needed for the performance of Disciplinary Counsel's functions.

(b) To perform any administrative, non-adjudicatory function authorized by this Rule and delegated by the Board.

7.3. Disciplinary Counsel shall have the power:

(a) To investigate all matters involving possible misconduct.

(b) To dispose of all matters involving alleged misconduct by recommendation to the reviewing district committee member of either dismissal or private informal admonition; by recommendation to the Board of either private reprimand, public censure or the prosecution of formal charges before a hearing panel; or, by diversion in accordance with Section 13. Except in matters requiring dismissal because the complaint is frivolous and clearly unfounded on its face or falls outside the Board's jurisdiction, no disposition shall be recommended or undertaken by Disciplinary Counsel until the accused attorney shall have been afforded the opportunity to state a position with respect to the allegations against the attorney.

(c) To present in a timely manner all disciplinary proceedings.

(d) To investigate and to present in a timely manner all proceedings with respect to petitions for reinstatement of suspended or disbarred attorneys or attorneys transferred to inactive status because of disability, or with respect to petitions for voluntary surrenders of law licenses.

(e) To file with the Court adequate proof of attorneys' pleas of nolo contendere or pleas of guilty to, or verdicts of guilt of, crimes pursuant to Section 22.

(f) To maintain permanent records of all matters processed and the disposition thereof.

(g) To give advisory ethics opinions to members of the bar pursuant to Section 5.

(h) To implement the written internal operating procedures adopted by the Board and approved by the Court pursuant to Section 4.5(b), and to file reports with the Board on a quarterly basis demonstrating Disciplinary Counsel's substantial compliance with the operating procedures.

Section 8. Jurisdiction

8.1. Any attorney admitted to practice law in this State, including any formerly admitted attorney with respect to acts committed prior to surrender of a law license, suspension, disbarment, or transfer to inactive status, or with respect to acts subsequent thereto which amount to the practice of law or constitute a violation of this Rule or of the Rules of Professional Conduct, and any attorney specially admitted by a court of this State for a particular proceeding and any lawyer not admitted in this jurisdiction who practices law or renders or offers to render any legal services in this jurisdiction, is subject to the disciplinary jurisdiction of the Court, the Board, panels, the district committees and hearing panels herein established, and the circuit and chancery courts of this

State. In addition, attorneys not admitted or specially admitted to practice law in this State, attorneys who are suspended, and individuals who are disbarred or who have surrendered a law license, but who nevertheless engage in the practice of law in this State shall be subject to the imposition of civil remedies and criminal prosecution pursuant to Tenn. Code Ann. § 23-3-103. Disciplinary Counsel shall refer such attorneys or individual to the appropriate authorities for investigation and pursuit of civil remedies and/or criminal prosecution.

8.2. Nothing herein contained shall be construed to deny to any court such powers as are necessary for that court to maintain control over proceedings conducted before it, such as the power of contempt, nor to prohibit any bar association from censuring, suspending or expelling its members from membership.

Section 9. Multijurisdictional Practice

9.1. Any attorney practicing in this State under the authority of RPC 5.5(c) or (d) or otherwise subject to the Court's disciplinary jurisdiction under RPC 8.5 is subject to the disciplinary jurisdiction prescribed in Section 8.1 of this Rule and the procedures for exercise of such jurisdiction prescribed in this Rule.

9.2. The authorization for practice granted in RPC 5.5(c) or (d) may be terminated or suspended. The grounds and processes for such termination shall be those provided in this Rule for disbarment; and the grounds and processes for such suspension shall be those provided in this Rule for suspension.

9.3. If an attorney is practicing in this State under authority of RPC 5.5(c), or if an attorney is practicing in this State under authority of RPC 5.5(d) and does not maintain an office in this State:

(a) Hearing panel and panel proceedings may occur in any disciplinary district in which the conduct that forms the basis of the complaint against the attorney occurred;

(b) Circuit or chancery court proceedings for appeal pursuant to Section 33 of this Rule shall occur as specified in Section 33.1(a) of this Rule; and,

(c) The Board shall file in the Nashville office of the Clerk of the Supreme Court a Notice of Submission with an attached copy of an unappealed final trial court judgment disbarring or suspending the attorney for any period of time.

9.4. The procedures and remedies for reciprocal discipline prescribed in Section 25 of this Rule shall apply to attorneys practicing in this State under authority of RPC 5.5(d)(1). Upon receipt of a certified copy of an order demonstrating that such an attorney has been disciplined in another jurisdiction, the Court shall employ the procedures prescribed in Sections 25.2 through 25.5.

9.5. The information filing, fee payment and other requirements and regulations prescribed in Section 10 of this Rule shall apply to attorneys practicing in this State under authority of RPC 5.5(d)(1).

Appendix B

Section 10. Periodic Assessment of Attorneys

10.1. Every attorney admitted to practice before the Court, except those exempt under Section 10.3(b) and (c), shall, on or before the first day of their birth month, file with the Board at its central office an annual registration statement, on a form prescribed by the Board, setting forth the attorney's current residence, office, and email addresses, and such other information as the Board may direct. The attorney shall designate information by which the attorney may be contacted by clients and members of the public, including an email address, or a telephone number, or a physical or post office box address, which will be treated by the Board as public records. Other contact information of the attorney the Board may direct the attorney to provide, including the attorney's residence address, cellular telephone number, home telephone number, and personal non-government issued e-mail address are confidential and not public records. However, the nonpublic information may be used by this Court and its agencies in the course of business and may be available to Tennessee courts and licensed attorneys upon written request to the Board's registration department. In addition to such annual statement, every attorney shall file electronically with the Board through the Board's Attorney Portal as necessary a supplemental statement of any change in information previously submitted within thirty days of such change.

10.2. (a) Every attorney admitted to practice before the Court, except those exempt under Section 10.3, shall pay to the Board on or before the first day of the attorney's birth month an annual fee.

(b) All funds collected hereunder shall be deposited by the Board with the State Treasurer; all such funds, including earnings on investments and all interest and proceeds from said funds, if any, are deemed to be, and shall be designated as, funds belonging solely to the Board. Withdrawals from those funds shall be made by the Board only for the purpose of defraying the costs of disciplinary administration and enforcement of this Rule, and for such other related purposes as the Court may from time to time authorize or direct.

(c) The annual fee for each attorney shall be Two Hundred Seventy Dollars ($270), consisting of a Two Hundred Forty Dollar ($225) Board of Professional Responsibility annual registration fee, a Fifteen Dollar ($15) annual fee due under Tenn. Sup. Ct. R. 25, Section 2.01(a) (Tennessee Lawyers' Fund for Client Protection), and a Thirty Dollar ($30) annual fee due under Tenn. Sup. Ct. R. 33.01C (Tennessee Lawyer Assistance Program), and shall be payable on or before the first day of the attorney's birth month, and a like sum each year thereafter until otherwise ordered by the Court. If an attorney chooses to pay or submit annual registration by mail, rather than online, that attorney shall pay an additional $5 for processing.

(d) In connection with the payment of the annual fee, every attorney shall have the opportunity to make a financial contribution to support access-to-justice programs. Funds raised through optional contributions will be distributed to access-to-justice programs which provide direct legal services to low income Tennesseans.

10.3. Upon Application for status change pursuant to Section 10.7, there shall be exempted from the application of this rule:

(a) Attorneys who serve as a justice, judge, or magistrate judge of a court of the United States of America or who serve in any federal office in which the attorney is prohibited by federal law from engaging in the practice of law.

(b) Retired attorneys.

(c) Attorneys on active duty with the armed forces.

(d) Faculty members of Tennessee law schools who do not practice law.

(e) Attorneys not engaged in the practice of law in Tennessee. The term "the practice of law" shall be defined as any service rendered involving legal knowledge or legal advice, whether of representation, counsel, or advocacy, in or out of court, rendered in respect to the rights, duties, regulations, liabilities, or business relations of one requiring the services. It shall encompass all public and private positions in which the attorney may be called upon to examine the law or pass upon the legal effect of any act, document, or law.

10.4. Within thirty days of the completion of the required annual registration by an attorney in accordance with the provisions of Section 10.1, the Board, acting through Disciplinary Counsel, shall acknowledge receipt thereof,

on a form prescribed by the Court in order to enable the attorney on request to demonstrate compliance with the requirements of Sections 10.1 and 10.2

10.5. The Board shall monthly compile lists of attorneys who have failed to timely file the annual registration statement required by Section 10.1 or have failed to timely pay the annual registration fee required by Section 10.2. The Board shall send to each attorney listed thereon an Annual Registration Fee/Statement Delinquency Notice (the "Notice"). The Notice shall state that the attorney has failed to timely complete the annual registration statement required by Tenn. Sup. Ct. R. 9, Section 10.1, or has failed to timely pay the annual registration fee required by Tenn. Sup. Ct. R. 9, Section 10.2, and that the attorney's license therefore is subject to suspension pursuant to Tenn. Sup. Ct. R. 9, Section 10.6. The Notice 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 10.1 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 10.1.

10.6. (a) Each attorney to whom a Notice is sent pursuant to Section 10.5 shall file with the Board within thirty days of the date of delivery of the Notice an affidavit or declaration under penalty of perjury with supporting documentation demonstrating that the attorney has paid the annual registration fee or has filed the annual registration statement, and has paid a delinquent compliance fee of

One Hundred Dollars ($100.00) to defray the Board's costs in issuing the Notice; or, alternatively, demonstrating that the Notice was sent to the attorney in error, the attorney having timely paid the annual registration fee or having timely filed the annual registration statement. For purposes of this provision, the date of mailing shall be deemed to be the postmark date.

(b) Upon the expiration of thirty days from the date of the Notice pursuant to Subsection (a) hereof, the Chief Disciplinary Counsel shall submit to the Court a proposed Suspension Order. The proposed Suspension Order shall list all attorneys who were sent the Notice and who failed to respond; failed to demonstrate to the satisfaction of the Board that they had paid the delinquent annual registration fee or had filed the delinquent annual registration statement, and had paid the One Hundred Dollar ($100.00) delinquent compliance fee; or, failed to demonstrate to the satisfaction of the Board that the Notice had been sent in error. The proposed Suspension Order shall provide that the license to practice law of each attorney listed therein shall be suspended upon the Court's filing of the Order and that the license of each attorney listed therein shall remain suspended until the attorney pays the delinquent annual registration fee or files the delinquent annual registration statement, and pays the One Hundred Dollar ($100.00) delinquent compliance fee and a separate reinstatement fee of Two Hundred Dollars ($200.00), and is reinstated pursuant to Subsection (d).

(c) Upon the Court's review and approval of the proposed Suspension Order, the Court will file the Order summarily

suspending the license to practice law of each attorney listed in the Order. The suspension shall be effective immediately and shall remain in effect until the attorney completes all delinquent registration requirements, pays the delinquent registration fees or files the delinquent registration statement, and pays the One Hundred Dollar ($100.00) delinquent compliance fee and the Two Hundred Dollar ($200.00) reinstatement fee, and until the attorney is reinstated pursuant to Subsection (d). An attorney who fails to resolve the suspension within thirty days of the Court's filing of the Suspension Order shall comply with the requirements of Section 28.

(d) Reinstatement following a suspension pursuant to Subsection (c) shall require an order of the Court but shall not require a reinstatement proceeding pursuant to Section 30.4, unless ordered by the Court.

(1) An attorney suspended by the Court pursuant to Subsection (c) who wishes to be reinstated and who has remained suspended for one year or less before the filing of a petition for reinstatement shall file with the Board a petition for reinstatement of the attorney's license to practice law demonstrating that the attorney has paid all delinquent annual registration fees or has filed the delinquent registration statement, and has paid the One Hundred Dollar ($100.00) delinquent compliance fee and the Two Hundred Dollar ($200.00) reinstatement fee; or, alternatively, demonstrating that the Suspension Order was entered in error as to the attorney. If the petition is satisfactory to the Board and if the attorney otherwise is eligible for reinstatement, the Board, or the Chief

Disciplinary Counsel acting on its behalf, shall promptly submit to the Court a proposed Reinstatement Order. The proposed Reinstatement Order shall provide that the attorney's reinstatement is effective as of the date of the attorney's payment of all delinquent registration fees or the date of the attorney's filing of the delinquent registration statement, and the attorney's payment of the One Hundred Dollar ($100.00) delinquent compliance fee and the Two Hundred Dollar ($200.00) reinstatement fee; or, alternatively, as of the date of entry of the Suspension Order if that Order was entered in error. An attorney resolves a suspension within thirty days for purposes of Section 10.6(c) if a proposed Reinstatement Order has been submitted to the Court within thirty days of the Court's filing of the Suspension Order.

(2) An attorney suspended by the Court pursuant to Subsection (c) who wishes to be reinstated and who has remained suspended for more than one year before the filing of a petition for reinstatement shall file with the Court a petition for reinstatement of the attorney's license to practice law demonstrating that the attorney has paid all delinquent annual registration fees or has filed the delinquent registration statement, and has paid the One Hundred Dollar ($100.00) delinquent compliance fee and the Two Hundred Dollar ($200.00) reinstatement fee; or, alternatively, demonstrating that the Suspension Order was entered in error as to the attorney. The petitioner shall serve a copy of the petition upon Disciplinary Counsel, who shall investigate the matter and file an answer to the petition within thirty days. The Court shall review the record and determine whether to grant or

deny the petition for reinstatement. If the Court grants the petition, the Reinstatement Order shall provide that the attorney's reinstatement is effective as of the date of the attorney's payment of all delinquent registration fees or the date of the attorney's filing of the delinquent registration statement, and the attorney's payment of the One Hundred Dollar ($100.00) delinquent compliance fee and the Two Hundred Dollar ($200.00) reinstatement fee; or, alternatively, as of the date of entry of the Suspension Order if that Order was entered in error.

10.7. (a) An attorney who claims an exemption under Section 10.3(a), (b), (d), or (e) shall file with the Board an application to assume inactive status and discontinue the practice of law in this state. In support of the application, the attorney shall file an affidavit or declaration under penalty of perjury stating that the attorney is not delinquent in paying the privilege tax imposed on attorneys by Tenn. Code Ann. § 67-4-1702, is not delinquent in meeting any of the reporting requirements imposed by Rules 9, 21, and 43, is not delinquent in the payment of any fees imposed by those rules, and is not delinquent in meeting the continuing legal education requirements imposed by Rule 21. The Board shall approve the application if the attorney qualifies to assume inactive status under Section 10.3 and is not delinquent in meeting any of the obligations set out in the preceding sentence. If it appears to the Board that the applicant is delinquent in meeting any of those obligations, the Board shall notify the applicant of the delinquency and shall deny the application unless, within ninety days after the date of the Board's notice, the applicant demonstrates to the Board's satisfaction

that the delinquency has been resolved. Upon the date of the Board's written approval of the application, the attorney shall no longer be eligible to practice law in Tennessee. The Board shall act promptly on applications to assume inactive status and shall notify the applicant in writing of the Board's action. If the Board denies an application to assume inactive status, the applicant may request the Court's administrative review by filing in the Nashville office of the Clerk of the Supreme Court a Petition for Review within thirty days of the Board's denial. The Court's review, if any, shall be conducted on the application, the supporting affidavit or declaration under penalty of perjury, and any other materials relied upon by the Board in reaching its decision.

(b) An attorney who assumes inactive status under an exemption granted by Section 10.3(a), (d), or (e) shall pay to the Board, on or before the first day of the attorney's birth month, an annual inactive-status fee in an amount equal to one half of the total annual fee set forth in Section 10.2(c) for each year the attorney remains inactive. Inactive attorneys who fail to timely pay the annual inactive fee and submit the registration form prescribed by the Board will be mailed a Delinquency Notice and will be subject to delinquent compliance fees and suspension as provided in Sections 10.5 and 10.6. If an attorney chooses to pay or submit annual registration by mail, rather than online, that attorney shall pay an additional $5 for processing.

(c) An attorney who assumes inactive status under the exemption granted by Section 10.3(e) and who is licensed to practice law in another jurisdiction shall not be eligible

to provide any legal services in Tennessee pursuant to Tenn. Sup. Ct. R. 8, RPC 5.5(c) or (d).

10.8. (a) Upon the Board's written approval of an application to assume inactive status, the attorney shall be removed from the roll of those classified as active until and unless the attorney requests and is granted reinstatement to the active rolls.

(b) Reinstatement following inactive status, other than reinstatement from disability inactive status pursuant to Section 27.7, which has continued for five years or less before the filing of a petition for reinstatement to active status shall not require an order of the Court or a reinstatement proceeding pursuant to Section 30.4. The attorney shall file with the Board a petition for reinstatement to active status. Reinstatement shall be granted unless the attorney is subject to an outstanding order of suspension or disbarment, upon the payment of any assessment in effect for the year the request is made and any arrears accumulated prior to transfer to inactive status.

(c) Reinstatement following inactive status, other than reinstatement from disability inactive status pursuant to Section 27.7, which has continued for more than five years before the filing of a petition for reinstatement to active status shall require an order of the Court but shall not require a reinstatement proceeding pursuant to Section 30.4, unless ordered by the Court. The attorney shall file with the Court a petition for reinstatement to active status. The petitioner shall serve a copy of the petition upon

Disciplinary Counsel, who shall investigate the matter and file an answer to the petition within thirty days. The Court shall review the record and determine whether to grant or deny the petition for reinstatement. If the Court grants the petition, the Reinstatement Order shall provide that the attorney's reinstatement is effective as of the date of the attorney's payment of any assessment in effect for the year the request is made and any arrears accumulated prior to transfer to inactive status.

10.9. The courts of this State are charged with the responsibility of insuring that no disbarred, suspended, or inactive attorney be permitted to file any document, paper or pleading or otherwise practice therein.

10.10. (a) Every attorney who is required by Section 10.1 to file an annual registration statement with the Board is requested to also file a pro bono reporting statement, reporting the extent of the attorney's pro bono legal services and activities during the previous calendar year. The pro bono reporting statement shall be in substantially the format provided in Appendix A hereto, and shall be provided to the attorney by the Board with the attorney's annual registration statement.

(b) In reporting the extent of the attorney's pro bono legal services and activities, the attorney is requested to state whether or not the attorney made any voluntary financial contributions pursuant to RPC 6.1(c), but the attorney need not disclose the amount of any such contributions.

(c) The Board may promulgate such forms, policies and procedures as may be necessary to implement this Section.

(d) The individual information provided by attorneys in the pro bono reporting statements filed pursuant to this Section shall be confidential and shall not be a public record, unless the attorney waives confidentiality on the reporting statement solely to be considered for recognition by the Tennessee Supreme Court for pro bono work the attorney completed in the previous calendar year. The Board shall not release any individual information contained in such statements, except as directed in writing by the Court or as required by law. The Board, however, may compile statistical data derived from the statements, which data shall not identify any individual attorney, and may release any such compilations to the public.

Section 11. Grounds for Discipline

11.1. Acts or omissions by an attorney, individually or in concert with any other person or persons, which violate the Rules of Professional Conduct of the State of Tennessee, including acts prior to surrender of a law license, suspension, disbarment, or transfer to inactive status on other grounds, and acts subsequent to resignation, suspension, disbarment, or transfer to inactive status which acts amount to the practice of law, shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship.

11.2. Conviction of a serious crime as defined in Section 2 also shall be grounds for discipline pursuant to the procedures set forth in Section 22.

11.3. Adjudication that a lawyer has willfully refused to comply with a court order also shall be grounds for discipline.

Section 12. Types of Discipline

The following are the types of discipline which may be imposed, with or without conditions, on the basis of the grounds for discipline set forth in Section 11.

12.1. Disbarment. Disbarment terminates the individual's status as an attorney.

12.2. Suspension.

(a) Suspension generally is the removal of an attorney from the practice of law for a specified minimum period of time. Suspension may be for a fixed period of time, or for a fixed period of time and an indefinite period to be determined by the conditions proposed by the judgment. The imposition of a portion but not all of a suspension for a fixed period of time may be deferred in conjunction with a period of probation ordered pursuant to Section 14. A suspension order must result in some cessation of the practice of law for not less than thirty days.

(1) No attorney suspended under any Section of this Rule shall resume practice until reinstated by order of the Court.

(2) No suspension shall be ordered for a specific period less than thirty days or in excess of ten years.

(3) All suspensions regardless of duration shall be public and shall be subject to the provisions of Section 28, unless otherwise expressly provided in this Rule.

(b) No suspension shall be made retroactive, except that a suspension may be made retroactive to a date on which an attorney was temporarily suspended pursuant to Section 12.3 or Section 22 if the attorney was not subsequently reinstated from such temporary suspension.

12.3. Temporary Suspension.

(a) On petition of Disciplinary Counsel and supported by an affidavit or declaration under penalty of perjury demonstrating facts personally known to affiant showing that an attorney has misappropriated funds to the attorney's own use, has failed to respond to the Board or Disciplinary Counsel concerning a complaint of misconduct, has failed to substantially comply with a Tennessee Lawyer Assistance Program monitoring agreement requiring mandatory reporting to Disciplinary Counsel pursuant to Section 36.1, or otherwise poses a threat of substantial harm to the public, the Court may issue an order with such notice as the Court may prescribe imposing temporary conditions of probation on said attorney or temporarily suspending said attorney, or both.

(b) Any order of temporary suspension which restricts the attorney maintaining a trust account shall, when served on any bank maintaining an account against which said attorney may make withdrawals, serve as an injunction to prevent said bank from making further payment from

such account or accounts on any obligation except in accordance with restrictions imposed by the Court.

(c) Any order of temporary suspension issued under this Rule shall preclude the attorney from accepting any new cases, unless otherwise provided in the order. An order of temporary suspension shall not preclude the attorney from continuing to represent existing clients during the first thirty days after the effective date of the order of temporary suspension, unless otherwise provided in the order; however, any fees tendered to such attorney during such thirty day period shall be deposited in a trust fund from which withdrawals may be made only in accordance with restrictions imposed by the Court.

(d) The attorney may for good cause request dissolution or amendment of any such order of temporary suspension by filing in the Nashville office of the Clerk of the Supreme Court and serving on Disciplinary Counsel a Petition for Dissolution or Amendment. Such petition for dissolution shall be set for immediate hearing before the Board or a panel. The Board or panel shall hear such petition forthwith and file its report and recommendation to the Supreme Court with the utmost speed consistent with due process. There shall be no petition for rehearing. Upon receipt of the foregoing report, the Court may modify its order if appropriate or continue such provision of the order as may be appropriate until final disposition of all pending disciplinary charges against said attorney;

12.4. Public Censure. Public censure is a form of public discipline which declares the conduct of the attorney

improper, but does not limit the attorney's privilege to practice law.

12.5. Private Reprimand. Private reprimand is a form of non-public discipline which declares the conduct of the attorney improper, but does not limit the attorney's privilege to practice law. A private reprimand may be imposed when there is harm or risk of harm to the client, the public, the legal system or the profession, and the respondent attorney has previously received a private informal admonition for the same misconduct and repeats the misconduct; or, when there are several similar acts of minor misconduct within the same time frame, but relating to different matters.

12.6. Private Informal Admonition. Private informal admonition is a form of non-public discipline which declares the conduct of the attorney improper, but does not limit the attorney's privilege to practice law. Private informal admonition may be imposed when there is harm or risk of harm to the client, the public, the legal system or the profession, but the misconduct appears to be an isolated incident or is minor.

12.7. Restitution. Upon order of a hearing panel, panel or court, or upon stipulation of the parties, and in addition to any other type of discipline imposed, the respondent attorney may be required to make restitution to persons or entities financially injured as a result of the respondent attorney's misconduct. In the event that a person or entity financially injured as a result of the respondent attorney's misconduct has received any payment from or has a claim

pending before the Tennessee Lawyers' Fund for Client Protection, the order or stipulation shall provide that the Fund shall be reimbursed to the extent of such payment by the Fund.

12.8. Upon order of a hearing panel, panel or court, or upon stipulation of the respondent attorney and Disciplinary Counsel in matters which are or are not in formal proceedings, conditions consistent with the purpose of this Rule and with the Rules of Professional Conduct, including but not limited to the requirement of a practice monitor pursuant to the procedures set forth in Section 12.9 and completion of a practice and professionalism enhancement program, may be placed upon the imposition of any form of public discipline. If a respondent attorney fails to fully comply with the conditions placed upon the public discipline imposed, the Board may reopen its disciplinary file and conduct further proceedings under these Rules.

12.9. Practice Monitors.

(a) If a practice monitor is required as a condition of public discipline pursuant to Section 12.8, or as a condition of probation pursuant to Section 14, or as a condition of reinstatement pursuant to Section 30, the judgment or order of the hearing panel or panel and the Order of Enforcement, Order of Reinstatement, or other judgment or order of the reviewing court shall specify the duties and responsibilities of the practice monitor.

(b) The duties and responsibilities of a practice monitor may include, but shall not be limited to, supervision of

the respondent or petitioning attorney's compliance with any conditions of discipline, probation, or reinstatement; and, the respondent or petitioning attorney's compliance with trust account rules, accounting procedures, office management procedures, and any other matters involving the respondent or petitioning attorney's practice of law which the parties, by stipulation or agreement, or the hearing panel, panel or reviewing court determines to be appropriate and consistent with the violation(s) for which the respondent or petitioning attorney was disciplined. The practice monitor shall make periodic reports to Disciplinary Counsel at such times or intervals as may be prescribed by Disciplinary Counsel and also as deemed necessary or desirable by the practice monitor.

(c) The respondent or petitioning attorney shall, within fifteen days of the entry of the stipulation, judgment or order imposing the requirement of a practice monitor, provide to the Board a list of three proposed practice monitors, all of whom shall be attorneys licensed to practice law in this State and whose licenses are in good standing with the Board, and none of whom shall be engaged in the practice of law with the respondent or petitioning attorney, whether in a law firm of any form or structure or in an association of attorneys of any kind or form. The Board, in its sole discretion, shall designate a practice monitor from the list so provided, and the Board's designation shall be final and not subject to appeal. In the event that the Board, in its sole discretion, determines that none of the respondent or petitioning attorney's proposed practice monitors is acceptable, or the respondent or petitioning attorney fails to provide the required list, the

Board shall designate a practice monitor, and the Board's designation shall be final and not subject to appeal.

(d) The respondent or petitioning attorney shall be responsible for and shall pay a reasonable fee to the practice monitor, and, where applicable, the payment of such fee shall be a condition of reinstatement pursuant to Section 30. The practice monitor may make application to the Board Chair for an award of fees and shall file with the application an affidavit or a declaration under penalty of perjury and such other documentary evidence as the practice monitor deems appropriate documenting the hours expended and the fees incurred, and shall serve a copy of the same on the respondent or petitioning attorney. Such proof shall create a rebuttable presumption as to the necessity and reasonableness of the hours expended and the fees incurred. The respondent or petitioning attorney may within fifteen days after the practice monitor's application submit to the Board Chair and serve on the practice monitor any response in opposition to the application for an award of fees. The burden shall be upon respondent or petitioning attorney to prove by a preponderance of the evidence that the hours expended or fees incurred by the practice monitor were unnecessary or unreasonable. The practice monitor or the respondent or petitioning attorney may request a hearing before a panel, in which event the panel shall promptly schedule the same. The panel shall within fifteen days from the conclusion of such hearing submit to the Board its findings and judgment with respect to the practice monitor's application for the award of fees. There shall be no petition for rehearing. The Board shall review the panel's findings

and judgment and shall either enter the panel's judgment or modify the same and enter judgment as modified. In the event no hearing is requested, the Board shall within fifteen days from the date on which the respondent or petitioning attorney's response is due or is submitted, whichever is earlier, enter a judgment with respect to the practice monitor's application for the award of fees. There shall be no other or further relief with respect to an application for the award of practice monitor fees. Nothing herein shall prohibit the practice monitor from providing these services pro bono. A practice monitor who elects to provide services pro bono may include the hours providing such services on his or her annual pro bono reporting statement under the category of "hours providing legal services to improve the law, the legal system, or the legal profession."

Section 13. Diversion of Disciplinary Cases

13.1. Authority of Board. The Board is hereby authorized to establish practice and professionalism enhancement programs to which eligible disciplinary cases may be diverted as an alternative to disciplinary sanction. Subject to Section 36.1(d), the Board is also authorized to require a respondent attorney to enter into a Tennessee Lawyer Assistance Program monitoring agreement requiring mandatory reporting to Disciplinary Counsel as a condition of diversion under this Section. Such monitoring agreement may, in the Board's discretion, qualify as a practice and professionalism enhancement program or a part thereof.

13.2. 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.

13.3. Limitation on Diversion. A respondent attorney who has been the subject of a prior diversion within five years shall not be eligible for diversion.

13.4. Approval of Diversion. The Board shall not offer a respondent attorney 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 district committee member concur.

13.5. Contents of Diversion Recommendation. If a diversion recommendation is approved as provided in Section 13.4, the recommendation shall state the practice and professionalism enhancement program(s) to which the respondent attorney shall be diverted, shall state the general purpose for the diversion, and that the costs thereof shall be paid by the respondent attorney.

13.6. Service of Recommendation on and Review by Respondent. If a diversion recommendation is approved as provided in Section 13.4, the recommendation shall be served on the respondent attorney who may accept or reject a diversion recommendation in the same manner as provided for in Section 15. The respondent attorney shall not have the right to reject any specific requirement of a practice and professionalism enhancement program.

13.7. Effect of Rejection of Recommendation by Respondent Attorney. In the event that a respondent attorney rejects a diversion recommendation the matter shall be returned for further proceedings under this Rule.

13.8. Effect of Diversion.

(a) When the recommendation of diversion becomes final, the respondent attorney shall enter the practice and professionalism enhancement program(s) and complete the requirements thereof. Disciplinary Counsel shall provide the complainant notice that the complaint has been resolved by diversion and that the matter is confidential under Section 32. The complainant has no right to appeal a disposition by diversion under this Section.

(b) Upon the respondent attorney's successful completion of the practice and professionalism enhancement program(s), the Board shall terminate its investigation into the matter and its disciplinary files indicating the diversion shall be closed 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.

13.9. Effect of Failure to Complete the Practice and Professionalism Enhancement Program. If a respondent attorney fails to fully complete all requirements of the practice and professionalism enhancement program(s) to which the respondent attorney was diverted, including the payment of costs thereof, the Board may reopen its disciplinary file and conduct further proceedings

under this Rule. Failure to complete the practice and professionalism enhancement program shall be considered as a matter of aggravation when imposing a disciplinary sanction.

Section 14. Probation

14.1. Probation. In the discretion of the hearing panel, panel or a reviewing court, the imposition of a suspension for a fixed period (Section 12.2) may be deferred in conjunction with a fixed period of probation. The conditions of probation shall be stated in writing in the judgment of the hearing panel, panel or court. Probation shall be used only in cases where there is little likelihood that the respondent attorney will harm the public during the period of rehabilitation and where the conditions of probation can be adequately supervised. Subject to Section 36.1(d), the hearing panel, panel or reviewing court may require the respondent attorney to enter into a monitoring agreement with the Tennessee Lawyer Assistance Program requiring mandatory reporting to Disciplinary Counsel. The hearing panel, panel or reviewing court may require as a condition of probation the assignment of a practice monitor for the purposes and pursuant to the procedures set forth in Section 12.9 and the completion of a practice and professionalism enhancement program. The respondent attorney shall pay the costs associated with probation, including but not limited to a reasonable fee to the practice monitor.

14.2. In the event the respondent attorney violates or otherwise fails to meet any condition of probation,

Disciplinary Counsel is authorized to file a petition to revoke probation. Upon the filing of such a petition, the respondent attorney shall have the opportunity to appear and be heard before a panel. A record of such hearing shall be made in the same manner as for a disciplinary hearing under Section 15.2. The only issue in such a proceeding is whether probation is to be revoked; the original judgment imposing the fixed period of probation may not be reconsidered. Upon finding that revocation of probation is warranted, the panel shall order that the respondent attorney serve the previously deferred period of suspension. As an alternative to revocation, the panel may impose additional conditions on probation, including the requirement of a practice monitor to be appointed in accordance with the procedures set forth in Section 12.9. Having conducted such a hearing, the panel shall file an order within thirty days; this order must include the basis for the panel's decision. There shall be no petition for rehearing. An order reflecting the decision shall be treated as a decree of the circuit or chancery court and, as such, is appealable to the Court under Section 33.

14.3. Probation shall terminate upon the expiration of the fixed period of probation, unless the conditions of probation have been violated or have not been met. Probation may be terminated earlier by the tribunal (hearing panel or court) which imposed the period of probation upon the filing of a motion and an affidavit or declaration under penalty of perjury by the respondent attorney showing compliance with all the conditions of probation and an affidavit or declaration under penalty of perjury by the practice monitor, if one is designated, stating that probation is

no longer necessary and summarizing the basis for that statement. Disciplinary Counsel shall file a response to any such motion to terminate probation. The tribunal may conduct whatever hearings are necessary to decide the motion to terminate probation. There shall be no petition for rehearing. The tribunal's ruling on the motion may be appealed pursuant to Section 33.

Section 15. Initiation, Investigation, and Hearing

15.1. (a) All complaints must be submitted in writing, must contain the identity of the complainant, and must be signed by the complainant. The Board shall provide the respondent attorney with a complete copy of the original complaint and of any additional or supplemental written submissions provided by the complainant. In the event that the Board's investigation is the result of information from a source other than a written complaint pursuant to Section 4.5(a), the Board shall notify the respondent attorney and provide a copy of such information.

(b) All investigations, whether upon complaint or otherwise, shall be initiated and conducted by Disciplinary Counsel. Upon the conclusion of an investigation, Disciplinary Counsel may recommend dismissal, private informal admonition, private reprimand, public censure or prosecution of formal charges before a hearing panel.

(c) If Disciplinary Counsel recommends disposition by dismissal or private informal admonition, the reviewing member of the district committee in the appropriate disciplinary district shall review the recommendation and

may approve or modify it. In reviewing the recommended disposition, the reviewing member of the district committee shall consider the applicable provisions of the ABA Standards for Imposing Lawyer Sanctions. In no event may the reviewing member of the district committee impose a sanction greater than private informal admonition. Nor may the reviewing member of the district committee offer diversion except as provided in Section 13.4. Disciplinary Counsel may appeal to the Board the action of the reviewing member of the district committee.

(d) If Disciplinary Counsel recommends disposition by private reprimand or public censure, or recommends the prosecution of formal charges before a hearing panel, the Board shall review the recommendation and approve or modify it. In reviewing the recommended disposition, the Board shall consider the applicable provisions of the ABA Standards for Imposing Lawyer Sanctions. The Board may determine whether a matter should be concluded by dismissal or private informal admonition; may recommend a private reprimand or public censure; or, may direct that a formal proceeding be instituted.

(e) A respondent attorney shall not be entitled to appeal a private informal admonition approved by the reviewing member of the district committee or imposed by the Board; similarly, a respondent attorney may not appeal a recommended private reprimand or public censure by the Board. In either case, however, the respondent attorney may, within twenty days of notice thereof, demand as of right that a formal proceeding be instituted before a

hearing panel in the appropriate disciplinary district. In the event of such demand, the private informal admonition shall be vacated or the recommended private reprimand or public censure shall be withdrawn, and the matter shall be disposed of in the same manner as any other formal hearing instituted before a hearing panel.

(f) If Disciplinary Counsel recommends disposition by dismissal, and if that recommended disposition is approved by the reviewing member of the district committee in the appropriate disciplinary district, Disciplinary Counsel shall provide the complainant notice of the disposition by dismissal. A complainant who is not satisfied with the disposition by dismissal of the matter may appeal in writing to the Board within thirty days of receipt of notice of the reviewing member's approval of the recommended disposition. The Board, or a committee of no fewer than three of its members, may approve, modify or disapprove the disposition, or direct that the matter be investigated further. The complainant has no other or further right of appeal or review under this Rule or otherwise.

(g) If Disciplinary Counsel recommends disposition by private informal admonition, and if that recommended disposition is approved by the reviewing member of the district committee in the appropriate disciplinary district, Disciplinary Counsel shall provide the complainant notice that the complaint has been resolved by private informal admonition and that the matter is confidential under Section 32. The complainant has no right to appeal a disposition by private informal admonition under this Section.

(h) If Disciplinary Counsel recommends disposition by private reprimand, and if that recommended disposition is approved by the Board, Disciplinary Counsel shall provide the complainant notice that the complaint has been resolved by private reprimand and that the matter is confidential under Section 32. The complainant has no right to appeal a disposition by private reprimand under this Section.

15.2. (a) Formal disciplinary proceedings before a hearing panel shall be commenced by Disciplinary Counsel by filing with the Board a Petition for Discipline (hereinafter "Petition") which shall be sufficiently clear and specific to inform the respondent attorney of the alleged misconduct. Disciplinary Counsel, as needed, may file Amended Petitions which arise out of the same facts and circumstances but which change, delete or augment the existing allegations. Disciplinary Counsel, as needed and with the approval of the Board, may file Supplemental Petitions which make new allegations and which bring new charges arising from a different complaint(s) not previously included in a Petition. No Petition, Amended Petition, or Supplemental Petition shall include allegations of any private discipline previously imposed against the respondent attorney.

(b) A copy of the Petition shall be served upon the respondent attorney pursuant to Section 18.1. The respondent attorney shall serve an answer upon Disciplinary Counsel pursuant to Section 18.2 and file the original with the Board within thirty days after the service of the Petition, unless such time is extended by

the agreement of Disciplinary Counsel or by leave of the Chair of the Board. In the event the respondent attorney fails to answer, the charges shall be deemed admitted and Disciplinary Counsel may move the hearing panel assigned to hear the matter for entry of a Judgment of Default. Disciplinary Counsel shall serve a copy of any such motion on the respondent attorney pursuant to Section 18.2. Relief from a Judgment of Default for failure to serve an answer to the Petition within thirty days shall be determined by the hearing panel in the same manner such motions are determined by Rule 55.02 of the Tennessee Rules of Civil Procedure. Upon granting relief from a Judgment of Default, the hearing panel may extend the respondent attorney's time to answer the Petition.

(c) A copy of any Amended Petition or Supplemental Petition shall be served on the respondent attorney pursuant to Section 18.2. The respondent attorney shall serve an answer on Disciplinary Counsel pursuant to Section 18.2 and file the original with the Board within fifteen days after service of the Amended Petition or Supplemental Petition, unless such time is extended by the agreement of Disciplinary Counsel or by leave of the hearing panel assigned to hear the matter.

(d) Following the service of the answer to the Petition, or upon failure to answer, the matter shall be assigned by the Chair of the Board to a hearing panel. The Chair of the Board, or in the absence of the Chair the Vice-Chair of the Board, shall select the hearing panel from the members of the district committee in the district in which the respondent practices law. The hearing panel shall be

selected pursuant to written procedures approved by the Board. If there is an insufficient number of committee members in that district who are able to serve on the hearing panel, the Chair, or Vice -Chair, may appoint one or more members from the district committee of an adjoining district to serve on the panel.

(e) Ex parte communications between the Chair or the Vice-Chair of the Board, district committee members, and the Executive Secretary of the Board concerning the selection of hearing panels and for scheduling or other administrative purposes are permitted. A district committee member may advise the Executive Secretary of the Board if he or she is unable to serve on a hearing panel for any reason.

(f) A pre-hearing conference shall be held within sixty days of the filing date of any Petition commencing a formal proceeding, or within thirty days of the filing of the answer if an extension has been granted. The pre-hearing conference shall be conducted by the chair of the assigned hearing panel and at least one other member of the hearing panel. The pre-hearing conference may be conducted in person, by telephone, or by video conference. In the pre-hearing conference, the hearing panel shall schedule deadlines for discovery, the filing of motions, and the exchange of witness and exhibit lists, and it also shall set the hearing date. The hearing panel may discuss with and accept from the parties stipulations of fact and/or stipulations regarding the authenticity of documents and exhibits, may narrow the issues presented by the pleadings, and may address any other matter the

hearing panel deems appropriate in the management of the proceeding, including but not limited to the resolution of any discovery disputes except as otherwise provided by Section 19. Subsequent pre-hearing conferences may be held in the discretion of the hearing panel, acting on its own initiative or upon motion of a party. Within five days of each pre-hearing conference, the chair of the hearing panel shall file an order reciting the actions taken by the hearing panel during the conference, including any deadlines imposed and the date set for the hearing. The order shall advise the respondent attorney that he/she is entitled to be represented by counsel, to cross-examine witnesses, and to present evidence in his/her own behalf.

(g) In a hearing panel's hearing on the Petition, Disciplinary Counsel may submit evidence of prior discipline against the respondent attorney, including prior private discipline, as an aggravating circumstance. Such evidence may be introduced to the extent it is otherwise admissible under the Tennessee Rules of Evidence. Pursuant to Section 32.6, the respondent attorney may apply to the hearing panel for a protective order concerning the admission of evidence of prior private discipline.

(h) In hearings on formal charges of misconduct, Disciplinary Counsel must prove the case by a preponderance of the evidence.

15.3. (a) In every case, the hearing panel shall submit its findings and judgment, in the form of a final decree of a trial court, to the Board within thirty days after the conclusion of the hearing. The hearing panel's findings

and judgment shall contain a notice that the findings and judgment may be appealed pursuant to Section 33. The Executive Secretary shall serve a copy of the hearing panel's findings and judgment upon Disciplinary Counsel, the respondent attorney and the respondent attorney's counsel of record pursuant to Section 18.2. The hearing panel may make a written request to the Chair for an extension of time within which to file its findings and judgment. In the event that the hearing panel does not submit its findings and judgment within thirty days or such other time as extended by the Chair, Disciplinary Counsel shall report the same to the Court which may take such action as it deems necessary to secure submission of the findings and judgment. The failure of the hearing panel to meet this deadline, however, shall not be grounds for dismissal of the Petition.

(b) 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. If the Board makes application to the hearing panel for the assessment of costs pursuant to Section 31, the making of such application shall extend the time for taking steps in the regular appellate process under Section 33.1(a) unless, upon application of the Board to the Court and for good cause shown, the Court orders otherwise.

15.4. (a) If the hearing panel finds one or more grounds for discipline of the respondent attorney, the hearing panel's judgment shall specify the type of discipline imposed: disbarment (Section 12.1), suspension (Section 12.2), or public censure (Section 12.4). In the discretion of the

hearing panel, the imposition of a portion but not all of a suspension for a fixed period of time (Section 12.2) may be deferred in conjunction with a period of probation ordered pursuant to Section 14. In addition to imposing one of the foregoing types of discipline, the hearing panel may order restitution (Section 12.7). Temporary suspension (Section 12.3), private reprimand (Section 12.5), and private informal admonition (Section 12.6) are not types of discipline available to the hearing panel following the filing of a Petition for Discipline. In determining the appropriate type of discipline, the hearing panel shall consider the applicable provisions of the ABA Standards for Imposing Lawyer Sanctions.

(b) If the judgment of the hearing panel is that the respondent attorney shall be disbarred or suspended for any period of time or shall receive a public censure, and no appeal is perfected within the time allowed, or if there is a settlement providing for a disbarment or suspension for any period of time or a public censure, at any stage of disciplinary proceedings, the Board shall file in the Nashville office of the Clerk of the Supreme Court a Notice of Submission with attached copies of the Petition, the judgment or settlement, the proposed Order of Enforcement, and a Protocol Memorandum as defined in Section 2. A copy of the proposed Order of Enforcement and the Protocol Memorandum shall be served upon the respondent attorney and the respondent attorney's counsel of record pursuant to Section 18.2. In all cases except those in which the sanction imposed is by agreement, the respondent attorney shall have ten days from service of the foregoing within which to file with the Court and

serve upon Disciplinary Counsel pursuant to Section 18.2 a response to the Protocol Memorandum. Such response shall be limited to contesting any alleged factual errors in the Protocol Memorandum. The Court shall review the recommended punishment provided in such judgment or settlement with a view to attaining uniformity of punishment throughout the State and appropriateness of punishment under the circumstances of each particular case. The Court may direct that the transcript or record of any proceeding be prepared and filed with the Court for its consideration.

(c) If the Court finds that the punishment imposed under subsection (b) appears to be inadequate or excessive, it shall issue an order advising the Board and the respondent attorney that it proposes to increase or to decrease the punishment. If the Court proposes to increase the punishment, the respondent attorney shall have twenty days from the date of the order to file a brief and request oral argument; if the Court proposes to decrease the punishment, the Board shall have twenty days from the date of the order within which to file a brief and request oral argument. Reply briefs shall be due within twenty days of the filing of the preceding brief. If a party requests oral argument, the Court may grant it. Upon termination of such proceedings as are requested, the Court may modify the judgment of the hearing panel or the settlement in such manner as it deems appropriate. There shall be no petition for rehearing.

(d) If the judgment of a hearing panel is appealed to the circuit or chancery court pursuant to Section 33 and the

trial court enters a judgment disbarring or suspending the respondent attorney for any period of time or imposing a public censure, and no appeal is perfected within the time allowed, the Board shall file in the Nashville office of the Clerk of the Supreme Court a Notice of Submission with an attached copy of its judgment. The Court shall review the recommended punishment provided in such judgment with a view to attaining uniformity of punishment throughout the State and appropriateness of punishment under the circumstances of each particular case. The Court may direct that the transcript or record of any proceeding be prepared and filed with the Court for its consideration.

(e) If the Court finds that the punishment imposed under subsection (d) appears to be inadequate or excessive, it shall issue an order advising the Board and the respondent attorney that it proposes to increase or to decrease the punishment. If the Court proposes to increase the punishment, the respondent attorney shall have twenty days from the date of the order to file a brief and request oral argument; if the Court proposes to decrease the punishment, the Board shall have twenty days from the date of the order within which to file a brief and request oral argument. Reply briefs shall be due within twenty days of the filing of the preceding brief. If a party requests oral argument, the Court may grant it. Upon termination of such proceedings as are requested, the Court may modify the judgment of the trial court in such manner as it deems appropriate. There shall be no petition for rehearing.

Appendix B

Section 16. Complaints Against Board Members, District Committee Members, or Disciplinary Counsel

16.1. (a) Complaints against Disciplinary Counsel or a district committee member alleging violations of the Rules of Professional Conduct shall be submitted directly to the Board.

(b) Disagreement with the official decision of Disciplinary Counsel, a hearing panel, or a district committee member, taken in the course and scope of his or her responsibilities, shall not be grounds for the filing of a disciplinary complaint.

(c) The investigation of complaints against Disciplinary Counsel submitted under Section 16.1 shall proceed in accordance with the procedures contained in Section 15, except that an attorney member of the Board appointed by the Chair shall conduct the investigation and the findings of such investigation shall be reviewed by a committee of no fewer than three members of the Board appointed by the Chair or Vice Chair. Provided, however, that the Board may request the Court to appoint a Special Disciplinary Counsel to conduct the investigation. Upon application to the Court, the Court may authorize the payment of reasonable fees to Special Disciplinary Counsel.

(d) The investigation of complaints against district committee members shall be conducted by Disciplinary Counsel in accordance with the procedures contained in Section 15. The findings of such investigation shall be reviewed by a committee of no fewer than three members

of the Board appointed by the Chair or Vice Chair. Provided, however, that the Board may request the Court to appoint a Special Disciplinary Counsel to conduct the investigation. Upon application to the Court, the Court may authorize the payment of reasonable fees to Special Disciplinary Counsel.

16.2. (a) Complaints against attorney members of the Board alleging violations of the Rules of Professional Conduct shall be submitted directly to the Chief Justice of the Court.

(b) Disagreement with the official decision of the Board or a member, taken in the course and scope of his or her responsibilities, shall not be grounds for the filing of a disciplinary complaint.

16.3. The investigation of complaints submitted under Section 16.2 against attorney members of the Board shall proceed in accordance with the procedures contained in Section 15, with the following modifications:

(a) A Special Disciplinary Counsel, whom the Chief Justice shall appoint by order entered under seal, shall take the place and perform all of the functions of Disciplinary Counsel set forth in Section 15.1, including all investigations, whether upon complaint or otherwise. Upon conclusion of an investigation, Special Disciplinary Counsel may recommend dismissal, private informal admonition of the attorney concerned, or a private reprimand, public censure, or prosecution of formal charges before a special hearing panel.

(b) One member of the Court, whom the Chief Justice shall designate, shall take the place and perform all of the functions of the Board in all investigations and proceedings governed by this Section, including the review of recommendations of dismissal or private informal admonition, or a private reprimand, public censure or prosecution of formal charges, pursuant to Section 15.1. The member so designated shall not participate with the Court in any subsequent proceedings in the same case.

(1) If Special Disciplinary Counsel's recommendation is dismissal, it shall be reviewed by the designated member of the Court ("Reviewing Justice"), who may approve or modify it. If the recommendation is approved by the Reviewing Justice, notice of the disposition by dismissal shall be provided by Special Disciplinary Counsel to the complainant. A complainant who is not satisfied with the disposition by dismissal of the matter may appeal in writing to the Chief Justice within thirty days of receipt of notice of the Reviewing Justice's approval of the recommended disposition. The Court may approve, modify, or disapprove the disposition, or direct that the matter be investigated further. If the Court approves the recommended disposition of dismissal, the Court shall enter an appropriate order under seal.

(2) If Special Disciplinary Counsel's recommendation is private informal admonition, it shall be reviewed by the Reviewing Justice, who may approve or modify it. If the recommendation is approved by the Reviewing Justice, notice shall be provided by Special Disciplinary Counsel to the complainant that the complaint has been

resolved by private informal admonition and that the matter is confidential under Section 32. The complainant has no right to appeal a disposition by private informal admonition under this Section.

(3) If the recommended disposition is private reprimand, public censure, or prosecution of formal charges before a special hearing panel, the Reviewing Justice shall review the recommendation and shall approve, disapprove, or modify it. The Reviewing Justice may determine whether a matter should be concluded by dismissal or private informal admonition; may approve or impose a private reprimand or public censure; or may direct that a formal proceeding be instituted before a special hearing panel.

(4) If Special Disciplinary Counsel's recommendation is private reprimand, and if the recommendation is approved by the Reviewing Justice, notice shall be provided by Special Disciplinary Counsel to the complainant that the complaint has been resolved by private reprimand and that the matter is confidential under Section 32. The complainant has no right to appeal a disposition by private reprimand under this Section.

(5) The respondent attorney shall not be entitled to appeal a private informal admonition approved by the Reviewing Justice; similarly, the respondent attorney may not appeal a private reprimand or public censure approved or imposed by the Reviewing Justice. In either case, however, the respondent attorney may, within twenty days of notice thereof, demand as of right that a formal proceeding be instituted before a special hearing panel. In the event

of such demand, the private informal admonition shall be vacated or the recommended private reprimand or public censure shall be withdrawn, and the matter shall be disposed of in the same manner as any other formal hearing instituted before a hearing panel.

(c) If the recommendation, as approved or modified by the Reviewing Justice, includes the institution of formal proceedings before a hearing panel, or if the respondent attorney demands in writing to the Chief Justice such formal proceedings as of right, then the Chief Justice shall at that time appoint three persons to act as a special hearing panel. The special hearing panel shall take the place and perform all of the functions of the hearing panel as provided in Sections 6 and 15. The Special Disciplinary Counsel shall continue to perform the functions of Disciplinary Counsel and shall proceed in accordance with the provisions of this Rule governing formal proceedings.

(d) There shall be no petition for rehearing. The respondent attorney or Special Disciplinary Counsel may appeal the judgment of the special hearing panel as provided in Section 33.

Section 17. Immunity

Members of the Board, district committee members, Disciplinary Counsel, staff, and practice monitors shall be immune from civil suit for any conduct in the course of their official duties. Complainants and witnesses shall be immune from civil suit with respect to any communications to the Board, district committee members, Disciplinary

Counsel or staff relating to attorney misconduct or disability or any testimony in the proceedings regarding the same, unless the information which the complainant or witness provides in such communication or such testimony is false and the complainant or witness had actual knowledge of the falsity. The immunity granted in this Section shall not be construed to limit any other form of immunity available to any covered person.

Section 18. Service

18.1. The Petition in any disciplinary proceeding shall be served on the respondent attorney by personal service by any person authorized to do so pursuant to the Tennessee Rules of Civil Procedure, or by any form of United States mail providing delivery confirmation, at the primary or preferred address shown in the most recent registration statement filed by the respondent attorney pursuant to Section 10.1 or at the respondent attorney's other last known address. If such service is not successfully completed, the Board shall undertake additional reasonable steps to obtain service, including but not limited to, personal service or service by mail at such alternative addresses as the Board may identify, or service by email at the email address shown in the most recent registration statement filed by the respondent attorney pursuant to Section 10.1 or such other email address as the Board may identify.

18.2. Service of any other papers or notices required by this Rule shall, unless otherwise provided by this Rule, be made in accordance with Rule 5.02 of the Tennessee Rules of Civil Procedure.

Appendix B

Section 19. Subpoena Power, Witnesses and Pre-trial Proceedings

19.1. Any member of a hearing panel in matters before it, and Disciplinary Counsel in matters under investigation or in formal proceedings, may administer oaths and affirmations and may obtain from the circuit or chancery court having jurisdiction subpoenas to compel the attendance of witnesses and the production of pertinent books, papers and documents. A respondent attorney may, similarly, obtain subpoenas to compel the attendance of witnesses and the production of pertinent books, papers and documents before a hearing panel after formal disciplinary proceedings are instituted.

19.2. Subpoenas issued prior to formal proceedings shall clearly indicate on their face that the subpoenas are issued in connection with a confidential investigation under this Rule and that it may be regarded as contempt of the Court or grounds for discipline under this Rule for a person subpoenaed to in any way breach the confidentiality of the investigation. The scope of the confidentiality of the investigation shall be governed by Section 32. It shall not be regarded as a breach of confidentiality for a person subpoenaed to consult with an attorney.

19.3. The circuit or chancery court in which the attendance or production is required may, upon proper application, enforce the attendance and testimony of any witness and the production of any documents so subpoenaed. Subpoena and witness fees and mileage shall be the same as in the courts of this State.

19.4. Any attack on the validity or scope of a subpoena so issued, and any application for a protective order with respect to a subpoena so issued, shall be filed in and heard and determined by the court in which enforcement of the subpoena is being sought.

19.5. Discovery proceedings by the respondent attorney, prior to institution of proceedings for a formal hearing, may be had upon the order of the Chair of the Board for good cause shown.

19.6. With the approval of the hearing panel, testimony may be taken by deposition or by interrogatories if the witness is not subject to service or subpoena or is unable to attend or testify at the hearing because of age, illness, infirmity, or incarceration. A complete record of the testimony so taken shall be made and preserved, but need not be transcribed unless needed for appeal pursuant to Section 33.

19.7. The subpoena and deposition procedures shall be subject to the protective requirements of confidentiality provided in Section 32.

Section 20. Refusal of Complainant to Proceed, Compromise, etc.

Neither unwillingness nor neglect of the complainant to sign a complaint or to prosecute a charge, nor settlement or compromise between the complainant and the attorney or restitution by the attorney, shall, in itself, justify abatement of the processing of any complaint.

Appendix B

Section 21. Matters Involving Related Pending Civil or Criminal Litigation

Processing of disciplinary complaints shall not be deferred or abated because of substantial similarity to the material allegations made in other pending criminal or civil litigation or because the substance of the complaint relates to the respondent attorney's alleged conduct in pending litigation, unless authorized by the Board, in its discretion, for good cause shown.

Section 22. Attorneys Convicted Or Acknowledging Guilt of Crimes

22.1. Notice.

(a) The clerk of any court in this state in which an attorney enters a plea of nolo contendere or a plea of guilty to, or is found guilty by verdict of the jury or of the trial court sitting without a jury of, a crime shall within ten days of the plea or verdict transmit a copy thereof to the Court and to Disciplinary Counsel.

(b) Any attorney subject to the disciplinary jurisdiction of this Court who has entered a plea of nolo contendere or a plea of guilty to, or who has been found guilty by verdict of the jury or of the trial court sitting without a jury of, any serious crime, as defined in Section 2, shall within ten days of such plea or verdict provide adequate proof of the plea or verdict, including a copy thereof, to Disciplinary Counsel.

(c) Upon receiving notice from an attorney pursuant to Section 22.1(b) with respect to any serious crime, as defined in Section 2, or upon otherwise being advised that an attorney subject to the disciplinary jurisdiction of the Court has entered a plea of nolo contendere or a plea of guilty to, or has been found guilty by verdict of the jury or of the trial court sitting without a jury of, any crime, Disciplinary Counsel shall obtain adequate proof of the plea or verdict, including a copy thereof, and shall file the same with a Notice of Submission in the Nashville office of the Clerk of the Supreme Court.

22.2. Acts Not Constituting Serious Crime. Upon receipt of adequate proof and copies of the judgment, plea of nolo contendere or guilty plea with respect to any crime not constituting a serious crime, as defined in Section 2, the Court shall refer the matter to the Board for whatever action the Board may deem warranted, including the institution of an investigation by Disciplinary Counsel, or a formal proceeding before a hearing panel, provided, however, that the Court may in its discretion make no reference with respect to convictions for minor offenses.

22.3. Serious Crime.

(a) Upon the filing with the Court of the Notice of Submission with attached adequate proof and copies demonstrating that an attorney who is a defendant in a criminal case involving a serious crime, as defined in Section 2, has entered a plea of nolo contendere or a plea of guilty or has been found guilty by verdict of the jury, or the trial court sitting without a jury, the Court shall

enter an order immediately suspending the attorney. Such suspension shall take place regardless of the pendency of a motion for new trial or other action in the trial court and regardless of the pendency of an appeal. Such suspension shall remain in effect pending final disposition of a disciplinary proceeding to be commenced upon such finding of guilt.

(b) An attorney suspended under the provisions of Subsection (a) will be reinstated immediately upon the filing of an affidavit or declaration under penalty of perjury with supporting documentation demonstrating that the underlying conviction of a serious crime has been reversed, but the reinstatement will not terminate any formal proceeding then pending against the attorney, the disposition of which shall be determined by the hearing panel and the Board on the basis of the available evidence.

(c) Upon the receipt of adequate proof and copies of a judgment, plea of nolo contendere or guilty plea with respect to a serious crime, as defined in Section 2, the Court shall, in addition to suspending the attorney in accordance with the provisions of Section 22.3(a), also refer the matter to the Board for the institution of a formal proceeding before a hearing panel in which the sole issue to be determined shall be the extent of the final discipline to be imposed, provided that a disciplinary proceeding so instituted will not be brought to hearing until all appeals from the conviction are concluded.

22.4. An order summarily suspending an attorney from the practice of law pursuant to Section 22.3(a) shall constitute a suspension of the attorney for the purpose of Section 28.

22.5. An attorney suspended pursuant to Section 22.3(a) shall receive credit for any period of suspension served pursuant to Section 22.3(a) that preceded the commencement of the term of incarceration. Notwithstanding the provisions of Section 12.2, any suspension or disbarment ordered pursuant to Section 22.3(c) shall be served consecutive to any period of incarceration imposed upon the attorney as a result of the attorney's conviction in the underlying criminal case.

22.6. A certified copy of the judgment, plea of nolo contendere or guilty plea, or an affidavit or declaration under penalty of perjury with other adequate proof of a conviction of an attorney for any crime, shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against the attorney based upon the conviction.

22.7. Judicial diversion pursuant to Tenn. Code Ann. § 40-35-313, including dismissal and discharge of the criminal proceedings and expungement from the official records pursuant to Tenn. Code Ann. § 40-35-313(b), shall not foreclose the initiation, investigation or prosecution of disciplinary action on the basis of the conduct constituting the diverted criminal offense(s). An attorney receiving judicial diversion shall not be subject to Immediate Summary Suspension pursuant to Section 22.3(a). The Board shall evaluate the facts and circumstances of each such case and proceed pursuant to Section 15 of this Rule.

Appendix B

Section 23. Disbarment by Consent of Attorneys Under Disciplinary Investigation or Prosecution

23.1. An attorney who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to disbarment, by delivering to the Board an affidavit or declaration under penalty of perjury stating that such attorney desires to consent to disbarment and that:

(a) The attorney's consent to disbarment is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of submitting consent;

(b) The attorney is aware that there is a presently pending investigation into, or proceeding involving, allegations that there exist grounds for discipline the nature of which the attorney shall specifically set forth;

(c) The attorney acknowledges that the material facts so alleged are true; and,

(d) The attorney consents because the attorney knows that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, no successful defense could be made.

23.2. Upon receipt of the required affidavit or declaration under penalty of perjury, the Board shall file under seal in the Nashville office of the Clerk of the Supreme Court a Notice of Submission with an attached copy of the

declaration and the Court shall enter an order disbarring the attorney on consent.

23.3. The order disbarring the attorney on consent shall be a matter of public record. However, the affidavit or declaration under penalty of perjury required under Section 23.1 shall not be publicly disclosed or made available for use in any other proceeding except upon order of the Court.

Section 24. Discipline by Consent

24.1. An attorney against whom formal charges have been served may at any stage of the proceedings before the Board, hearing panel or trial court, thereafter tender a conditional guilty plea to the petition or to a particular count thereof in exchange for a stated form of punishment. Such a tendered plea shall be submitted to Disciplinary Counsel and approved or rejected by the Board upon recommendation of the hearing panel if the matter has been assigned for hearing, or shall be approved or rejected by the trial court if an appeal has been filed pursuant to Section 33; subject, however, in either event, to final approval or rejection by the Court if the stated form of punishment includes disbarment, suspension or public censure. In conjunction with the Court's review as set forth herein, the Board shall file in the Nashville office of the Clerk of the Supreme Court and shall serve on the respondent attorney and his/her counsel of record pursuant to Section 18.2 a Notice of Submission with an attached copy of the proposed Order of Enforcement and a Protocol Memorandum as defined in Section 2.

The respondent attorney shall not be permitted to file a response to the Protocol Memorandum required under this Section.

24.2. A continuance in a hearing panel proceeding, or before a trial court, on the basis of such a tender shall be granted only with the concurrence of Disciplinary Counsel. Approval of such a tendered plea by the Board or trial court and, if required, by the Court shall divest the hearing panel or trial court of further jurisdiction. The final order of discipline shall be predicated upon the petition and an approved tendered conditional guilty plea.

Section 25. Reciprocal Discipline

25.1. Upon being subjected to professional disciplinary action in another jurisdiction while subject to the disciplinary jurisdiction of this Court pursuant to Section 8.1, an attorney shall promptly inform Disciplinary Counsel of such action in writing. Upon being informed that an attorney subject to disciplinary jurisdiction pursuant to Section 8.1 has been subjected to discipline in another jurisdiction while subject to disciplinary jurisdiction pursuant to Section 8.1, Disciplinary Counsel shall obtain a certified copy of such disciplinary order and file the same with the Board and shall file in the Nashville office of the Clerk of the Supreme Court a Notice of Submission with an attached copy of such disciplinary order.

25.2. Upon receipt of a certified copy of an order pursuant to Section 25.1, the Court shall forthwith serve upon the attorney in accordance with Section 18.1 a notice containing:

(a) A copy of the order from the other jurisdiction; and

(b) An order directing that the attorney inform the Court, within thirty days from service of the notice, of any claim by the attorney predicated upon the grounds set forth in Section 25.4 that the imposition of the identical discipline in this State would be unwarranted and the reasons therefor.

25.3. In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this State shall be deferred until such stay expires. However, Disciplinary Counsel, in his or her discretion, may initiate and conduct an independent investigation of the attorney pursuant to Section 15.

25.4. Upon the expiration of thirty days from service of the notice issued pursuant to Section of 25.2, the Court shall impose the identical discipline unless Disciplinary Counsel or the attorney demonstrates, or the Court finds, that upon the face of the record upon which the discipline is predicated it clearly appears:

(a) That the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(b) That there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not, consistent with its duty, accept as final the conclusion on that subject; or

(c) That the misconduct established warrants substantially different discipline in this State. Where the Court determines that any of said elements exist, the Court shall enter such other order as it deems appropriate.

25.5. In all other respects, a final adjudication in another jurisdiction that an attorney subject to disciplinary jurisdiction pursuant to Section 8.1 has been guilty of misconduct while subject to disciplinary jurisdiction pursuant to Section 8.1 shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this State.

Section 26. Attorneys Failing to Comply with Tenn. Code Ann. §§ 67-4-1701-1710 (Privilege Tax Applicable to Persons Licensed to Practice Law)

26.1. Tenn. Code Ann. § 67-4-1702 levies a tax on the privilege of engaging in certain vocations, professions, businesses and occupations, including "persons licensed as attorneys by the supreme court of Tennessee." Tenn. Code Ann. § 67-4-1704 provides that failure to pay the privilege tax can result in suspension or revocation of "any license or registration by the appropriate licensing board" and goes on to state that "the supreme court of Tennessee is encouraged to establish guidelines to suspend the license of an attorney who fails to comply with the requirements of this part." The Court hereby establishes the following procedures to promote compliance with Tenn. Code Ann. §§ 67-4-1701-1710, as those Sections apply to attorneys licensed by the Court.

26.2. The Court designates the Chief Disciplinary Counsel of the Board as the official to whom the Department of Revenue shall monthly send a list of attorneys licensed by the Court who have failed, for ninety (90) days or more from the due date, to pay the privilege tax imposed by Tenn. Code Ann. § 67-4-1702.

26.3. Upon receipt of the list of attorneys transmitted by the Department of Revenue, the Chief Disciplinary Counsel shall send each attorney listed thereon a Privilege Tax Delinquency Notice (the "Notice"), stating that the Department of Revenue has informed the Chief Disciplinary Counsel that the attorney has failed, for ninety (90) days or more from the due date, to pay the privilege tax imposed by Tenn. Code Ann. § 67-4-1702 and that the attorney's license is therefore subject to suspension. The Notice 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 10.1 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 10.1.

26.4. (a) Each attorney to whom a Notice is sent pursuant to Section 26.3 shall file with the Board within thirty days of the date of mailing of the Notice an affidavit or declaration under penalty of perjury supported by documentary evidence showing that the attorney has paid the delinquent privilege taxes and any interest and penalties assessed by the Department of Revenue, and

has paid to the Board a delinquent compliance fee of One Hundred Dollars ($100.00) to defray the Board's costs in issuing the Notice; or, alternatively, demonstrating that the Notice was sent to the attorney in error, the attorney having timely paid the privilege taxes. For purposes of this provision, the date of mailing shall be deemed to be the postmark date.

(b) Upon the expiration of thirty days from the date of the Notice pursuant to Subsection (a) hereof, the Chief Disciplinary Counsel shall submit to the Court a proposed Suspension Order. The proposed Suspension Order shall list all attorneys who were sent the Notice and who failed to respond; failed to demonstrate to the satisfaction of the Chief Disciplinary Counsel that they had paid the delinquent privilege taxes and any interest and penalties, and had failed to pay to the Board a delinquent compliance fee of One Hundred Dollars ($100.00) to defray the Board's costs in issuing the Notice; or, failed to demonstrate to the satisfaction of the Chief Disciplinary Counsel that the Notice had been sent in error. The proposed Suspension Order shall provide that the license to practice law of each attorney listed therein shall be suspended upon the Court's filing of the Order and that the license of each attorney listed therein shall remain suspended until the attorney pays the delinquent privilege taxes and any interest and penalties, and pays to the Board the One Hundred Dollar ($100.00) delinquent compliance fee and a separate reinstatement fee of Two Hundred Dollars ($200.00), and is reinstated pursuant to Subsection (d).

(c) Upon the Court's review and approval of the proposed Suspension Order, the Court will file the Order summarily

suspending the license to practice law of each attorney listed in the Order. The suspension shall be effective immediately and shall remain in effect until the attorney pays the delinquent privilege taxes and any interest and penalties, and pays to the Board the One Hundred Dollar ($100.00) delinquent compliance fee and the Two Hundred Dollar ($200.00) reinstatement fee, and until the attorney is reinstated pursuant to Subsection (d). An attorney who fails to resolve the suspension within thirty days of the Court's filing of the Suspension Order shall comply with the requirements of Section 28.

(d) Reinstatement following a suspension pursuant to Subsection (c) shall require an order of the Court but shall not require a reinstatement proceeding pursuant to Section 30.4, unless ordered by the Court.

(1) An attorney suspended by the Court pursuant to Subsection (c) who wishes to be reinstated and who has remained suspended for one year or less before the filing of a petition for reinstatement shall file with the Board a petition for reinstatement of the attorney's license to practice law demonstrating that the attorney has paid all delinquent privilege taxes and any interest and penalties, and has paid to the Board the One Hundred Dollar ($100.00) delinquent compliance fee and the Two Hundred Dollar ($200.00) reinstatement fee; or, alternatively, demonstrating that the Suspension Order was entered in error as to the attorney. If the petition is satisfactory to the Chief Disciplinary Counsel and if the attorney otherwise is eligible for reinstatement, the Chief Disciplinary Counsel shall promptly submit to the

Court a proposed Reinstatement Order. The proposed Reinstatement Order shall provide that the attorney's reinstatement is effective as of the date of the attorney's payment of all delinquent privilege taxes and any interest and penalties, and the attorney's payment to the Board of the One Hundred Dollar ($100.00) delinquent compliance fee and the Two Hundred Dollar ($200.00) reinstatement fee; or, alternatively, as of the date of entry of the Suspension Order if that Order was entered in error. If the petition 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 approve or reverse the determination of the Chief Disciplinary Counsel. There shall be no petition for rehearing. An attorney resolves a suspension within thirty days for purposes of Section 26.4 if a proposed Reinstatement Order has been submitted to the Court within thirty days of the Court's filing of the Suspension Order.

(2) An attorney suspended by the Court pursuant to Subsection (c) who wishes to be reinstated and who has remained suspended for more than one year before the filing of a petition for reinstatement shall file with the Court a petition for reinstatement of the attorney's license to practice law demonstrating that the attorney has paid all delinquent privilege taxes and any interest and penalties, and has paid the One Hundred Dollar ($100.00) delinquent compliance fee and the Two Hundred Dollar ($200.00) reinstatement fee; or, alternatively, demonstrating that

the Suspension Order was entered in error as to the attorney. The petitioner shall serve a copy of the petition upon Disciplinary Counsel, who shall investigate the matter and file an answer to the petition within thirty days. The Court shall review the record and determine whether to grant or deny the petition for reinstatement. If the Court grants the petition, the Reinstatement Order shall provide that the attorney's reinstatement is effective as of the date of the attorney's payment of all delinquent privilege taxes and any interest and penalties, and the attorney's payment of the One Hundred Dollar ($100.00) delinquent compliance fee and the Two Hundred Dollar ($200.00) reinstatement fee; or, alternatively, as of the date of entry of the Suspension Order if that Order was entered in error.

Section 27. Proceedings Where an Attorney Is Declared to Be Incompetent or Is Alleged to Be Incapacitated

27.1. Where an attorney has been judicially declared incompetent or involuntarily committed on the grounds of incompetency or disability or detained or placed in the custody of a center for the treatment of mental illness after a probable cause hearing pursuant to the procedures set forth in Tenn. Code Ann. § 33-6-103, the Court, upon proper proof of the fact, shall enter an order transferring such attorney to disability inactive status effective immediately for an indefinite period until further order of the Court. A copy of such order shall be served upon the attorney, the attorney's guardian, and/or the director of the institution to which the attorney had been committed in such manner as the Court may direct.

27.2. Whenever during the course of an investigation pursuant to Section 15.1 or formal proceedings pursuant to Section 15.2, Disciplinary Counsel obtains information calling into question the mental or physical health of the respondent attorney that raises a substantial concern regarding the respondent attorney's capacity to continue the practice of law or to respond to or defend against a complaint, Disciplinary Counsel should request the respondent attorney to agree voluntarily to submit to an evaluation by the Tennessee Lawyer Assistance Program or an examination by a qualified medical or mental health expert to determine respondent attorney's capacity and report the results of the examination to Disciplinary Counsel and to the respondent attorney and the respondent attorney's counsel. In the event the respondent attorney declines to submit to such evaluation or examination and reporting, Disciplinary Counsel should file a petition with the Court for an order requiring the respondent attorney to submit to an evaluation by the Tennessee Lawyer Assistance Program or an examination by a qualified medical or mental health expert as the Court shall designate, the results of either of which shall be reported to Disciplinary Counsel, the Court, and the respondent attorney and the respondent attorney's counsel. Failure to comply with an order issued under this Subsection may serve as the basis for temporary suspension pursuant to Section 12.3.

27.3. The Board may petition the Court to determine whether an attorney is incapacitated from continuing the practice of law by reason of mental infirmity or illness or because of addiction to drugs or intoxicants, and an

attorney, with no disciplinary proceeding or complaint pending, may petition to be transferred to disability inactive status. If such a petition is filed, the Court may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including the examination of the attorney by such qualified medical or mental health experts as the Court shall designate or assignment to a hearing panel for a formal hearing to determine the issue of capacity. If the Board petitions the Court, the burden of proof shall be upon the Board and shall be by a preponderance of the evidence. If, upon due consideration of the matter, the Court concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order transferring the attorney to disability inactive status on the ground of such disability for an indefinite period and until the further order of the Court. If the Board files a petition pursuant to this Section while a disciplinary proceeding is pending against the respondent attorney, the disciplinary proceeding shall be suspended pending the determination as to the attorney's alleged incapacity.

27.4. (a) If, during the course of a disciplinary investigation or proceeding involving an attorney who presently is not suspended or disbarred, the respondent attorney contends that he/she is suffering from a disability by reason of mental or physical infirmity or illness, or because of addiction to drugs or intoxicants, which disability makes it impossible for the respondent attorney to respond to or defend against the complaint, such contention shall place at issue the respondent attorney's capacity to continue to practice law. Disciplinary Counsel, the respondent

attorney or the attorney for the respondent attorney shall file in the Nashville office of the Clerk of the Supreme Court a Notice advising the Court of such contention within ten days of learning of the contention, if the Court has not been otherwise notified. The Court thereupon may enter an order immediately transferring the respondent attorney to disability inactive status for an indefinite period and until the further order of the Court. The Court may take or direct such action as it deems necessary or proper to make a determination as to the respondent attorney's capacity to continue to practice law and to respond to or defend against the complaint, including the examination of the respondent attorney by such qualified medical or mental health experts as the Court shall designate or the referral of the matter to a hearing panel for a formal hearing to determine the respondent attorney's capacity to continue to practice law and to respond to or defend against the complaint. In any such proceeding, the burden of proof shall rest upon the respondent attorney and shall be by a preponderance of the evidence.

(b) If, during the course of a disciplinary investigation or proceeding involving an attorney who is suspended or disbarred, the respondent attorney contends that he/she is suffering from a disability by reason of mental or physical infirmity or illness, or because of addiction to drugs or intoxicants, which disability makes it impossible for the respondent attorney to respond to or defend against the complaint, such contention shall place at issue the respondent attorney's capacity to continue to the disciplinary proceedings. Disciplinary Counsel, the respondent attorney or the attorney for the respondent

attorney shall file in the Nashville office of the Clerk of the Supreme Court a Notice advising the Court of such contention within ten days of learning of the contention, if the Court has not been otherwise notified. The Court may take or direct such action as it deems necessary or proper to make a determination as to the respondent attorney's capacity to respond to or defend against the complaint, including the examination of the respondent attorney by such qualified medical or mental health experts as the Court shall designate or the referral of the matter to a hearing panel for a formal hearing to determine the respondent attorney's capacity to continue to practice law and to respond to or defend against the complaint. In any such proceeding, the burden of proof shall rest upon the respondent attorney and shall be by a preponderance of the evidence.

(c) If the Court or hearing panel determines that the respondent attorney is incapacitated from responding to or defending against the complaint, the Court or hearing panel shall take such action as it deems proper and advisable, including a direction for the suspension of the disciplinary proceeding against the respondent attorney.

(d) If the investigation of complaints or disciplinary proceedings has been suspended pursuant to this Section, the Board may petition the Court to require the disabled attorney to provide competent evidence from qualified medical or mental health experts that his or her condition continues to be such that the disabled attorney is not capable of responding to pending disciplinary complaints, or to submit to an examination by such independent

qualified medical or mental health experts as the Court shall designate in order to determine whether the condition continues to be such that the disabled attorney is not capable of responding to pending complaints or defending against disciplinary proceedings. The results of such examination shall be reported to the Disciplinary Counsel, the Court and the attorney and the attorney's counsel. In the event such experts determine that the attorney has recovered from the disability to the point that the attorney is capable of defending against allegations of misconduct, the Board may petition the Court for an order permitting the disciplinary proceedings to be reactivated. If the Board files such a petition, the burden of proof shall rest upon the Board and shall be by a preponderance of the evidence. Should the Court permit the disciplinary proceedings to proceed, the cost of the independent medical or mental health examinations shall be charged to the respondent attorney.

27.5. The Board shall cause a notice of transfer to disability inactive status to be published pursuant to Section 28.11.

27.6. Whenever an attorney has been transferred to disability inactive status pursuant to either Section 27.1 or Section 27.3; or, whenever the Board, pursuant to Section 27.2, petitions the Court to determine that an attorney is disabled or incapacitated from continuing the practice of law, the Board shall request such action under the provisions of Section 29 as may be indicated in order to protect the interests of the disabled or allegedly disabled attorney and the attorney's clients.

27.7. (a) No attorney transferred to disability inactive status pursuant to Section 27 may resume active status until reinstated by order of the Court. Any attorney transferred to disability inactive status pursuant to Section 27 shall be entitled to petition for reinstatement to active status after the disability is removed. The petition for reinstatement shall be filed with the Court in the form adopted by the Board. The petitioner shall serve a copy of the petition upon Disciplinary Counsel, who shall investigate the matter and file an answer to the petition within thirty days. The answer shall include a recommendation as to whether the petition should be granted without a hearing or referred to a hearing panel for a hearing.

(b) Upon the filing of a petition for reinstatement pursuant to Section 27, the Court may take or direct such action as it deems necessary or proper to a determination of whether the attorney's disability has been removed, including a direction for an examination of the attorney by such qualified medical or mental health experts as the Court shall designate and the furnishing of such expert's report to the Board, the Court, and the attorney and the attorney's counsel. In its discretion, the Court may direct that the expense of such an examination shall be paid by the attorney, and that the attorney establish proof of competence 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. The Court also may refer the petition to a hearing panel for a hearing in which the petitioner shall have the burden of proof. The hearing shall be governed by Section

30.4. The petition shall be granted upon a showing by clear and convincing evidence that the attorney's disability has been removed and the attorney is fit to resume the practice of law.

(c) Pending disciplinary complaints against the attorney, whether filed before or after the attorney's transfer to disability inactive status, must be resolved before the effective date of any reinstatement. Provided, however, that the Court may order reinstatement pending the completion of any conditional disciplinary action (e.g., probation or restitution) imposed upon the attorney or the final completion of the terms of any agreement executed by the attorney and the Tennessee Lawyer Assistance Program.

27.8. Where an attorney has been transferred to disability inactive status by an order in accordance with Section 27.1 and, thereafter, in proceedings duly taken, the attorney has been judicially declared to be competent, this Court may dispense with further evidence that the attorney's disability has been removed and may direct the attorney's reinstatement to active status upon such terms as the Court deems proper and advisable.

27.9. The filing of a petition for reinstatement to active status by an attorney transferred to disability inactive status because of disability shall be deemed to constitute a waiver of any doctor-patient privilege with respect to any treatment of the attorney during the period of disability. The attorney shall be required to disclose the name of every psychiatrist, psychologist, physician and hospital

or other institution by whom or in which the attorney has been examined or treated since the transfer to disability inactive status, and shall furnish to the Court written consent to each to divulge such information and records as requested by court appointed medical experts.

Section 28. Notice to Clients, Adverse Parties, and Other Counsel

28.1. Effective Date of Order. Orders imposing disbarment, suspension, transfers to disability inactive status, or temporary suspension are effective upon entry.

28.2. Recipients of Notice; Contents. By no later than ten days after the effective date of the order, the respondent attorney shall notify or cause to be notified by registered or certified mail, return receipt requested:

(a) all clients being represented in pending matters;

(b) all co-counsel in pending matters; and

(c) all opposing counsel in pending matters, or in the absence of opposing counsel, the adverse parties, of the order of the Court and that the attorney is therefore disqualified to act as attorney after the effective date of the order except as permitted by Section 12.3(c). The notice to be given to the attorney(s) for an adverse party, or, in the absence of opposing counsel, the adverse parties, shall state the last known address of the client of the respondent attorney. The notice shall inform the recipient of the effective date of the suspension and the effect it will

have on the attorney's representation of the client in the applicable matter.

28.3. Special Notice. The Court may direct the issuance of notice to such financial institutions or others as may be necessary to protect the interests of clients or other members of the public.

28.4. Duty to Maintain Records. The respondent attorney shall keep and maintain records of the steps taken to accomplish the requirements of Sections 28.1 and 28.2 and shall make those records available to Disciplinary Counsel on request.

28.5. Return of Client Property. The respondent attorney shall deliver to all clients any papers or other property to which they are entitled and shall notify them and any counsel representing them of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property.

28.6. Refund of Fees. By no later than fifteen days after the effective date of the order, the respondent attorney shall refund any part of any fees, expenses, or costs paid in advance that has not been earned or expended, unless the order directs otherwise.

28.7. Withdrawal from Representation. The respondent attorney shall within twenty days after the effective date of the order file in the court, agency or tribunal in which the proceeding is pending a motion for leave to withdraw

or a motion or agreed order to substitute and shall serve a copy of the motion or agreed order on opposing counsel or the adverse party, if unrepresented, in the proceeding.

28.8. New Representation Prohibited. The respondent attorney shall not undertake any new legal matters on or after the effective date of the order. By no later than twenty days after the effective date of the order, the respondent attorney shall cease to maintain a presence or occupy an office where the practice of law is conducted, except as provided in Section 12.3(c), and shall take such action as is necessary to cause the removal of any indicia of attorney, lawyer, counselor at law, legal assistant, law clerk, or similar title.

28.9. Affidavit Filed with Board. Within twenty days after the effective date of the order, the respondent attorney shall file with the Board an affidavit or declaration under penalty of perjury showing:

(a) Compliance with the provisions of the order and with Section 28;

(b) All other state, federal, and administrative jurisdictions to which the attorney is admitted to practice;

(c) Place of residence and all addresses where communications may thereafter be directed; and

(d) Service of a copy of the affidavit or declaration under penalty of perjury upon Disciplinary Counsel, which shall include proof of compliance with Section 28.2.

28.10. Reinstatement. Proof of compliance with Section 28 shall be a condition precedent to any petition for reinstatement.

28.11. Publication of Notice. The Board shall provide a notice of the disbarment, suspension, disability inactive status, temporary suspension or reinstatement to all State judges and to the Tennessee Bar Association, and shall cause the same to be published in online or print media in each county in which the respondent attorney maintained an office for the practice of law, if available and in such other manner as the Board may determine to be appropriate.

Section 29. Appointment of a Receiver when an Attorney Becomes Unable to Continue the Practice of Law

29.1. The purpose of this Section is to protect clients and, to the extent possible and not inconsistent with the protection of clients, to protect the interests of the attorney to whom this rule applies.

29.2. Appointment of a Receiver Attorney.

(a) For purposes of this Section, an "affected attorney" is an attorney who is licensed and engaged in the practice of law in this State and who has no partner, associate, executor, or other appropriate successor or representative capable and available to continue or wind-down the attorney's law practice.

(b) If an affected attorney has: (1) resigned or been suspended or disbarred from the practice of law; (2)

disappeared or abandoned the practice of law; (3) become disabled or incapacitated or otherwise become unable to continue the practice of law or has been transferred to disability inactive status pursuant to Section 27 of this Rule; or (4) died, the Board of Professional Responsibility, the Tennessee Bar Association or any local bar association, any attorney licensed to practice law in this state, or any other interested person may commence a proceeding in the chancery, circuit, or probate court for the county in which the affected attorney maintained an office for the practice of law for the appointment of an attorney who is licensed to practice law in this state and in good standing with the Board of Professional Responsibility to serve as a receiver attorney to wind-down the law practice of the affected attorney.

(c) The proceeding shall be commenced by the filing of a complaint setting forth the pertinent facts, which shall be verified or accompanied by the affidavit or declaration under penalty of perjury of a person having personal knowledge of the facts. To the extent practicable, the complaint and any accompanying affidavit or declaration under penalty of perjury shall be served upon the affected attorney or the guardian, conservator, or personal representative of the affected attorney if one has been appointed and qualified.

(d) If the trial court determines upon a showing by a preponderance of the evidence that the appointment of a receiver attorney is necessary to protect the interests of the affected attorney's clients or the interests of the affected attorney, the trial court shall appoint one or

more receiver attorneys. The order of the trial court may be appealed to the Court by the affected attorney or by the guardian or personal representative of the affected attorney, or by the complainant.

29.3. Duties and Authority of a Receiver Attorney.

(a) The receiver attorney shall: (1) take custody of the files, records, bank accounts, and other property of the affected attorney's law practice; (2) review the files and other papers to identify any pending matters; (3) notify all clients represented by the affected attorney in pending matters of the appointment of the receiver attorney and suggest that it may be in their best interest to obtain replacement counsel; (4) notify all courts and counsel involved in any pending matters, to the extent they can be reasonably identified, of the appointment of a receiver attorney for the affected attorney; (5) deliver the files, money, and other property belonging to the clients of the affected attorney pursuant to the client's directions, subject to the right to retain copies of such files or assert a retaining or charging lien against such files, money, or other property if fees or disbursements for past services rendered are owed to the affected attorney by the client; and (6) take such steps as seem indicated to protect the interests of the clients, the public, and, to the extent possible and not inconsistent with the protection of the affected attorney's clients, to protect the interests of the affected attorney. If the receiver attorney determines that conflicts of interest exist between the receiver attorney and a client of the affected attorney, the receiver attorney shall notify the court of the existence of the conflict of

interest with regard to the particular matters and the receiver attorney shall take no action with regard to those cases or files.

(b) The order appointing the receiver attorney shall specifically authorize the receiver attorney to take custody of and act as signatory on any bank or investment accounts, safe deposit boxes, and other depositories maintained by the affected attorney in connection with the affected attorney's law practice, including trust accounts, escrow accounts, payroll accounts, IOLTA accounts, operating accounts, and special accounts, and to disburse funds to clients of the affected attorney or others entitled thereto, and take all appropriate actions with respect to such accounts.

(c) The receiver attorney shall take reasonable efforts to safeguard all property in the offices of the affected attorney and to collect any outstanding attorney's fees, costs, and expenses to which the affected attorney is entitled and shall make appropriate arrangements for the prompt resolution of any disputes concerning outstanding attorney's fees, costs, and expenses.

(d) To the extent possible, the receiver attorney shall assist and cooperate with the affected attorney and the guardian or personal representative of the affected attorney in the transition, sale, or winding-down of the affected attorney's law practice. The receiver attorney may purchase the law practice of the affected attorney only upon the trial court's approval of such sale.

(e) The trial court may order the receiver attorney to submit interim and final accountings, as it deems appropriate. The trial court may allow or direct portions of any accounting relating to the funds and confidential information of the clients of the affected attorney to be filed under seal.

29.4. Protection of Client Information and Privilege. The appointment of the receiver attorney shall not be deemed in any manner to create the relationship of attorney and client between the receiver attorney and any client of the affected attorney. However, the attorney-client privilege shall apply to all communications by or between the receiver attorney and the clients of the affected attorney to the same extent as it would have applied to any communications by or to the affected attorney, and the receiver attorney shall be governed by Rule 1.6 of the Tennessee Rules of Professional Conduct with respect to all information contained in the files of the affected attorney's clients and any information relating to the matters in which the clients were being represented by the affected attorney.

29.5. Protection of Client Files and Property. The trial court shall have jurisdiction over all of the files, records, and property of clients of the affected attorney and may make any orders necessary or appropriate to protect the interests of the clients of the affected attorney and, to the extent possible and not inconsistent with the protection of clients, the interests of the affected attorney, including, but not limited to, orders relating to the delivery, storage, or destruction of the client files of the affected attorney.

Appendix B

29.6. Fees and Expenses of the Receiver Attorney.

(a) The receiver attorney shall be entitled to reasonable fees in compensation for performance of the receiver attorney's duties and reimbursement for actual and reasonable costs incurred by the receiver attorney in connection with the performance of the receiver attorney's duties. Reimbursable expenses shall include, but not be limited to, the actual and reasonable costs incurred in connection with maintaining the staff, offices, and operation of the affected attorney's law practice and the employment of attorneys, accountants, and others retained by the receiver attorney in connection with carrying out the receiver attorney's duties.

(b) The receiver attorney shall file an application for fees and expenses with the trial court, which shall determine the amount of such fees and reimbursement. The application shall be accompanied by an accounting in a form and substance acceptable to the trial court of all funds and property coming into the custody of the receiver attorney.

(c) Any fees and expenses awarded by the trial court to the receiver attorney shall be paid by the affected attorney or the estate of the affected attorney or from such other available sources as the court may direct. The order of the trial court awarding the fees and expenses shall be a judgment against the affected attorney or the estate of the affected attorney. The judgment shall be a lien upon all property of the affected attorney or the estate of the affected attorney retroactive to the date of filing of the

complaint for the appointment of a receiver attorney under this Rule. The judgment lien is subordinate to possessory liens and to non-possessory liens and security interests created prior to its taking effect and may be foreclosed upon in the manner prescribed by law.

29.7. Limitation of Liability. Any person serving as a receiver attorney under this Rule shall be immune from suit for any conduct undertaken in good faith in the course of the official duties of the receiver attorney.

29.8. Employment of the Receiver as Attorney for a Client. A receiver attorney shall not, without the informed written consent of the client and the permission of the trial court, represent a client in a pending matter in which the client was represented by the affected attorney, other than to temporarily protect the interests of the client, or unless and until the receiver attorney has concluded the purchase of the law practice of the affected attorney. Any written consent by the client shall include an acknowledgment that the client is not obligated to use the receiver attorney.

29.9. Advance Designation of a Receiver or Successor Attorney. An attorney may designate in advance another attorney by contract, appointment, or other arrangement to handle or assist in the continued operation, sale, or closing of the attorney's law practice in the event of such attorney's death, incapacity or unavailability. In the event an attorney to whom this rule applies has made adequate provision for the protection of his or her clients, such provision shall govern to the extent consistent with this Rule unless the trial court or the Court determines,

upon a showing of good cause, that the provisions for the appointment of a receiver attorney under this Rule should be invoked. After a complaint for the appointment of a receiver attorney has been filed, the affected attorney or the guardian, conservator, or personal representative of the affected attorney may designate a successor attorney and the trial court shall respect such designation unless the trial court determines, upon a showing of good cause, that such designation should be set aside.

29.10. Effect on Pending Cases. Upon entry of the order appointing a receiver attorney, any applicable statute of limitations, deadline, time limit, or return date for a filing as it relates to the clients of the affected attorney shall be tolled during the period from the date of the filing of the complaint for the appointment of a receiver attorney until the first regular business day that is not less than sixty (60) days after the date of the entry of the order appointing the receiver attorney, if it would otherwise expire before the extended date.

Section 30. Reinstatement

30.1. No attorney disbarred; suspended under any section of this Rule or under Rule 21 or Rule 43 of the Rules of the Tennessee Supreme Court; on disability inactive status under Section 27 of this Rule; or who has remained on inactive status under Section 10.8 of this Rule for over five years before filing a petition for reinstatement to active status, may resume practice until reinstated by order of the Court.

30.2. Individuals disbarred on or after July 1, 2020, are not eligible for reinstatement. Individuals disbarred under Rule 9 prior to July 1, 2020, may not apply for reinstatement until the expiration of at least five years from the effective date of disbarment.

30.3. Reinstatement from Administrative Suspension or Inactive Status.

(a) Reinstatement from administrative suspension for non-payment of the Board's annual registration fee shall be pursuant to Section 10.6(d) of this Rule.

(b) Reinstatement from administrative suspension for IOLTA non- compliance shall be pursuant to Sections 15 and 16 of Rule 43 of the Rules of the Tennessee Supreme Court.

(c) Reinstatement from administrative suspension for failure to pay the Professional Privilege Tax shall be pursuant to Section 26.4(d) of this Rule.

(d) Reinstatement from inactive status, other than disability inactive status, shall be pursuant to Section 10.8 of this Rule.

(e) Reinstatement from disability inactive status shall be pursuant to Sections 27.7, 27.8 and 27.9 of this Rule.

(f) Reinstatement from temporary suspension shall be pursuant to Section 12.3(d) of this Rule.

(g) Reinstatement from administrative suspension for non-compliance with continuing legal education requirements shall be pursuant to Section 7 of Rule 21 of the Rules of the Tennessee Supreme Court.

(h) Reinstatement from administrative suspension for default on student loan or service-conditional scholarship program shall be pursuant to Section 37 of this Rule.

(i) The Court may require an attorney seeking reinstatement from suspension or inactive status under any of the foregoing provisions and who has remained suspended or inactive for more than five years before the filing of a petition for reinstatement and/or application for reinstatement 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 or transfer to inactive status, and to establish proof of compliance with all other applicable rules and regulations.

30.4. Reinstatement from Disbarment or Disciplinary Suspension.

(a) Reinstatement other than as set forth in Section 30.3 of this Rule shall be pursuant to this Section, regardless of when or under what procedure the suspension or disbarment occurred.

(b) No petition for reinstatement shall be filed more than ninety days prior to the time the attorney shall first be eligible for reinstatement.

(c) An attorney who wishes to be reinstated, who has been suspended by the Court for a period of one year or less or for an indefinite period, and who has remained suspended for one year or less before the filing of a petition for reinstatement shall file with the Board and serve upon Disciplinary Counsel promptly a petition for reinstatement of the attorney's license to practice law demonstrating that the petitioning attorney has the moral qualifications, competency and learning in law required for admission to practice law in this state, that the resumption of the practice of law within the state will not be detrimental to the integrity and standing of the bar or the administration of justice, or subversive to the public interest, and that the petitioning attorney has satisfied all conditions set forth in the order imposing discipline, including the payment of costs incurred by the Board in the prosecution of the preceding disciplinary proceeding and any court costs assessed against the attorney in any appeal from such proceeding. If the petition is satisfactory to the Board and if the attorney otherwise is eligible for reinstatement, the Board, or the Chief Disciplinary Counsel acting on its behalf, shall promptly file in the Nashville office of the Clerk of the Supreme Court a Notice of Submission with an attached copy of a proposed Reinstatement Order. For purposes of this filing, the same appeal number shall be used as previously was assigned to the order which suspended the attorney. If the petition is unsatisfactory to the Board, Disciplinary Counsel shall file and serve upon the petitioning attorney a responsive pleading to the petition and the matter shall proceed as provided in Subsection (d).

(d) An attorney who wishes to be reinstated and who has been disbarred by the Court, or who has been suspended by the Court for a period of more than one year, or who has been suspended by the Court for a period of one year or less or an indefinite period but has remained suspended for more than one year before the filing of a petition for reinstatement, shall file with the Board and serve upon Disciplinary Counsel promptly a petition for reinstatement. Upon receipt of the petition, Disciplinary Counsel shall investigate the matter and file and serve upon the petitioning attorney a responsive pleading to the petition. The Board shall promptly refer the petition to a hearing panel in the disciplinary district in which the petitioning attorney maintained an office at the time of the disbarment or suspension. Individuals disbarred on or after July 1, 2020, are not eligible for reinstatement.

(1) The hearing panel shall schedule a hearing at which the petitioning attorney shall have the burden of demonstrating by clear and convincing evidence that the petitioning attorney has the moral qualifications, competency and learning in law required for admission to practice law in this state, that the resumption of the practice of law within the state will not be detrimental to the integrity and standing of the bar or the administration of justice, or subversive to the public interest, and that the petitioning attorney has satisfied all conditions set forth in the order imposing discipline, including the payment of costs incurred by the Board in the prosecution of the preceding disciplinary proceeding and any court costs assessed against the attorney in any appeal from such proceeding.

(2) In all proceedings upon a petition for reinstatement, cross-examination of the petitioning attorney's witnesses and the submission of evidence, if any, in opposition to the petition shall be conducted by Disciplinary Counsel.

(3) If the petitioning attorney is found unfit to resume the practice of law, the decision of the hearing panel shall dismiss the petition. If the petitioning attorney is found fit to resume the practice of law, the decision of the hearing panel shall reinstate the petitioning attorney.

(4) The hearing panel shall within thirty days file a report containing its findings and decision and transmit its report, together with the record, to the Board.

(5) There shall be no petition for rehearing. Either party dissatisfied with the hearing panel's decision may appeal as provided in Section 33.

(6) If neither party appeals as provided in Section 33, the Board shall file in the Nashville office of the Clerk of the Supreme Court a Notice of Submission with an attached copy of the record of the proceedings before the hearing panel together with its report approving same. The Court will take such action upon the record so transmitted as it deems appropriate.

(7) With respect to suspended or disbarred attorneys, the hearing panel or reviewing court may impose conditions on the petitioning attorney's reinstatement, including, without limitation, certification by the Board of Law Examiners of the successful completion of an examination

for admission to practice; the assignment of a practice monitor for the purposes and pursuant to the procedures set forth in Section 12.9; the completion of a practice and professionalism enhancement program; the making of restitution required pursuant to Section 12.7; and, the payment of all or part of the costs of the proceeding.

(8) The petitioning attorney shall pay the costs associated with the conditions of reinstatement, including without limitation a reasonable fee to the practice monitor pursuant to the procedures in Section 12.9(d).

(9) Petitions for reinstatement under this Section shall be accompanied by an advance cost deposit in an amount to be set from time-to-time by the Board to cover anticipated costs of the reinstatement proceeding. All advance cost deposits collected hereunder shall be deposited by the Board with the State Treasurer; all such funds including earnings on investments and all interest and proceeds from said funds, if any, are deemed to be, and shall be designated as, funds belonging solely to the Board. Withdrawals from those funds shall only be made by the Board to cover costs of reinstatement proceedings, and reimbursement of advance cost deposits not expended. Such advance cost deposit funds shall be maintained, managed, and administered solely and exclusively by the Board.

30.5. Successive Petitions. No petition for reinstatement under this Rule, except for petitions for reinstatement under Section 27, shall be filed within two years following an adverse judgment upon a petition for reinstatement

filed by or on behalf of the same person, unless otherwise ordered by the Court in denying the petition for reinstatement.

30.6. After the effective date of an order accepting the surrender of a license to practice law pursuant to Article XV of Rule 7 of the Rules of the Tennessee Supreme Court, the license shall not be reinstated, and the attorney may not be licensed to practice law in Tennessee until he or she applies for a license in Tennessee and meets the requirements of Rule 7 of the Rules of the Tennessee Supreme Court.

Section 31. Expenses, Audit, Reimbursement of Costs

31.1. Expenses. The salaries of Disciplinary Counsel and staff, their expenses, administrative costs, and the expenses of the members of the Board and of members of the district committees shall be paid by the Board out of the funds collected under the provisions of this Rule.

31.2. Accounting. The Administrative Office of the Courts performs accounting functions for the Board, either directly or through its oversight and final approval of transactions performed by Board personnel.

31.3. Reimbursement of Costs.

(a) In the event that a judgment of disbarment, suspension, public censure, temporary suspension, disability inactive status, reinstatement, or denial of reinstatement results from formal proceedings, Disciplinary Counsel shall

within fifteen days from the hearing panel's submission of such judgment pursuant to Section 15.3 make application to the hearing panel for the assessment against the respondent or petitioning attorney of the necessary and reasonable costs of the proceedings, including court reporter's expenses for appearances and transcription of all hearings and depositions, the expenses of the hearing panel in the hearing of the cause, and the hourly charge of Disciplinary Counsel in investigating and prosecuting, and shall serve a copy of such application on respondent or petitioning attorney and the petitioning attorney's counsel of record pursuant to Section 18.2. The application shall be accompanied by an affidavit or declaration under penalty of perjury and such other documentary evidence as Disciplinary Counsel deems appropriate documenting the hours expended and the costs incurred by Disciplinary Counsel in investigating and prosecuting the complaint or responding to the petition for reinstatement. Such proof shall create a rebuttable presumption as to the necessity and reasonableness of the hours expended and the costs incurred. The respondent or petitioning attorney may within fifteen days after Disciplinary Counsel's application submit to the hearing panel and serve on Disciplinary Counsel pursuant to Section 18.2 any response in opposition to the application for an assessment of costs. The burden shall be upon respondent or petitioning attorney to prove by a preponderance of the evidence that the hours expended or costs incurred by Disciplinary Counsel were unnecessary or unreasonable. Disciplinary Counsel or the respondent or petitioning attorney may request a hearing before the hearing panel, in which event, the hearing panel shall promptly schedule the same. The

hearing panel shall within fifteen days from the conclusion of such hearing, or in the event no hearing is requested, within fifteen days from the date on which the respondent or petitioning attorney's response is due or is submitted, whichever is earlier, submit to the Board its findings and judgment with respect to Disciplinary Counsel's application for the assessment of costs. There shall be no petition for rehearing. The making of an application under this Section shall extend the time for taking steps in the regular appellate process under Section 33.1(a) unless, upon application of the Board to the Court and for good cause shown, the Court orders otherwise.

(b) In the event that a judgment as set forth in Subsection (a) is appealed to the circuit or chancery court pursuant to Section 33 and the Board is the prevailing party in such appeal, Disciplinary Counsel may make application to the circuit or chancery court for the assessment against the respondent or petitioning attorney of the necessary and reasonable costs of the trial court proceedings, including court reporter's expenses for appearances and transcription of all hearings and depositions and the hourly charge of Disciplinary Counsel for the trial court proceedings. Disciplinary Counsel shall file any such application within fifteen days from the circuit or chancery court's decree and shall serve a copy of such application on respondent or petitioning attorney and the attorney's counsel of record. The application shall be accompanied by an affidavit or declaration under penalty of perjury and such other documentary evidence as Disciplinary Counsel deems appropriate documenting the hours expended and the costs incurred by Disciplinary Counsel for the trial

court proceedings. Such proof shall create a rebuttable presumption as to the necessity and reasonableness of the hours expended and the costs incurred. The respondent or petitioning attorney may within fifteen days after Disciplinary counsel's application file and serve on Disciplinary Counsel any response in opposition to the application for an assessment of costs. The burden shall be upon the respondent or petitioning attorney to prove by a preponderance of the evidence that the hours expended or costs incurred by Disciplinary Counsel were unnecessary or unreasonable. The circuit or chancery court may consider the application on the written submissions alone or may, in the court's discretion, conduct a hearing on the application. In the event the circuit or chancery court considers the application on the written submissions alone, the court shall within fifteen days from the date on which the respondent or petitioning attorney's response is due or submitted, whichever is earlier, enter and serve on the parties its findings and judgment with respect to the application for the assessment of costs. In the event the circuit or chancery court conducts a hearing on the application for costs, the court shall within fifteen days from the date of the hearing enter and serve on the parties its findings and judgment with respect to the application for the assessment of costs. The filing of an application under this Section shall extend the time for appeal to the Court under Section 33.1(d) and Tenn. R. App. P. 4.

(c) In the event that the decree of the circuit or chancery court is appealed to the Court pursuant to Section 33 and the Board is the prevailing party in such appeal, Disciplinary Counsel may make application to the Court

for the assessment against the respondent or petitioning attorney of the necessary and reasonable costs of the proceedings before the Court, including court reporter's expenses for appearances and transcription of all hearings and depositions and the hourly charge of Disciplinary Counsel for the proceedings before the Court. Disciplinary Counsel shall file any such application within fifteen days from the Court's judgment and shall serve a copy of such application on respondent or petitioning attorney and the attorney's counsel of record. The application shall be accompanied by an affidavit or declaration under penalty of perjury and such other documentary evidence as Disciplinary Counsel deems appropriate documenting the hours expended and the costs incurred by Disciplinary Counsel for the proceedings in the Court. Such proof shall create a rebuttable presumption as to the necessity and reasonableness of the hours expended and the costs incurred. The respondent or petitioning attorney may within fifteen days after Disciplinary counsel's application file and serve on Disciplinary Counsel any response in opposition to the application for an assessment of costs. The burden shall be upon the respondent or petitioning attorney to prove by a preponderance of the evidence that the hours expended or costs incurred by Disciplinary Counsel were unnecessary or unreasonable. The Court shall consider the application on the written submissions.

(d) The provisions of subsections (a)-(c) shall not apply to costs assessed pursuant to a guilty plea in which the respondent or petitioning attorney has agreed to the payment of costs and the amount thereof.

(e) The hourly charges of Disciplinary Counsel on formal proceedings shall be assessed at the rates set forth in Tenn. Sup. Ct. R. 13, Section 2(c)(1) for compensation of counsel appointed for indigent criminal defendants in non-capital cases.

(f) Payment of the costs and fees assessed pursuant to this Section shall be required as a condition precedent to any later request for reinstatement of the respondent or petitioning attorney. Interest shall accrue on costs and fees assessd in disciplinary proceedings in accordance with Tennessee Code Annotated sections 47-14-121 and -122, In the discretion of the Chief Disciplinary Counsel, the respondent or petitioning attorney may, upon a showing of extraordinary need, be permitted to pay costs in periodic payments. If a payment plan is permitted, the respondent or petitioning attorney also shall pay the Board interest at the statutory rate. If for any reason, the respondent or petitioning attorney does not abide by the terms of the payment plan, the Chief Disciplinary Counsel may revoke the plan and the respondent or petitioning attorney shall be required to pay the balance of any unpaid assessment of costs and accrued interest within thirty days thereof.

(g) Attorneys successfully defending some or all disciplinary charges filed by the Board may not recover attorney's fees or costs from the Board.

Section 32. Confidentiality

32.1. All matters, investigations, or proceedings involving allegations of misconduct by or the disability of an

attorney, including all information, records, minutes, correspondence, files or other documents of the Board, district committee members and Disciplinary Counsel shall be confidential and privileged, and shall not be public records or open for public inspection, except as otherwise provided in this Section.

All hearings held before a duly appointed hearing panel or Court, except those pursuant to Section 27, shall be public, subject to the provisions of Section 32.6 and Tenn. Sup. Ct. R. 30.

32.2. Upon (a) the Board's imposition of public discipline without the initiation of a formal disciplinary proceeding pursuant to Section 15.2, or (b) the filing of a petition for formal discipline pursuant to Section 15.2, the following documents, subject to the provisions of any protective order which may be entered pursuant to Section 32.6, shall be public records and open for public inspection:

(i) all pleadings, petitions, motions, orders, correspondence, exhibits, transcripts or documents filed in the formal disciplinary proceeding;

(ii) the written complaint(s) and any additional or supplemental submissions received by the Board;

(iii) the written response(s) to the complaint received by the Board;

(iv) the formal written public discipline imposed by the Board in the matter.

32.3. Upon receipt by the Board of a written request from a respondent attorney that a pending matter be made public, the following documents, subject to the provisions of any protective order which may be entered pursuant to Section 32.6, shall be public records and open for public inspection:

(i) all pleadings, petitions, motions, orders, correspondence, exhibits, transcripts or documents filed in the formal disciplinary proceeding;

(ii) the written complaint(s) and any additional or supplemental submissions received by the Board;

(iii) the written response(s) to the complaint received by the Board;

(iv) the formal written public discipline imposed by the Board in the matter.

32.4. In disability proceedings referred to in Section 27, the order transferring the respondent attorney to disability inactive status shall become a public record upon filing; however, all other documents relating to the respondent attorney's disability proceeding, including any subsequent petition for reinstatement after transfer to disability inactive status, shall not be public records and shall be kept confidential. An order granting a petition for reinstatement after transfer to disability inactive status shall become a public record upon filing.

32.5. Notwithstanding anything to the contrary herein, all work product and work files of the Board, district

committee members, and Disciplinary Counsel, including but not limited to internal memoranda; internal correspondence, emails, and notes; investigative notes, statements and reports; and, similar documents and files, shall be confidential and privileged, shall not be public records, and shall not be subject to the provisions of Sections 32.2 and 32.3.

32.6. In order to protect the interests of a complainant, respondent or petitioning attorney, witness, or third party, the Board may, at any stage of the proceedings, upon application of any person and for good cause shown, issue a protective order prohibiting the disclosure of specific information or documents, or the closure of any hearing, and direct that the proceedings be conducted so as to implement the order, including requiring that the hearing be conducted in such a way as to preserve the confidentiality of the information that is the subject of the application. After the initiation of a formal proceeding, any such application shall be filed with and decided by the assigned hearing panel.

32.7. All participants in any matter, investigation, or proceeding shall conduct themselves so as to maintain confidentiality. However, unless a protective order has been entered, nothing in this Section or this Rule shall prohibit the complainant, respondent or petitioning attorney, or any witness from disclosing the existence or substance of a complaint, matter, investigation, or proceeding under this Rule or from disclosing any documents or correspondence filed by, served on, or provided to that person.

Appendix B

The Board, district committee members, hearing panel members, Disciplinary Counsel, their assistants, staff and employees shall maintain confidentiality with respect to all pending matters, investigations and proceedings arising under this Rule, except as may be provided under Sections 32.2 and 32.3.

32.8. In those disciplinary proceedings in which an appeal is taken pursuant to Section 33, the records and hearing in the circuit or chancery court and in the Court shall be public to the same extent as in all other cases.

32.9. The provisions of this Rule shall not be construed to deny access to relevant information to authorized agencies investigating the qualifications of judicial candidates; or to other jurisdictions investigating qualifications for admission to practice; or to law enforcement agencies investigating qualifications for government employment; or to prevent the Board from reporting evidence of a crime by an attorney or other person to courts or law enforcement agencies; or to prevent the Board from reporting to the Tennessee Lawyers Assistance Program evidence of a disability that impairs the ability of an attorney to practice or serve; or to prevent the Board or Disciplinary Counsel from making available to the Tennessee Lawyers' Fund for Client Protection information relevant to any claim pending before the Fund; or to prevent the Board from making available all attorney registration information to the Tennessee Commission on Continuing Legal Education; the Lawyers' Fund for Client Protection; the Board of Law Examiners; and the Tennessee Lawyers Assistance Program; or to prevent the Board

or Disciplinary Counsel from defending any action or proceeding now pending or hereafter brought against either of them. In addition, Chief Disciplinary Counsel shall transmit notice of all public discipline imposed by the Court on an attorney or the transfer to inactive status due to disability of an attorney to the National Discipline Data Bank maintained by the American Bar Association.

32.10. Nothing in this Section is intended to limit or repeal any confidentiality or privilege afforded by other law.

Section 33. Appeal

33.1. (a) The respondent or petitioning attorney or the Board may appeal the judgment of a hearing panel by filing within sixty days of the date of entry of the hearing panel's judgment a Petition for Review in the circuit or chancery court of the county in which the office of the respondent or petitioning attorney was located at the time the charges were filed with the Board. Cross appeals and separate appeals are not required. Upon the filing of a single Petition for Review, any issue may be brought up for review and relief by either party. *Cf.* Tenn. R. App. P. 13(a). If the respondent or petitioning attorney was located outside this State, the Petition for Review shall be filed in the circuit court or chancery court of Davidson County, Tennessee. If a timely application for the assessment of costs is made under Section 31.3(a), the time for appeal for all parties shall run from the hearing panel's submission of its findings and judgment with respect to the application for the assessment of costs unless, upon application of the Board to the Court and for good cause shown, the Court

orders otherwise. In the absence of such an application and order, a Petition for Review filed prior to the hearing panel's submission of its findings and judgment with respect to the application for the assessment of costs shall be deemed to be premature and shall be treated as filed after the submission of the hearing panel's findings and judgment with respect to the assessment of costs and on the day thereof.

(b) The review shall be on the transcript of the evidence before the hearing panel and its findings and judgment. If allegations of irregularities in the procedure before the hearing panel are made, the trial court is authorized to take such additional proof as may be necessary to resolve such allegations. The trial court may, in its discretion, permit discovery on appeals limited only to allegations of irregularities in the proceeding. The court may affirm the decision of the hearing panel or remand the case for further proceedings. The court may reverse or modify the decision if the hearing panel's findings, inferences, conclusions or decisions on any issue brought up for review and relief are: (1) in violation of constitutional or statutory provisions; (2) in excess of the hearing panel's jurisdiction; (3) made upon unlawful procedure; (4) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (5) unsupported by evidence which is both substantial and material in the light of the entire record. In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the hearing panel as to the weight of the evidence on questions of fact.

(c) There shall be no petitions for rehearing in the trial court.

(d) Either party dissatisfied with the decree of the circuit or chancery court may prosecute an appeal directly to the Court by filing a Notice of Appeal. Cross appeals and separate appeals are not required. Upon the filing of a single Notice of Appeal, any issue may be brought up for review and relief by either party. Tenn. R. App. P. 13(a). The appeal shall be determined upon the transcript of the record from the circuit or chancery court, which shall include the transcript of evidence before the hearing panel, and upon the parties' briefs but without oral argument, unless the Court orders otherwise. In addition to the issues the parties raise on appeal, the Court shall review the recommended punishment provided in the judgment with a view to attaining uniformity of punishment throughout the State and appropriateness of punishment under the circumstances of each particular case. Cf. Tenn. Sup. Ct. R. 9, § 15.4. If a timely application for the assessment of costs is made under Section 31.3(b), the time for appeal for all parties shall run from the trial court's entry of its findings and judgment with respect to the application for the assessment of costs unless, upon application of the Board to the Court and for good cause shown, the Court orders otherwise. Absent such application and order, a Notice of Appeal filed prior to the trial court's entry of its findings and judgment with respect to the application for the assessment of costs shall be deemed to be premature and shall be treated as filed after the entry of the trial court's findings and judgment with respect to the assessment of costs and on the day

thereof. Prior decisions of the Court holding that appeal of disciplinary proceedings must be taken to the Court of Appeals because Tenn. Code Ann. § 16-4-108 so requires are expressly overruled. Except as otherwise provided in this Rule, Tenn. R. App. P. 24, 25, 26, 27, 28, 29 and 30 shall apply to such appeals to this Court.

33.2. The Chief Justice shall designate a trial judge or chancellor, regular or retired, who shall not reside within the geographic boundaries of the chancery division or circuit court wherein the office of the respondent or petitioning attorney was located at the time the charges were filed with the Board. Alternatively, the Chief Justice may designate a Senior Judge who shall not be subject to this geographic limitation. It shall be this judge's, chancellor's, or Senior Judge's duty to review the case in the manner set forth in Section 33.1 and to enter judgment upon the minutes of the circuit or chancery court of the county where the case is heard, and the judgment shall be effective as if the special judge were the regular presiding judge of said court. The duty is imposed upon the clerks and the regular trial judge to promptly notify the Chief Justice of the filing of an appeal in disciplinary cases.

33.3. (a) The judgment of the hearing panel may be stayed in the discretion of the hearing panel, pending any appeal pursuant to Section 33. Upon the filing of a Petition for Review pursuant to Section 33, and in the event the judgment is not stayed by the hearing panel, the trial court in its discretion may stay the hearing panel's judgment upon motion of a party.

(b) The final judgment of the trial court may be stayed in the discretion of the trial court, pending an appeal to the Court pursuant to Section 33. In the event the trial court does not issue a stay pending appeal, the Court may issue a stay upon the motion of a party.

Section 34. Additional Rules of Procedure

34.1. (a) The Board Chair may authorize the preparation of all or any portion of the transcript of a hearing upon a written request from the hearing panel stating the need therefore. If request is made by the hearing panel for only a portion of the transcript, either Disciplinary Counsel or the respondent or petitioning attorney may request in writing from the Chair authorization for transcription of any other portion of the hearing for completeness. Each party shall pay for that portion of the transcript which the respective party requests.

(b) It is the responsibility of the party seeking review of the hearing panel's decision to procure and file the transcript of the hearing. However, if there is no appeal from the judgment of the hearing panel, the hearing shall not be transcribed unless requested by one of the parties, which party shall pay the expense of transcription. The court reporter shall preserve the record of the proceedings until the time for appeal has expired.

34.2. Except as is otherwise provided in this Rule, time is directory and not jurisdictional. Time limitations are administrative, not jurisdictional. Failure to observe such directory time intervals may result in contempt of the

agency having jurisdiction but will not justify abatement of any disciplinary investigation or proceeding.

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 a hearing panel, the Board, or a panel. Tennessee Rule of Civil Procedure 69.04 also applies to motions to extend judgments entered in disciplinary case proceedings.

(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.

Section 35. Detection and Prevention of Trust Account Violations

35.1. Maintenance of Trust Funds in Approved Financial Institutions; Overdraft Notification.

(a) Clearly Identified Trust Accounts in Approved Financial Institutions Required.

(1) Attorneys who practice law in Tennessee shall deposit all funds held in trust in this jurisdiction in accounts clearly identified as "trust" or "escrow" accounts, referred to herein as "trust accounts," and shall take all steps necessary to inform the depository institution of the purpose and identity of the accounts. Funds held in trust include funds held in any fiduciary capacity in connection with a representation, whether as trustee, agent, guardian, executor or otherwise. Attorney trust accounts shall be maintained only in financial institutions approved by the Board, provided however nothing herein shall be construed as limiting any statutory provisions dealing with the investment of trust and/or estate assets, or the investment authority granted in any instrument creating a fiduciary relationship.

(2) Every attorney engaged in the practice of law in Tennessee shall maintain and preserve for a period of at least five years, after final disposition of the underlying matter, the records of the accounts, including checkbooks, canceled checks, check stubs, vouchers, ledgers, journals, closing statements, accounting or other statements of disbursements rendered to clients or other parties with regard to trust funds or similar equivalent records clearly and expressly reflecting the date, amount, source and explanation for all receipts, withdrawals, deliveries and disbursements of the funds or other property of a client. The five year period for preserving records created herein is only intended for the application of this rule and does not alter, change or amend any other requirements for record-keeping as may be required by other laws, statutes or regulations.

(b) Overdraft Notification Agreement and Acknowledgment of Authorization Required. A financial institution shall be approved as a depository for attorney trust accounts if it files with the Board an acknowledgment of the attorney's constructive consent of disclosure of their trust account financial records as a condition of their admission to practice law, and the financial institution's agreement, in a form provided by the Board to report to the Board whenever any properly payable instrument is presented against an attorney trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The Board shall establish rules governing approval and termination of approved status for financial institutions, and shall annually publish a list of approved financial institutions. No trust account shall be maintained in any financial institution that does not acknowledge constructive authorization by the attorney and agree to so report. Any such acknowledgment and agreement shall apply to all branches of the financial institution and shall not be canceled except upon thirty days notice in writing to the Board.

(c) Overdraft Reports. The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the following format:

(1) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors;

(2) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the attorney or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of overdraft created thereby.

(d) Timing of Reports. Reports under Subpart (c) shall be made simultaneously with, and within the time provided by law for notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five banking days of the date of presentation for payment against insufficient funds.

(e) Consent by Attorneys. Every attorney practicing or admitted to practice in this jurisdiction shall, as a condition thereof, be conclusively deemed, under the financial records privacy laws, other similar laws, or otherwise, to have designated the Board as their agent for the purpose of disclosure of financial records by financial institutions relating to their trust accounts; conclusively deemed to have authorized disclosure of financial records relating to their trust accounts to the Board; and, conclusively deemed to have consented to the reporting and production of financial records requirements contemplated or mandated by Sections 35.1 or 35.2 of this Rule.

(f) No Liability Created. Nothing herein shall create or operate as a liability of any kind or nature against any financial institution for any of its actions or omissions in reporting overdrafts or insufficient funds to the Board.

(g) Costs. Nothing herein shall preclude a financial institution from charging a particular attorney or law firm for the reasonable cost of producing the reports and records required by this rule.

(h) Definitions. For the purpose of this Rule:

(1) "Financial institution" includes a bank, savings and loan association, credit union, savings bank, and any other business or person that accepts for deposit funds held in trust by attorneys.

(2) "Properly payable" refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of this jurisdiction.

(3) "Notice of dishonor" refers to the notice that a financial institution is required to give, under the laws of this jurisdiction, upon presentation of an instrument that the institution dishonors.

35.2. Verification of Financial Institution Accounts.

(a) Generally. Whenever Disciplinary Counsel has probable cause to believe that financial institution accounts of an attorney that contain, should contain or have contained funds belonging to clients have not been properly maintained or that the funds have not been properly handled, Disciplinary Counsel shall request the approval of the Chair or Vice-Chair of the Board to initiate an investigation for the purpose of verifying the accuracy and integrity of all financial institution accounts

maintained by the attorney. If the Chair or Vice-Chair approves, Disciplinary Counsel shall proceed to verify the accuracy of the financial institution accounts.

(b) Confidentiality. Investigations, examinations, and verifications shall be conducted so as to preserve the private and confidential nature of the attorney's records insofar as is consistent with these rules and the attorney-client privilege; however, no assertion of attorney-client privilege or confidentiality will prevent an inspection or audit of a trust account as provided in this Rule.

Section 36. Tennessee Lawyer Assistance Program

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

36.1. Referrals to TLAP.

(a) Pursuant to Rule 33.07(A) of the Rules of the Tennessee Supreme Court, the Board, or its hearing panels or Disciplinary Counsel, may provide a written referral to TLAP of any attorney who the Board, or a hearing panel or Disciplinary Counsel determines:

(1) has failed to respond to a disciplinary complaint;

(2) has received three or more complaints within a period of twelve months;

(3) has received 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) has pleaded impairment or disability as a defense to a complaint;

(5) has exhibited behavior or has 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 where there is a question of either prior or present impairment or disability; or

(7) is requesting TLAP's involvement.

(b) The Executive Director of TLAP shall review any referral made pursuant to subsection (a). 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 Agreement ("Agreement") with the attorney pursuant to Rule 33.05(E) of the Rules of the Tennessee Supreme Court. If the Executive Director of TLAP determines that TLAP assistance is not appropriate, for whatever reason, the Executive Director shall report that determination in writing to the referring party under subsection (a), without further elaboration and without disclosure of information otherwise confidential under Rule 33.10.

(c) The Board 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 Board or when the Board, or a hearing panel or Disciplinary Counsel, knows that TLAP has an ongoing relationship with an attorney who has a matter pending before the Board. The Board 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 Board 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 Board, or by a hearing panel or Disciplinary Counsel, to the Court or any other agreement between the respondent or petitioning attorney and the Board or Disciplinary Counsel, informal or otherwise, in which TLAP is required. The Executive Director of TLAP will notify the Board of any requested modification of the order and may decline involvement. Both the Board and TLAP will timely provide this information to the other to prevent unnecessary delay of the disciplinary process. If the Executive Director of TLAP declines involvement of TLAP, neither the Board, nor a hearing panel nor Disciplinary Counsel, shall include TLAP's participation in any proposed order submitted to the Court. Neither the Board, nor a hearing panel nor Disciplinary Counsel, shall include TLAP in any proposed order submitted to the Court unless TLAP has given notice to the Board or the respondent or petitioning attorney or his or her counsel

that TLAP will accept involvement in the matter. In any proposed order submitted by the Board, or by a hearing panel or Disciplinary Counsel, to the Court that includes TLAP involvement, the proposed order shall specifically state that TLAP has been consulted and that TLAP has accepted involvement in the matter, and the proposed order shall contain a certificate of service stating the date and manner in which the proposed order was served upon the Executive Director of TLAP.

(e) Pursuant to Rule 33.07(B) of the Rules of the Tennessee Supreme Court, TLAP will provide the Board with the following information:

(1) TLAP will notify Disciplinary Counsel 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 which requires mandatory reporting to Disciplinary Counsel, TLAP will provide a copy of the Agreement to Disciplinary Counsel. Such Agreement will provide for notification by TLAP to Disciplinary Counsel 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 Disciplinary Counsel as TLAP deems appropriate.

(3) Upon request of Disciplinary Counsel, TLAP will provide Disciplinary Counsel with a status report of monitoring and compliance pursuant to the Agreement.

When appropriate, Disciplinary Counsel will obtain from TLAP's Executive Director a recommendation concerning the attorney's compliance with any Agreement.

36.2. Autonomy.

The Board 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.

Section 37. Suspension of Law License for Default on Student Loan or Service-Conditional Scholarship Program

37.1. Consistent with Chapter 519, Section 6, of the Public Acts of 2012 and with Tenn. Comp. R. & Regs. 1640-01-23 (2013), this Section 37 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.

37.2. 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.

37.3. Service of Show Cause Order. A show cause order issued pursuant to Section 37.2 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 10.1 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 10.1 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.

37.4. 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 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 37.4 shall be served on the attorney, the Chief Disciplinary Counsel of the Board, and the Executive Director of TSAC.

37.5. Term of Suspension; Notice of Compliance. Upon the Court's issuance of a Suspension Order pursuant to Section 37.4, 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 37.7.

37.6. Suspended Attorney Required to Notify Clients, Adverse Parties, and Other Counsel. An attorney whose license is suspended pursuant to this Section 37 shall comply with the applicable provisions of Section 28.

37.7. Reinstatement.

Reinstatement following a suspension pursuant to Section 37.4 shall require payment to the Board of a Two Hundred Dollar ($200.00) reinstatement fee and an order of the Court but shall not require a reinstatement proceeding pursuant to Section 30.4, unless ordered by the Court.

(a) An attorney suspended by the Court pursuant to Section 37.4 who wishes to be reinstated and who has remained suspended for one year or less before the filing of a petition for reinstatement shall file with the Board a petition for reinstatement of the attorney's license to practice law; the attorney must submit with the petition 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 and must pay to the Board the Two Hundred Dollar ($200.00) reinstatement fee. If the petition is satisfactory to the Chief Disciplinary Counsel and if the attorney otherwise is eligible for reinstatement, the Chief Disciplinary Counsel shall promptly submit to the Court a proposed Reinstatement Order. If the petition 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 approve or reverse the determination of the Chief Disciplinary Counsel. There shall be no petition for rehearing.

(b) An attorney suspended by the Court pursuant to Section 37.4 who wishes to be reinstated and who has remained suspended for more than one year before the filing of a petition for reinstatement shall file with the Court a petition for reinstatement of the attorney's license to practice law; the attorney must submit with the petition 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 and confirmation that the attorney has paid to the Board the Two Hundred Dollar ($200.00) reinstatement fee. The petitioner shall serve a copy of the petition upon Disciplinary Counsel, who shall investigate the matter and file an answer to the petition within thirty days. The Court shall review the record and determine whether to grant or deny the petition for reinstatement.

37.8. Fees. Upon the filing of a Suspension Order pursuant to Section 37.4, the costs of the show-cause proceeding shall be taxed to the suspended attorney.

[Amended by Order filed October 23, 2009; by order filed May 2, 2011]; [Rule replaced in its entirety by order filed August 30, 2013, effective January 1, 2014; amended by orders filed October 3, 2013 and November 25, 2013, effective January 1, 2014; and by order filed February 14, 2014; amended by order filed May 27, 2014, effective July 1, 2014; amended by order filed October 3, 2014; amended by order filed December 3, 2014; amended by order filed April 23, 2015 and effective April 23, 2015; amended by order filed March 31, 2015; amended by order filed October 6, 2015; amended by order filed March 28, 2016; amended by order filed May 9, 2016; amended by order filed and effective October 4, 2016; amended by order filed December 1, 2016 and effective December 1, 2016; and as amended by order filed April 18, 2017 and effective August 30, 2017; as amended by order filed and effective January 23, 2020; as amended by order filed April 20, 2020; as amended by order filed October 7, 2020; as amended by order filed August 24, 2021,and as amended by order filed on March 24, 2022.]