

# BOARD NOTES

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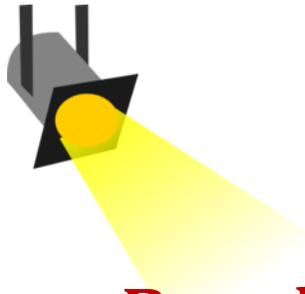


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### Greeting from Russ Parkes, Board Chair

We at the Tennessee Board of Professional Responsibility strive to be of assistance to consumers and the Judiciary, as well as all attorneys. In keeping with that goal, we hope that the information contained within this edition of Board Notes will be of assistance to all groups that we strive to serve.



# The Tennessee Board of Law Examiners (TBLE)

By Lisa Perlen, J.D.  
Executive Director

For the most part, those reading this article are attorneys licensed to practice in Tennessee. In order to receive said license, an application had to be submitted to the Tennessee Board of Law Examiners (TBLE). The TBLE was created by Section 23-1-101, *Tennessee Code Annotated*, to assist the judiciary as part of the judicial branch of government. It is an agency of the Supreme Court of Tennessee governed by Tennessee Supreme Court Rule 7. The TBLE governs the examination and licensing of attorneys who wish to practice law in Tennessee, the licensing of attorneys licensed in another jurisdiction for more than 5 years (admission on motion), and the registration of attorneys licensed in another jurisdiction employed by an organization (in-house counsel).

Additionally, the TBLE is responsible for approval of law schools located in Tennessee not accredited by the American Bar Association, including newly formed law schools within the state.

The TBLE consists of five members of the Tennessee bar. Administrative office staff includes a full time Executive Director and three full time staff assistants. Additional staff includes twelve Assistants to the Board, who write and grade the essay questions for the bar examinations.

Although the national trend has seen a reduction in the number of applicants for admission, Tennessee has had a steady number of applicants by examination: in 2011, 1047 applicants; in 2012, 993; and in 2013, 1108. Our applicants for admission by motion have increased: in 2011, 163 applicants; in 2012, 187 applicants; and through mid-November 2013, 176 applicants. In-House Counsel applications have seen increases as well: in 2011, 14 applicants; in 2012, 28 applicants; and through mid-November, 2013, 18 applicants.

The bar examination is held twice each year, the last Tuesday and Wednesday of February and July. The make-up of the examination has changed in recent years. Presently, the Tennessee Bar Examination consists of the Multistate Bar Examination (MBE) and the Multistate Performance Test (MPT), both developed by the National Conference of Bar Examiners (NCBE), plus nine (9) locally written essay questions on subject matter specified in Tennessee Supreme Court Rule 7. The purpose of the examination as a whole is to enable applicants to demonstrate to the TBLE that they possess the knowledge, skills and abilities basic to competence in the profession. The essay questions test the applicant's ability to identify legal issues raised by a hypothetical fact situation, separate relevant material from that which is not, present an analysis of the relevant issues in a clear, concise and organized manner, and demonstrate an understanding of the legal principles relevant to the issues raised. The MPT is designed to test an examinee's ability to use fundamental lawyering skills in a realistic situation, evaluating an applicant's ability to complete a task that a beginning lawyer should be able to accomplish. It is not a test of substantive knowledge. Rather, the applicant is required to sort detailed factual materials from irrelevant facts, analyze the statutory, case and administrative materials for applicable law, apply the applicable law, identify and resolve any ethical issues that may be presented, and communicate effectively in writing. The MBE is given to assess the extent to which an applicant can apply fundamental legal principles and legal reasoning to analyze given fact patterns. In addition to the components of the examination described above, applicants are required to achieve a passing score on the Multistate Professional Responsibility Examination (MPRE),

administered by the Law School Admission Council. The MPRE tests an examinee's knowledge of the professional rules of conduct.

For all examination and motion applicants, the TBLE requires applicants to undergo a background investigation conducted by the NCBE. In addition to the background investigation, applicants by examination are required to participate in an in-person interview with a member of the bar who serves on a District Investigatory Committee. The interviewers are appointed by the Tennessee Supreme Court. After the interview, the board members review the recommendations of the interviewer. Any applicants that are not recommended for admission or, although recommended, the members of the board doubt meet the standards for admission, are issued orders to show cause and appear before the board at a hearing to determine character and fitness. In some cases, the applicant is referred to the Tennessee Lawyer's Assistance Program (TLAP) for assessment.

The TBLE protects the public welfare by ensuring that lawyers licensed and practicing in Tennessee meet a threshold of knowledge, ability, character and fitness before admission to the bar. Failure to require standards for bar admission would subject the public to harm through ineptitude and malfeasance. As such, the staff of the TBLE works with the staff of the Board of Professional Responsibility (BPR) on a daily basis. In addition to routine coordination with BPR, the TBLE works closely with TLAP. We regularly speak to law students and applicants to address issues in their applications that might require the services of TLAP.

***It is important for attorneys who might be advising an applicant in completion of the application or representing an applicant before the Board to understand that full disclosure, even of expunged records, and compliance with requests to contact TLAP are in the best interest of the applicant and speed the licensing process.***

In 2009, The Supreme Court amended Rule 7, adding Section 10.05, which allows conditional admission. Conditional admission might be warranted when an applicant's previous conduct or behavior would or might result in denial of admission. Upon a showing of sufficient rehabilitation and/or mitigating circumstances, conditional admission might be granted in conjunction with a TLAP monitoring agreement. Since the adoption of Section 10.05, fourteen applicants have been admitted conditionally.

In addition to the licensing of attorneys, the TBLE monitors law schools located in the State of Tennessee. Currently, there are two new law schools in Tennessee that are working towards ABA accreditation. Belmont University College of Law received provisional ABA accreditation this summer; Lincoln Memorial University Duncan School of Law is awaiting word on provisional accreditation. Both institutions have received approval from the TBLE for its graduates to take the Tennessee bar examination. As part of the monitoring process, the TBLE is charged with visiting the law schools and assessing their programs and the performance of their students on examinations.

For more information on the Tennessee Board of Law Examiners, please contact:

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## Supreme Court Appoints New Board Member

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The Tennessee Supreme Court has appointed Odell Horton as the newest member of the Board of Professional Responsibility of the Supreme Court of Tennessee. The Board considers and votes on disciplinary actions against attorneys and issues ethics opinions interpreting the Rules of Professional Conduct. Board members do not receive compensation for their service. The Board consists of nine lawyers from each disciplinary district and three public (non-lawyer) members from each of the grand divisions of the state.

Mr. Horton is a partner at Wyatt, Tarrant & Combs, LLP in Memphis, Tennessee, where his practice concentrates in the areas of governmental issues, corporate law and litigation. Previously, Mr. Horton served as the Vice President and General Counsel of Memphis Light, Gas and Water; as Vice Chancellor for University Relations at the University of Tennessee Health Science Center; and as Assistant Attorney General and Reporter in the Civil Rights and Claims Division. He is a graduate of the University of Tennessee College of Law in Knoxville and became licensed to practice law in the State of Tennessee in 1987.



Odell Horton, Jr.

## Supreme Court Appoints New Chair and Vice-Chair

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The Tennessee Supreme Court has appointed J. Russell Parkes as the new Chair of the Board of Professional Responsibility effective January 1, 2014, and Michael U. King as the new Vice-Chair, also effective January 1, 2014. The Board would like to take this opportunity to publicly thank Board Member Lela Hollabaugh for her tenure as Chair from January 1, 2011 through December 31, 2013, and former Board Member Clarence Halmon for serving as Vice-Chair from January 1, 2013 through December 31, 2013.

J. Russell Parkes is a founding member of the Hardin, Parkes, Kelley, Carter & Bryant law firm. The firm was established in 1990 when Mr. Parkes joined Thomas W. Hardin in the practice of law. His practice is limited to litigation including personal injury, workers' compensation, complex civil litigation and insurance defense.

Russ received his law degree from the University of Memphis School of Law in 1986. Prior to receiving his law degree, Russ graduated from the University of North Alabama in 1984. Russ was admitted to practice law in the State of Tennessee in May of 1987. Russ is also admitted to practice in the United State District Courts in the State of Tennessee.

Russ is a member of the Maury County Bar Association, Lawrence County Bar Association, Tennessee Bar Association and American Bar Association. Russ has held a number of leadership roles within the Maury County Bar Association. He served as President of the Maury County Bar Association in 2009. Russ has also served in various leadership roles within the Tennessee Bar Association. He served as TBA Young Lawyers Secretary from 1992 – 1993 and Middle Tennessee Governor from 1993-1994 and 1994-1995. Russ is a Fellow of the Tennessee Bar Association Young Lawyers Division. In 2008, Russ was elected by fellow members of the Bar to become a Fellow of the Tennessee Bar Association. In 2011, the Tennessee Supreme Court appointed Russ to the Tennessee Board of Professional Responsibility, the governing board overseeing ethical conduct of lawyers. In January 2014, Russ was reappointed by the Tennessee Supreme Court to serve his second three (3) year term on the Tennessee Board of Professional Responsibility, and at that time was also designated by the Court as Chair of the Board.

Russ has tried in excess of eighty (80) jury trials, including such complex jury trials as securities fraud, wrongful death, and multiple personal injury trials for both plaintiffs and defendants.

Russ is counsel of record in five (5) published Tennessee Appellate Court Opinions, including *Hollis v. Doerflinger*, 137 S.W. 3d 625 (Tenn. Ct. App. 2003); *State v. Witherspoon*, 763 S.W. 2d 880 (Tenn. Ct. App. 1988); *Loftin v. Langston* 813 S.W. 2d 475 (Tenn. Ct. App. 1991); *Hodge v. Craig*, 382 S.W. 3d 325 (Tenn. 2012).

In addition to Russ's leadership roles in the local and state Bar Associations, Russ is active on a civic level. He has served on multiple local charitable and not for profit boards including Chairman of The Impact Centers, Board Member for Kings Daughters School, and Crime Stoppers. Russ is also a past board member of AmSouth/Regions Bank and presently serves on First Farmers and Merchants Bank Advisory Board.

Russ resides in Columbia with his wife, Phyllis. He has three (3) daughters, Lauren, Neelley and Blair.

Michael U. King is the owner of the King Law Office located in Huntingdon, Tennessee with a focus on Personal Injury, Workers' Compensation, Social Security Disability, Probate and Representation of Public and Private Entities. He has been a Board Member since January 1, 2011. Prior to that, Mr. King served as Hearing Committee Member for the Board of Professional Responsibility from March, 2009 through December, 2010.

Michael is a graduate of the Mississippi College of Law, having first received a Bachelor of Science in Business Administration from the University of Tennessee at Martin in 1997. He was licensed to practice law in Tennessee in 2000.

Michael is a member of several professional organizations, including the American Bar Association, the Tennessee Bar Association, the Tennessee Association for Justice (formerly Tennessee Trial Lawyers Association), the Tennessee Association of School Board Attorneys, the Tennessee Municipal Attorneys Association, and the Carroll County and Jackson-Madison County Bar Associations. In 2009 and 2011-2012, Michael was awarded the Carroll County News Leader Readers' Choice Award -- Best Attorney.

Michael's involvement in community organizations includes the Carroll County Chamber of Commerce; the Huntingdon Lions Club; the Huntingdon Quarterback Club; and sitting on the Advisory Board of the Carl Perkins Center Exchange Club Against Child Abuse. He is a member of First Baptist Church of Huntingdon and is the Vice President of Cal Ripken Baseball.



J. Russell Parkes



Michael U. King

## **Recognition of former Board Member Clarence Halmon**

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The Board of Professional Responsibility wishes to publicly recognize and thank former Board member Clarence Halmon for his hard work and conscientious involvement during his tenure as a member of the Board. The Supreme Court appointed Mr. Halmon to the Board on January 1, 2011 where he served until December 31, 2013. During this period, Mr. Halmon served as Vice-Chair of the Board from January 1, 2013 to December 31, 2013.

Mr. Halmon gave freely of his time and expertise, and his contributions to the legal community, the general public and the staff of the Board of Professional Responsibility are greatly appreciated.

## Formal Ethics Opinion 2013-F-157

On December 6, 2013, the Board of Professional Responsibility issued Formal Ethics Opinion 2013-F-157 regarding whether it is a conflict for a lawyer who was appointed guardian ad litem (GAL) to subsequently represent another interest in a matter regarding the child for whom the attorney was appointed GAL.

In summary, the opinion concludes Rule of Professional Conduct (RPC) 1.7 would permit a lawyer representing a child's interest as GAL to represent another's interest only if the other interest was consistent with and did not compromise the GAL's independent judgment on behalf of the child. Additionally, the attorney must not violate RPC 1.6 and 1.8 by revealing information relating to the representation. However, other statutes and/or rules appear to prohibit a lawyer from serving as a GAL while representing other interests in the same matter.

A copy of this Opinion is attached.

**BOARD OF PROFESSIONAL RESPONSIBILITY  
OF THE  
SUPREME COURT OF TENNESSEE**

**FORMAL ETHICS OPINION 2013-F-157**

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Is it a conflict of interest for a lawyer who was appointed guardian ad litem to subsequently represent another interest in a matter regarding the child for whom the lawyer was appointed guardian ad litem?

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**QUESTION**

A formal ethics opinion has been requested as follows:

Is there a conflict for an attorney who was appointed as a Guardian ad Litem in a Dependency and Neglect matter to assist the adoptive parents in finalizing an adoption after the child comes into complete guardian ship of the State of Tennessee whether through involuntary termination or surrender of the parents?

**OPINION**

A lawyer who formerly represented the child or the child's interest(s) as guardian ad litem (hereinafter GAL) pursuant to Tennessee Supreme Court Rules (hereinafter SCR) 40 and or 40A could represent adoptive parents in the subsequent adoption proceeding only if the adoption is consistent with the interests of the former client/child and does not violate Tennessee Rules of Professional Conduct (hereinafter RPC) 1.9(c). To ensure that the subsequent representation of another interest is not inconsistent with the interest(s) of the child, it would be advisable to secure consent or permission from the judge who had appointed the lawyer as GAL to represent the other interest, including the subsequent representation of the adoptive parents in an adoption proceeding regarding the child. See the DISCUSSION and CONCLUSION for broader application of this opinion.

**DISCUSSION**

While matters of substantive law must be considered with regard to this issue, the Board of Professional Responsibility can render opinions regarding only issues of ethics. Various statutes and rules of substantive and procedural law govern the appointment and obligations of GAL for minors. SCR 40 and 40A provide obligations of lawyers appointed by courts as GAL for minors.

SCR 40 applies to such appointments only in juvenile court neglect and abuse and dependence proceedings.<sup>1</sup> SCR 40 provides that the GAL is a lawyer appointed to represent the best interest of the child.<sup>2,3</sup> The child, not the court, is the client of the GAL.<sup>3</sup> The rule provides that the GAL may not be a witness in any proceeding in which they serve as GAL except in extraordinary circumstances provided in the rule; is not a special master and should not make a report or recommendation to the court; and must present their results and conclusions to the court in the same manner as any other lawyer.<sup>4</sup>

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<sup>1</sup> Supreme Court Rule 40(a) provides:

**(a) Application.**

These Guidelines set forth the obligations of lawyers appointed to represent children as guardians ad litem only in juvenile court neglect, abuse and dependency proceedings pursuant to T.C.A. § 37-1-149, Rules 37 of the Tennessee Rules of Juvenile Procedure, and Supreme Court Rule 13. By adoption of these guidelines it is intended that they not be applied to proceedings in other courts that involve child custody or related issues.

<sup>2</sup> Supreme Court Rule 40(b)(1)(2) provides in part:

**(b) Definitions.**

As used in this Rule, unless the context otherwise requires:

(1) "Guardian ad litem" is a lawyer appointed by the court to advocate for the best interests of a child and to ensure that the child's concerns and preferences are effectively advocated.

(2) "Child's best interests" refers to a determination of the most appropriate course of action based on objective consideration of the child's specific needs and preferences...

<sup>3</sup> Supreme Court Rule 40(c)(1) provides:

**(c) General Guidelines.**

(1) The child is the client of the guardian ad litem. The guardian ad litem is appointed by the court to represent the child by advocating for the child's best interests and ensuring that the child's concerns and preferences are effectively advocated. The child, not the court, is the client of the guardian ad litem.

<sup>4</sup> Supreme Court Rule 40(f) provides:

**(f) Guardian ad litem to function as lawyer, not as a witness or special master.**

(1) A guardian ad litem may not be a witness or testify in any proceeding in which he or she serves as guardian ad litem, except in those extraordinary circumstances specified by Supreme Court Rule 8, §§ EC 5-9, 5-10 and DR 5-101.

(2) A guardian ad litem is not a special master, and should not submit a "report and recommendations" to the court.

(3) The guardian ad litem must present the results of his or her investigation and the conclusion regarding the child's best interest in the same manner as any other lawyer presents his or her case on behalf of a client: by calling, examining and cross examining witnesses, submitting and

SCR 40A applies to appointments of GAL in custody proceedings.<sup>5,6</sup> “Custody proceeding”<sup>7</sup> is defined to include proceedings which could be pending in courts other than juvenile court. Like SCR 40, SCR 40A provides that the GAL is an attorney appointed to represent the best interest of the child, but does not specifically provide that the child is the client of the GAL.<sup>6,8</sup> Even so, Commentary to SCR 40A § 9 provides, in part, that the “current rule 40A differs from the prior rule in that the guardian ad litem now functions as a lawyer, not as a witness or special master. The guardian ad litem does not prepare a report for the parties or the court, nor does the guardian ad litem make a recommendation to the parties or the court concerning custody...” The rule further provides that the GAL does not perform any other judicial or quasi judicial responsibilities<sup>8</sup> and must satisfy their duties and responsibilities in an impartial, unbiased, objective and fair manner.<sup>6,9</sup>

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responding to other evidence in conformance with the rules of evidence, and making oral and written arguments based on the evidence that has been or is expected to be presented.

<sup>5</sup> Supreme Court Rule 40A, §2 provides:

**Section 2. Applicability**

This Rule applies to all guardian ad litem appointments in custody proceedings pending on or filed after the effective date of this Rule. On or after the effective date of this Rule, licensed attorneys appointed as guardians ad litem under the prior Rule 40A may be re-appointed under the terms of this Rule.

<sup>6</sup> Supreme Court Rule 40A, §3(a)(d) provides:

**Section 3. Guardian Ad Litem Appointments**

(a) Consistent with Tennessee Code Annotated section 36-4-132, in a custody proceeding the court may appoint a guardian ad litem when the court finds that the child’s best interests are not adequately protected by the parties and that separate representation of the child’s best interests is necessary. Such an appointment may be made at any stage of the proceeding.

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d) If the court concludes that appointing a guardian ad litem is necessary, the court should endeavor to appoint a person with the knowledge, skill, experience, training, education and/or any other qualifications the court finds necessary that enables the guardian ad litem to conduct a thorough and impartial investigation and effectively represent the best interests of the child.

<sup>7</sup> Supreme Court Rule 40A §1(a) provides:

“Custody proceeding” means a court proceeding, other than an abuse or neglect proceeding, in which legal or physical custody of, access to, or visitation or parenting time with a child is at issue, including but not limited to divorce, post divorce, paternity, domestic violence, contested adoptions, and contested private guardianship cases.

<sup>8</sup> Supreme Court Rule 40A, §6(a)(b) provides:

**Section 6. Role Of Guardian Ad Litem**

(a) The role of the guardian ad litem is to represent the child’s best interests by gathering facts and presenting facts for the court’s consideration subject to the Tennessee Rules of Evidence. (See Section 8 of this Rule.)

The rules permit the same attorney to be appointed GAL in the juvenile court proceeding pursuant to SCR 40 and subsequently in a custody proceeding pursuant to SCR 40A. Commentary to SCR 40A, § 1 provides:

Under revised Rule 40A it is now possible for the same attorney who is appointed as a Rule 40 guardian ad litem to follow a case and be appointed to represent the child as a Rule 40A guardian ad litem in subsequent proceedings (e.g., a termination of parental rights case in Juvenile Court followed by a contested adoption between competing grandparents in Chancery Court).

Concerns have been expressed by parties or witnesses, or their counsel, that the lawyer who had been appointed GAL had a conflict of interest in a subsequent proceeding because the party and/or witness had provided information to the GAL only because they thought they were obligated to do so because the GAL was appointed by the court. It is asserted that a conflict of interest exists because the lawyer who had been GAL could potentially reveal or use such information to the disadvantage of the party or witness in a subsequent proceeding.

While the term “guardian ad litem” is not referenced in the Tennessee Rules of Professional Conduct (RPC), it is clear from SCRs 40 and 40A that the GAL is not permitted to represent interest(s) contrary to the interest of the child and that conflicts of interest must be avoided. Commentary to SCR 40A, §4 provides:

The omission of the original Section 4(d) (conflicts of interests) from revised Rule 40A does not mean that a guardian ad litem may ignore a conflict of interest. On the contrary, a guardian ad litem who runs afoul of the conflict-of-interest provisions of the Rules of Professional Conduct is subject to appropriate disciplinary action.

Conflicts of interest governed by the Rules of Professional Conduct (RPC) arise primarily out of representation of current or former clients. Conflicts of interest with current clients are governed by RPC 1.7.<sup>10</sup> Conflicts of interest with former clients are governed by RPC 1.9.<sup>11</sup>

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(b) The guardian ad litem shall not function as a special master for the court or perform any other judicial or quasi-judicial responsibilities.

<sup>9</sup> Supreme Court Rule 40A, §8(a) provides:

**Section 8. Duties/Rights Of Guardian Ad Litem**

(a) The guardian ad litem shall satisfy the duties and responsibilities of the appointment in an unbiased, objective, and fair manner.

<sup>10</sup> Tennessee Rule of Professional Conduct 1.7 provides in part:

**Rule 1.7: Conflict Of Interest: Current Clients**

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

RPC 1.7<sup>10</sup> prohibits a lawyer, in the absence of informed consent,<sup>12</sup> from representing competing, inconsistent or contrary interest. “Loyalty and independent judgment are essential elements in the lawyer’s relationship to a client. Concurrent conflicts of interest can arise from the lawyer’s responsibility to another client, a former client or a third person or from the lawyer’s own interest...” RPC 1.7, Cmt. [1]. “Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent...” RPC 1.7, Cmt. [6]. “Even where there is no direct adversity between clients, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client...The critical questions are: what is the likelihood that a difference in interests will eventuate and, if it does, will it materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client?” RPC 1.7, Cmt. [8]. “The lawyer's own interests should not be permitted to have an adverse effect on representation of a client...” RPC 1.7, Cmt. [10].

It is clear that SCRs 40 and/or 40A in conjunction with RPC 1.7 would prohibit a lawyer from serving as GAL while at the same time representing another interest(s) which is inconsistent with, contrary to, compromises or interferes with the GAL’s exercise of their independent judgment on behalf of the child or the child’s interest. While RPC 1.7(b) permits waiver of conflicts of interest, neither SCR 40<sup>2,3</sup> nor 40A<sup>6,8</sup> provide for waiver of the requirement of the GAL to represent only the child or interest of the child. The Rules of Professional Conduct would permit an attorney to serve as

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(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

<sup>11</sup> Tennessee Rule of Professional Conduct 1.9 provides in part :

**Rule 1.9: Duties To Former Clients**

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

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(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter reveal information relating to the representation or use such information to the disadvantage of the former client unless (1) the former client gives informed consent, confirmed in writing, or (2) these Rules would permit or require the lawyer to do so with respect to a client, or (3) the information has become generally known.

<sup>12</sup> Tennessee Rule of Professional Conduct 1.0(e) provides:

(e) “Informed consent” denotes 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.

GAL for a child while at the same time representing another party to proceeding only if the representation of the other party was consistent with the interest of the child and if the lawyer does not violate RPC 1.6<sup>13</sup> and/or RPC 1.8(b)<sup>14</sup> by revealing information relating to the representation or using such information to the disadvantage of the child or the child's interest, except as provided in the rules. While both RPC 1.6<sup>13</sup> and 1.8(b)<sup>14</sup> provide an exception for informed consent, by whom and under what circumstances such consent can be given on behalf of the child is a matter of substantive law beyond the scope of the Rules of Professional Conduct.

Regardless of the Rules of Professional Conduct, TCA 37-1-149<sup>15</sup> prohibits a party or a party's representative from being appointed GAL in any action governed by the statute. Tennessee Rules of Juvenile Procedure (TRJP) 39(d) provides that appointment of a GAL in a termination of parental rights action in juvenile court is governed by TCA 37-1-149<sup>15</sup>. An attorney, therefore, cannot represent a party in an action to terminate parental rights in juvenile court or as otherwise governed by TCA 37-1-149 while at the same time serving as GAL for the child, even though both TCA 36-1-113(b) and TRJP 39(a) permit a GAL to file a petition for termination. TRJP 37(c)<sup>16</sup> prohibits a party or a party's representative from being appointed GAL in a proceedings governed by the rule.

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<sup>13</sup> Tennessee Rule of Professional Conduct 1.6 provides in part:

- (a) A lawyer shall not reveal information relating to the representation of a client unless:
  - (1) the client gives informed consent;
  - (2) the disclosure is impliedly authorized in order to carry out the representation; or
  - (3) the disclosure is permitted by paragraph (b) or required by paragraph (c).

<sup>14</sup> Tennessee Rule of Professional Conduct 1.8(b) provides:

- (b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client, unless the client gives informed consent, except as permitted or required by these Rules.

<sup>15</sup> Tennessee Code Annotated § 37-1-149(a)(1) provides:

- (a)(1) The court at any stage of a proceeding under this part, on application of a party or on its own motion, shall appoint a guardian ad litem for a child who is a party to the proceeding if such child has no parent, guardian or custodian appearing on such child's behalf or such parent's, guardian's or custodian's interests conflict with the child's or in any other case in which the interests of the child require a guardian. The court, in any proceeding under this part resulting from a report of harm or an investigation report under §§ 37-1-401 -- 37-1-411, shall appoint a guardian ad litem for the child who was the subject of the report. A party to the proceeding or the party's employee or representative shall not be appointed.

<sup>16</sup> Tennessee Rule of Juvenile Procedure 37 provides:

- (a)** In delinquent and unruly proceedings, the court at any stage of a proceeding, on application of a party or on its own initiative, shall appoint a guardian ad litem for a child if such child has no parent, guardian or custodian appearing on such child's behalf; or such parent's, guardian's or custodian's interests conflict with the child's; or in any other case in which the interests of the child require a guardian.
- (b)** In any proceeding resulting from a report of harm or an investigation report under T.C.A. §§ 37-1-401 – 37-1-411 and T.C.A. § 37-1-101, et. seq., the court shall appoint a guardian ad litem for the child who is or may be the subject of such report. The guardian ad litem shall comply with the requirements of Tennessee Supreme Court Rule 40.

In the absence of informed consent<sup>12</sup>, RPC 1.9(a)<sup>11</sup> prohibits a lawyer from representing an interest against a former client in the same or substantially related matter.<sup>17</sup> “After termination of a client-lawyer relationship, a lawyer has certain continuing duties with respect to confidentiality and conflicts of interest and thus may not represent another client except in conformity with this Rule.” RPC 1.9, Cmt. [1]. “Representing one side in a lawsuit and then switching to represent the other in the same matter clearly implicates loyalty to the first client and protection of that client's confidences...” RPC 1.9, Cmt. [1a]. “The lawyer's duty of loyalty survives the termination of the former representation to the extent that it precludes the lawyer from acting to deprive the former client of the benefit of the lawyer's prior work on the former client's behalf.” RPC 1.9, Cmt. [3a].

RPC 1.9(a)<sup>11</sup> would permit a lawyer who formerly represented the child and/or the child's interest as GAL pursuant to SCRs 40 and/or 40A to represent another subsequent interest(s) in the same substantially related matter only if consistent with the interest of the former client/child. A lawyer who formerly represented the child or the child's interest(s) as GAL pursuant to SCRs 40 and or 40A could represent adoptive parents in the subsequent adoption proceeding only if the adoption is consistent with the interests of the former client/child.

SCR 40 (d)(1)(vi)<sup>18</sup> requires a GAL to interview parents or legal guardians of the child only with permission of their counsel, or, in the absence of permission, through formal discovery. But SCR 40A §8(b)(3)<sup>19</sup> requires the GAL to interview anyone, including foster parents of the child, who have

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(c) A party to the proceeding or the party's employee or representative shall not be appointed as the child's guardian ad litem.

<sup>17</sup> Tennessee Rule of Professional Conduct 1.9, Cmt. [3] provides:

[3] Matters are “substantially related” for purposes of this Rule if they involve the same transaction or legal dispute or other work the lawyer performed for the former client or if there is a substantial risk that confidential factual information that would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter, unless that information has become generally known...

<sup>18</sup> SCR 40(d)(1)(vi) provides:

**(d) Responsibilities and duties of a lawyer guardian ad litem.**

The responsibilities and duties of the guardian ad litem include, but are not limited to the following:

(1) Conducting an independent investigation of the facts that includes:

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(vi) Interviewing the parent(s) and legal guardian(s) of the child with permission of their lawyer(s) or conducting formal discovery to obtain information from parents and legal guardians if permission to interview is denied;

<sup>19</sup> Supreme Court Rule 40A, §8(b)(3) provides:

**Section 8. Duties/Rights Of Guardian Ad Litem**

(b) A guardian ad litem shall:

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significant knowledge of the child's history and condition and the parties to the proceeding. Some of the individuals interviewed by the GAL pursuant to SCR 40A could well be parties or witnesses in subsequent proceedings. Can the lawyer who was formerly the GAL use or reveal information which the GAL gathered from parents, legal guardians, foster parents, parties or others in the proceeding in which they were appointed GAL in subsequent custody, termination, adoptions or other proceedings? RPC 1.9(c)<sup>11</sup> precludes the lawyer who formerly represented the child or the child's interest as GAL from revealing information relating to the former representation or using such information, regardless of its source, to the disadvantage of the child or the child's interest, except as provided in the rule. See cmt. [3] to RPC 1.6. By whom and under what circumstances consent can be given by or on behalf of the child to reveal or use such information is a matter of substantive law beyond the scope of the Rules of Professional Conduct.

RPC 1.6<sup>13</sup>, 1.8(b)<sup>14</sup> and RPC 1.9(c)<sup>11</sup> prohibit revealing or using information with respect to current clients and former clients, respectively. The Rules of Professional Conduct do not otherwise limit an attorney who was GAL for a child from revealing or using of information obtained from other parties or witnesses. Likewise conflicts of interest are not created by RPC 1.7<sup>10</sup> or 1.9(a)<sup>11</sup>, except as provided herein, with respect to individuals who were other parties or witnesses in the matter for which the lawyer had been appointed GAL for the child.

Both SCR 40<sup>4</sup> and 40A<sup>8</sup> provide that the GAL does not function as a special master for the court and SCR 40A<sup>8</sup> provides that the GAL shall not perform any other judicial or quasi-judicial responsibilities. Even so, the GAL was appointed by the court, and as a courtesy to the court which appointed the GAL and to ensure that the concurrent or subsequent representation of another interest is not inconsistent with the interest(s) of the child, it would be advisable to secure consent or permission from the judge who had appointed the lawyer as GAL to represent the other interest, including representation of the adoptive parents in a subsequent adoption proceeding regarding the child.

### CONCLUSION

RPC 1.7 would permit a lawyer representing a child or the child's interest as GAL pursuant to SCR 40 or 40A to represent another interest(s) only if other interest(s) was consistent with and did not compromise or interfere with the GAL's exercise of their independent judgment on behalf of the child or the child's interest and did not require the lawyer to violate RPC 1.6 or 1.8(b) by revealing information relating the representation or using such information to the disadvantage of the child or the child's interest. However, other statutes and/or rules of substantive or procedural law appear to prohibit a lawyer from serving as GAL while representing other interest(s) in the same matter. RPC 1.9(a) would permit a lawyer who formerly represented the child and/or the child's interest as GAL

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(3) within a reasonable time after the appointment, interview:

- (i) the child in a developmentally appropriate manner, if the child is four years of age or older;
- (ii) each person who has significant knowledge of the child's history and condition, including any foster parent of the child; and
- (iii) the parties to the suit;

pursuant to SCRs 40 and/or 40A to represent another subsequent interest(s) in the same or substantially related matter only if the interest(s) is consistent with the interest of the former client/child and does not violate RPC 1.9(c) by revealing information relating the former representation or using such information to the disadvantage of the child or the child's interest. A lawyer who formerly represented the child or the child's interest(s) as GAL pursuant to SCRs 40 and or 40A could represent adoptive parents in the subsequent adoption proceeding only if the adoption is consistent with the interests of the former client/child and they did violate RPC 1.9(c). To ensure that the concurrent or subsequent representation of another interest is not inconsistent with the interest(s) of the child, it would be advisable to secure consent or permission from the judge who had appointed the lawyer as GAL to represent the other interest, including representation of the adoptive parents in a subsequent adoption proceeding regarding the child.

This 6<sup>th</sup> day of December, 2013.

**ETHICS COMMITTEE:**

Scott Reams

Michael Callaway

Wade Davies

**APPROVED AND ADOPTED BY THE BOARD**

# The Supreme Court Revises Rule 9

By Order effective January 1, 2014, the Supreme Court filed comprehensive changes to Supreme Court Rule 9 governing attorney discipline. Changes to new Rule 9 include: recusal by Board of Professional Responsibility members (Section 4.6); recusal by district committee members (Section 6.5); delinquent compliance fees (Section 10.6); requirements for reinstatement orders (Sections 10.6 and 30.4); practice monitors (Section 12.9); immunity (Section 17); appointment of receiver attorneys (Section 29.2); and suspensions for default on student loans (Section 37).

By Orders filed October 3, 2013 and November 25, 2013, the Supreme Court amended typographical errors to new Rule 9, Sections 30.4; 10.6 and 26.4. New Rule 9 in its entirety may be read on the Board's website at [www.tbpr.org](http://www.tbpr.org).

# Annual Report for Fiscal Year 2012/2013

The Board of Professional Responsibility recently issued the attached 32nd Annual Report for Fiscal Year 2012/2013. Each year, the Board produces this report to provide a brief synopsis of the Board's activities throughout the year. Copies of all of the Board's annual reports are available on the Board's website at [www.tbpr.org](http://www.tbpr.org).

# Board of Professional Responsibility

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## 32<sup>nd</sup> Annual Discipline Report Fiscal Year July 1, 2012 – June 30, 2013

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### 1. Number of Tennessee Attorneys

- Active Attorneys	21,142
- Inactive Attorneys	3,833
- Pro Hac Vice Attorneys	833

### 2. Complaints

Complaints Received:	1,474
Complaints Pending at beginning of Fiscal Year:	<u>591</u>
Total Complaints:	2,065

#### Disposition:

Administrative Dismissals:	587
Investigative Dismissals:	613
Transfer to Formal Charges:	170
Diversions:	11
Private Informal Admonitions:	69
Private Reprimands:	13
Informal Public Censures:	30
Consent to Disbarment:	6
Transfer to Disability Inactive:	13
Placed on Retired Status:	17
Other: <sup>20</sup>	<u>7</u>

Total Complaints processed: 1,536

### 4. Formal Proceedings:

Formal cases filed:	79
Formal cases pending at beginning of Fiscal Year:	<u>73</u>
Total formal proceedings:	152

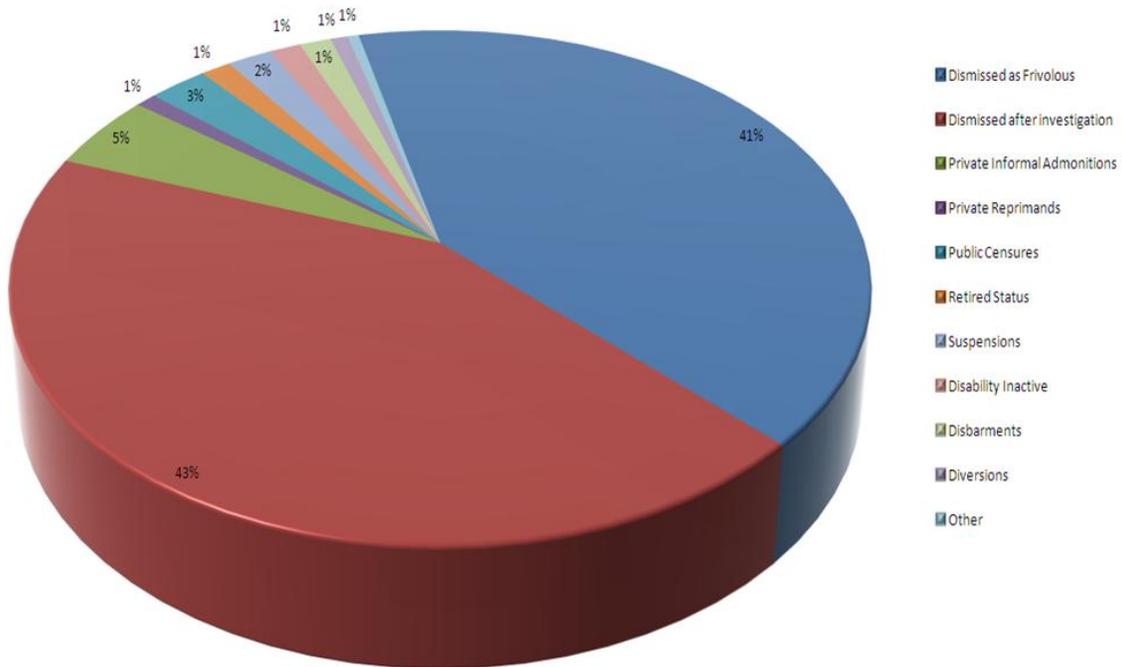
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<sup>20</sup> Abated by death; complaint withdrawn; duplicate file.

**5. Formal Proceedings Disposition:**

Dismissals:	3
Public Censures:	7
Suspensions:	28
Disbarments:	14
Transfer to Disability Inactive:	7
Placed on Retired Status:	2
Temporary Suspensions:	15
Reinstatements:	3
Other actions: <sup>21</sup>	7
	<hr/>
Total:	86

**Resolution of Complaints/Formal Proceedings  
July 1, 2012 -- June 30, 2013**



<sup>21</sup> Abated by death; voluntary non-suit; dismissed.

## 6. Non-disciplinary/Administrative Suspensions:

Non-payment of Annual Fee:	149
Continuing Legal Education non-compliance:	144
Interest on Lawyer's Trust Accounts non-compliance:	135
Professional Privilege Tax non-compliance:	41
Total:	469

## 7. Trust Account Overdrafts

### Activity:

Overdrafts Received:	172
Overdrafts Pending at beginning of Fiscal Year:	<u>16</u>
Total:	188

### Disposition:

Overdrafts Closed:	127
Overdrafts transferred to Investigation:	49
Overdrafts Pending as of end of Fiscal Year:	<u>12</u>
Total:	188

## 8. Consumer Assistance Program (CAP)

### Caseload:<sup>22</sup>

Cases Opened:	1021
Cases Closed:	985
Activities Opened:	1820
Activities Closed:	1946

### Disposition:

Mediate:	1096	34%
Advise:	1846	57%
Referrals:	275	9%
Total:	3217	100%

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<sup>22</sup> Each case number involves a client and a particular attorney, but within that case, there can be multiple activities. For example, a case is first opened and a minor communication problem is successfully mediated. Later, there may be a question about a returned file, which is mediated. These are two separate activities within the same case.

## **9. Education and Information**

### a. Ethics Opinions

1. Formal Ethics Opinions: In Fiscal Year 2012-2013, the Board issued three Formal Ethics Opinions:

- **2012-F-91(c)** concerning the ethical propriety of employment of lawyers admitted to practice in other jurisdictions but not admitted to practice in Tennessee;
- **2012-F-155** regarding whether district attorneys can ethically comply with the requirements of T.C.A. 40-32-101(a); and
- **2013-F-156** concerning whether a criminal defense lawyer alleged by a former criminal client to have rendered ineffective assistance of counsel may voluntarily provide information to the prosecutor defending the claim outside the court supervised setting.

2. Advisory Opinions: Disciplinary Counsel responded to 2,064 phone and internet inquiries from attorneys seeking ethical guidance.<sup>23</sup>

b. Continuing Legal Education (CLE) Presentations: Between July 1, 2012 and June 30, 2013, Disciplinary Counsel presented forty-nine (49) CLE seminars, attended by approximately 3,417 attorneys. The Board also hosted its Ethics Workshop on October 30, 2012, attended by 101 attorneys.

c. *Board Notes*: In January 2013, the Board resumed publication of *Board Notes*, the Board's bi-annual newsletter providing education and information to the bar and the public. *Board Notes* is emailed to all attorneys and judges and is published on the Board's website.

d. Website at [www.tbpr.org](http://www.tbpr.org): The Board continues to enhance its website with current rule changes, disciplinary decisions and news for the bar and the public. The Board posts disciplinary Judgments and has uploaded all Hearing Panel Judgments, Circuit, Chancery and Supreme Court decisions from 2008 to the present.

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<sup>23</sup> Tennessee attorneys may submit ethics inquiries to the Board by calling 615-361-7500, ext. 212, or via the Board's website at [www.tbpr.org](http://www.tbpr.org).

# Trust Accounting Formal Ethics Opinion 89-F-121

To address trust account issues presented by complaints and trust account overdrafts, the Board has made available on its website a video on trust accounting from the Board's 2013 Ethics Workshop. Additionally, attached is the Board's Formal Ethics Opinion 89-F-121 which outlines the mechanics and requirements for trust accounting. Attorneys may direct specific trust accounting questions to the Board's Ethics Counsel, James Vick, online at [ethics@tbpr.org](mailto:ethics@tbpr.org) or by phone at 1-800-486-5714, ext. 212.

**BOARD OF PROFESSIONAL RESPONSIBILITY  
OF THE  
SUPREME COURT OF TENNESSEE**

**FORMAL ETHICS OPINION 89-F-121**

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THE MECHANICS  
OF  
TRUST ACCOUNTING

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The Board issues this Formal Ethics Opinion on the Mechanics of Trust Accounting for the consideration of members of the Tennessee Bar by adopting the following portions of a treatise on Trust and Business Accounting for Attorneys, Second Edition, 1988, by David E. Johnson, Jr., Esquire, Director, Office of Attorney Ethics of the Supreme Court of New Jersey, as follows:

...In most states, whether by rule, statute or case law, attorneys are simply admonished to account in accordance with generally accepted accounting practices. Most attorneys, however, are not accountants and so this general direction, without more, leaves much to be desired.

...(C)omplete compliance with trust accounting duties requires familiarity with only four items:

- A. Trust Checkbook...
- B. Trust Receipts Book...
- C. Trust Disbursements...
- D. Client Trust Ledger Book...

**A. Trust Checkbook**

This is the most familiar of the trust accounting documents. It is, as it says, simply a form of checkbook. It may be identical in form to a personal checkbook, and anyone who can properly keep a personal checkbook can easily maintain a trust checkbook....

There are two parts to the checkbook itself: the checks and the stub. The check itself is self-explanatory. All checks must be pre-numbered. The stub is a miniature accounting sheet which, given a correct beginning balance, allows you to add-in the amount of all deposits and to subtract-out the amount of all the checks (and bank fees), giving you a new correct running balance. For those who like to look at these things horizontally, instead of vertically as the stubs are produced, the information would look like this:

Date	Description of Client or Matter	Deposits (ADD)	Check (Subtract)	Running Balance
5/2/1987	John Smith	\$5,000		\$17,500
5/13/1987	Rebecca Sands		\$3,200	\$14,300
5/20/1987	John Smith		\$1,300	\$13,000
5/20/1987	John Smith		\$3,700	\$ 9,300
5/21/1987	Burtol Corp	\$2,000		\$11,300

Monies come into the trust account via deposits, either by the lawyer or by the financial institution. If the attorney deposits the money, a deposit slip... will be completed by filling out the date, amount, client's last name or file number (to protect client confidentiality) and the source of the deposit by recording the bank identification code number of the check that is being deposited. These codes are found at the upper right-hand corner of a check. They are an identification code developed by the American Banker's Association and enable anyone with the code tables to locate the bank on which the check is drawn very accurately.

Some deposit slips are carbonized and the carbon portion, called the duplicate deposit slip, is returned to the attorney by the teller at the time the deposit is made. If carbonized deposit slips are not used, the teller will give the attorney a receipt showing the day, time and amount of the deposit. In this case it is important to record right on the receipt, the client's name or file number and the source bank code of the check that was deposited.

Deposits may also be made by the bank issuing a memorandum (a/k/a credit memo) showing the date, amount and source of the monies so deposited... This is the case where a client wires money directly from her account to the attorney's account.

Monies may be disbursed (a/k/a withdrawn), either by the attorney or the financial institution. Checks written on a trust account are identical to other checks... Checks, like deposits, must list the date and client or legal matter (*i.e.*, purpose). As a corollary to the source, which is required to be noted on the deposit ticket, every check must show the payee.

As with deposits, withdrawals can be made by the financial institution issuing a memorandum (a/k/a debit memo)... Thus, for example, where funds are wired from your account to that of your client in California, your financial institution will issue a memorandum advising the date, amount and source of the monies so transmitted. Debit memos are also issued for service items such as (a) cost of wire transfers, (b) monthly service charges, (c) overdraft notices, (d) check printing charges, (e) returned item notices, and other services rendered to you for which a fee is charged....

That is all there is to handling a trust account checkbook! It is really no different from handling a personal checking account. Three rules, however, make it work. First, all entries (deposits and disbursements) should be recorded contemporaneously (within 24 hours of the event). Second, all entries must be exact, to the penny. There is no room for rounding-off figures. This may be tolerable for personal accounts, but is definitely not acceptable for a trust account. Third, you must always keep a running balance preferably after each deposit or disbursement. ...

## **B. and C. Trust Receipts and Disbursements Books**

While these items sound foreboding to some, they are in fact much less complicated than the trust checkbook. In fact the Trust Receipts Book is nothing more than a chronological listing of every deposit made to the trust account. Conceptually, a yellow legal pad would serve the purpose! From the point of view of generally accepted accounting practice, however, a bound book (or journal) which gives these records some permanency is the required form. ...Note that it contains the exact same information required to be maintained in the trust checkbook stub and on the deposit slip or receipt itself, namely:

- (a) date;
- (b) source;
- (c) client name or matter; and
- (d) amount.

Similarly, the Trust Disbursements Book is a chronological listing of every disbursement made from the trust account. ...It contains the identical information required to be recorded on the trust checkbook stub and on the check (or a debit memorandum) itself, namely:

- (a) date;
- (b) payee;
- (c) purpose; and
- (d) amount.

In defining a Trust Receipts Book I stated that it must contain a chronological list of each and every deposit. This includes all credit memos from the financial institutions. ...Similarly, the Trust Disbursements Book must reflect each and every disbursement including any debit memos received....

At the end of each month, the total of all monies received should be added up as reflected in the Trust Receipts Book. Likewise, the total of all disbursements must be added as shown in the Trust Disbursements Book. These monthly totals should then be placed on the Control Sheet. ...(T)he Control Sheet is one of the first steps in the reconciliation process and filling out the Control Sheet monthly puts you a step ahead in the reconciliation process.

But why record the same information twice, you might ask? Why record all the same information you included in writing out a check in a Trust Disbursements Book? Good question! There are several reasons.

The first relates back to...maintaining an audit trail. The deposit slips, receipts, checks and memoranda are all referred to as source documents. They are the documents which actually "move" money around. Therefore, they must reflect the descriptive information above so they provide a complete audit trail, a direct link, to the trust receipts and disbursements books and to the clients' ledger book which will be covered next. But they are not permanent records. Recording their information in receipts and disbursements books, however, gives them permanency and accords with generally accepted accounting practice. ...

The other reasons relate to the purposes for the trust receipts and disbursements books, which are three-fold. First and foremost these two records, under the commonly used double-entry bookkeeping method, permit you to double check the running balance in the trust account to make sure it is correct... The second purpose which these two books serve is an easily accessible means of

locating items by arranging all deposits together chronologically in one book, and all disbursements together chronologically in another book. This is particularly handy at reconciliation time when a transposition error has occurred. In short, it makes it easy to find mathematical errors chronologically. Finally, and this is very important to realize, trust receipts and disbursements books allow you to look at your trust account activity on a macro-level. Add up all of the deposits listed in your trust receipts book for a particular month (or year) and see how much trust money you took in during that period. Similarly, add up all the disbursements in your trust disbursements book for a year (or a month) and see how much trust money went out during that period. Add the amount of deposits to the amount of disbursements for a given period, say one year, and you can tell the total amount of client funds for which you were responsible.

All of the three records that have been discussed so far--the Trust Checkbook, Trust Receipts Book and Trust Disbursements Book--give the "big picture," the overview. However, while this is very important, it is at least equally important to know, at any given time, exactly how each client's funds stand. This can be ascertained by the fourth and final item -- the Clients' Trust Ledger.

#### **D. Clients' Trust Ledger Book**

...(S)eparate clients are separate accounts. Indeed, this is the foundation of trust accounting, maintaining the individual separation and control that each client has the right to expect.

In order to maintain this full control and separate accountability of each individual client's trust funds, we maintain an individual accounting record of every deposit to and disbursement from that particular client's account. We do so by maintaining a separate book, called a Clients' Trust Ledger, with a separate page for each trust client.

The concept of an appropriate ledger book ... contemplates an integrated record which will show the current status of all funds collected or received for the credit of a particular client or beneficiary, all payments out and the amount, if any, remaining due the client. ...The Client Trust Ledger Book itself may be either bound or loose leaf, with removable ledger sheets which may be taken out when the client matter is closed. Original closed ledger sheets should not, however, be placed in the closed case file where they will be lost forever unless the name of the client is recalled. While a photocopy of the closed ledger sheet may properly be placed in the individual client case file, the original should be placed in a closed three ring binder and arranged alphabetically for future reference.

A separate client ledger sheet must... be maintained for each separate trust client. Thus, an entirely separate page must be set up for each client, regardless of the fact that all funds coming into the attorney's hands are disbursed simultaneously. This situation commonly occurs, for example, in real estate transactions. Good record keeping practices indicate that the reverse side of a ledger sheet should also be reserved for the sole use of that single client. Do not use the reverse side of one client's ledger for another client's case. Likewise, where a single client has multiple matters being handled by the same attorney, each separate financial matter should be reflected on a separate client ledger sheet.

...Like the trust account checkbook, a running balance on each individual client ledger sheet is maintained. This is so because we must NEVER disburse more money than we have on hand (collected) to the credit of that individual client. Keeping a running balance permits the attorney to know this at a glance.

Also, note the descriptiveness of the client ledger sheet. ...It must reflect:

- (1) the source of funds deposited;
- (2) the names of all persons (i.e., clients) for whom funds are or were held;
- (3) the amount of such funds;
- (4) the description and amounts of all charges or withdrawals (i.e., disbursements) from such accounts;
- (5) the names of all persons to whom funds were disbursed.

### Putting It All Together

We have separately looked at each of the four items that comprise the basics of correct attorney trust accounting. They are:

- A. Trust Checkbook;
- B. Trust Receipts Book;
- C. Trust Disbursements Book; and
- D. Clients' Trust Ledger Book.

Now we shall see how they fit together to form an integrated accounting system.

...(A)s a deposit comes in, say a settlement in a negligence matter, the check is received by the attorney (Step 1). The attorney then prepares a source document, which is a deposit slip (Step 2), and physically makes the deposit and has the duplicate deposit slip returned, stamped received with the date. This information is then entered in the trust checkbook (Step 2). Next, the deposit information is entered chronologically in the Trust Receipts Book (Step 3) and is also recorded on the individual client's trust ledger (Step 4).

Set forth below is a simple key to show the trust documents on which deposit and disbursement information must be recorded.

### TRUST ENTRY KEY

<u>DISBURSEMENTS</u>	<u>TRUST RECORDS</u>	<u>ENTER DEPOSITS</u>	<u>ENTER</u>
A.	Trust Checkbook	X	X
B.	Trust Receipts Book	X	
C.	Trust Disbursements Book		X
D.	Clients' Trust Ledger	X	X

## Reconciliation -- The 3-Way Check

Everybody makes mistakes when it comes to figures. Even banks and accountants make mistakes on occasion. This should not be surprising because there are a lot of ways that mistakes can be made. Simple arithmetic mistakes in addition or subtraction are common. Transposition errors occur when our eye rearranges the sequence of numbers and we record \$122.92 when the correct figure is \$129.22. In a similar vein, banks, which process checks and deposits electronically overnight by the millions, will sometimes have an encoding error when one of its coders reads a \$1,000 check but encodes the amount at the bottom right-hand corner as \$10,000. Other errors which may occur run the gamut from simply skipping one of many lines while transferring figures from one list to another, to perhaps the simplest mistake of all -- forgetting to record a check or deposit at all.

A reconciliation allows the attorney to detect when an error has occurred by showing that items, which should balance, do not balance. Our record keeping rule (and generally accepted accounting practice) requires that a reconciliation be performed at least quarterly.

...Naturally, the more frequently an account is reconciled, the sooner one will be able to detect, and thus correct, an error. The best rule is to reconcile monthly. Copies of all records reflecting quarterly reconciliations must be retained.

Reconciliation is the process by which all required trust records are brought into agreement. More simply, perhaps, it represents a balancing process by which the trust account records are all brought into a state of equilibrium. Based upon our model double-entry bookkeeping system, a full reconciliation requires a three-step review and analysis of the four documents.... By this process:

- (1) the balance of all trust receipts and disbursements is reconciled to the total of individual client ledger balances on hand;
- (2) the total of individual client ledger balances on hand is then reconciled to the trust checkbook balance; and finally,
- (3) the trust checkbook balance (as adjusted) is then reconciled with the balance on the trust bank account statement.

### STEP NO. 1

The very first step in the reconciliation process is to obtain a correct beginning balance. You can never reconcile an account unless you know the correct balance which you should have on hand to start with. When a new trust account is opened, the first time the account is reconciled the beginning balance will be zero. The beginning balance for each succeeding period for which a reconciliation is prepared will necessarily depend upon the prior reconciled balance being correct. This requires any discovered errors to be resolved. If you are not sure that the beginning trust balance is correct, you should consult a bookkeeper or an accountant. Carrying an incorrect balance only compounds the problem, as time makes finding and correcting the errors more and more difficult.

## STEP NO. 2

The second step in the reconciliation process is to add up all items for the reconciliation period (i.e., month or quarter) that have been recorded in the Trust Receipts Book.... The same total is then compiled for the Trust Disbursement Book.... Both of these figures are placed on the Receipts/Disbursements Control Sheet..., together with the beginning balance. The total of trust funds received is then added to the beginning balance. From the resulting figure, the total of trust funds disbursed is subtracted. This results in a new balance figure. It is this figure which will form the bedrock of the reconciliation process. That figure is also placed in the appropriate place on the Trust Reconciliation Sheet.

## STEP NO. 3

Next, prepare a list of the names and balances on hand (as of the bank statement date) for all trust clients and place them in the appropriate location on the Trust Reconciliation Sheet. These client figures are obtained by taking the last running balance from each individual Client's Trust Ledger Sheet and inserting the total of all individual ledger balances in the appropriate place on the Trust Reconciliation Sheet. (If there are many clients, a separate schedule of clients' ledger balances should be made.)

## STEP NO. 4

Compare the Control Sheet Balance to the total Clients' Trust Ledger Balance. They must be equal.

## STEP NO. 5

Place the amount of the checkbook balance in the Trust Checkbook in the appropriate place on the Trust Reconciliation Sheet. Compare the amount of the Total Clients' Ledger Balance to the balance in the Trust Checkbook. They must be equal.

## STEP NO. 6

List all outstanding checks and outstanding deposits (also called deposits in transit) on the Trust Reconciliation Sheet that are not reflected on the latest monthly bank statement for the reconciliation period. Add the outstanding checks to the Trust Checkbook Balance and place that amount in the place indicated on the Trust Reconciliation Sheet. Subtract from that figure all outstanding deposits and place that amount opposite the entry titled "Reconciliation Balance." Insert the Bank Statement Balance on the Trust Reconciliation Sheet.

## STEP NO. 7

Compare the Reconciliation Balance to the Bank Statement Balance - they must be equal.

Congratulations, if both figures are equal! If they are you have successfully, and correctly, reconciled your trust account. If there is a difference between the two figures roll up your sleeves, call in your bookkeeper or check with an accountant. Whatever you do, do not do nothing. Figures which do not reconcile only get harder to reconcile with time.

This 9th day of December, 1989.

ETHICS COMMITTEE:

/s/ Kitty G. Grubb

/s/ Michael E. Callaway

/s/ Charles T. Herndon, III

**APPROVED AND ADOPTED BY THE BOARD**

## New BPR Cards

The Board of Professional Responsibility (BPR) is pleased to announce the launch of our new and improved BPR cards. The cards were changed from a paper stock to a more durable stock that is heat, moisture and tear resistant. The new cards reflect the Board's effort to provide Tennessee attorneys with a professional, yet durable bar card to represent the annual renewal of their law license. Attorneys recently receiving these new cards have indicated they find the cards fresh and more tailored to meet their needs. We hope these more durable cards will be helpful to Tennessee attorneys.

# Disciplinary Actions

- (July 2013 – December 2013)
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## **DISBARMENTS**

### ***Jimmy Vallejo Delgado (Texas)***

On August 7, 2013, Mr. Delgado was disbarred by the Tennessee Supreme Court and was ordered to make restitution in the amount of \$96,826.00 to former clients in addition to paying costs of the disciplinary proceedings.

On June 1, 2012, the Board filed a Petition for Discipline against Mr. Delgado based upon his representation of clients in a Georgia wrongful death case. A hearing panel found Mr. Delgado never informed his clients that he was not licensed to practice law in Georgia. He did not meet with his clients personally, and he settled the wrongful death case without his clients' knowledge or consent. Mr. Delgado failed to promptly remit settlement funds to his clients.

Mr. Delgado's conduct violated Georgia Rules of Professional Conduct 1.2(a) (Scope of Representation); 1.15(I) and (II) (Safekeeping Property); 5.5 (Unauthorized Practice of Law); 8.4 (Misconduct) and 9.4 (Jurisdiction and Reciprocal Discipline). In addition, Mr. Delgado has violated Tennessee Rule of Professional Conduct 8.1(b) by failing to respond to the Board of Professional Responsibility regarding a complaint of misconduct.

### ***Johnny Von Dunaway (Campbell County)***

On October 28, 2013, the Tennessee Supreme Court disbarred Johnny Von Dunaway, of Campbell County, Tennessee. Pursuant to Tennessee Supreme Court Rule 9, Section 18.5, Mr. Dunaway's disbarment is effective November 7, 2013. Mr. Dunaway consented to disbarment because he could not successfully defend himself on charges filed against him with the Board alleging that he filed a false statement with the Internal Revenue Service for the 2008 tax year, in violation of 26 U.S.C. § 7206(1). Mr. Dunaway's actions violated Tennessee Supreme Court Rule 8, Section 8.4 (misconduct).

### ***Derek A. Artrip (Rutherford County)***

On November 14, 2013, Derek A. Artrip, formerly of Murfreesboro, Tennessee, was disbarred by the Tennessee Supreme Court. On July 14, 2012, Mr. Artrip was temporarily suspended for failure to respond to disciplinary complaints. Although he sought reinstatement, Mr. Artrip failed to meet the conditions of reinstatement and, therefore, he has remained on suspension since that time.

## **DISBARMENTS (Continued)**

The Board filed a Petition for Discipline against Mr. Artrip based upon two (2) complaints of misconduct for abandonment of practice and neglect of client matters. In the first complaint, Mr. Artrip was hired to represent a client in a child custody matter. Mr. Artrip failed to adequately communicate with his client during the representation regarding the status of her case and the use of her retainer fee. In early 2012, Mr. Artrip promised to have the matter heard by a court within thirty days but he failed to do so. In the second complaint, Mr. Artrip neglected a client matter and abandoned his law practice. He failed to return the client's file or to provide any information about the status of the matter. Mr. Artrip did not respond to the Petition for Discipline and did not appear for the final hearing, despite having notice of both.

Mr. Artrip's ethical misconduct violates Rules of Professional Conduct 1.1, Competence; 1.3, Diligence; 1.4, Communication; 1.5, Fees; 1.16(d), Declining and Terminating Representation; 3.2, Expediting Litigation; 8.1(b), Bar Admission and Disciplinary Matters; and 8.4(a) and (d), Misconduct.

### ***Lance William Parr (Jefferson County, Alabama)***

On November 18, 2013, Lance William Parr of Birmingham, Alabama, was disbarred by the Tennessee Supreme Court, pursuant to Tennessee Supreme Court Rule 9 Section 4.2. He was ordered to pay restitution to his former clients as a condition of reinstatement.

On April 5, 2013, a Petition for Discipline was filed against Mr. Parr. The complaints arose from Mr. Parr's suspension from practicing law before the United States District Court for the Eastern District of Tennessee. The Hearing Panel found that Mr. Parr neglected his cases, failed to communicate with his clients and opposing counsel, failed to protect his clients' interests, demonstrated incompetence and abandoned his practice. Mr. Parr did not respond to the Petition for Discipline and did not appear for the final hearing, despite having notice of both.

The Hearing Panel determined that Mr. Parr violated Rules of Professional Conduct 1.1, Competence; 1.3, Diligence; 1.4, Communication; 1.16, Terminating Representation; 3.2, Expediting Litigation; 3.4, Fairness to Opposing Counsel; 8.4(a) and (d), Misconduct.

### ***William Alan Alder (Davidson County)***

On December 26, 2013, William Alan Alder of Nashville, Tennessee was disbarred by Order of the Tennessee Supreme Court. He must pay the Board of Professional Responsibility's costs in this matter.

In handling a personal injury suit, Mr. Alder failed to obtain service of process on the defendants resulting in the suit being dismissed with prejudice. Mr. Alder failed to inform his clients that the case had been dismissed. Instead, he misled them to believe that the lawsuit was progressing normally and eventually told them the lawsuit had settled, providing them a fictitious release.

## **DISBARMENTS (Continued)**

His actions violate the following Rules of Professional Conduct: 1.1, Competence; 1.3, Diligence; 1.4, Communication; 1.16, Declining or Terminating Representation; 3.2, Expediting Litigation; 8.1(b), Bar Admission and Disciplinary Matters; and 8.4(a) and (c), Misconduct.

## **SUSPENSIONS**

### ***Thomas H. McKinnie, Jr. (Williamson County)***

On June 28, 2013, Mr. McKinnie was suspended from the practice of law by the Tennessee Supreme Court for two (2) years. Mr. McKinnie submitted a Conditional Guilty Plea that was approved by the Hearing Panel, the Board and the Supreme Court. Mr. McKinnie violated Rules of Professional Conduct by knowingly writing himself a check from his trust account that created an overdraft, failing to account for a portion of the money that he paid himself and not adequately responding to requests from the Board for an accounting.

Mr. McKinnie's actions violated Rules of Professional Conduct 1.15 (Safekeeping Property); 8.1(b) (Bar Admission and Disciplinary Matters) and 8.4(a) (Misconduct).

### ***Barbara S. Freemon (Davidson County)***

On July 5, 2013, Ms. Freemon's law license was suspended by the Tennessee Supreme Court for a period of one (1) year. Ms. Freemon was also ordered to pay restitution to a former client as a condition precedent to reinstatement.

A Petition for Discipline was filed against Ms. Freemon on March 8, 2013, based upon two complaints. The first complaint alleged that Ms. Freemon agreed to serve as trustee for an *inter vivos* trust set up to manage her brother's assets. Upon the death of her brother, Ms. Freemon did not return the trust assets to the named beneficiaries. The second complaint alleged that Ms. Freemon accepted a non-refundable fee to represent clients in a codes dispute, promising to file an action within 45 days. Ms. Freemon failed to prepare the written retainer agreement required when accepting a non-refundable fee. Ms. Freemon made several representations to her clients that she was preparing a petition but never prepared or filed any action on their behalf. Despite her failure to perform she refused to refund the full fee to the clients. Ms. Freemon also failed to respond to the Board. Ms. Freemon entered into a Conditional Guilty Plea admitting to the misconduct.

Ms. Freemon's actions violated Rules of Professional Conduct 1.1 (Communication); 1.2 (Scope of Representation); 1.4 (Communication); 1.5 (Fees); 1.15 (Safekeeping Property and Funds); 8.1 (Bar and Disciplinary Matters) and 8.4(a) (Misconduct).

## **SUSPENSIONS (Continued)**

### ***Timothy Darnell Flowers (Shelby County)***

On August 1, 2013, Mr. Flowers was suspended from the practice of law by Order of the Tennessee Supreme Court for three (3) years, retroactive to June 27, 2010. Mr. Flowers was ordered to pay restitution to former clients. Mr. Flowers is currently on suspension based upon Orders entered by the Supreme Court in 2010 and 2011.

A Petition for Discipline was filed against Mr. Flowers on May 7, 2013. The petition contained four (4) complaints alleging that Mr. Flowers committed ethical misconduct in his representation of clients in 2005-2009. Prior to his suspension in 2010, Mr. Flowers had a solo immigration practice. Mr. Flowers failed to advise his immigration client of a telephonic court date and therefore the client did not appear. This resulted in an order for removal being entered. Mr. Flowers failed to file a brief or other supporting argument for another client in an appeal to the Board of Immigration Appeals, resulting in dismissal of the appeal. Mr. Flowers changed venue in a matter without advising the client and failed to notify the client of a court date. Finally, Mr. Flowers failed to introduce proof regarding relocation in an asylum matter resulting in the dismissal of the case.

Mr. Flowers' actions violated Rules of Professional Conduct 1.1 (Competence); 1.3 (Diligence); 1.4 (Communication); 1.5(a) (Fees); 1.16(d) (Declining and Terminating Representation); 3.2 (Expediting Litigation) and 8.4(a) and (d) (Misconduct).

### ***William Alan Alder (Davidson County)***

On August 7, 2013, Mr. Alder was suspended by Order of the Tennessee Supreme Court for two (2) years, to run consecutive to a one (1) year suspension entered December 28, 2012. He must also make restitution to a client, consult with Tennessee Lawyers' Assistance Program and pay the Board of Professional Responsibility's costs in this matter.

On January 31, 2013, the Board filed a Petition for Discipline alleging that Mr. Alder failed to diligently handle two lawsuits, failed to communicate adequately with his clients, and made a misrepresentation to one client.

Mr. Alder's actions violated Rules of Professional Conduct 1.2 (Scope of Representation); 1.3 (Diligence); 1.4 (Communication); 1.15 (Safekeeping Property); 1.16(d) (Declining and Terminating Representation); 3.2 (Expediting Litigation); 8.1(b) (Bar Admission and Disciplinary Matters) and 8.4(a), (c) and (d) (Misconduct).

### ***Hudson Owen Maddux (Hamilton County)***

On August 9, 2013, Mr. Maddux was suspended for nine (9) months by Order of the Tennessee Supreme Court.

The Board of Professional Responsibility filed a Petition for Discipline against Mr. Maddux alleging that he committed ethical misconduct in his representation of plaintiffs in a civil action regarding a business dispute with the partner of the plaintiffs' company. In an effort to collect money

## **SUSPENSIONS (Continued)**

due to the company, Mr. Maddux sent letters to customers demanding that payment be made directly to him and that he would deposit the funds into the Court pending a resolution of the business dispute. Instead of depositing the funds into the Court, Mr. Maddux gave the money to his client. Further, Mr. Maddux did not notify the opposing party that the funds had been collected until after he made the distribution to his client and a motion had been filed seeking payment of the funds into the Court.

After a full hearing, a Hearing Panel recommended that Mr. Maddux be suspended for nine (9) months. Mr. Maddux appealed the Hearing Panel's recommendation to the Chancery Court of Hamilton County. The Chancery Court affirmed the Hearing Panel's decision. Mr. Maddux appealed to the Supreme Court. The Supreme Court affirmed the Chancery Court's judgment in an opinion filed on August 9, 2013.

Mr. Maddux's actions violated Rules of Professional Conduct: 1.15(b) (Safekeeping Property); 4.1 (Truthfulness and Candor in Statements to Others) and 8.4(a) and (c) (Misconduct).

### ***Raymond Andrew Shirley (Knox County)***

On September 23, 2013, the law license of Mr. Shirley was suspended by the Tennessee Supreme Court for a period of one (1) year pursuant to Tennessee Supreme Court Rule 9, Section 4.2. In addition, Mr. Shirley is required to undergo an assessment with the Tennessee Lawyers Assistance Program and engage a practice monitor for one year following any reinstatement of his license to practice law.

Mr. Shirley failed to diligently prosecute a case on behalf of his clients, failed to comply with court-ordered discovery, and failed to settle the pending lawsuit as requested by his clients. As a result of Mr. Shirley's actions and inactions in the matter, the case was dismissed by the trial court. Finally, Mr. Shirley failed to notify his clients that their case had been dismissed. Mr. Shirley entered a conditional guilty plea admitting to the misconduct.

Mr. Shirley's conduct was in violation of the Rules of Professional Conduct 1.1 (Competence); 1.3 (Diligence); 1.4 (Communication); 3.2 (Expediting litigation) and 8.4 (a) and (c) (Misconduct).

### ***Christopher Lee Brown (Shelby County)***

On September 27, 2013, Mr. Brown was suspended for three years by Order of the Tennessee Supreme Court. He must also make restitution to two clients, consult with the Tennessee Lawyers Assistance program and pay the Board of Professional Responsibility's costs in this matter.

Mr. Brown failed to act diligently and failed to communicate adequately with five clients. In addition, Mr. Brown accepted referrals from an unregistered intermediary organization in two matters. Mr. Brown also failed to comply with an Order of the Hearing Panel and made a false statement to the Hearing Panel.

## **SUSPENSIONS (Continued)**

Mr. Brown's actions violate the following Rules of Professional Conduct: 1.1 (Competence); 1.2(a) (Scope of Representation); 1.3 (Diligence); 1.4 (Communication); 1.16(d) (Declining or Terminating Representation); 3.2 (Expediting Litigation); 4.1(a) (Truthfulness in Statements to Others); 7.1 (Communications Concerning a Lawyer's Services); 7.3(b)(2) (Solicitation of Potential Clients); 7.6(b)(1)(iv) (Intermediary Organizations) and 8.4(a), (c) and (d) (Misconduct). In addition, the Hearing Panel concluded that Mr. Brown violated the following Rules of Professional Conduct in his *pro se* representation during the disciplinary proceeding: 3.3 (Candor toward the Tribunal); 8.1(b) (Bar Admission and Disciplinary Matters) and 8.4(g) (Misconduct).

### ***Dana L. Nero (Davidson County)***

On October 22, 2013, Dana L. Nero, of Nashville, Tennessee, was suspended from the practice of law by Order of the Tennessee Supreme Court for three (3) years, with eleven (11) months and twenty-nine (29) days as an active suspension retroactive to June 11, 2012, and the remainder probated. Ms. Nero was ordered to comply with her Tennessee Lawyers Assistance Program (TLAP) Monitoring Agreement signed on November 29, 2012. Finally, Ms. Nero must pay the Board's costs and expenses and the court costs within ninety days of the entry of the Order of Enforcement.

A Petition for Discipline was filed on April 2, 2013, alleging that Ms. Nero advised a witness that the witness did not have to appear in court even though she had been subpoenaed, that she failed to communicate with a client and provide him with his file following his conviction, and that she accepted a fee for which she did not perform any service. Ms. Nero entered into a Conditional Guilty Plea admitting to the misconduct.

Ms. Nero's actions violated RPC 1.3 (diligence); 1.4 (communication); 1.16(a), and (d), (terminating representation); 3.4 (g) (fairness to opposing party and counsel); 4.3 (dealing with unrepresented person); 4.4 (a) (1) (respect for rights of third persons); 8.1(a) (bar admission and disciplinary matters), and; 8.4(a), (d) and (g) (misconduct).

### ***M. Josiah Hoover, III (Knox County)***

On November 15, 2013, M. Josiah Hoover, III, of Knoxville, Tennessee was suspended by Order of the Tennessee Supreme Court for one (1) year, to run concurrently with his disbarment on November 16, 2012.

On March 26, 2012, the Board of Professional Responsibility filed a Petition for Discipline containing three complaints of ethical misconduct. Mr. Hoover charged a client excessive fees and practiced law while his license was suspended for failing to pay the Professional Privilege Tax.

His actions violate the following Rules of Professional Conduct: 1.5(a), Fees; 5.5, Unauthorized Practice of Law; and 8.4(a), Misconduct.

## **SUSPENSIONS (Continued)**

### ***Christopher Wayne Barber (Montgomery County)***

On December 9, 2013, Christopher Wayne Barber formerly of Clarksville, Tennessee, was suspended from the practice of law by Order of the Tennessee Supreme Court for three (3) years.

Pursuant to the Order of Enforcement, two (2) years of the suspension shall be served as an active suspension, and the remaining year shall be served on probation subject to certain conditions including engagement of a practice monitor. Mr. Barber is required to pay restitution in the amount of \$2,500.00 and the cost and expense of the disciplinary proceedings. Mr. Barber is required to contact Tennessee Lawyers Assistance Program (TLAP), pay all outstanding Professional Privilege Taxes and complete all Continuing Legal Education (CLE) requirements.

The Board of Professional Responsibility filed a Petition for Discipline against Christopher Wayne Barber on January 4, 2013. The Hearing Panel determined that Mr. Barber practiced law while suspended and failed to notify his client of his suspension as required by Rule 9, Sections 18 and 32.5 and withdraw as attorney of record. The Hearing Panel further found Mr. Barber failed repeatedly to respond to his client regarding the status of the case and failed to respond to the Petition for Discipline.

The Hearing Panel found Mr. Barber violated Rules of Professional Conduct 1.3 (diligence), 1.4 (communication), 1.16 (declining or terminating representation), 5.5 (unauthorized practice of law), 3.3(h) (candor toward the tribunal), 8.1(b) (bar admission and disciplinary matters), and 8.4(a)(c)(d) and (g) (misconduct).

### ***Michael Scott Collins (Sumner County)***

On December 10, 2013, Michael Scott Collins, of Sumner County, Tennessee, was suspended from the practice of law by Order of the Tennessee Supreme Court for three (3) years. Pursuant to the Order of Enforcement, Mr. Collins shall contact Tennessee Lawyers Assistance Program (TLAP), pay restitution to two (2) former clients, and pay the cost and expense of the disciplinary proceedings. Payment of restitution and contact with TLAP as required are conditions precedent to Mr. Collins' reinstatement to the practice of law.

The Board of Professional Responsibility filed a Petition for Discipline against Mr. Collins on February 26, 2013. A Hearing Panel determined that Mr. Collins received a \$27,500.00 retainer fee to represent a client in a post-divorce criminal contempt proceeding and failed to deposit the retainer into his trust account. Mr. Collins was also retained by the client's relative to recover certain personal property. The Panel determined Mr. Collins failed to provide agreed upon legal services to his clients, failed to communicate timely with his clients regarding the status of their respective cases and misled his clients regarding the status and progress of their respective cases. The Panel found the retainer fees charged by Mr. Collins were unreasonable. In addition, the Hearing Panel specifically found Mr. Collins charged the client \$10,000.00 to become a member of his "professional family" and that said charge was unrelated to any legal services and constituted an improper and unreasonable fee.

## **SUSPENSIONS (Continued)**

Mr. Collins' actions violated Rules of Professional Conduct 1.2 (scope of representation), 1.3 (diligence), 1.4 (communication), 1.5 (fees), 1.15 (safekeeping property and funds), 3.2 (expediting litigation), 8.1 (disciplinary matters), and 8.4(a) and (d) (misconduct).

### ***Vanessa Gale Keeler (Shelby County)***

On December 10, 2013, Vanessa Gale Keeler, formerly of Memphis, Tennessee, was suspended from the practice of law by Order of the Tennessee Supreme Court for three (3) years and six (6) months retroactive to her current three (3) year suspension entered August 1, 2012. Pursuant to the Order of Enforcement, Ms. Keeler shall pay restitution to her former client and the cost and expense of the disciplinary proceedings. Payment of restitution is a condition precedent to Ms. Keeler's reinstatement to the practice of law.

A Petition for Discipline containing two (2) complaints of misconduct was filed by the Board of Professional Responsibility on January 30, 2013. In each complaint, the Hearing Panel determined Ms. Keeler failed to communicate adequately with her client and failed to perform the legal work for which she had been paid. Despite demands from each client, Ms. Keeler failed to refund the unearned fee in a timely manner.

Ms. Keeler admitted violating Rules 1.3 (diligence), 1.4 (communication), 1.5 (fees), 1.15 (safekeeping of property), 1.16(a) and (d) (declining or terminating representation), and 8.4(a) (misconduct) of the Tennessee Rules of Professional Conduct.

### ***Johnathan Kenneth Borsodi (Knox County)***

On December 10, 2013, Johnathan Kenneth Borsodi, of Knoxville, Tennessee, was suspended from the practice of law by Order of the Tennessee Supreme Court for three (3) years retroactive to a Temporary Suspension Order entered on July 25, 2012. Pursuant to the Order of Enforcement, Mr. Borsodi shall submit to an evaluation by Tennessee Lawyers Assistance Program (TLAP), pay restitution to his former client, and pay the cost and expense of the disciplinary proceedings. Payment of restitution and contact with TLAP are conditions precedent to Mr. Borsodi's reinstatement to the practice of law, and if reinstated, Mr. Borsodi shall engage a practice monitor and enter into a monitoring agreement for a period of one year.

The Board of Professional Responsibility filed a Petition for Discipline against Johnathan Kenneth Borsodi on January 24, 2013. The Hearing Panel determined Mr. Borsodi accepted a non-refundable fee in the amount of \$7,500.00 and thereafter, misrepresented to his client the appeal was progressing. The client later discovered the appeal had never been filed. Further, the Hearing Panel found Mr. Borsodi failed to respond to his client's requests for information, abandoned his legal practice without notice to his client and failed to respond to the Petition for Discipline.

The Hearing Panel found Mr. Borsodi's actions violated Rules of Professional Conduct 1.1 (competence), 1.4 (communication), 1.5 (fees), 3.2 (expediting litigation), 8.1 (bar admission and disciplinary matters), and 8.4 (misconduct).

## **SUSPENSIONS (Continued)**

### ***John E. Clemmons (Davidson County)***

On December 19, 2013, the Tennessee Supreme Court suspended the law license of John E. Clemmons pursuant to Section 14 of Tennessee Supreme Court Rule 9. The Court suspended Mr. Clemmons' law license based upon his plea of guilty to serious crimes, i.e. Theft in an amount over \$60,000.00, Aggravated Perjury and TennCare Fraud.

The Supreme Court further ordered the Board of Professional Responsibility to institute a formal proceeding to determine the extent of final discipline to be imposed as a result of the conviction. Mr. Clemmons was ordered to fully comply with the provisions of Tennessee Supreme Court Rule 9, Section 18, which requires, in part, withdrawal from representation and prohibits undertaking any new representation.

### ***Edward Kindall (Davidson County)***

On December 26, 2013, Edward Kindall, of Nashville, Tennessee, was suspended from the practice of law by Order of the Tennessee Supreme Court for one (1) year, retroactive to May 12, 2013, the date he was transferred from Disability Inactive Status to Active Status. He must consult with the Tennessee Lawyers Assistance Program, refund a partial fee to a client, and pay the Board of Professional Responsibility's costs and expenses within ninety days of the entry of the Order of Enforcement.

A Petition for Discipline was filed on November 17, 2009, alleging that Mr. Kindall failed to supervise a non-lawyer employee who was engaging in the unauthorized practice of law and misusing Mr. Kindall's trust accounts. Because Mr. Kindall was not appropriately supervising the non-lawyer employee, she was able to engage in transactions that created conflicts of interest and that abused her authority as a representative of Mr. Kindall. Upon learning of the non-lawyer employee's conduct Mr. Kindall paid restitution to the clients that were injured.

Mr. Kindall failed to establish internal policies and procedures designed to provide reasonable assurance that his non-lawyer assistant acted in a way compatible with the Rules of Professional Conduct, and failed to properly supervise the non-lawyer's activities. Mr. Kindall entered into a Conditional Guilty Plea admitting to the misconduct.

Mr. Kindall's actions violated Rules of Professional Conduct 1.8 (conflict of interest); 1.15 (safekeeping property); 5.3 (responsibilities regarding non-lawyer assistants); 5.5 (unauthorized practice of law), and 8.4 (misconduct).

### ***Mark Kelley Braswell (Washington D.C.)***

On December 27, 2013, the law license of Mark Kelley Braswell of Washington, D.C. was suspended by the Tennessee Supreme Court for a period of six (6) months, pursuant to Tennessee Supreme Court Rule 9, Section 4.2, and thereafter, indefinitely until restitution in the amount of \$40,000.00 is paid to Mr. Braswell's former client. Mr. Braswell's suspension is retroactive to May

## **SUSPENSIONS** *(Continued)*

22, 2012, when he was temporarily suspended by the Tennessee Supreme Court for failure to respond to the Board of Professional Responsibility concerning a complaint of misconduct.

Mr. Braswell, along with retained co-counsel in Florida, represented a client in a Securities and Exchange Commission civil matter filed in the Federal District Court in Tampa, Florida. Mr. Braswell failed to appear to represent his client at trial, failed to timely file a brief in the appeal, misled his client that the appeal brief had been filed and misled opposing counsel by implying a filed copy of the appeal brief would be delivered by FedEx. The client's appeal was dismissed due to Mr. Braswell's failure to file the appeal brief in accordance with the rules of the United States Court of Appeals for the Eleventh Circuit. Mr. Braswell also failed to respond to the Board regarding this disciplinary complaint. In mitigation, Mr. Braswell experienced serious health problems during the representation and had no prior disciplinary record. Mr. Braswell's conduct violated the Florida and Tennessee Rules of Professional Conduct.

Mr. Braswell admitted his guilt of violating Florida Rules of Professional Conduct 4-1.1, 4-1.3, 4-1.4, 4-1.5, 4-1.16 and 4-8.4(a) and Tennessee Rules of Professional Conduct 8.1(b).

## **TEMPORARY/SUMMARY SUSPENSIONS**

### ***Robin Kathleen Barry (Davidson County)***

On August 6, 2013, the Supreme Court of Tennessee issued an Order summarily and temporarily suspending Ms. Barry from the practice of law upon finding that Ms. Barry has failed to respond to the Board regarding a complaint of misconduct.

Effective August 6, 2013, Ms. Barry is precluded from accepting any new cases and she must cease representing existing clients by September 5, 2013. After September 5, 2013, Ms. Barry shall not use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence where the practice of law is conducted.

### ***Kenneth Scott Williamson (Sumner County)***

On September 6, 2013, the Supreme Court of Tennessee issued an Order temporarily suspending Mr. Williamson from the practice of law upon finding that Mr. Williamson's continued practice of law poses a threat of substantial harm to the public.

Effective September 6, 2013, Mr. Williamson is precluded from accepting any new cases and he must cease representing existing clients by October 6, 2013. After October 6, 2013, Mr. Williamson shall not use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence where the practice of law is conducted.

## **TEMPORARY/SUMMARY SUSPENSIONS (Continued)**

### ***Steven Edward Sams (Knox County)***

On September 12, 2013, the Supreme Court of Tennessee issued an Order temporarily suspending Mr. Sams from the practice of law upon finding that Mr. Sams failed to respond to the Board regarding a complaint of Misconduct.

Effective September 12, 2013, Mr. Sams is precluded from accepting any new cases and he must cease representing existing clients by October 12, 2013. After October 12, 2013, Mr. Sams shall not use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence where the practice of law is conducted.

### ***Thomas Francis DiLustro (Knox County)***

On October 9, 2013, the Supreme Court of Tennessee temporarily suspended Thomas Francis DiLustro from the practice of law upon finding that Mr. DiLustro failed to respond to the Board regarding a complaint of misconduct. Section 4.3 of Supreme Court Rule 9 provides for the immediate summary suspension of an attorney's license to practice law in cases of an attorney's failure to respond to the Board regarding a complaint of misconduct.

Effective October 9, 2013, Mr. DiLustro is precluded from accepting any new cases and he must cease representing existing clients by November 8, 2013. After November 8, 2013, Mr. DiLustro shall not use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence where the practice of law is conducted.

### ***Brandon Michael Booten (Rutherford County)***

On November 1, 2013, the Supreme Court of Tennessee temporarily suspended Brandon Michael Booten from the practice of law upon finding that Mr. Booten has failed to respond to the Board regarding a complaint of misconduct. Section 4.3 of Supreme Court Rule 9 provides for the immediate summary suspension of an attorney's license to practice law in cases of an attorney's failure to respond to the Board regarding a complaint of misconduct.

Effective November 1, 2013, Mr. Booten is precluded from accepting any new cases, and he must cease representing existing clients by December 1, 2013. After December 1, 2013, Mr. Booten shall not use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence where the practice of law is conducted.

### ***Hal Wilkes Wilkins (Davidson County)***

On December 2, 2013, the Supreme Court of Tennessee temporarily suspended Hal Wilkes Wilkins from the practice of law upon finding that Mr. Wilkins has failed to respond to the Board regarding a complaint of misconduct. Section 4.3 of Supreme Court Rule 9 provides for the immediate summary suspension of an attorney's license to practice law in cases of an attorney's failure to respond to the Board regarding a complaint of misconduct.

## **TEMPORARY/SUMMARY SUSPENSIONS (Continued)**

Effective December 2, 2013, Mr. Wilkins is precluded from accepting any new cases and he must cease representing existing clients by January 1, 2014. After January 1, 2014, Mr. Wilkins shall not use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence where the practice of law is conducted.

### ***David Gregory Hays (Shelby County)***

On December 9, 2013, the Supreme Court of Tennessee temporarily suspended David Gregory Hays from the practice of law upon finding that Mr. Hays has failed to respond to the Board of Professional Responsibility regarding a complaint of misconduct. Section 4.3 of Supreme Court Rule 9 provides for the immediate summary suspension of an attorney's license to practice law in cases of an attorney's failure to respond to the Board regarding a complaint of misconduct.

Effective December 9, 2013, Mr. Hays is precluded from accepting any new cases and he must cease representing existing clients by January 8, 2014. After January 8, 2014, Mr. Hays shall not use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence where the practice of law is conducted.

### ***April Rebecca Mims (Henderson County)***

On December 20, 2013, the Supreme Court of Tennessee temporarily suspended April Rebecca Mims from the practice of law upon finding that Ms. Mims has failed to substantially comply with a monitoring agreement with the Tennessee Lawyers Assistance Program (TLAP). Section 4.3 of Supreme Court Rule 9 provides for the immediate summary suspension of an attorney's license to practice law if the attorney fails to substantially comply with a TLAP monitoring agreement.

Effective December 20, 2013, Ms. Mims is precluded from accepting any new cases and she must cease representing existing clients by January 19, 2014. After January 19, 2014, Ms. Mims shall not use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence where the practice of law is conducted.

### ***Joseph James Doherty (Hamblen County)***

On December 27, 2013, the Supreme Court of Tennessee temporarily suspended Joseph James Doherty from the practice of law upon finding that Mr. Doherty has failed to respond to the Board regarding a complaint of misconduct. Section 4.3 of Supreme Court Rule 9 provides for the immediate summary suspension of an attorney's license to practice law in cases of an attorney's failure to respond to the Board regarding a complaint of misconduct.

Effective December 27, 2013, Mr. Doherty is precluded from accepting any new cases and he must cease representing existing clients by January 26, 2014. After January 26, 2014, Mr. Doherty shall not use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence where the practice of law is conducted.

## **TEMPORARY/SUMMARY SUSPENSIONS** *(Continued)*

Mr. Doherty must notify all clients being represented in pending matters, as well as co-counsel and opposing counsel of the Supreme Court's Order suspending his law license. Section 18 of Supreme Court Rule 9 requires Mr. Doherty to deliver to all clients any papers or property to which they are entitled.

## **PUBLIC CENSURES**

### ***Chadwick Barry Tindell (Knox County)***

On June 28, 2013, Mr. Tindell received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Tindell pled guilty to facilitation of official misconduct. The conviction was based on Mr. Tindell's involvement to the Knox County Trustee giving employees unauthorized bonuses. Thus, his conduct violated Rule 8.4(b) because the criminal act adversely reflected on his honesty, trustworthiness or fitness as a lawyer in other respects.

Mr. Tindell's actions violated Rules of Professional Conduct 8.4(b) (Misconduct).

### ***Vanessa Lynn Lemons (Knox County)***

On June 21, 2013, Ms. Lemons received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Ms. Lemons was appointed to defend a client in several criminal cases. Because Ms. Lemons did not appear for Court hearings or communicate with her client, she was removed from the cases. Ms. Lemons has failed to respond to this complaint of misconduct, but is currently serving a four year suspension pursuant to Supreme Court Order filed January 25, 2013.

Ms. Lemons' actions violated Rules of Professional Conduct 1.1 (Competence); 1.3 (Diligence); 1.4 (Communication); 1.16 (Declining and Terminating Representation) and 8.1 (Responding to Disciplinary Authority).

### ***Scott David Johannessen (Davidson County)***

On July 29, 2012, Mr. Johannessen received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

On November 29, 2012, Mr. Johannessen's law license was suspended for failure to pay his professional privilege tax for two or more years. On December 19, 2012, Mr. Johannessen's license was reinstated. Mr. Johannessen engaged in the practice of law while administratively suspended from the practice of law.

## **PUBLIC CENSURES (Continued)**

Mr. Johannessen's actions violated Rules of Professional Conduct 5.5 (Unauthorized Practice of Law).

### ***James Henry Flood (Wilson County)***

On August 7, 2013, Mr. Flood received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Flood entered a fee contract with his client which stated he would receive a fee of 25% of past due social security benefits owed to the client. The client made periodic payments to Mr. Flood to be held for expenses or for satisfaction of the contingency fee. Mr. Flood received six payments from the client, and failed to deposit three of the payments into his trust account. An overdraft resulted in Mr. Flood's trust account when he wrote a check to himself for the earned fees. In another matter, Mr. Flood earned an attorney fee in May 2012 and failed to remove the fee from his trust account for more than seven months.

Mr. Flood's actions violated Rule of Professional Conduct 1.15 (Safekeeping Property and Funds), and is hereby Publicly Censured for this violation.

### ***Jill R. Talley (Jefferson County)***

On August 7, 2013, Jill R. Talley, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Ms. Talley was retained by a client to represent her in a divorce. Ms. Talley filed a motion and affidavit to withdraw in which she stated that "there have been several instances where [client] has not been completely truthful concerning certain issues, including her actions, in the case." Ms. Talley's client suffered harm as a result of her statement to the court.

By these acts, Jill R. Talley has violated Rule of Professional Conduct 1.6 (Confidentiality of Information), and is hereby Publicly Censured for this violation.

### ***Shawn Patrick Sirgo (Davidson County)***

On August 12, 2013, Mr. Sirgo received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Sirgo practiced law while his license to do so was suspended. By these acts, Mr. Sirgo violated Rule of Professional Conduct 5.5 (Unauthorized Practice of Law) and is hereby Publicly Censured for this violation.

## **PUBLIC CENSURES (Continued)**

### ***Adam W. Parrish (Wilson County)***

On September 23, 2013, Mr. Parrish was publicly censured by the Tennessee Supreme Court. Mr. Parrish was appointed to represent an indigent criminal defendant. More than 14 days after a decision by the Court of Criminal Appeals, Mr. Parrish sought and received from his client's relative a fee for filing a Petition for Permission to Appeal to the Supreme Court. While TCA 40-14-203 provides that appointed counsel is only required to represent the defendant through the initial appellate review, Tenn. Sup. Ct. R. 14 requires counsel for an indigent defendant to move to withdraw within 14 days after the intermediate court's judgment. Therefore, when appointed to represent an indigent criminal defendant, Mr. Parrish was not entitled to charge a fee for his services following the first tier appeal without moving to withdraw during the 14 day period in which an attorney is entitled to withdraw from the appointed representation.

Mr. Parrish made restitution and submitted a Conditional Guilty Plea acknowledging violation of Tennessee Supreme Court Rule 8, Rules of Professional Conduct 1.16(c) (Declining or Terminating Representation) and 8.4 (Misconduct).

### ***Tonya Hunt Crownover (Sumner County)***

On October 8, 2013, Tonya Hunt Crownover of Hendersonville, Tennessee, was Publicly Censured by the Tennessee Supreme Court pursuant to Tennessee Supreme Court, Rule 9, Section 4.4.

Ms. Crownover committed the unauthorized practice of law by representing a client after she had been administratively suspended for failing to comply with her continuing legal education requirements.

By these acts, Ms. Crownover has violated Rule 5.5 (unauthorized practice of law) of the Rules of Professional Conduct and is hereby Publicly Censured for this violation.

### ***Samuel Jones (Shelby County)***

On October 16, 2013, Samuel Jones of Memphis, Tennessee, was Publicly Censured by the Tennessee Supreme Court pursuant to Tennessee Supreme Court Rule 9, Section 4.4.

Mr. Jones failed to adequately communicate with a client during his representation in a divorce proceeding. Mr. Jones also failed to diligently represent the client which led to the court's dismissal of the client's case on two separate occasions for lack of prosecution.

By these acts, Mr. Jones has violated Rule 1.3 (diligence), 1.4 (communication), 3.2 (expediting litigation), and 8.4(a) and (d) (misconduct) of the Rules of Professional Conduct and is hereby Publicly Censured for this violation.

## **PUBLIC CENSURES (Continued)**

### ***Thomas Harding Potter (Fentress County)***

On October 16, 2013, Thomas Harding Potter, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Potter disclosed confidential, prejudicial information about his client in a motion to withdraw. By these acts, Thomas Harding Potter, violated Rules of Professional Conduct 1.6 (confidentiality) and 1.16(d) (declining and terminating representation) and is hereby Publicly Censured for these violations.

### ***Michael Lloyd Freeman (Davidson County)***

On October 16, 2013, Michael Lloyd Freeman, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Freeman kept his own money in his client trust account and used those funds to pay his office rent. Also, Mr. Freeman failed to maintain reasonable communication with a client and then failed to provide subsequent counsel with the client's file. Finally, Mr. Freeman neglected a different client's case by failing to act with reasonable diligence and failing to communicate with the client.

By these acts, Michael Lloyd Freeman, has violated Rule of Professional Conduct 1.3 (diligence), 1.4 (communication), 1.15 (safekeeping property), 1.16 (declining and terminating representation) and 3.2 (expediting litigation) and is hereby Publicly Censured for these violations.

### ***James Franklin Logan, Jr. (Bradley County)***

On October 16, 2013, James Franklin Logan, Jr., an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Logan, on behalf of a Limited Partnership in which he and his client were principals, attempted to foreclose on his client's residence to recover monies the client owed to the Partnership. In so doing, Mr. Logan violated Rules 1.7 and 1.8 because his actions were adverse to the interests of his client. Additionally, Mr. Logan violated Rule 1.6 by discussing his client's finances with his client's ex-wife without his client's consent.

By these acts, James Franklin Logan, Jr., has violated Rule of Professional Conduct 1.6 (confidentiality), 1.7 (conflict of interest, general rule) and 1.8 (conflict of interest, prohibited transactions) and is hereby Publicly Censured for these violations.

## **PUBLIC CENSURES (Continued)**

### ***John Minor Richardson (Montgomery County)***

On November 1, 2013, John Minor Richardson of Montgomery County, was publicly censured by the Tennessee Supreme Court.

The Board of Professional Responsibility filed a Petition for Discipline against Mr. Richardson pursuant to Rule 9, Rules of the Supreme Court. Mr. Richardson submitted a Conditional Guilty Plea acknowledging violation of Tennessee Supreme Court Rule 8, Rules of Professional Conduct 1.3 (diligence) 5.3 (responsibilities regarding non-lawyer assistants) and 8.4(a) (misconduct).

Mr. Richardson failed to adequately supervise his non-lawyer employee who did not follow internal accounting procedures that resulted in a monetary loss to his client. Upon discovering the problem, Mr. Richardson terminated the employee and conducted an extensive internal audit of his accounts. He also repaid the client for the loss.

### ***Barry Keith Maxwell (Monroe County)***

On November 14, 2013, Barry Keith Maxwell, Monroe County, Tennessee, was publicly censured by the Tennessee Supreme Court, and also ordered to pay restitution to his client.

The Board of Professional Responsibility filed a Petition for Discipline against Mr. Maxwell pursuant to Rule 9, Rules of the Supreme Court. Mr. Maxwell submitted a Conditional Guilty Plea acknowledging violation of Tennessee Supreme Court Rule 8, Rules of Professional Conduct 1.16 (terminating representation).

Mr. Maxwell did not promptly refund an advance payment of fees when it became clear that the work for which he had been retained was unnecessary.

### ***Bede O.M. Anyanwu (Madison County)***

On December 18, 2013, Bede O.M. Anyanwu, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Although his wife was to be the buyer in a real estate transaction, Dr. Anyanwu represented the seller in matters related to the transaction. Additionally, Dr. Anyanwu drafted documents related to the real estate transaction which were misleading as to the true sales price of the property.

By these acts, Bede O. M. Anyanwu has violated Rules of Professional Conduct 1.2(d) (scope of representation), 1.7 (conflict of interest), and 8.4(a), (b), and (c) (misconduct), and is hereby Publicly Censured for this violation.

## **PUBLIC CENSURES (Continued)**

### ***Thomas D. Henderson (Shelby County)***

On December 23, 2013, Thomas D. Henderson of Memphis, Tennessee was publicly censured by the Tennessee Supreme Court.

The Board of Professional Responsibility filed a Petition for Discipline against Mr. Henderson pursuant to Rule 9, Rules of the Supreme Court. Mr. Henderson submitted a Conditional Guilty Plea acknowledging violation of Tennessee Supreme Court Rule 8, Disciplinary Rule 7-103 (Performing the Duty of Public Prosecutor or Other Government Lawyer) and Rules of Professional Conduct 3.8 (Special Responsibilities of a Prosecutor) and 8.4 (misconduct).

Mr. Henderson is an assistant district attorney. While prosecuting a capital murder case in 1998, and again in 2004 during a retrial, Mr. Henderson responded to discovery in a manner that did not make timely disclosure of all exculpatory evidence.

### ***Huntly Scott Gordon (Williamson County)***

On December 23, 2013, Huntly Scott Gordon of Franklin, Tennessee was censured by Order of the Tennessee Supreme Court. He must also pay the Board of Professional Responsibility's costs in this matter.

Mr. Gordon was one of several investors in the development of two tracts of land. Over a two-year period of time, Mr. Gordon collected the rent paid by tenants residing in three (3) houses located on the tracts and resided rent free in another. Mr. Gordon claimed that he had entered into a verbal agreement with the LLCs allowing him to retain the rent, and live in the house, in exchange for services rendered to the LLCs. In so doing, Mr. Gordon entered into a business transaction with a client which was not reduced to writing and without the informed consent of the client.

His actions violate the following Rules of Professional Conduct: 1.8(a), Conflict of Interest - Prohibited Transactions; and 8.4(a), Misconduct.

### ***Samuel Rodriguez, III (Shelby County)***

On December 23, 2013, Samuel Rodriguez, III, of Memphis, Tennessee, was publicly censured by the Tennessee Supreme Court.

The Board of Professional Responsibility filed a Petition for Discipline against Mr. Rodriguez pursuant to Rule 9, Rules of the Supreme Court. Mr. Rodriguez submitted a Conditional Guilty Plea acknowledging violations of Tennessee Supreme Court Rule 8, Rules of Professional Conduct 1.1 (competence), 1.3 (diligence), 1.4 (communication), 1.16 (terminating representation), 3.2 (expediting litigation) and 8.4(a) (misconduct).

Mr. Rodriguez was appointed to represent three defendants. He was not diligent in handling his clients' cases. In one case, he did not properly withdraw after the trial court denied his client's petition for post conviction relief, and failed to timely file a Notice of Appeal. In another case, he

## **PUBLIC CENSURES** (*Continued*)

was appointed to represent his client on appeal and failed to pursue the appeal for an extended period of time. In both cases, the Court of Criminal Appeals granted Mr. Rodriguez's Motion for Delayed Appeal. In another case, Mr. Rodriguez failed to timely file an appeal brief on behalf of his client and was later relieved of representation by the Court of Criminal Appeals. In all three cases, he did not communicate with his clients for extended periods of time.

### ***Linda Kaye Kendall (Shelby County)***

On December 26, 2013, Linda Kaye Kendall Garner of Memphis, Tennessee, was publicly censured by the Tennessee Supreme Court.

The Board of Professional Responsibility filed a Petition for Discipline against Ms. Garner pursuant to Rule 9, Rules of the Supreme Court. Ms. Garner submitted a Conditional Guilty Plea acknowledging violation of Tennessee Supreme Court Rule 8, Rules of Professional Conduct 1.3 (diligence); 1.5 (fees); and 8.4(a), (misconduct).

Ms. Garner entered into a contingent fee agreement without reducing it to writing and failed to diligently pursue the case on behalf of her client.

### ***Paul Donald Rush (McMinn County)***

On December 27, 2013, Paul Donald Rush, of McMinn County, Tennessee, was publicly censured by Order of the Tennessee Supreme Court.

The Board of Professional Responsibility filed a Petition for Discipline against Mr. Rush on July 6, 2012 alleging that he committed ethical misconduct in the prosecution of a criminal case. A hearing panel determined that Mr. Rush intentionally solicited a statement from a prosecution witness which had been prohibited by a court order prior to trial. Further, the hearing panel concluded that Mr. Rush failed to report misconduct to the Board of Professional Responsibility as ordered by the trial court.

Mr. Rush's actions violate the following Rules of Professional Conduct: 3.4(c), Fairness to Opposing Party and Counsel, and 8.4(d), Misconduct.

## **DISABILITY INACTIVE STATUS**

### ***Bryan Bradley Martin (Washington County)***

On July 23, 2013, by Order of the Supreme Court of Tennessee, Mr. Martin's law license was transferred to disability inactive status. Mr. Martin cannot practice law while on disability inactive status.

**DISABILITY INACTIVE STATUS (Continued)**

***Christopher Joseph Larkin***

On August 2, 2013, by Order of the Supreme Court of Tennessee, Mr. Larkin's law license was transferred to disability inactive status. Mr. Larkin cannot practice law while on disability inactive status.

***Paul Leland Smith (McMinn County)***

On August 5, 2013, by Order of the Supreme Court of Tennessee, Mr. Smith's law license was transferred to disability inactive status. Mr. Smith cannot practice law while on disability inactive status.

***C. Kinian Cosner (Davidson County)***

On August 5, 2013, by Order of the Supreme Court of Tennessee, Mr. Cosner's law license was transferred to disability inactive status. Mr. Cosner cannot practice law while on disability inactive status.

***Donald Ashworth Cox, Jr. (Davidson County)***

On September 6, 2013, by Order of the Supreme Court of Tennessee, the law license of Mr. Ashworth was transferred to disability inactive status. Mr. Cox cannot practice law while on disability inactive status.

***James Prentice DeRossitt, IV (Shelby County)***

By Order of the Tennessee Supreme Court entered October 14, 2013, the law license of James Prentice DeRossitt, IV, was transferred to disability inactive status pursuant to Section 21 of Tennessee Supreme Court Rule 9.

***Jean Norris Crowe (Davidson County)***

By Order of the Tennessee Supreme Court entered October 28, 2013, the law license of Jean Norris Crowe was transferred to disability inactive status pursuant to Section 21 of Tennessee Supreme Court Rule 9.

## **DISABILITY INACTIVE STATUS (Continued)**

### ***Keith Lane Edmiston (Blount County)***

By Order of the Tennessee Supreme Court entered December 2, 2013, the law license of Keith Lane Edmiston was transferred to disability inactive status pursuant to Section 21 of Tennessee Supreme Court Rule 9.

## **REINSTATEMENTS**

### ***Brandon Michael Booten (Rutherford County)***

On November 27, 2013, the Supreme Court of Tennessee reinstated the law license of Brandon Michael Booten of Murfreesboro. Mr. Booten was suspended by the Supreme Court on November 1, 2013, upon finding that Mr. Booten had failed to respond to the Board regarding a complaint of misconduct.

Mr. Booten filed a Petition for Dissolution or Amendment of Order of Temporary Suspension on November 7, 2013. A Hearing Panel appointed to hear the Petition for Dissolution recommended to the Court that the Temporary Suspension be set aside upon conditions that Mr. Booten comply with Supreme Court Rule 9, Section 19, continue consultation with the Tennessee Lawyers Assistance Program (TLAP), adhere to any recommendations of TLAP, and provide disciplinary counsel with a copy of any and all assessments and/or monitoring agreements.

### ***James A. Meaney, III (Georgia)***

On December 23, 2013, the Supreme Court of Tennessee reinstated the law license of James A. Meaney, III, of Ringgold, Georgia. Mr. Meaney was suspended by Order of the Court on March 6, 2012, upon finding that he had failed to respond to the Board regarding a complaint of misconduct. Section 4.3 of Supreme Court Rule 9 provides for the immediate summary suspension of an attorney's license to practice law in cases of an attorney's failure to respond to the Board regarding a complaint of misconduct.

Mr. Meaney filed a Motion to Dissolve Order of Temporary Suspension on October 16, 2013, asking the Court to enter an Order of Dissolution. A Hearing Panel appointed to hear the Petition for Dissolution recommended to the Supreme Court that the Temporary Suspension be set aside. Mr. Meaney was ordered to pay costs and expenses of the proceeding.