

POLICIES AND RULES
of the
BOARD OF PROFESSIONAL RESPONSIBILITY
of the
SUPREME COURT OF TENNESSEE

Adopted by the Board of Professional Responsibility

December 14, 2018

Approved by the Tennessee Supreme Court

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1. INVESTIGATIONS

1.1 Complaints Received by the Board

All complaints received by the Board will be entered into the Disciplinary Management System within 7 business days.

1.2 Complaints Against Board Members, District Committee Members or Disciplinary Counsel

A. Board Members

(1) Complaints against Board Members shall be submitted directly to the Chief Justice of the Supreme Court. Rule 9, § 16.2.

(2) The investigations of complaints against attorney Board Members shall proceed in accordance with the investigation procedures set forth in Rule 9, § 15, with the modifications set forth in Rule 9, § 16.3.

B. District Committee Members or Disciplinary Counsel

Complaints against District Committee Members or Disciplinary Counsel shall be submitted directly to the Board pursuant to Rule 9, § 16.1. The Board Chair may administratively dismiss a complaint without investigation pursuant to Board Policy and Rule 1.6 and/or Tenn. Sup. Ct. R. 9 § 16.1(b). If the complaint is **not** administratively dismissed, thereafter the complaint shall be processed as follows:

(1) Complaints against District Committee Members will be investigated by Disciplinary Counsel. Disciplinary Counsel's investigation findings shall be reviewed by a Committee of no fewer than three members of the Board appointed by the Chair or Vice Chair. Rule 9 § 16.1(d).

(2) Complaints against Disciplinary Counsel will be conducted by an attorney member of the Board appointed by the Chair, who may investigate the complaint or, with the concurrence of the Chair, may make a request to the Supreme Court for appointment of a Special Disciplinary Counsel to investigate the complaint.

Disagreement with the official decision of Disciplinary Counsel, a hearing panel, the Board of Professional Responsibility or a district committee member, taken in the course and scope of their responsibilities, shall not be grounds for the filing of a disciplinary complaint. Rule 9 § 17.

1.3 Complaints Against Judges and District Attorneys

Complaints against District Attorneys will be reviewed and processed the same as any other complaint. Complaints against Judges will not be opened, but will be referred to the Board of Judicial Conduct.

1.4 Complaints Against Suspended and Disbarred Attorneys

Complaints against suspended attorneys will be reviewed and processed the same as any other complaint. There may be special circumstances that warrant retirement of the file pending a petition for reinstatement. The Board retains jurisdiction over disbarred attorneys in connection with misconduct committed before the disbarment. Complaints and petitions pending at the time of disbarment will be handled in the ordinary course. Complaints received following disbarment will be investigated if the alleged misconduct amounts to the practice of law or constitutes a violation of Rule 9 § 8.1 or the Rules of Professional Conduct, Rule 9 § 8.1. Complaints may be administratively dismissed, investigated, or retired until a petition for reinstatement is filed.

1.5 Criminal Defendant Complaints Against Defense Lawyers

The following policies address criminal defendants' complaints against their defense lawyers:

A. Current Trial and/or Post-Conviction Counsel

Generally, these complaints are referred to the Consumer Assistance Program (CAP) for initial processing. If CAP informal mediation or explanation does not resolve the issues and CAP review reveals evidence that an ethical violation may be involved, the complaint shall be referred to the investigations section.

B. Former Trial and Former Post-Conviction Counsel

Generally, these complaints are referred to CAP for initial processing.

(1) All complaints at any stage which allege clear ethics violations such that they are not subject to mediation or resolution by CAP will be referred to the investigations section for review and processing. Processing of such complaints will not be deferred because of related proceedings unless authorized by the Board in its discretion for good cause shown.

(2) Other complaints which allege conviction as a result of counsel's actions, inactions or ineffective assistance will be referred to CAP for review and processing. However, if post-conviction proceedings have been completed and ineffective assistance of counsel has been found, CAP will refer these to the investigations section. If post-conviction proceedings have not been instituted and would be time-barred, the complaint is referred to CAP. If CAP review and inquiry reveals evidence that an ethical violation

may be involved, the complaint shall be referred to the investigations section.

(3) Generally, complaints against former trial counsel involving other concerns, such as transcript, fees, return of property, etc., will be addressed by CAP. If issues remain unresolved and there is evidence of an ethical violation, CAP will refer the complaints to investigations.

1.6 Administrative Dismissals

Disciplinary Counsel or the Chair of the Board may administratively dismiss a complaint without investigation that:

- does not state a potential ethical violation on its face or is not sufficiently credible or verifiable through objective means;
- is against a deceased attorney;
- is against an attorney who is not licensed or “specially admitted” to practice in Tennessee;
- does not state sufficient evidence to support the allegations contained in the complaint;
- is for a civil debt, such as a court reporting fee and/or court costs;
- has been previously investigated and closed;
- is against a judge, and such complaint will be referred to the Board of Judicial Conduct;
- is premature because the matter at issue is pending in court where legal remedies or sanctions should be pursued;
- is against a law firm;
- is best investigated in another state where the acts complained of occurred.

There may be other appropriate grounds upon which to dismiss a complaint.

1.7 Referrals to the Consumer Assistance Program

Upon receipt of a complaint, Disciplinary Counsel may determine after an initial evaluation to refer the complaint to CAP for mediation and resolution of the dispute.

1.8 Additional Ethics Violations Discovered During Investigation

The evidence of an additional potential ethics violation discovered during the course of an investigation will be gathered and notice given to the respondent, stating that the complaint was discovered during the course of investigation and affording the respondent an opportunity to respond. The complaint will be processed the same as all other complaints.

1.9 Private Informal Admonition, Diversion or Dismissal

All matters in which a Disciplinary Counsel recommends a Private Informal Admonition, Diversion or Dismissal will be sent to a Hearing Committee Member, pursuant to Rule 9, § 15.1. Private Informal Admonitions, Diversions and Dismissals may be presented to the Board for consideration under circumstances including, but not limited to, the following:

- (i) after having been previously reviewed and considered by a Hearing Committee member and further review by the Board appears to be warranted (for instance, when Disciplinary Counsel recommends a Private Informal Admonition and the Hearing Committee recommends Dismissal or Diversion, or vice versa, etc.); or
- (ii) recommendations which are likely to reflect adversely upon the Board or the Court; or
- (iii) cases of first impression for which there is no precedent as to whether the conduct constitutes a rule violation, for which it would be helpful to establish a uniform standard.

1.10 Diversion

Pursuant to Rule 9, § 13, the Board has established practice and professionalism enhancement programs, including additional continuing legal education (CLE) or ethics workshop, to which eligible disciplinary files may be diverted as an alternative to disciplinary sanction.

1.11 Private Reprimands and Public Discipline

Disciplinary Counsel recommendations for Private Reprimand or any type of Public Discipline shall be presented to the Board for approval or modification. Rule 9, § 15.1(d).

1.12 Requests for Reconsideration by Respondents After Board Approval

Once the Board has voted, requests for reconsideration by the respondent-attorney will not be presented to the Board unless the Board Chair deems the information contained in the request to be new factual information that has not been previously provided to Disciplinary Counsel and that requires further consideration by the Board. Requests by the respondent-attorney based on new, previously untried, or unasserted theories or legal arguments will not constitute sufficient grounds for reconsideration. Requests for reconsideration by a respondent-attorney shall not operate to extend the period for accepting or rejecting discipline governed by Tenn. Sup. Ct. R. 9, § 15.1(e).

1.13 ABA Standards – Uniformity of Discipline

The ABA Standards for Imposing Lawyer Sanctions provides a structure for achieving uniformity of discipline. Disciplinary Counsel should in each matter include a

reference to the application of the *ABA Standards for Imposing Lawyer Sanctions* in all Quarterly Board Reports.

1.14 Appeal of Dismissal

Appeals of dismissals by Complainants will be decided by the appeals committee of the Board. Rule 9 § 15.1.

1.15 Trust Account Overdrafts

When the Board receives notice of a trust account overdraft, an administrative file is opened and the attorney is requested to provide information concerning the circumstances that resulted in the overdraft. If the attorney does not respond, responds inadequately or the response indicates a potential rule violation, an investigation will be initiated. Rule 9, § 35.

1.16 Backlog Report

Investigations Disciplinary Counsel will prepare a quarterly Backlog Report which will be reviewed by the management committee. The report will be made quarterly on dates set by management and will include pertinent information about the history and status of the files, and a plan of action.

1.17 Privilege of Hearing Committee Members

The names and identity of district committee members serving or acting in particular matters are subject to confidentiality, will not be revealed, and will remain privileged and confidential except in instances where the matters are public.

2.

LITIGATION

2.1 Three-member Hearing Panel Requirement

Formal proceedings and hearings upon charges of misconduct shall be conducted by a hearing panel consisting of three District Committee Members. Disciplinary Counsel and/or Respondent may not agree to waive the requirement of a three-member panel.

2.2 Appointment of Hearing Panel

A. Following the service of the answer or upon failure to answer, the matter shall be assigned by the Board Chair or the Vice-Chair to a hearing panel. Rule 9, § 15.2(d). In assigning the members of the hearing panel, the Chair shall select them from the members of the district committee in the district in which the respondent practices law with consideration given to their availability and willingness to serve and to the number of panels on which the Hearing Committee Member currently serves. If there is an insufficient number of committee members in that district who are able to serve on the hearing panel, the Chair or Vice Chair may appoint one or more members from the district committee of an adjoining district to serve on the panel. Rule 9, § 15.2(d).

B. District committee members from the same law firm or office may not serve together on the same hearing panel.

C. District Committee Members may not participate in cases against respondent attorneys defended by members or associates of their law firm.

D. District Committee Members are prohibited from serving on a hearing panel wherein a judge is a respondent and the member practices before the judge.

E. A District Committee Member may not be assigned to a hearing panel if a complaint is pending against the committee member.

F. A District Committee Member may continue to review Disciplinary Counsel's recommendations for dismissals, diversion and private informal admonitions regarding complaints while a complaint is pending against that District Committee Member.

2.3 Defending Respondents

District Committee Members are not to serve as counsel for respondents in disciplinary matters, either in their disciplinary district or other districts.

2.4 Election of Chair of Hearing Panel

The hearing panel, upon being designated by the Board Chair, will immediately elect a Hearing Panel Chair and notify the Executive Secretary.

2.5 Chair to Preside At Hearings

The Chair of the hearing panel will preside at the hearing and with the advice and consent of the other members of the hearing panel will rule on all issues of law, evidence and procedure arising during the hearing.

2.6 Hearing Panel Should Function as a Trial Court

The Hearing Panel should take such steps as appropriate to ensure the maintenance of order, decorum, judicial temperament and avoidance of *ex parte* communications between the hearing panel and respondent or counsel for respondent and Disciplinary Counsel. The hearing panel shall perform their duties impartially, competently and diligently and in a manner to uphold and promote independence, integrity and impartiality.

2.7 Discovery Material Not Filed in Board File

Discovery materials, including depositions, interrogatories, requests for documents, requests for admissions, and answers or responses thereto shall not be filed with the Board's Executive Secretary or filed in the Board file except pursuant to special order by the Board or hearing panel, or for use in the proceedings.

2.8 Selection of Location of Hearing(s)

The Executive Secretary will arrange for a location for the hearing.

2.9 Arranging for Court Reporter at Trial.

The Executive Secretary is responsible for arranging for a court reporter to be present at all formal hearings.

2.10 Custody and Retention of Board File(s)

The original pleadings, motions and entire record will be maintained in the custody of the Executive Secretary of the Board and delivered to the Chair of the hearing panel on or prior to the final hearing. All additional pleadings, motions and exhibits filed during the hearing will be appropriately placed in the Board's file. The completed Board file containing the entire record will be returned to the Executive Secretary of the Board with the findings and judgment of the hearing panel. The Executive Secretary will then file the findings and judgment in the Board file and distribute copies to Disciplinary Counsel and counsel for respondent.

2.11 Open Meetings Act

Hearing panel deliberations are not subject to the Open Meetings Act. *Moncier v. Board of Professional Responsibility*, No. M2012-01850-COA-R3-CV, 2013 Tenn. App. Lexis 469 (Tenn. Ct. App. 2013).

2.12 Local Rules of Practice

The Local Rules of Practice in each judicial district do not apply in disciplinary cases.

2.13 Transcript(s)

The hearing panel has no authority to direct that a transcript of the proceedings be prepared. However, the hearing panel may request approval from the Board Chair to order a transcript in a particular case. Rule 9, § 34.1(a). The Board Chair will, in its sole discretion, grant or deny such requests.

2.14 Disciplinary Counsel as Witness in the Case

If it is reasonably anticipated that Disciplinary Counsel is required to testify as a material witness in a pending disciplinary proceeding, then another member of the Disciplinary Counsel Staff will be the attorney of record in the matter, except in instances which arise during the course of trial when Disciplinary Counsel may have to testify in rebuttal.

2.15 Conditional Guilty Plea(s)

All conditional guilty pleas will be reviewed by the Charging Committee and a recommendation made to the Board whether to accept, reject or propose an alternative discipline.

2.16 Dilatory Performance of Duties

The hearing panel may make a written request to the Chair for an extension of time to file its findings and judgment. In the event the hearing panel does not submit its findings and judgment within thirty (30) days or such time as extended by the Chair, Disciplinary Counsel shall report the same to the Court. Rule 9 § 15.3(a).

2.17 Appeals

- A. The Charging Committee will review all judgments or rulings of a hearing panel or court and recommend to the Board whether to appeal.
- B. Disciplinary Counsel will seek a review or appeal of the judgment or ruling of the hearing panel or Court only upon approval by the Board.

2.18 Hearing Panel is to Be Notified of Review

The Executive Secretary will notify the hearing panel members serving on a particular case of all reviews and appeals concerning the case.

2.19 Record is Certified and Filed by Executive Secretary

Upon the review of any matter before a hearing panel or panel, the Executive Secretary will certify and file the original pleadings, motions, trial exhibits, findings and judgment of the hearing panel or panel and the entire record to the appropriate court.

2.20 Clerks and Trial Judges Shall Notify Chief Justice of Appeals

Disciplinary Counsel will, where necessary, advise the Clerks and Trial Judges that Rule 9, § 33.2 imposes the duty on them to notify the Chief Justice of the filing of appeals in disciplinary cases.

2.21 Compensation of Lay Witnesses

Lay witnesses testifying on behalf of and at the request of the Board or Disciplinary Counsel will be compensated by the Board as provided in Title 24 Chapter 4, Public Acts of Tennessee.

2.22 Suspended or Disbarred Attorney Practicing Law

The Board may authorize Disciplinary Counsel to bring an action to show cause why a suspended or disbarred attorney should not be held in contempt when it is discovered that he or she is practicing law or frequenting a law office during business hours or giving any appearance of violating the suspension or disbarment.

2.23 Temporary Suspension

Disciplinary Counsel will forward a matter which is the subject of a Petition for Temporary Suspension pursuant to Rule 9, § 12.3 to the litigation section to prepare a Petition to be filed with the Supreme Court. Such Petition must be approved by the Board Chair prior to filing.

If the respondent does not move to dissolve the § 12.3 Suspension by the second board meeting following the entry of the Order, the investigation Disciplinary Counsel shall present the matter to the Charging Committee. Should the Charging Committee determine that a petition for discipline is appropriate, the investigation Disciplinary Counsel will prepare the matter for consideration by the Board.

2.24 Attorneys Convicted of a Serious Crime

In cases involving a conviction for a “serious crime” as defined in Rule 9, § 22, Disciplinary Counsel will forward the matter to the litigation section to institute formal

proceedings pursuant to Rule 9, § 22.

2.25 Reinstatements

- A. Upon the filing of any petition for reinstatement, Disciplinary Counsel may, in his or her discretion, notify the local bar where one exists.
- B. Petitions for reinstatements shall be accompanied by an advance cost deposit in the amount of \$2,000 to cover anticipated costs of the reinstatement proceeding. Rule 9, § 30.4(d)(9).

3.

BOARD MATTERS

3.1 Regular Scheduled Meeting

The regularly scheduled quarterly meetings will be held on each second Friday of March, June, September and December in Nashville.

Notices of Regular Meetings relating to the Board's administrative affairs are posted on the Board's website.

The Board may convene at any other time or place as the Board may determine.

3.2 Convening of Board by Conference Call

The Board may be convened and conduct business via conference call at the request of one member of the Board and with a quorum of seven members represented during the conference call meeting. Notices, either by telephone, in writing or by electronic mail, will be given to each Board member at least 24 hours in advance. All meetings by conference call shall conform to Rule 9, § 4.3.

3.3 Voting by the Board

Board members may communicate their vote by telephone, facsimile, e-mail, or regular mail or at a regularly scheduled meeting. Board members may not vote by proxy. An affirmative vote of seven (7) members of the Board shall be necessary to authorize action.

The Open Meetings Act is not applicable to confidential sessions of the Board of Professional Responsibility. (See § 2.11)

3.4 Privilege of Individual Voting Records on Disciplinary Matters

The voting record of individual Board members on any disciplinary matter, including the bringing of formal charges or review and appeal of any case, is privileged in the same manner that deliberations of an appellate court panel or a grand jury panel are privileged. Disciplinary Counsel is authorized to resist any attempt to discover such individual voting record by filing an appropriate motion showing only the numerical vote on the matter, confirming the decision of the Board and seeking any necessary protective orders.

3.5 Appearances Before the Board

There shall be no personal appearances except upon authority of the Board, or written authorization of the Board Chair, pursuant to a written request submitted to the Board fourteen (14) days in advance of the Board Meeting. Any individual may attend the public portion of a meeting of the Board of Professional Responsibility.

3.6 Committees

A. The following Board committees are established:

- (1) Quarterly Ethics and Appeal Review Committee
 - (a) Complainants may appeal Dismissals in writing to the Board within thirty (30) days. Rule 9, § 15.1(f). The Board Chair will designate an Appeal Review Committee and Chair, to serve each quarter, to review each appeal and determine whether to approve or modify the disposition or direct further investigation.
 - (b) The committee will consider any proposed formal ethics opinions or other tasks as requested by the Board Chair. The criteria for considering opinions is set forth in Policy 3.15.
 - (c) The committee will review Disciplinary Counsel's investigation of complaints against District Committee members. See Rule 9 § 16.1(d) and Policy 1.1(B)(1).
 - (d) The committee will also review appeals of petitions to reinstate from privilege tax suspensions. See Rule 9 § 26.4(d)(1).
- (2) Finance Committee
- (3) Contract Review Committee
- (4) Rules Committee

B. Committees of the Board's staff include:

- (1) Charging Committee: A Committee consisting of Disciplinary Counsel designated by Chief Disciplinary Counsel to review: a) proposed settlement offers and conditional guilty pleas, b) judgments, and orders of Hearing Panels and Courts to recommend to the Board whether to appeal and c) recommendations regarding disciplinary investigations to be presented to the Board at its quarterly meetings.
- (2) Management Team: A committee consisting of Chief Disciplinary Counsel, the Deputies for the Investigation and Litigation sections, Ethics Counsel, the Director of CAP, Senior Litigation Counsel and/or other members of the staff as determined by the Chief Disciplinary Counsel.

3.7(A) Designation of Practice Monitor

(1) The Respondent or petitioning attorney shall, within fifteen (15) days of the entry of the stipulation, judgment or order imposing the requirement of a practice monitor, file with the Executive Secretary of the Board a list of three proposed practice monitors, all of whom shall be attorneys licensed to practice law in Tennessee and whose licenses are in good standing and none of whom shall be engaged in the practice of law with the Respondent or petitioning attorney, whether in a law firm of any form or structure or in an association of attorneys of any kind or from. Rule 9 § 12.9(c).

(2) Disciplinary Counsel will review Respondent or petitioning attorney's recommended practice monitor and recommend to the Board whether to accept one of the recommended practice monitors in its sole discretion.

(3) The Board shall designate a practice monitor from the list provided or if none are acceptable or were provided, the Board shall designate a practice monitor in its sole discretion. The Board's designation of a practice monitor shall be final and not subject to appeal. Rule 9 § 12.9(c).

3.7(B) Procedures for Reviewing § 12.9(d) Applications for Fees to Practice Monitors

(1) The application for fees and attached affidavit or declaration from the practice monitor shall be filed with the Executive Secretary of the Board and forwarded to the Board Chair. Rule 9, § 12.9(d).

(2) Within fifteen (15) days after the application of fees has been submitted, the Respondent or petitioning attorney may submit to the Board Chair any response in opposition to the application for fees, filed with the Executive Secretary and a copy served on the practice monitor. Rule 9 § 12.9(d).

(3) The Executive Secretary will docket any request for a hearing by the practice monitor, Respondent or petitioning attorney and will coordinate with the Board Chair or the Chair's designee in designating a panel to conduct a hearing.

(4) The Executive Secretary will coordinate with the practice monitor, respondent attorney, petitioning attorney and the panel in promptly scheduling a time, date and place for a hearing.

(5) The Executive Secretary will arrange for the presence of a Court Reporter at the hearing.

(6) The panel will, within 15 days of the conclusion of the hearing, file findings and judgments with the Board's Executive Secretary to be served upon the practice monitor respondent and/or petitioning attorney.

(7) The Board shall review the panel's findings and judgment and either enter the panel's judgment or modify and enter judgment as modified. Rule 9 § 12.9(d).

(8) If no hearing is requested, the Board shall within 15 days from the date on which the respondent or petitioning attorney's response is due or submitted, whichever is earlier, enter a judgment regarding the practice monitor's application for fees. Rule 9 § 12.9(d).

(9) There shall be no other or further relief regarding an application for practice monitor fees. Rule 9 § 12.9(d).

3.8 Keeping and Preparation of Minutes

Minutes will be kept of all meetings and will be prepared and submitted to the Board at the next quarterly meeting.

3.9 Meetings Governed by Roberts Rules of Order

Roberts Rules of Order will prevail and govern where they are not inconsistent with Rule 9 of the Supreme Court or the policies and rules adopted herein.

3.10 Protocol for Records Retention

A. Credit Card Information

(1) Credit card information entered into the Attorney Portal for the purpose of paying an outstanding invoice are temporary records and will be retained only as long as necessary to process the payment. Credit card data will be immediately deleted from the Board's systems once a payment transaction has either succeeded or failed. The credit card number will be truncated to the last four digits only and the CVV number and expiration date will be deleted completely. Under no circumstances will any Board employee have access to an attorney's credit card information. Credit card numbers will not be taken over the phone, written down, emailed, photocopied, or in any other manner obtained or stored by Board staff.

B. Email

The Board of Professional Responsibility's email system will automatically on a daily basis delete all temporary records that exceed the following limits, except for material subject to a litigation hold:

- (1) All email items received in a user's inbox and sent items will be maintained for a maximum of 180 days;
- (2) Appointments in calendars – two (2) years;
- (3) Tasks and Notes – two (2) years;
- (4) Trash items – 15 days.

C. Employee-Created Documents

(1) Documents created and/or stored by BPR users on network file shares will be retained for the duration of the user's employment with the agency. Following termination of employment, a former employee's individual folder will be retained for six months. After six months the user's folder may be deleted from the network.

(2) Employee-created documents stored on network file shares are considered working copies only and should not be used as permanent Board records. Final copies of employee documents which become permanent records should be filed, scanned, and retained as appropriate for the type of document.

D. Data Backup

(1) All electronic data will be backed up at least twice weekly. Backup data will include SQL databases, files stored on network file shares, and all server operating systems and application files. Backup data for the current work week will be retained offsite. Backup data for the previous two weeks will be sent to an offsite storage facility for use in a disaster recovery scenario.

(2) Email backup databases will be retained for a maximum of 180 days.

3.11 Records Policy

I. Definitions:

A. "Records Custodian" is the office, official, or employee lawfully responsible for the direct custody and care of a public record. Tenn. Code Ann. § 10-7-503(a)(1)(C). The records custodian is not necessarily the original preparer or receiver of the record.

B. "Public Records" includes all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films,

sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency except for confidential records as set forth in Tenn. Sup. Ct. R. 9 §32. See Tenn. Code Ann. § 10-7-503(a)(1)(A).

C. “Public Records Request Coordinator” is the individual or individuals, designated in this Policy who has, or have, the responsibility to ensure public records requests are routed to the appropriate records custodian and are fulfilled in accordance with the Tennessee Public Records Act (TPRA). Tenn. Code Ann. § 10-7-503(a)(1)(B). The Public Records Request Coordinator may also be a records custodian.

D. “Requestor” is a person seeking access to a public record, whether it is for inspection or duplication.

E. “Employee” is any person that is an employee of the Board of Professional Responsibility (the Board).

II. Policy and Procedures:

A. PURPOSE

1. The following Policy for the Board is hereby adopted to provide economical and efficient access to public records as provided under the Tennessee Public Records Act, Tenn. Code Ann. §10-7-503 (a)(1)(B). This policy is available for inspection and duplication at the Board and is posted online at www.tpbr.org. The policy shall be reviewed as needed, but no less frequently than every two years.

B. REQUESTING ACCESS TO PUBLIC RECORDS

1. Public record requests shall be made to the Public Record Request Coordinator (“PRRC”) or his/her designate in order to ensure public records requests are routed to the appropriate records custodian and fulfilled in a timely manner.

2. Requests for inspection may be made in person, by telephone, fax, email or other electronic means to the Board of Professional Responsibility, 10 Cadillac Drive, Suite 220, Brentwood, TN 37027. The PRRC shall, however, request a U.S. mail address or email address from the requestor in order to provide any written communication required under the TPRA.

3. Requests for copies may be made in person, by telephone, fax, email or other electronic means to the Board of Professional Responsibility of the Supreme Court of Tennessee, 10 Cadillac Drive, Suite 220, Brentwood, TN

37027. The PRRC shall, however, request a U.S. mail address or email address from the requestor in order to provide any communication required under the TPRA.

4. Unless there is an indication that the requestor is not a Tennessee citizen, proof of Tennessee citizenship by presentation of a valid Tennessee's driver's license is not required as a condition to inspect or receive copies of public records.

C. RESPONDING TO PUBLIC RECORDS REQUESTS

1. Public Records Request Coordinator

a. The PRRC shall review public records requests and make an initial determination of the following:

- i. If the requestor is a Tennessee citizen;
- ii. If the records requested are described with sufficient specificity to identify them; and
- iii. If the Board is the custodian of the requested records.

b. The PRRC shall acknowledge receipt of the request and take the following actions, if appropriate:

- i. Deny the request on the basis that:
 - A. The requestor is not a Tennessee citizen;
 - B. The request lacks specificity and/or needs clarification;
 - C. The Board is not the custodian of the requested records; or
 - D. The requested records do not exist.
- ii. Contact the requestor to see if the request can be narrowed and/or clarified.
- iii. Forward the public records request to the appropriate records custodian(s) in the Board with notice of the date the request was received and the deadline for when a response to the request is due.

- iv. If requested records are in the custody of a different governmental entity, and the PRRC knows the correct government entity, advise the requestor of the correct governmental entity and PRRC for that entity, if known.
- c. The designated PRRC is:
 - i. Name or title: Ethics Counsel
 - ii. Contact information: 10 Cadillac Drive, Suite 220, Brentwood, TN 37027.

2. Records Custodian

- a. Upon receiving a public records request from the PRRC, if the requested records are practicably available and not exempt from disclosure, a records custodian shall promptly make the requested public records available pursuant to Tenn. Code Ann. § 10-7-503(a)(2)(B)(i). If the records custodian is uncertain that an applicable exemption applies, the custodian may consult with the PRRC or counsel.
- b. If not practicable to promptly provide requested records because additional time is necessary to determine whether the requested records exist; to search for, retrieve, or otherwise gain access to records; to determine whether the records are subject to inspection; to redact records; or for other similar reasons, then the records custodian shall inform the PRRC, who shall, within seven (7) business days from the PRRC's receipt of the request, send the requestor a Public Records Request Response pursuant to Tenn. Code Ann. § 10-7-503(a)(2)(B)(iii).
- c. If a records custodian reasonably determines that production of records should be in installments, the records custodian shall inform the PRRC, who shall, within seven (7) business days from the PRRC's receipt of the request, send the requestor a Public Records Request Response informing the requestor that the production of records will be in installments and that a records production schedule will be provided as expeditiously as practicable.
- d. If a records custodian determines that a public records request should be denied because of an applicable exemption, the records custodian shall inform the PRRC, who shall, within seven (7) business days from the PRRC's receipt of the request, deny the

request in writing and include the basis for such denial, pursuant to Tenn. Code Ann. § 10-7-503(a)(2)(B)(ii).

e. If a records custodian discovers public records responsive to a records request were omitted in a production, the records custodian shall notify the PRRC, who shall contact the requestor concerning the omitted documents and produce those public records as quickly as practicable.

3. Redaction

a. If a record contains confidential information or information that is not open for public inspection, the records custodian shall prepare a redacted copy prior to providing access.

b. Whenever a redacted record is provided, a records custodian should provide the requestor with the basis for redaction, which shall be general in nature and not disclose confidential information. A records custodian is otherwise not required to provide any sort of privilege log.

4. Inspection of Records

a. There shall be no charge for inspection of public records that are subject to inspection under the TPRA.

b. Inspection of records shall take place at the Board located at 10 Cadillac Drive, Suite 220, Brentwood, TN 37027. The location for inspection of records within the Board shall be determined either by the PRRC or the appropriate records custodian.

c. Appointments for inspection of public records are required and may be scheduled by contacting the Board's Ethics Counsel at (615) 361-7500 Ext. 212.

5. Copies of Records

a. A records custodian shall promptly respond to a public record request for copies in the most economic and efficient manner practicable.

b. Copies will be available for pickup at the BOPR, 10 Cadillac Drive, Suite 220, Brentwood, TN 37027.

c. Upon payment for postage, copies will be mailed to the requestor's home address by the United States Postal Service.

d. A requestor will not be allowed to make copies of records with any type of personal equipment, including but not limited to cell phones, portable scanners, or portable copy machines.

6. Fees and Procedures For Billing and Payment

a. Fees for labor and copies of public records shall not be used to hinder access to public records.

b. Prior to producing copies of records, records custodians shall provide requestors with an itemized estimate of the fees, including labor costs, to the extent possible.

c. Pursuant to Tenn. Code Ann. § 10-7-503(a)(7)(C)(i), upon a request for copies of records, the Board shall assess fees for the copying and labor based on the most current version of the "Schedule of Reasonable Charges" issued by the Office of Open Records Counsel, available at:
<http://www.comptroller.tn.gov/openrecords/>.

d. A records custodian may waive or reduce fees if:

i. The fees total less than ten dollars (\$10.00);

ii. The person requesting the copies is indigent pursuant to Federal poverty guidelines and signs a sworn statement to that effect; or

iii. The person requesting the copies does so on behalf of a government agency.

e. Payment is to be made by personal check, cashier's check, or money order made payable to the State of Tennessee and delivered to the Board.

f. Payment in advance is required for all requests for copies of records.

i. The Board will aggregate records requests when more than four (4) requests are received within a calendar month, either from a single individual or a group of individuals deemed working in concert and adopts the "Frequent and

Multiple Request Policy” and any successor policy developed by the Office of Open Records Counsel.

- ii. Such requests may be aggregated on any level whether by attorney, case, division, office or otherwise.
- iii. The PRRC is responsible for making the determination that a group of individuals are working in concert. The PRRC must inform the individuals that they have been deemed to be working in concert and that they have the right to appeal the decision to the Office of Open Records Counsel.

3.12 Facsimile and Electronic Filing of Papers

A. Pursuant to Rule 5A of the Tennessee Rules of Civil Procedure (T.R.C.P.), the Executive Secretary of the Board shall accept for filing any document by facsimile transmission. The Board shall assess charges for filings by facsimile pursuant to T.R.C.P. 5A.04.

B. The Board has considered Rule 5B of the Tennessee Rules of Civil Procedure and does not allow the electronic filing of papers with the Executive Secretary of the Board of Professional Responsibility.

3.13 Outside Recording Devices at Meetings of the Board

No recording devices other than those in use by the Executive Secretary are permitted at meetings of the Board.

3.14 Hearing Committee Member Nominations

In making recommendations to the Court for Hearing Committee members, Board members should strive for diversity and representation throughout the geographical boundaries of the member’s disciplinary district. Preference should be given to nominating Hearing Committee members with litigation experience.

3.15 Formal and Advisory Opinion Requests

A. Pursuant to Rule 9 § 5.2, the Board shall apply the following criteria in considering whether to express or decline requests for opinions:

- (1) Opinions shall not be issued if it is known to the Board that:
 - a. the inquiry is the subject of a disciplinary proceeding;
 - b. the inquiry subject is pending before a court.

- (2) The Board may decline to issue an opinion if the inquiry:
 - a. is made by a person who is not an attorney licensed and/or admitted to practice law in Tennessee;
 - b. concerns past conduct of the inquirer;
 - c. involves the conduct of an attorney other than the inquirer;
 - d. asks for an opinion governed by law other than the rules of professional conduct;
 - e. asks for an opinion governed by law other than the rule or court procedure.

B. Requests for Formal Ethics Opinions

Requests for formal ethics opinions should be in writing addressed to the Board in accordance with Tennessee Supreme Court Rule 9 § 5.4. If the Board votes to issue a formal ethics opinion pursuant to the written request, then the Ethics Committee with the assistance of Ethics Counsel shall prepare a draft formal ethics opinion. The draft formal ethics opinion shall be considered by the full Board. If the draft formal ethics opinion is approved by the Board, Disciplinary Counsel shall publicize the draft formal ethics opinion for comment from judges, lawyers, bar associations and members of the public for thirty (30) days on the Board's website and through TBA Today. After expiration of the comment period, the Board shall consider the filed comments and vote to approve, revise or disapprove the proposed formal ethics opinion.

3.16 Rules Governing Financial Institutions

A. Approval of Financial Institutions

(1) Each financial institution seeking approval as a depository for attorney trust accounts shall file with the Board an acknowledgment of the attorney's constructive consent of disclosure of their trust account financial records as a condition of their admission to practice law and the financial institution's agreement to report to the Board whenever any properly payable instrument is presented against an attorney trust account containing insufficient funds. Rule 9 § 35.1(b).

(2) If a financial institution agrees to reporting overdrafts of attorney trust accounts and files this form with the Board, then the financial institution shall be approved.

C. Termination of Financial Institutions

(1) If a financial institution fails to complete or periodically update the Board's form overdraft notification agreement, the Board shall terminate the financial institution's approved status.

(2) If an approved financial institution fails to comply with the terms of the form overdraft notification agreement, the Board may, after notice to the financial institution, terminate the financial institution's approved status.

(3) The financial institution may cancel its agreement with the Board upon thirty (30) days notice in writing to the Board. Supreme Court Rule 9 § 35.1(b).

4. CONFLICT OF INTEREST SCREENING PROCEDURES

The following procedures will be used each time the Office hires an attorney or other individual:

1. Each time the Office hires an individual, that individual will be asked to compile a list of all cases or matters upon which he/she is working which he/she knows may in any way involve pending matters with the Office (Attachment A). The Chief Disciplinary Counsel shall review this list, and any additional potential conflicts which may arise, and, if appropriate, shall implement the following guidelines:

- (a) a list of all matters where a potential conflict exists will be compiled (the "Restricted Files);
- (b) all Office employees will be instructed in writing (Attachment B) not to discuss the Restricted Files with, or in the presence of, the newly-hired individual or to permit such individual to have access to any files pertaining to the Restricted Files;
- (c) brightly colored labels will be placed by the newly-hired individual's legal assistant or other designated person on all physical files pertaining to the specified client or matter which will state the following: "The person listed below is not allowed access to this file and no discussions should be had with or around this person regarding this case. This is in accordance with Rule of Professional Conduct 1.10 and Comment [10a];
- (d) the newly-hired individual will provide written affirmation (Attachment C) that he/she is aware of and will abide by the Office's screening procedures; and
- (e) the responsible attorney overseeing the Restricted Files will provide written affirmation (Attachment D) that he/she is aware of and will abide by the Office's screening procedures.

2. Any legal assistant who is under consideration for employment by the Office shall be asked to identify any cases in which either she/he, the attorneys or other persons with whom she/he has worked have been involved with this Office. If actual conflicts are evident, the assistant shall not be hired; however, if potential conflicts are identified, they shall be presented to the attorneys involved and the Chief Disciplinary Counsel to determine if the applicant may be hired. If the applicant is hired, the procedure outlined in Section 1 above shall apply to the newly-hired legal assistant.

3. Any employee found to have knowingly or intentionally breached or to have attempted to circumvent the established screening mechanisms of the Office shall be immediately disciplined, up to and including discharge.

4. The case manager provides all Disciplinary Counsel with a list of newly-opened investigative files. If Disciplinary Counsel has a conflict, then Disciplinary Counsel will advise the case manager and Chief Disciplinary Counsel by completing Attachment E. The procedures outlined above in Section 1 will be followed in the event of a conflict.

5.

REGISTRATION

5.1 Annual Registration

On the registration statement provided to the Board, the attorney may designate the primary or preferred address. Changes in the attorney's contact information may be made by the attorney in the Board's Attorney Portal, in writing on the attorney's letterhead (by fax or mail), by email from the attorney's registered email address or on the registration statement provided by the Board. If the attorney does not specifically designate a "primary or preferred" address, the Board will default to the attorney's office address unless it is determined to be invalid. Tenn. Sup. Ct. R. 9 § 10.1.

5.2 Letters of Good Standing

- A. An attorney may request a Letter of Good Standing from the Board. The Board will receive requests through the Attorney Portal, by fax, mail or email. Requests must meet the following requirements:
- (1) Letters of Good Standing and/or Disciplinary History information will be released only by request of the subject attorney;
 - (2) The attorney requesting the release of information must make the request in writing or by email if payment of the request is made in the Attorney Portal. The attorney must specify whether the request is for a Letter of Good Standing, a Disciplinary History, or both;
 - (3) The attorney must include specific instructions as to where the Board should forward the requested information;
 - (4) The requesting attorney must give specific permission to release the requested information.
- B. The charge for a Letter of Good Standing is \$25.00. The charge for a Disciplinary History Report is also \$25.00. The charge for a Letter of Good Standing with a Disciplinary History Report is \$25.00. Payment may be made when requesting the service through the Attorney Portal or by mailing a check to the Board of Professional Responsibility.
- C. The fee for each additional original is also \$25.00.
- D. The Board will send all requested information upon receipt of payment.

5.3 Board of Professional Responsibility (BPR) Cards

- A. The Board acknowledges receipt of an attorney's registration statement and payment of the annual fee by mailing a Board of Professional Responsibility (BPR) card to the attorney pursuant to Tenn. Sup. Ct. R. 9 § 10.4. BPR cards are not provided to inactive attorneys, registered in-house counsel attorneys, or attorneys registering as *pro hac vice*.
- B. The replacement fee for a BPR card is \$15.00. Replacement BPR cards may be requested through the Board's Attorney Portal under the Services tab. Replacement BPR cards will be mailed to the attorney after receipt of payment.

5.4 Pro Hac Vice

Any lawyer admitted *pro hac vice* pursuant to Tenn. Sup. Ct. R. 19 shall renew such registration for each subsequent year the case is pending and the lawyer remains counsel of record for that case. This requires the payment of the annual registration fee but does not require resubmission of the required application paperwork. Registration as *pro hac vice* requires the payment of the annual registration fee but does not require resubmission of the required application paperwork. Annual registration for *pro hac vice* attorneys must be made through the Board's Attorney Portal. Annual registration for *pro hac vice* attorneys is open on November 10 each year. If payment is not received on or before the 1st day of January, the *pro hac vice* attorney's registration will be listed as expired until such time as payment for the current year is received. *Pro hac vice* attorneys will not be allowed to pay annual fees for prior years in order to show active registration for a prior year. Upon receipt of timely payment of the annual fee, the Board will show the *pro hac vice* attorney's registration as complete on the Board's website. The website listing will show each year the attorney has had an active *pro hac vice* registration.

5.5 New Admittees

- A. Bar exam admittees must initially register with the Board via the online Attorney Portal.
- B. Bar exam and comity admitted attorneys must pay the New License Fee (\$250.00) in order to complete their registration requirements and be sworn in by the Supreme Court pursuant to Tennessee Supreme Court Rules 6 and 7.
- C. Upon notice from the Supreme Court Clerk that a new admittee has completed the requirements of admission, the Board will list the new attorney as active and will issue a BPR card for the new attorney.

- D. The prorated registration fee for bar exam admittees will be due three months from the date the attorney completed all admission requirements. For attorneys admitted by comity, the prorated registration fee is added to the New License Fee and must be paid prior to completing the admission process.

5.6 Contact Information

- A. In compliance with Rule 9, § 10.1, attorneys may submit changes in contact information to the Board via the Attorney Portal, by regular mail, email or fax. All requests for contact information changes must include the attorney's BPR number. The Board cannot accept third party contact information change requests.
- B. An attorney's office address information will be posted on the Board's website. If an attorney does not provide an office address to the Board, the attorney's home address will be posted on the Board's website pursuant to Tenn. Sup. Ct. R. 9 § 10.1.

5.7 Convenience Fee

A Convenience Fee will be assessed for every online payment transaction on the Board's Attorney Portal.

Attachment A

**Please return to
Chief Disciplinary Counsel**

MEMORANDUM

TO: All Disciplinary Counsel
FROM: Chief Disciplinary Counsel
DATE:
RE: Conflicts Screening Procedures

Our Office has a policy and procedure (attached) regarding the identification of potential conflicts of interest. Please review the attached list of active matters upon which (name) has been working that he/she has identified may in any way involve pending matters in this Office. This memo is being sent to you for the purpose of identifying any potential conflicts of interest which may exist as a result of (name's) prior employment with _____ from (dates). (Name) is a new (position) in the Office. *It is necessary for each of you to complete and return this memo.*

Please complete and sign this memo and return it to Chief Disciplinary Counsel by (date). Thank you for giving your prompt attention to this important request.

_____ I know of no open matters which present a potential conflict of interest.

_____ I know of the following open matters which could present a potential conflict of interest:

File #

Respondent

Date

Employee Signature

Print Name

Attachment

MEMORANDUM

TO: Chief Disciplinary Counsel
FROM: (Newly-hired Individual)
DATE:
RE: Possible Conflicts of Interest

Listed below are all currently active matters or cases in which I participated substantially while employed in any capacity in a law firm or law office which may in any way involve pending matters with the Board of Professional Responsibility.

<u>Case Name</u>	<u>Client and Affiliated Parties</u>	<u>Adverse Parties</u>
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Name of the attorney with a matter pending with the Board of Professional Responsibility:

Name

Date

MEMORANDUM

TO: (Newly-hired individual)
FROM: Chief Disciplinary Counsel
DATE: _____
RE: Conflicts of Interest

Pursuant to Ethics Opinions 89-F-118 and 2003-F-147 of the Tennessee Board of Professional Responsibility, this is to advise that you are prohibited from engaging in any work, having any discussions, gathering any information and being in any way involved with the matters noted below. Failure to abide by this requirement could result in disciplinary action.

This memorandum is being sent as a part of our screening procedure to avoid imputed or vicarious disqualification provisions of the Tennessee Rules of Professional Conduct. The noted matters have been compiled from a memorandum of inquiry addressed to every attorney within the Office.

Conflicted Matters:

cc: All Board of Professional Responsibility employees

MEMORANDUM

TO: Chief Disciplinary Counsel
FROM: (Newly-hired individual)
DATE:
RE: Acknowledgement of Ethical Screening Procedures

As part of the process of moving from (last employment), to begin work with Board of Professional Responsibility, the matters on the attached list with which I have had substantial involvement for clients or others with pending matters with the Board of Professional Responsibility (“the Restricted Files”) have been identified as ones from which I need to be ethically screened. I understand that I am prohibited from having any access to the Restricted Files or communications about them with the attorneys and other Office employees working on them. In that regard, I have been informed that the Office has in place screening procedures which are designed to effectively prevent the flow of information with respect to the Restricted Files between me and others in the Office. I have reviewed these procedures, understand them, and confirm to you that I will abide by them.

I confirm to you that I have not provided any information, material or otherwise, with respect to the Restricted Files to any employee of the Office.

Dated: _____
NAME _____

Attachments

MEMORANDUM

TO: Chief Disciplinary Counsel
FROM: (Responsible Attorney)
DATE:
RE: Acknowledgement of Ethical Screening

I am the responsible attorney for one or more of the matters on the attached list (the “Restricted Files”) which identifies (newly-hired individual) as being disqualified from having any access to the Restricted Files, or contact with any Office employee performing any work on them. I understand that the Restricted Files are subject to screening procedures established by the Office designed to effectively prevent the flow of information about them between (newly-hired individual) and other employees of the Board of Professional Responsibility. The purpose of this letter is to confirm that I am aware of the screening procedures implemented by the Office and will abide by them.

I wish to further confirm to you that I have not received any information, material or otherwise, from (newly-hired individual) or anyone with his/her former firm or office, (former employer), with respect to the Restricted Files.

Signed: (Responsible Attorney)

Attachments