

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED

09/18/2019

Clerk of the
Appellate Courts

**IN RE: AMENDMENTS TO RULE 9, SECTIONS 8, 12, & 30
RULES OF THE TENNESSEE SUPREME COURT**

No. ADM2019-01685

ORDER

The Court is considering amending Tennessee Supreme Court Rule 9 as it pertains to the permanency of disbarment and the length of time for suspension. The proposed amendments are set out in the attached Appendix to this Order.

The Court hereby publishes the proposed amendments for public comment and solicits written comments from the bench, the bar, and the public. The deadline for submitting written comments is Tuesday, December 17, 2019. Written comments may be emailed to appellatecourtclerk@tncourts.gov or mailed to:

James M. Hivner, Clerk
Re: Tenn. Sup. Ct. R. 9, sections 8, 12, & 30
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

and should reference the docket number set out above.

The Clerk shall provide a copy of this Order, including the Appendix, to LexisNexis and to Thomson Reuters. In addition, this Order, including the Appendix, shall be posted on the Court's website.

It is so ORDERED.

PER CURIAM

TENN. SUP. CT. R. 9, SECTION 8

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Section 8. Jurisdiction

8.1. Any attorney admitted to practice law in this State, including any formerly admitted attorney with respect to acts committed prior to surrender of a law license, suspension, disbarment, or transfer to inactive status, or with respect to acts subsequent thereto which amount to the practice of law or constitute a violation of this Rule or of the Rules of Professional Conduct, and any attorney specially admitted by a court of this State for a particular proceeding, is subject to the disciplinary jurisdiction of the Court, the Board, panels, the district committees and hearing panels herein established, and the circuit and chancery courts of this State. ~~Any a~~Attorneys not admitted or specially admitted to practice law in this State, attorneys who are suspended, and individuals who are disbarred or who have surrendered a law license, but who nevertheless engages in the practice of law in this State shall be subject to the imposition of civil remedies and criminal prosecution pursuant to Tenn. Code Ann. § 23-3-103, ~~and~~ Disciplinary Counsel shall refer such attorney or individual to the appropriate authority~~(ies)~~ for investigation and pursuit of civil remedies and/or criminal prosecution.

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

TENN. SUP. CT. R. 9, SECTION 12

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Section 12. Types of Discipline

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

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

12.2. Suspension.

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

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

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

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

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

12.3. Temporary Suspension.

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

(b) Any order of temporary suspension which restricts the attorney maintaining a trust account shall, when served on any bank maintaining an account against which said attorney may make withdrawals, serve as an injunction to prevent said bank from making further payment from such account or accounts on any obligation except in accordance with restrictions imposed by the Court.

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

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

12.4. Public Censure. Public censure is a form of public discipline which declares the conduct of the attorney improper, but does not limit the attorney's privilege to practice law.

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

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

12.7. Restitution. Upon order of a hearing panel, panel or court, or upon stipulation of the parties, and in addition to any other type of discipline imposed, the respondent attorney may be required to make restitution to persons or entities financially injured as a

result of the respondent attorney's misconduct. In the event that a person or entity financially injured as a result of the respondent attorney's misconduct has received any payment from or has a claim pending before the Tennessee Lawyers' Fund for Client Protection, the order or stipulation shall provide that the Fund shall be reimbursed to the extent of such payment by the Fund.

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

12.9. Practice Monitors.

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

(b) The duties and responsibilities of a practice monitor may include, but shall not be limited to, supervision of the respondent or petitioning attorney's compliance with any conditions of discipline, probation, or reinstatement; and, the respondent or petitioning attorney's compliance with trust account rules, accounting procedures, office management procedures, and any other matters involving the respondent or petitioning attorney's practice of law which the parties, by stipulation or agreement, or the hearing panel, panel or reviewing court determines to be appropriate and consistent with the violation(s) for which the respondent or petitioning attorney was disciplined. The practice monitor shall make periodic reports to Disciplinary Counsel at such times or intervals as may be prescribed by Disciplinary Counsel and also as deemed necessary or desirable by the practice monitor.

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

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

(d) The respondent or petitioning attorney shall be responsible for and shall pay a reasonable fee to the practice monitor, and, where applicable, the payment of such fee shall be a condition of reinstatement pursuant to Section 30. The practice monitor may make application to the Board Chair for an award of fees and shall file with the application an affidavit or a declaration under penalty of perjury and such other documentary evidence as the practice monitor deems appropriate documenting the hours expended and the fees incurred, and shall serve a copy of the same on the respondent or petitioning attorney. Such proof shall create a rebuttable presumption as to the necessity and reasonableness of the hours expended and the fees incurred. The respondent or petitioning attorney may within fifteen days after the practice monitor's application submit to the Board Chair and serve on the practice monitor any response in opposition to the application for an award of fees. The burden shall be upon respondent or petitioning attorney to prove by a preponderance of the evidence that the hours expended or fees incurred by the practice monitor were unnecessary or unreasonable. The practice monitor or the respondent or petitioning attorney may request a hearing before a panel, in which event the panel shall promptly schedule the same. The panel shall within fifteen days from the conclusion of such hearing submit to the Board its findings and judgment with respect to the practice monitor's application for the award of fees. There shall be no petition for rehearing. The Board shall review the panel's findings and judgment and shall either enter the panel's judgment or modify the same and enter judgment as modified. In the event no hearing is requested, the Board shall within fifteen days from the date on which the respondent or petitioning attorney's response is due or is submitted, whichever is earlier, enter a judgment with respect to the practice monitor's application for the award of fees. There shall be no other or further relief with respect to an application for the award of practice monitor fees. Nothing herein shall prohibit the practice monitor from providing these services pro bono. A practice monitor who elects to provide services pro bono may include the hours providing such services on his or her annual pro bono reporting statement under the category of "hours providing legal services to improve the law, the legal system, or the legal profession."

TENN. SUP. CT. R. 9, SECTION 30

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Section 30. Reinstatement

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

30.2. Individuals disbarred on or after July 1, 2020, are not eligible for reinstatement. ~~An attorney who has been disbarred~~ Individuals disbarred under Rule 9 prior to July 1, 2020, may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment. ~~An attorney who has previously been disbarred and reinstated is not eligible for reinstatement following a second disbarment.~~

30.3. Reinstatement from Administrative Suspension or Inactive Status.

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

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

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

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

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

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

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

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

(i) The Court may require an attorney seeking reinstatement from suspension or inactive status under any of the foregoing provisions and who has remained suspended or inactive

for more than five years before the filing of a petition for reinstatement and/or application for reinstatement to establish proof of competency and learning in law which proof may include certification by the Board of Law Examiners of the successful completion of an examination for admission to practice subsequent to the date of ~~disbarment~~, suspension or transfer to inactive status, and to establish proof of compliance with all other applicable rules and regulations.

30.4. Reinstatement from Disbarment or Disciplinary Suspension.

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

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

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

(d) An attorney who wishes to be reinstated and who has been disbarred by the Court, or who has been suspended by the Court for a period of more than one year, or who has been suspended by the Court for a period of one year or less or an indefinite period but has remained suspended for more than one year before the filing of a petition for reinstatement, shall file with the Board and serve upon Disciplinary Counsel promptly a petition for reinstatement. Upon receipt of the petition, Disciplinary Counsel shall investigate the matter and file and serve upon the petitioning attorney a responsive pleading to the petition. The Board shall promptly refer the petition to a hearing panel in the disciplinary

district in which the petitioning attorney maintained an office at the time of the disbarment or suspension. Individuals disbarred on or after July 1, 2020, are not eligible for reinstatement.

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

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

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

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

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

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

(7) With respect to suspended or disbarred attorneys, the hearing panel or reviewing court may impose conditions on the petitioning attorney's reinstatement, including, without limitation, certification by the Board of Law Examiners of the successful completion of an examination for admission to practice; the assignment of a practice monitor for the purposes and pursuant to the procedures set forth in Section 12.9; the completion of a practice and professionalism enhancement program; the making of restitution required pursuant to Section 12.7; and, the payment of all or part of the costs of the proceeding.

(8) The petitioning attorney shall pay the costs associated with the conditions of

reinstatement, including without limitation a reasonable fee to the practice monitor pursuant to the procedures in Section 12.9(d).

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

30.5. Successive Petitions. No petition for reinstatement under this Rule, except for petitions for reinstatement under Section 27, shall be filed within two years following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person, unless otherwise ordered by the Court in denying the petition for reinstatement.

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