

June 16, 2017

Knoxville Bar Association
505 Main Street, Suite 50
P.O. Box 2027
Knoxville, TN 37901-2027
PH: (865) 522-6522
FAX: (865) 523-5662
www.knoxbar.org

VIA E-MAIL: appellatecourtclerk@tncourts.gov

James Hivner, Clerk of Appellate Courts
Tennessee Supreme Court
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

**Re: Proposed Amendments to the Tennessee Supreme Court Rule 9;
No. ADM2017-00554**

Officers

Amanda M. Busby
President

Keith H. Burroughs
President-Elect

Wynne du Mariau Caffey-Knight
Treasurer

Hanson R. Tipton
Secretary

Wayne R. Kramer
Immediate Past President

Dear Mr. Hivner:

Pursuant to the Tennessee Supreme Court's Order referenced above, the Knoxville Bar Association ("KBA") Professionalism Committee (the "Committee") has carefully considered current Rule 9 and the proposed amendments thereto (the "Amendments"). At the KBA Board of Governors' (the "Board") Meeting held on May 17, 2017, the Committee presented a detailed report of its review of the proposed Amendments. Among other matters, concerns arose as to whether opening disciplinary proceedings to the public could unfairly subject many attorneys to public scrutiny before allegations against them have been substantiated.

Board of Governors

Dwight L. Aarons

E. Michael Brezina III

Kathryn St. Clair Ellis

Lisa J. Hall

Dana C. Holloway

Rachel P. Hurt

Stephen Ross Johnson

Mary D. Miller

Carrie S. O'Rear

T. Mitchell Panter

M. Samantha Parris

Cheryl G. Rice

John E. Winters

For reference, Section 32.1 currently provides as follows:

32.1. All matters, investigations, or proceedings involving allegations of misconduct by or the disability of an attorney, including all hearings and all information, records, minutes, correspondence, files or other documents of the Board, district committee members and Disciplinary Counsel shall be confidential and privileged, and shall not be public records or open for public inspection, except as otherwise provided in this Section.

The proposed Amendments would delete the language – "all hearings and" – and add the sentence – "All hearings held before a duly appointed hearing panel or Court shall be public, subject to the provisions of Section 32.6 and Tenn. Sup. Ct. R. 30." This would essentially make attorney disciplinary hearings, including those before a hearing panel or a Court, generally open to the public. Respondent attorneys could seek to have their disciplinary proceedings closed under Section 32.6 and Tenn. Sup. Ct. R. 30.

Following the Committee's presentation and thorough discussion by the Board, the Board as a whole unanimously approved opposing the proposed Amendments for the following reasons and submits this comment in opposition to the Amendments:

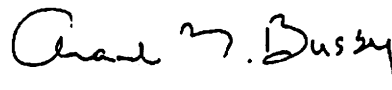
Executive Director
Marsha S. Watson
mwatson@knoxbar.org

James M. Hivner, Clerk
Re: Tenn. Sup. Ct. R. 9
June 16, 2017
Page 2

1. The KBA is concerned that opening disciplinary proceedings to the public could unfairly subject many attorneys to public scrutiny before allegations against them have been substantiated. The KBA would note that an attorney's reputation takes many years to build, but can be destroyed in an instant.
2. The KBA believes the changes are unnecessary and would create the potential for a media circus in connection with disciplinary proceedings.
3. The KBA is concerned that Board of Professional Responsibility (BPR) disciplinary hearings if open to the public could result in the inappropriate disclosure of attorney-client privileged communications and attorney work-product because BPR hearings typically involve underlying attorney-client relations and attorney work-product, which should qualify as confidential and/or privileged.
4. The proposed Amendments would be counter to the current routine practice for Senior Judges in our district to close the courtroom whenever conducting an attorney disciplinary hearing.
5. The Amendments to Section 32.1 do not appear to be well coordinated with the other sections of Rule 9:
 - (1) Under Section 32.6 that is not currently being amended, there must be a "proceeding" underway before confidentiality may be requested;
 - (2) Section 32.2 currently does not address disability proceedings;
 - (3) Opening hearings to the public generally would create ambiguity in the different sections of Rule 9; and
 - (4) Opening hearings to the public generally might counteract the goal of recovery in the cases of attorneys working with the Tennessee Lawyers Assistance Program, which is important for many attorneys facing discipline.

For all of the foregoing reasons, the KBA opposes the proposed Amendments to Rule 9. As always, the KBA appreciates the opportunity to comment on proposed Rules and changes to such Rules promulgated by the Tennessee Supreme Court.

Sincerely,

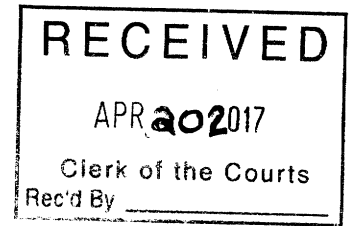


Amanda M. Busby, President
Knoxville Bar Association

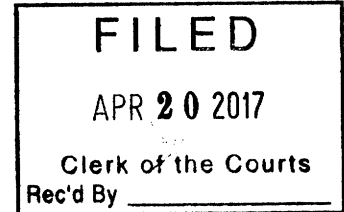
Enclosures

cc: Marsha Watson, KBA Executive Director (via e-mail)
KBA Executive Committee (via e-mail)

**TODD
FLOYD** PLC
ATTORNEYS AT LAW



April 19, 2017



James M. Hivner, Clerk
Re: Tenn. Sup, Ct. R. 9, section 32
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

RE: No. ADM2017-00554

Dear Mr. Hivner:

As a Hearing Committee Member for the Board of Professional Responsibility, I write in general opposition to the proposed amendment making disciplinary hearings public. By their very nature, these hearings typically involve underlying attorney-client relations and attorney work-product, all of which should qualify as confidential and/or privileged. Moreover, unrepresented witnesses and involved third parties may well have concerns that will not be addressed without proper legal representation.

At a minimum, I would suggest that R. 32.6 be amended to provide ample notice to all persons involved that each such person must apply for protection but my concern is that the amendment would have a chilling effect on the participation of such involved parties. Unrepresented witnesses and third parties cannot fairly be expected to know their rights in this regard and would probably be disinclined to secure legal representation due to expense and time issues.

Since the hearings are already recorded and transcribed, I would think that a better solution might be to require the Hearing Panel, as part of its judgment, to address any issues regarding portions of the hearing to be designated as confidential and privileged. Thereafter, the ruling could be challenged, briefed and argued before the Panel's Final Order is issued and any appeal could be expedited. However, I can envision circumstances where I would be uncomfortable as a Panel Member when confronted with these issues for an unrepresented witness or third party. In those circumstances, an attorney *ad litem* may be required.

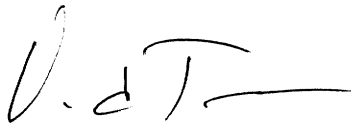
James M. Hivner, Clerk

April 19, 2017

Page 2

While I am generally in favor of "transparency" in the judicial process, I cannot see how this amendment would solve more problems than it would create.

Sincerely,

A handwritten signature in black ink, appearing to read "D. C. Todd", with a long horizontal flourish extending to the right.

Daniel C. Todd, #013442