

**IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE**

FILED
2016 APR -1 PM 2: 35

**IN RE PROPOSED AMENDMENT TO RULE 9, SECTION 22
RULES OF THE TENNESSEE SUPREME COURT**

No ADM2016-00202

COMMENT OF THE TENNESSEE BAR ASSOCIATION

The Tennessee Bar Association (“TBA”), by and through its President, William L. Harbison; Chair of its Committee on Ethics and Professional Responsibility, Brian Faughnan; General Counsel, Paul Ney; and Executive Director, Allan F. Ramsaur, files this comment supporting adoption of the proposed changes to Tenn. Sup. Ct. R. 9 § 22, suggesting clarifying language with respect to records of expunged proceedings, and supporting the addition of language with respect to summary suspension proposed by the Tennessee Supreme Court Board of Professional Responsibility (“BPR”).

By order entered February 1, 2016 this Honorable Court published for comment the addition of Tenn. Sup. Ct. R. 9 § 22.7 pertaining to the discipline of lawyers convicted or acknowledging guilt of crimes. The proposal set a deadline for written comments of Friday, April 1, 2016.

The TBA referred this matter to its standing Committee on Ethics and Professional Responsibility which reviewed this matter and made this recommendation to the President on behalf of the TBA. On March 11, 2016, the

BPR provided its own comment supporting the addition of Tenn. Sup. Ct. R. 9 § 22.7 and suggesting additional language to expressly provide that lawyers receiving judicial diversion are not subject to immediate summary suspension.

The TBA supports the addition of language as represented by Tenn. Sup. Ct. R. 9 § 22.7 indicating that, while judicial diversion may dismiss and discharge criminal proceedings and expunge the matter from official records, the conduct constituting the diverted or expunged criminal offense is available to disciplinary authorities.


The TBA additionally proposes the inclusion of explicit language that the public records of the expunged criminal proceedings should not be relied upon, referenced, or otherwise used during any disciplinary action.


The BPR has further proposed that Tenn. Sup. Ct. R. 9 § 22.3(a) relative to immediate summary suspension following a conviction is not available when the matter is disposed of by judicial diversion under Tenn. Sup. Ct. R. 9 § 22.7.


Again, the proof of the underlying conduct would still be available to disciplinary authorities.

Attached as Exhibit A is a redline version of the proposed language to accomplish the changes which the TBA proposes. Attached as Exhibit B is a "clean version" incorporating those changes proposed by the BPR.

Respectfully Submitted,

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“Exhibit A”

AMENDMENT TO TENN. SUP. CT. R. 9, §22

[New text is indicated by underlining]

Section 22. Attorneys Convicted or Acknowledging Guilt of Crimes

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

“Exhibit B”

**COMMENT OF THE BOARD OF PROFESSIONAL RESPONSIBILITY
TO PROPOSED AMENDMENT TO TENNESSEE SUPREME COURT
RULE 9, SECTION 22
[CLEAN COPY]**

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

"Exhibit C"

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April 1, 2016

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IN RE: RULE 9, § 22 RULES OF THE TENNESSEE
SUPREME COURT
NO. ADM2016-00202

Dear Jim:

Attached please find an original and one copy of the Comment of the Tennessee Bar Association in reference to the above matter.

As always, thank you for your cooperation. I remain,

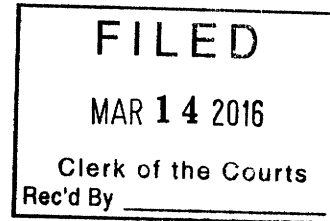
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cc: Bill Harbison, President, Tennessee Bar Association
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IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE



**IN RE: PROPOSED AMENDMENT TO TENNESSEE SUPREME
COURT RULE 9, SECTION 22**

No. ADM 2016-00202

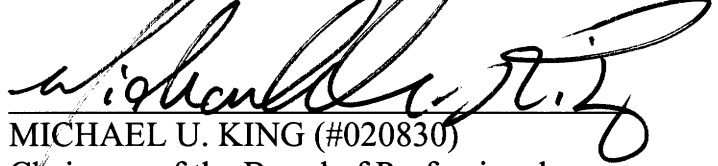
**COMMENT OF THE BOARD OF PROFESSIONAL RESPONSIBILITY
TO PROPOSED AMENDMENT TO TENNESSEE SUPREME COURT
RULE 9, SECTION 22**

Comes now the Board of Professional Responsibility (the Board), pursuant to Order filed February 1, 2016, and submits the following comment to In re: Proposed Amendment to Tenn. Sup. Ct. R. 9, Section 22.

1. The Board supports the proposed amendment to Tenn. Sup. Ct. R. 9, § 22 clarifying that attorneys receiving judicial diversion may be subject to disciplinary proceedings pursuant to Tenn. Sup. Ct. R. 9.
2. Tenn. Sup. Ct. R. 9 § 22.3 provides for the immediate summary suspension of an attorney who has entered a plea of nolo contendere or a plea of guilty or has been found guilty of a serious crime. For clarity, the Board suggests additional language be included in proposed Section 22.7 expressly providing that attorneys receiving judicial diversion are not subject to immediate summary suspension.

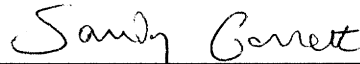
Accordingly, the Board respectfully proposes Tenn. Sup. Ct. R. 9 § 22.7 be modified as reflected in Attachment A.

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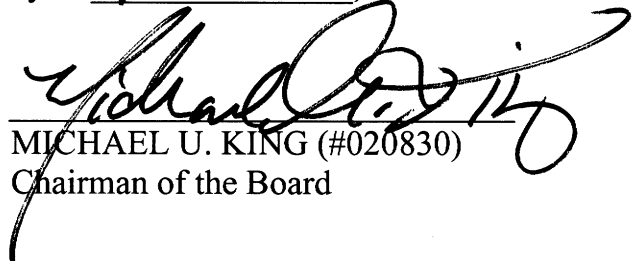


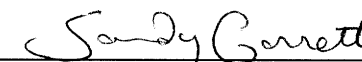
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Chief Disciplinary Counsel of the Board of
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Certificate of Service

I certify that the foregoing has been mailed to Allan F. Ramsaur, Esq., Executive Director, Tennessee Bar Association, 221 4th Avenue North, Suite 400, Nashville, Tennessee by U.S. mail, on this the 11 day of March, 2016.

By: 
MICHAEL U. KING (#020830)
Chairman of the Board

By: 
SANDY L. GARRETT (#013863)
Chief Disciplinary Counsel

Attachment A

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