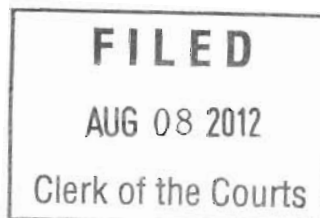


IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE



**IN RE: THE ADOPTION OF AMENDED TENNESSEE SUPREME
COURT RULE 9**

No. M2012-01648-SC-RL2-RL - Filed: August 8, 2012

ORDER

Tenn. Sup. Ct. R. 9 sets out the rules governing disciplinary enforcement with respect to attorneys. The Court has determined that this rule requires substantial restructuring and revision. Accordingly, a revised version of Tenn. Sup. Ct. R. 9 is contained in an appendix attached to this order. Also contained in the appendix are reconciliation charts correlating the current numbering of the sections in Tenn. Sup. Ct. R. 9 with the numbering of the sections in the proposed revisions to Tenn. Sup. Ct. R. 9.

Adopting the proposed amendments to Tenn. Sup. Ct. R. 9 will result in a comprehensive revision of the current rules governing disciplinary enforcement with respect to attorneys. In light of the important public policy issues raised by the proposed revisions, the Court hereby solicits written comments regarding the proposed revisions from judges, lawyers, bar associations, members of the public, and any other interested parties. The deadline for submitting written comments is Friday, February 8, 2013. Written comments should be addressed to:

Mike Catalano, Clerk
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 Tennessee Supreme Court's website.

IT IS SO ORDERED.

PER CURIAM

APPENDIX

The appendix is comprised of the following documents, which are attached:

1. Proposed Revisions To Rule 9, Disciplinary Enforcement;
2. Chart A: Reconciliation Of Rule 9 (New to Former);
3. Chart B: Reconciliation Of Rule 9 (Former to New).

1 **[Proposed Revisions To] Rule 9. Disciplinary Enforcement.**

2 **Section 1. Preamble**

3 The license to practice law in this State is a continuing proclamation by the
4 Supreme Court of the State of Tennessee (hereinafter the “Court”) that the holder is
5 fit to be entrusted with professional and judicial matters, and to aid in the
6 administration of justice as an attorney and as an officer of the Court. It is the duty
7 of every recipient of that privilege to act at all times, both professionally and
8 personally, in conformity with the standards imposed upon members of the bar as
9 conditions for the privilege to practice law.

10 **Section 2. Definitions**

11 **Board:** The Board of Professional Responsibility of the Supreme Court of
12 Tennessee.

13 **Complainant:** A person who alleges misconduct by an attorney, including
14 Disciplinary Counsel and attorney members of the Board and members of the district
15 committees.

16 **Court:** The Supreme Court of Tennessee.

17 **Disciplinary Counsel:** The Chief Disciplinary Counsel selected by the Court
18 and staff Disciplinary Counsel employed by the Chief Disciplinary Counsel, with the
19 approval of the Board, pursuant to the provisions of this Rule.

20 **District committees:** Committees of attorneys appointed by the Court pursuant
21 to provisions of this Rule.

22 **Hearing panels:** Panels of three district committee members selected by the
23 Board to hear matters pursuant to provisions of this Rule.

24 **Practice monitor:** An attorney licensed to practice law in the State of
25 Tennessee designated by the Board to supervise an attorney as a condition of public
26 discipline, probation or reinstatement pursuant to the provisions of this Rule.

27 **Protocol memorandum:** A memorandum prepared by the Board and provided
28 to the Court pursuant to the provisions of this Rule which addresses the following:
29 1) The basis for the Petition for Discipline; 2) The proposed disposition; 3) The

30 procedural history; 4) The prior history of discipline; and, 5) The reasons for the
31 proposed discipline, including: a) application of the ABA Standards for Imposing
32 Lawyer Sanctions; b) comparative Tennessee discipline in similar cases; and, c)
33 aggravating and mitigating circumstances of the kind and character set forth in the
34 ABA Standards for Imposing Lawyer Sanctions.

35 **RPC:** The Rules of Professional Conduct as adopted by Rule 8 of the Rules of
36 the Tennessee Supreme Court.

37 **Rule:** Rule 9 of the Rules of the Tennessee Supreme Court.

38 **Section:** A section of Rule 9 of the Rules of the Tennessee Supreme Court.

39 **Serious crime:** The term “serious crime” as used in Section 22 of this Rule
40 shall include any felony under the laws of Tennessee and any other crime a necessary
41 element of which, as determined by the statutory or common law definition of such
42 crime, involves improper conduct as an attorney, interference with the administration
43 of justice, false swearing, misrepresentation, fraud, willful failure to file income tax

44 returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a
45 conspiracy or solicitation of another to commit a “serious crime.”

46 **Serve or service:** The method of serving pleadings or other papers as specified
47 in Section 18 of this Rule or otherwise in the provisions of this Rule.

48 **Section 3. Disciplinary Districts**

49 Disciplinary jurisdiction in this State shall be divided into the following
50 districts:

51 District I -- the counties of Johnson, Carter, Cocke, Greene, Hancock, Grainger,
52 Jefferson, Sullivan, Washington, Unicoi, Hawkins, Claiborne, Hamblen and Sevier.

53 District II -- the counties of Campbell, Anderson, Roane, Blount, Morgan,
54 Union, Knox, Loudon and Scott.

55 District III -- the counties of Polk, Hamilton, Sequatchie, Bledsoe, Meigs,
56 Monroe, Bradley, Marion, Grundy, Rhea and McMinn.

57 District IV -- the counties of White, Van Buren, Pickett, Putnam, Overton,
58 Clay, Franklin, Moore, Bedford, Rutherford, Wilson, Trousdale, Warren, Fentress,

59 Cumberland, Smith, Jackson, Coffee, Lincoln, Marshall, Cannon, DeKalb and
60 Macon.

61 District V -- the county of Davidson.

62 District VI -- the counties of Giles, Wayne, Lewis, Maury, Humphreys,
63 Cheatham, Montgomery, Robertson, Lawrence, Perry, Hickman, Dickson, Houston,
64 Stewart, Sumner and Williamson.

65 District VII -- the counties of Henry, Carroll, Henderson, Hardeman, Hardin,
66 Benton, Decatur, Chester, Fayette, McNairy and Madison.

67 District VIII -- the counties of Weakley, Lake, Gibson, Haywood, Tipton,
68 Obion, Dyer, Crockett and Lauderdale.

69 District IX -- the county of Shelby.

70 **Section 4. The Board of Professional Responsibility**
71 **of the Supreme Court of Tennessee**

72 **4.1.** The Court shall appoint a twelve member Board to be known as “The
73 Board of Professional Responsibility of the Supreme Court of Tennessee” (hereinafter
74 the “Board”) which shall consist of:

75 (a) Three resident attorneys admitted to practice in this state and one public
76 (non-attorney) member appointed for an initial term of three years; and

77 (b) Three resident attorneys admitted to practice in this state and one public
78 member appointed for an initial term of two years; and

79 (c) Three resident attorneys admitted to practice in this state and one public
80 member appointed for an initial term of one year.

81 Subsequent terms of all members shall be for three years. A member may serve
82 a maximum of any remaining portion of a three-year term created by a vacancy filled
83 by such member, plus two consecutive three-year terms. A member who has served
84 the maximum term shall be eligible for re-appointment after the expiration of three
85 years. Vacancies shall be filled by the Court. There shall be one attorney member
86 from each disciplinary district. There shall be one public member from each of the
87 three grand divisions of the state.

88 **4.2.** The Court shall designate one member as Chair of the Board and another
89 member as Vice-Chair.

90 **4.3.** The Board shall act only with the concurrence of seven or more members.
91 Seven members shall constitute a quorum. If time restraints are such that a regular

92 or special meeting of the Board is impractical, Disciplinary Counsel shall circulate
93 to the members of the Board in writing the reasons for the recommendation supported
94 by a factual report. Board members may communicate their vote for or against the
95 recommendation by telephone, facsimile, regular mail, or electronic means. Any
96 member of the Board may request that Disciplinary Counsel convene a telephone
97 conference of the Board, whereupon such conference must be convened with at least
98 a quorum so conferring. An affirmative vote of seven members of the Board shall be
99 necessary to authorize an action. Decisions of the Board whether or not to appeal
100 from the judgment of a hearing panel or of a trial judge, as provided in Section 33.1,
101 shall be made in accord with the foregoing procedure. If an appeal has been
102 authorized by the foregoing procedure, any member of the Board may demand that
103 the question of whether or not the appeal should be dismissed be placed upon the
104 agenda for consideration at any regular meeting of the Board or special meeting
105 convened for other business.

106 **4.4.** Members shall receive no compensation for their services but may be
107 reimbursed for their travel and other expenses incidental to the performance of their
108 duties in accordance with the schedule for judicial reimbursement promulgated by the
109 Administrative Office of the Courts.

110 **4.5.** The Board shall exercise the powers and perform the duties conferred and
111 imposed upon it by this Rule, including the power and duty:

112 (a) To consider and investigate any alleged ground for discipline or alleged
113 incapacity of any attorney called to its attention, or upon its own motion, and to take
114 such action with respect thereto as shall be appropriate to effectuate the purposes of
115 this Rule. The Board is authorized to investigate information from a source other
116 than a signed written complaint if the Board deems the information sufficiently
117 credible or verifiable through objective means.

118 (b) To adopt written internal operating procedures to ensure the efficient and
119 timely resolution of complaints, investigations, and formal proceedings, which
120 operating procedures shall be approved by the Court, and to monitor Disciplinary
121 Counsel's and the hearing panels' continuing compliance with those operating
122 procedures. The Board shall quarterly file a report with the Court demonstrating
123 substantial compliance with the operating procedures.

124 (c) To assign members of the district committees appointed within each
125 disciplinary district to conduct disciplinary hearings and to review and approve or
126 modify recommendations by Disciplinary Counsel for dismissals or private informal
127 admonitions.

128 (d) To review, upon application by Disciplinary Counsel, a determination by
129 the reviewing member of a district committee that a matter should be concluded by
130 dismissal or by private informal admonition without the institution of formal charges.

131 (e) To privately reprimand, publicly censure or authorize the filing of formal
132 charges against attorneys for misconduct.

133 (f) The Board may delegate to a committee or panel of its members any
134 administrative duty conferred or imposed by this Rule.

135 **4.6.** Board members shall not take part in any matter in which a judge,
136 similarly situated, would have to recuse himself or herself in accordance with Tenn.
137 Sup. Ct. R. 10.

138 **Section 5. Ethics Opinions**

139 **5.1.** The Board shall be responsible for issuing ethics opinions from time to
140 time. The Board may, in its discretion, accomplish this by dividing itself into three
141 geographic ethics committees.

142 **5.2.** In performing its responsibility under Section 5.1, the Board shall act
143 under rules which the Board may from time to time promulgate.

144 **5.3.** In performing its responsibility under Section 5.1, the members of the
145 Board shall receive no compensation for their services but may be reimbursed for
146 their travel and other expenses incidental to the performance of their duties in
147 accordance with the schedule for judicial reimbursement promulgated by the
148 Administrative Office of the Courts.

149 **5.4.** In performing its responsibilities under Section 5.1, the Board shall
150 exercise the powers and perform the ordinary and necessary duties usually carried out
151 by ethics advisory bodies. The Board shall:

152 (a) By the concurrence of a majority of its members, or of the members of any
153 committees established by the Board pursuant to Section 5.1, issue and distribute
154 Formal Ethics Opinions on proper professional conduct, either on the Board's own
155 initiative or when requested to do so by a member of the bar or by an officer or a
156 committee or any other state or local bar association, except that an opinion may not
157 be issued in a matter that is pending before a court or in a pending disciplinary
158 proceeding;

159 (b) Periodically distribute its issued Formal Ethics Opinions to the legal
160 profession in summary or complete form;

161 (c) On request, advise or otherwise help any state or local bar associations in
162 their activities relating to the interpretation of the Rules of Professional Conduct;

163 (d) Recommend appropriate amendments to or clarification of the Rules of
164 Professional Conduct, if it considers them advisable;

165 (e) Adopt such rules as it considers appropriate relating to the procedures to be
166 used in considering inquiries and expressing opinions, including procedures for
167 classifying opinions or declining requests for opinions.

168 **5.5.** (a) A Formal Ethics Opinion issued and distributed by the Board shall
169 bind the Board and the person requesting the opinion and shall constitute a body of
170 principles and objectives upon which members of the bar may rely for guidance in
171 many specific situations.

172 (b) Requests for Formal Ethics Opinions shall be addressed to the Board in
173 writing, shall state the factual situation in detail, shall be accompanied by a short brief
174 or memorandum citing the Rules of Court or Professional Conduct involved and any
175 other pertinent authorities, and shall contain a certificate with the opinion that the
176 matters are not pending in any court or disciplinary proceeding.

177 (c) An advisory ethics opinion may be issued by Disciplinary Counsel orally
178 when there is readily available precedent. The advisory opinion shall not be binding
179 on the Board or the Court and shall offer no security to the person requesting it.

180 **Section 6. District Committees**

181 **6.1.** The Court shall appoint one district committee within each disciplinary
182 district. Each district committee shall consist of not less than five members of the bar
183 of this state who maintain an office for the practice of law within that district or, if not
184 actively engaged in the practice of law, reside within that district. Members of
185 district committees may be recommended by the Board, or by the president or board
186 of directors of the local bar associations in each district.

187 **6.2.** Terms of members of each district committee shall be for three years, and
188 such terms shall be staggered so that one third of the members rotate off the
189 committee each year; provided that shorter terms may be designated where necessary
190 to observe the above rotation practice. A member may serve a maximum of two
191 consecutive three-year terms. Members whose terms have expired shall continue to
192 serve with respect to any formal hearing commenced prior to the expiration of their

193 terms until the conclusion of such hearing, regardless of whether their successors
194 have been appointed. A member who has served the maximum term may be
195 reappointed after the expiration of one year.

196 **6.3.** A member of the district committee acting as the reviewing member shall
197 approve or modify recommendations by Disciplinary Counsel for dismissals and
198 private informal admonitions. In no event may a member of the district committee
199 acting as the reviewing member impose a sanction greater than private informal
200 admonition. Nor may a district committee member acting as the reviewing member
201 offer diversion except as provided in Section 13.4.

202 **6.4.** Formal hearings upon charges of misconduct shall be conducted by a
203 hearing panel consisting of three district committee members designated by the Board
204 pursuant to Section 15.2. The hearing panel shall submit its findings and judgment
205 to the Board. Each hearing panel shall elect its own Chair. The hearing panel shall
206 act only with the concurrence of a majority of its members.

207 **6.5.** District committee members, whether acting as the reviewing committee
208 member or as a hearing panel member, shall not take part in any matter in which a

209 judge, similarly situated, would have to recuse himself or herself in accordance with
210 Tenn. Sup. Ct. R. 10.

211 **Section 7. Disciplinary Counsel**

212 **7.1.** The Court shall appoint an attorney admitted to practice in the State to
213 serve as Chief Disciplinary Counsel, who shall serve at the pleasure of the Court.
214 Following his or her appointment by the Court, the Chief Disciplinary Counsel shall
215 report to the Board, which shall conduct annual performance evaluations of the Chief
216 Disciplinary Counsel and report such evaluations to the Court. Neither the Chief
217 Disciplinary Counsel nor full-time staff Disciplinary Counsel shall engage in the
218 private practice of law; however, the Board and the Court may agree to a reasonable
219 period of transition after appointment.

220 **7.2.** Chief Disciplinary Counsel shall have the power and duty, with the
221 approval of the Board:

222 (a) To employ and supervise staff needed for the performance of counsel's
223 duties.

224 (b) To perform any administrative tasks delegated by the Board.

225 (c) To perform any duty or task set forth in Section 7.3.

226 **7.3.** Disciplinary Counsel shall have the power and duty:

227 (a) To investigate all matters involving possible misconduct.

228 (b) To dispose of all matters involving alleged misconduct by recommendation
229 to the reviewing district committee member of either dismissal or private informal
230 admonition; by recommendation to the Board of either private reprimand, public
231 censure or the prosecution of formal charges before a hearing panel; or, by diversion
232 in accordance with Section 13. Except in matters requiring dismissal because the
233 complaint is frivolous and clearly unfounded on its face or falls outside the Board's
234 jurisdiction, no disposition shall be recommended or undertaken by Disciplinary
235 Counsel until the accused attorney shall have been afforded the opportunity to state
236 a position with respect to the allegations against the attorney.

237 (c) To present in a timely manner all disciplinary proceedings and proceedings
238 to determine incapacity of attorneys before hearing panels, the Board, trial courts, and
239 the Court.

240 (d) To investigate and to present in a timely manner all proceedings with
241 respect to petitions for reinstatement of suspended or disbarred attorneys or attorneys
242 transferred to inactive status because of disability, or with respect to petitions for

243 voluntary surrenders of law licenses before hearing panels, the Board, trial courts,
244 and the Court.

245 (e) To file with the Court adequate proof of conviction of attorneys for crimes
246 pursuant to Section 22.

247 (f) To maintain permanent records of all matters processed and the disposition
248 thereof.

249 (g) To give advisory ethics opinions to members of the bar pursuant to Section
250 5.

251 (h) To implement the written internal operating procedures adopted by the
252 Board and approved by the Court pursuant to Section 4.5(b), and to file reports with
253 the Board on a quarterly basis demonstrating Disciplinary Counsel's substantial
254 compliance with the operating procedures.

255 **Section 8. Jurisdiction**

256 **8.1.** Any attorney admitted to practice law in this State, including any formerly
257 admitted attorney with respect to acts committed prior to resignation, suspension,
258 disbarment, or transfer to inactive status, or with respect to acts subsequent thereto
259 which amount to the practice of law or constitute a violation of this Rule or of the

260 Rules of Professional Conduct, and any attorney specially admitted by a court of this
261 State for a particular proceeding, is subject to the disciplinary jurisdiction of the
262 Court, the Board, the district committees and hearing panels herein established, and
263 the circuit and chancery courts of this State. Any attorney not admitted to practice
264 law in this State or specially admitted to practice law in this State but who engages
265 in the practice of law in this State shall be subject to the imposition of civil remedies
266 and criminal prosecution pursuant to Tenn. Code Ann. § 23-3-103, and Disciplinary
267 Counsel shall refer such attorney to the appropriate authority(ies) for investigation
268 and pursuit of civil remedies and/or criminal prosecution.

269 **8.2.** Nothing herein contained shall be construed to deny to any court such
270 powers as are necessary for that court to maintain control over proceedings conducted
271 before it, such as the power of contempt, nor to prohibit any bar association from
272 censuring, suspending or expelling its members from membership.

273 **Section 9. Multijurisdictional Practice.**

274 **9.1.** Any attorney practicing in this State under the authority of RPC 5.5(c) or
275 (d) or otherwise subject to the Court's disciplinary jurisdiction under RPC 8.5 is

276 subject to the disciplinary jurisdiction prescribed in Section 8.1 of this Rule and the
277 procedures for exercise of such jurisdiction prescribed in this Rule .

278 **9.2.** The authorization for practice granted in RPC 5.5(c) or (d) may be
279 terminated or suspended. The grounds and processes for such termination shall be
280 those provided in this Rule for disbarment; and the grounds and processes for such
281 suspension shall be those provided in this Rule for suspension.

282 **9.3.** If an attorney is practicing in this State under authority of RPC 5.5(c), or
283 if an attorney is practicing in this State under authority of RPC 5.5(d) and does not
284 maintain an office in this State:

285 (a) Hearing panel proceedings shall occur in the disciplinary district in which
286 the conduct that forms the basis of the complaint against the attorney occurred;

287 (b) Circuit or chancery court proceedings for appeal pursuant to Section 33 of
288 this Rule shall occur as specified in Section 33.1(a) of this Rule; and,

289 (c) Unappealed final trial court judgments disbarring or suspending the attorney
290 for any period of time in excess of three months, or for a period of time of three
291 months or less with conditions, shall be forwarded to the Nashville office of the Clerk
292 of the Supreme Court as specified in Section 15.4(d) of this Rule.

293 **9.4.** The procedures and remedies for reciprocal discipline prescribed in
294 Section 25 of this Rule shall apply to attorneys practicing in this State under authority
295 of RPC 5.5(d)(1). Upon receipt of a certified copy of an order demonstrating that
296 such an attorney has been disciplined in another jurisdiction, the Court shall employ
297 the procedures prescribed in Sections 25.2 through 25.5.

298 **9.5.** The information filing, fee payment and other requirements and
299 regulations prescribed in Section 10 of this Rule shall apply to attorneys practicing
300 in this State under authority of RPC 5.5(d)(1).

301 **Section 10. Periodic Assessment of Attorneys**

302 **10.1.** Every attorney admitted to practice before the Court, except those
303 exempt under Section 10.2, shall pay to the Board on or before the last day of the
304 attorney's birth month an annual fee for each year beginning January 1, 2012.

305 All funds collected hereunder shall be deposited by the Board with the State
306 Treasurer; all such funds, including earnings on investments and all interest and
307 proceeds from said funds, if any, are deemed to be, and shall be designated as, funds
308 belonging solely to the Board. Withdrawals from those funds shall be made by the

309 Board only for the purpose of defraying the costs of disciplinary administration and
310 enforcement of those rules, and for such other related purposes as this Court may
311 from time to time authorize or direct.

312 The annual registration fee for each attorney shall be \$140, payable on or
313 before the last day of the attorney's birth month, and a like sum each year thereafter
314 until otherwise ordered by the Court.

315 **10.2.** There shall be exempted from the application of this rule:

316 (a) Attorneys who serve as a justice, judge, or magistrate judge of a court of the
317 United States of America or who serve in any federal office in which the attorney is
318 prohibited by federal law from engaging in the practice of law.

319 (b) Retired attorneys.

320 (c) Attorneys on temporary duty with the armed forces.

321 (d) Faculty members of Tennessee law schools who do not practice law.

322 (e) Attorneys not engaged in the practice of law in Tennessee. The term "the
323 practice of law" shall be defined as any service rendered involving legal knowledge
324 or legal advice, whether of representation, counsel, or advocacy, in or out of court,
325 rendered in respect to the rights, duties, regulations, liabilities, or business relations
326 of one requiring the services. It shall encompass all public and private positions in

327 which the attorney may be called upon to examine the law or pass upon the legal
328 effect of any act, document, or law.

329 **10.3.** To facilitate the collection of the annual fee provided for in Section 10.1,
330 all persons required by this Rule to pay an annual fee shall, on or before the last day
331 of their birth month, file with the Board at its central office a registration statement,
332 on a form prescribed by the Court, setting forth the attorney's current residence,
333 office, and email addresses, and such other information as the Court may from time
334 to time direct. In addition to such statement, every attorney shall file with the Board
335 a supplemental statement of any change in the information previously submitted
336 within 30 days of such change.

337 **10.4.** Within thirty days of the receipt of a statement or supplement thereto
338 filed by an attorney in accordance with the provisions of Section 10.3, the Board,
339 acting through Disciplinary Counsel, shall acknowledge receipt thereof, on a form
340 prescribed by the Court in order to enable the attorney on request to demonstrate
341 compliance with the requirements of Sections 10.1 and 10.3.

342 **10.5.** The Board periodically shall compile lists of attorneys who have failed
343 to timely pay the annual registration fee required by Section 10.1 or have failed to
344 timely file the annual registration statement required by Section 10.3. The Board shall
345 send to each attorney listed thereon an Annual Registration Fee/Statement
346 Delinquency Notice (the “Notice”). The Notice shall state that the attorney has failed
347 to timely pay the annual registration fee required by Tenn. Sup. Ct. R. 9, Section
348 10.1, or has failed to timely file the annual registration statement required by Tenn.
349 Sup. Ct. R. 9, Section 10.3, and that the attorney’s license therefore is subject to
350 suspension pursuant to Tenn. Sup. Ct. R. 9, Section 10.6. The Notice shall be sent to
351 the attorney by a form of United States mail providing delivery confirmation, at the
352 address shown in the attorney’s most recent registration statement filed pursuant to
353 Section 10.3 or at the attorney’s last known address, and at the email address shown
354 in the attorney’s most recent registration statement filed pursuant to Section 10.3 or
355 at the attorney’s last known email address.

356 **10.6. (a)** Each attorney to whom a Notice is sent pursuant to Section 10.5 shall
357 file with the Board within thirty days of the date of delivery of the Notice an affidavit
358 with supporting documentation demonstrating that the attorney has paid the annual
359 registration fee or has filed the annual registration statement, and has paid a

360 delinquent compliance fee of One Hundred Dollars(\$100.00) to defray the Board's
361 costs in issuing the Notice; or, alternatively, demonstrating that the Notice was sent
362 to the attorney in error, the attorney having timely paid the annual registration fee or
363 having timely filed the annual registration statement.

364 (b) Within thirty days of the expiration of the time for an attorney to respond
365 to the Notice pursuant to Subsection (a) hereof, the Chief Disciplinary Counsel shall
366 prepare and furnish to the Court a proposed Suspension Order. The proposed
367 Suspension Order shall list all attorneys who were sent the Notice and who failed to
368 respond; failed to demonstrate to the satisfaction of the Board that they had paid the
369 delinquent annual registration fee or had filed the delinquent annual registration
370 statement, and had paid the One Hundred Dollar (\$100.00) delinquent compliance
371 fee; or, failed to demonstrate to the satisfaction of the Board that the Notice had been
372 sent in error. The proposed Suspension Order shall provide that the license to practice
373 law of each attorney listed therein shall be suspended upon the Court's filing of the
374 Order and that the license of each attorney listed therein shall remain suspended until
375 the attorney pays the delinquent annual registration fee or files the delinquent annual
376 registration statement, and pays the One Hundred Dollar (\$100.00) delinquent
377 compliance fee, and is reinstated pursuant to Subsection (d).

378 (c) Upon the Court's review and approval of the proposed Suspension Order,
379 the Court will file the Order summarily suspending the license to practice law of each
380 attorney listed in the Order. The suspension shall remain in effect until the attorney
381 pays the delinquent registration fees or files the delinquent registration statement, and
382 pays the One Hundred Dollar (\$100.00) delinquent compliance fee, and until the
383 attorney is reinstated pursuant to Subsection (d). An attorney who fails to resolve the
384 suspension within thirty days of the Court's filing of the Suspension Order shall
385 comply with the requirements of Section 28.

386 (d) An attorney suspended by the Court pursuant to Subsection (c) may file
387 with the Board an application for reinstatement of the attorney's license to practice
388 law demonstrating that the attorney has paid all delinquent annual registration fees
389 or has filed the delinquent registration statement, and has paid the One Hundred
390 Dollar (\$100.00) delinquent compliance fee; or, alternatively, demonstrating that the
391 Suspension Order was entered in error as to the attorney. If the application is
392 satisfactory to the Board and if the attorney otherwise is eligible for reinstatement, the
393 Board, or the Chief Disciplinary Counsel acting on its behalf, shall promptly prepare
394 and send to the Court a proposed Reinstatement Order. The proposed Reinstatement
395 Order shall provide that the attorney's reinstatement is effective as of the date of the
396 attorney's payment of all delinquent registration fees or the date of the attorney's

397 filing of the delinquent registration statement, and the attorney's payment of the One
398 Hundred Dollar (\$100.00) delinquent compliance fee; or, alternatively, as of the date
399 of entry of the Suspension Order if that Order was entered in error.

400 **10.7.** An attorney who claims an exemption under Section 10.2 (a), (b), (d), or
401 (e) shall file with the Board an application to assume inactive status and discontinue
402 the practice of law in this state. In support of the application, the attorney shall file
403 an affidavit stating that the attorney is not delinquent in paying the privilege tax
404 imposed on attorneys by Tenn. Code Ann. § 67-4-1702, is not delinquent in meeting
405 any of the reporting requirements imposed by Rules 9, 21, and 43, is not delinquent
406 in the payment of any fees imposed by those rules, and is not delinquent in meeting
407 the continuing legal education requirements imposed by Rule 21. The Board shall
408 approve the application if the attorney qualifies to assume inactive status under
409 Section 10.2 and is not delinquent in meeting any of the obligations set out in the
410 preceding sentence. If it appears to the Board that the applicant is delinquent in
411 meeting any of those obligations, the Board shall notify the applicant of the
412 delinquency and shall deny the application unless, within ninety days after the date
413 of the Board's notice, the applicant demonstrates to the Board's satisfaction that the
414 delinquency has been resolved. Upon the date of the Board's written approval of the

415 application, the attorney shall no longer be eligible to practice law in Tennessee. The
416 Board shall act promptly on applications to assume inactive status and shall notify the
417 applicant in writing of the Board's action. If the Board denies an application to
418 assume inactive status, the applicant may request the Court's administrative review
419 by submitting a petition to the Chief Justice within thirty days of the Board's denial.
420 The Court's review, if any, shall be conducted on the application, the supporting
421 affidavit, and any other materials relied upon by the Board in reaching its decision.

422 An attorney who assumes inactive status under an exemption granted by
423 Section 10.2(a), (d), or (e) shall pay to the Board, on or before the last day of the
424 attorney's birth month, an annual inactive-status fee set at one-half of the annual
425 registration fee assessed under Section 10.1 for each year the attorney remains
426 inactive. Such attorney shall file annually with the Board at its central office a
427 registration statement, on a form prescribed by the Board, setting forth the attorney's
428 current residence, office, and email addresses, and such other information as the
429 Board may direct. In addition to such statement, such attorney shall file with the
430 Board a supplemental statement of any change in the information previously
431 submitted within 30 days of such change.

432 An attorney who assumes inactive status under the exemption granted by
433 Section 10.2 (e) and who is licensed to practice law in another jurisdiction shall not

434 be eligible to provide any legal services in Tennessee pursuant to Tenn. Sup. Ct. R.
435 8, RPC 5.5(c) or (d).

436 **10.8.** Upon the Board's written approval of an application to assume inactive
437 status, the attorney shall be removed from the roll of those classified as active until
438 and unless the attorney requests and is granted reinstatement to the active rolls.
439 Reinstatement shall be granted unless the attorney is subject to an outstanding order
440 of suspension or disbarment or has been on inactive status for five years or more,
441 upon the payment of any assessment in effect for the year the request is made and any
442 arrears accumulated prior to transfer to inactive status. Attorneys who have been
443 suspended or on inactive status for over five years before filing a petition for
444 reinstatement to active status may be required, in the discretion of the Court, to
445 establish proof of competency and learning in law which proof may include
446 certification by the Board of Law Examiners of the successful completion of an
447 examination for admission to practice subsequent to the date of suspension or transfer
448 to inactive status.

449 **10.9.** The courts of this State are charged with the responsibility of insuring
450 that no suspended attorney be permitted to file any document, paper or pleading or
451 otherwise practice therein.

452 **10.10.** Every lawyer who is required by Section 10.3 to file an annual
453 registration statement with the Board is requested to also voluntarily file a pro bono
454 reporting statement, reporting the extent of the lawyer’s pro bono legal services and
455 activities during the previous calendar year. The pro bono reporting statement shall
456 be in substantially the format provided in the Appendix hereto, and shall be provided
457 to the lawyer by the Board with the lawyer’s annual registration statement.

458 The lawyer is requested to complete the pro bono reporting statement and file
459 it with his or her annual registration statement. In reporting the extent of the
460 lawyer’s pro bono legal services and activities, the lawyer is requested to state
461 whether or not the lawyer made any voluntary financial contributions pursuant to
462 RPC 6.1(c), but the lawyer shall not disclose the amount of any such contributions.

463 The Board may promulgate such forms, policies and procedures as may
464 be necessary to implement this rule.

465 The individual information voluntarily provided by lawyers in the pro bono
466 reporting statements filed pursuant to this Section shall be confidential and shall not
467 be a public record. The Board shall not release any individual information contained
468 in such statements, except as directed in writing by the Court or as required by law.
469 The Board, however, may compile statistical data derived from the statements, which
470 data shall not identify any individual lawyer, and may release any such compilations
471 to the public.

472 **Section 11. Grounds for Discipline**

473 **11.1.** Acts or omissions by an attorney, individually or in concert with any
474 other person or persons, which violate the Attorney’s Oath of Office or the Rules of
475 Professional Conduct of the State of Tennessee, including acts prior to resignation,
476 suspension, disbarment, or transfer to inactive status on other grounds, and acts
477 subsequent to resignation, suspension, disbarment, or transfer to inactive status which
478 acts amount to the practice of law, shall constitute misconduct and shall be grounds
479 for discipline, whether or not the act or omission occurred in the course of an
480 attorney-client relationship.

481 **11.2.** Conviction of a serious crime as defined in Section 2 also shall be
482 grounds for discipline pursuant to the procedures set forth in Section 22.

483 **11.3.** Adjudication that a lawyer has willfully refused to comply with a court
484 order also shall be grounds for discipline.

485 **Section 12. Types of Discipline**

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

488 **12.1. Disbarment.** Disbarment terminates the individual's status as an
489 attorney.

490 **12.2. (a) Suspension.** Suspension is the removal of an attorney from the
491 practice of law for a specified minimum period of time. Suspension may be for an
492 appropriate fixed period of time, or for an appropriate fixed period of time and an
493 indefinite period to be determined by the conditions proposed by the judgment.

494 (1) A suspension of less than one year shall not require proof of rehabilitation;
495 a suspension of one year or more shall require proof of rehabilitation to be
496 demonstrated in a reinstatement proceeding pursuant to Section 30.

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

499 (3) All suspensions regardless of duration shall be public and shall be subject
500 to the provisions of Section 28.

501 (4) The imposition of a portion but not all of a suspension for a fixed period of
502 time may be deferred in conjunction with a period of probation ordered pursuant to
503 Section 14. A suspension order must result in some cessation of the practice of law.

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

508 **12.3. (a) Temporary Suspension.** On petition of Disciplinary Counsel and
509 supported by an affidavit demonstrating facts personally known to affiant showing
510 that an attorney has misappropriated funds to the attorney's own use, has failed to
511 respond to the Board or Disciplinary Counsel concerning a complaint of misconduct,

512 has failed to substantially comply with a contract entered into with the Tennessee
513 Lawyer Assistance Program pursuant to Section 36.1, or otherwise poses a threat of
514 substantial harm to the public, the Court may issue an order with such notice as the
515 Court may prescribe imposing temporary conditions of probation on said attorney or
516 temporarily suspending said attorney, or both.

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

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

530 (d) The attorney may for good cause request dissolution or amendment of any
531 such order of temporary suspension by petition filed with the Supreme Court, a copy
532 of which shall will be served on Disciplinary Counsel. Such petition for dissolution
533 shall be set for immediate hearing before the Board or a panel of three members, at
534 least two of whom shall be members of the Board and one of whom may be a district
535 committee member from the same disciplinary district as the respondent, designated
536 by the Chair of the Board, or, in the Chair's absence, the Vice-Chair. No more than
537 one non-attorney Board member may serve on the panel. The Board or its designated
538 panel shall hear such petition forthwith and submit its report and recommendation to
539 the Supreme Court with the utmost speed consistent with due process. Upon receipt
540 of the foregoing report, the Court shall modify its order if appropriate and continue
541 such provision of the order as may be appropriate until final disposition of all pending
542 disciplinary charges against said attorney;

543 **12.4. Public Censure.** Public censure is a form of public discipline which
544 declares the conduct of the attorney improper, but does not limit the attorney's
545 privilege to practice law.

546 **12.5. Private Reprimand.** Private reprimand is a form of non-public
547 discipline which declares the conduct of the attorney improper, but does not limit the
548 attorney’s privilege to practice law. A private reprimand may be imposed when there
549 is harm or risk of harm to the client and the respondent attorney has previously
550 received a private informal admonition for the same misconduct and repeats the
551 misconduct; or, when there are several similar acts of minor misconduct within the
552 same time frame, but relating to different clients.

553 **12.6. Private Informal Admonition.** Private informal admonition is a form
554 of non-public discipline which declares the conduct of the attorney improper, but
555 does not limit the attorney’s privilege to practice law. Private informal admonition
556 may be imposed when there is harm or risk of harm to the client, but the misconduct
557 appears to be an isolated incident or is minor.

558 **12.7. Restitution.** Upon order of a hearing panel or court, or upon stipulation
559 of the parties, and in addition to any other type of discipline imposed, the respondent
560 attorney may be required to make restitution to persons or entities financially injured
561 as a result of the respondent attorney’s misconduct.

562 **12.8.** Upon order of a hearing panel or court, or upon stipulation of the parties,
563 conditions consistent with the purpose of this Rule and with the Rules of Professional
564 Conduct, including but not limited to the requirement of a practice monitor pursuant
565 to the procedures set forth in Section 12.9, may be placed upon the imposition of any
566 form of public discipline.

567 **12.9. Practice Monitors.**

568 (a) If a practice monitor is required as a condition of public discipline pursuant
569 to Section 12.8, or as a condition of probation pursuant to Section 14, or as a
570 condition of reinstatement pursuant to Section 30, the Order of Enforcement, or Order
571 of Reinstatement, shall specify the duties and responsibilities of the practice monitor.

572 (b) The duties and responsibilities of a practice monitor may include, but shall
573 not be limited to, supervision of the respondent or petitioning attorney's compliance
574 with any conditions of discipline, probation, or reinstatement; and, the respondent or
575 petitioning attorney's compliance with trust account rules, accounting procedures,
576 office management procedures, and any other matters involving the respondent or
577 petitioning attorney's practice of law which the hearing panel or reviewing court
578 determines to be appropriate and consistent with the violation(s) for which the
579 respondent or petitioning attorney was disciplined.

580 (c) The respondent or petitioning attorney shall provide to the Board a list of
581 three proposed practice monitors, all of whom shall be attorneys licensed to practice
582 law in this State and whose licenses are in good standing with the Board, and none
583 of whom shall be engaged in the practice of law with the respondent or petitioning
584 attorney, whether in a law firm of any form or structure or in an association of
585 attorneys of any kind or form. The Board, in its sole discretion, shall designate a
586 practice monitor from the list so provided, and the Board's designation shall be final
587 and not subject to appeal. In the event that the Board, in its sole discretion,
588 determines that none of the respondent or petitioning attorney's proposed practice
589 monitors is acceptable, or the respondent or petitioning attorney fails to provide the
590 required list, the Board shall designate a practice monitor, and the Board's
591 designation shall be final and not subject to appeal.

592 (d) The respondent or petitioning attorney shall be responsible for and shall pay
593 a reasonable fee to the practice monitor, and the payment of such fee shall be a
594 condition of reinstatement pursuant to Section 30. The practice monitor shall make
595 application to the Board for an award of fees and shall file with the application an
596 affidavit and such other documentary evidence as the practice monitor deems
597 appropriate documenting the hours expended and the fees incurred, and shall serve
598 a copy of the same on the respondent or petitioning attorney. Such proof shall create

599 a rebuttable presumption as to the necessity and reasonableness of the hours
600 expended and the fees incurred. The respondent or petitioning attorney may within
601 fifteen days after the practice monitor's application submit to the Board and serve on
602 the practice monitor any response in opposition to the application for an award of
603 fees. The burden shall be upon respondent or petitioning attorney to prove by a
604 preponderance of the evidence that the hours expended or fees incurred by the
605 practice monitor were unnecessary or unreasonable. The practice monitor or the
606 respondent or petitioning attorney may request a hearing before a hearing panel, in
607 which event, the hearing panel shall promptly schedule the same. The hearing panel
608 shall within fifteen days from the conclusion of such hearing submit its findings and
609 judgment with respect to the practice monitor's application for the award of fees. In
610 the event no hearing is requested, the Board shall within fifteen days from the date
611 on which the respondent or petitioning attorney's response is due or is submitted,
612 whichever is earlier, enter a judgment with respect to the practice monitor's
613 application for the award of fees.

614 **Section 13. Diversion of Disciplinary Cases**

615 **13.1. Authority of Board.** The Board is hereby authorized to establish
616 practice and professionalism enhancement programs to which eligible disciplinary
617 cases may be diverted as an alternative to disciplinary sanction.

618 **13.2. Types of Disciplinary Cases Eligible for Diversion.** Disciplinary cases
619 that otherwise would be disposed of by a private informal admonition or a private
620 reprimand are eligible for diversion to practice and professionalism enhancement
621 programs.

622 **13.3. Limitation on Diversion.** A respondent attorney who has been the
623 subject of a prior diversion within five years shall not be eligible for diversion.

624 **13.4. Approval of Diversion.** The Board shall not offer a respondent attorney
625 the opportunity to divert a disciplinary case to a practice and professionalism
626 enhancement program unless the Board or a combination of Disciplinary Counsel and
627 a district committee member concur.

628 **13.5. Contents of Diversion Recommendation.** If a diversion
629 recommendation is approved as provided in Section 13.4, the recommendation shall

630 state the practice and professionalism enhancement program(s) to which the
631 respondent attorney shall be diverted, shall state the general purpose for the diversion,
632 and that the costs thereof shall be paid by the respondent attorney.

633 **13.6. Service of Recommendation on and Review by Respondent.** If a
634 diversion recommendation is approved as provided in Section 13.4, the
635 recommendation shall be served on the respondent attorney who may accept or reject
636 a diversion recommendation in the same manner as provided for in Section 15. The
637 respondent attorney shall not have the right to reject any specific requirement of a
638 practice and professionalism enhancement program.

639 **13.7. Effect of Rejection of Recommendation by Respondent Attorney.** In
640 the event that a respondent attorney rejects a diversion recommendation the matter
641 shall be returned for further proceedings under this Rule.

642 **13.8. Authority of Hearing Panel to Refer a Matter to a Practice and**
643 **Professionalism Enhancement Program.** Nothing in this rule shall preclude a
644 hearing panel from referring a disciplinary matter to a practice and professionalism
645 enhancement program as a part of a disciplinary sanction.

646 **13.9. Effect of Diversion.**

647 (a) When the recommendation of diversion becomes final, the respondent
648 attorney shall enter the practice and professionalism enhancement program(s) and
649 complete the requirements thereof. The complainant shall be provided notice that the
650 complaint has been resolved in a manner that is confidential under Section 32. The
651 complainant has no right to appeal a disposition by diversion.

652 (b) Upon the respondent attorney’s successful completion of the practice and
653 professionalism enhancement program(s), the Board shall terminate its investigation
654 into the matter and its disciplinary files shall be closed indicating the diversion unless
655 the diversion is ordered in addition to other discipline. Diversion into the practice
656 and professionalism enhancement program shall not constitute a disciplinary sanction
657 and shall remain confidential.

658 **13.10. Effect of Failure to Complete the Practice and Professionalism**

659 **Enhancement Program.** If a respondent attorney fails to fully complete all
660 requirements of the practice and professionalism enhancement program(s) to which
661 the respondent attorney was diverted, including the payment of costs thereof, the
662 Board may reopen its disciplinary file and conduct further proceedings under these

663 rules. Failure to complete the practice and professionalism enhancement program
664 shall be considered as a matter of aggravation when imposing a disciplinary sanction.

665 **Section 14. Probation**

666 **(a) Probation.** In the discretion of the hearing panel or a reviewing court, the
667 imposition of a suspension for a fixed period (Section 12.2) may be deferred in
668 conjunction with a fixed period of probation. The conditions of probation shall be
669 stated in writing in the judgment of the hearing panel or court. Probation shall be
670 used only in cases where there is little likelihood that the respondent attorney will
671 harm the public during the period of rehabilitation and where the conditions of
672 probation can be adequately supervised. The hearing panel or reviewing court may
673 require as a condition of probation the assignment of a practice monitor for the
674 purposes and pursuant to the procedures set forth in Section 12.9. The respondent
675 attorney shall pay the costs associated with probation, including but not limited to a
676 reasonable fee to the practice monitor.

677 **(b)** In the event the respondent attorney violates or otherwise fails to meet any
678 condition of probation, Disciplinary Counsel is authorized to file a petition to revoke
679 probation. Upon the filing of such a petition, the respondent attorney shall have the

680 opportunity to appear and be heard before a duly constituted panel of the Board. A
681 record of such hearing shall be made in the same manner as for a disciplinary hearing
682 under Section 15.2. The only issue in such a proceeding is whether probation is to
683 be revoked; the original judgment imposing the fixed period of probation may not be
684 reconsidered. Having conducted such a hearing, the panel shall file an order within
685 thirty days; this order must include the basis for the panel's decision. An order
686 reflecting the decision shall be treated as a decree of the circuit or chancery court and,
687 as such, is appealable to the Court under Section 33.

688 (c) Probation shall terminate upon the expiration of the fixed period of
689 probation. Probation may be terminated earlier by the tribunal (hearing panel or
690 court) which imposed the period of probation upon the filing of a motion and an
691 affidavit by the respondent attorney showing compliance with all the conditions of
692 probation and an affidavit by the practice monitor, if one is designated, stating that
693 probation is no longer necessary and summarizing the basis for that statement.
694 Disciplinary Counsel shall file a response to any such motion to terminate probation.
695 The tribunal may conduct whatever hearings are necessary to decide the motion to
696 terminate probation. The tribunal's ruling on the motion may be appealed pursuant
697 to Section 33.

698

Section 15. Initiation, Investigation, and Hearing

699 **15.1.** (a) All complaints must be submitted in writing, must contain the
700 identity of the complainant, and must be signed by the complainant. The Board shall
701 provide the respondent attorney with a complete copy of the original complaint. In
702 the event that the Board's investigation is the result of information from a source
703 other than a written complaint pursuant to Section 4.5(a), the Board shall notify the
704 respondent attorney and provide a copy of such information.

705 (b) All investigations, whether upon complaint or otherwise, shall be initiated
706 and conducted by Disciplinary Counsel. Upon the conclusion of an investigation,
707 Disciplinary Counsel may recommend dismissal, private informal admonition, private
708 reprimand, public censure or prosecution of formal charges before a hearing panel.

709 (c) If Disciplinary Counsel recommends disposition by dismissal or private
710 informal admonition, the reviewing member of the district committee in the
711 appropriate disciplinary district shall review the recommendation and may approve
712 or modify it. In reviewing the recommended disposition, the reviewing member of
713 the district committee shall consider the applicable provisions of the ABA Standards
714 for Imposing Lawyer Sanctions. In no event may the reviewing member of the
715 district committee impose a sanction greater than private informal admonition. Nor

716 may the reviewing member of the district committee offer diversion except as
717 provided in Section 13.4. Disciplinary Counsel may appeal to the Board the action
718 of the reviewing member of the district committee.

719 (d) If the recommended disposition is private reprimand, public censure, or
720 prosecution of formal charges before a hearing panel, the Board shall review the
721 recommendation and approve or modify it. In reviewing the recommended
722 disposition, the Board shall consider the applicable provisions of the ABA Standards
723 for Imposing Lawyer Sanctions. The Board may determine whether a matter should
724 be concluded by dismissal or private informal admonition; may recommend a private
725 reprimand or public censure; or, may direct that a formal proceeding be instituted
726 before a hearing panel in the appropriate disciplinary district and assign it to a hearing
727 panel for that purpose.

728 (e) A respondent attorney shall not be entitled to appeal a private informal
729 admonition approved by the reviewing member of the district committee or imposed
730 by the Board; similarly, a respondent attorney may not appeal a recommended private
731 reprimand or public censure by the Board. In either case, however, the respondent
732 attorney may, within twenty days of notice thereof, demand as of right that a formal
733 proceeding be instituted before a hearing panel in the appropriate disciplinary district.
734 In the event of such demand, the private informal admonition shall be vacated or the

735 recommended private reprimand or public censure shall be withdrawn, and the matter
736 shall be disposed of in the same manner as any other formal hearing instituted before
737 a hearing panel.

738 (f) If Disciplinary Counsel recommends disposition by dismissal, and if that
739 recommended disposition is approved by the reviewing member of the district
740 committee in the appropriate disciplinary district, notice of the disposition shall be
741 provided by Disciplinary Counsel to the complainant. A complainant who is not
742 satisfied with the disposition of the matter may appeal in writing to the Board within
743 thirty days of receipt of notice of the reviewing member's approval of the
744 recommended disposition. The Board may approve, modify or disapprove the
745 disposition, or direct that the matter be investigated further.

746 (g) If Disciplinary Counsel recommends disposition by private informal
747 admonition, and if that recommended disposition is approved by the reviewing
748 member of the district committee in the appropriate disciplinary district, the
749 complainant shall be provided notice that the complaint has been resolved in a
750 manner that is confidential under Section 32. The complainant has no right to appeal
751 a disposition by private informal admonition under this Section.

752 **15.2.** (a) Formal disciplinary proceedings before a hearing panel shall be
753 instituted by Disciplinary Counsel by filing with the Board a Petition for Discipline
754 (hereinafter “Petition”) which shall be sufficiently clear and specific to inform the
755 respondent attorney of the alleged misconduct. Disciplinary Counsel, as needed, may
756 file Amended Petitions which arise out of the same facts and circumstances but which
757 change, delete or augment the existing allegations. Disciplinary Counsel, as needed
758 and with the approval of the Board, may file Supplemental Petitions which make new
759 allegations and which bring new charges arising from a different complaint(s) not
760 previously included in a Petition. Neither a Petition to initiate a formal disciplinary
761 proceeding, an Amended Petition, nor a Supplemental Petition shall include
762 allegations of any private discipline previously imposed against the respondent
763 attorney.

764 (b) A copy of the Petition shall be served upon the respondent attorney
765 pursuant to Section 18.1. The respondent attorney shall serve an answer upon
766 Disciplinary Counsel pursuant to Section 18.2 and file the original with the Board
767 within thirty days after the service of the Petition, unless such time is extended by the
768 agreement of Disciplinary Counsel or by leave of the hearing panel assigned to hear
769 the matter. In the event the respondent attorney fails to answer, the charges shall be
770 deemed admitted. Relief from a Judgment of Default for failure to serve an answer

771 to the Petition within thirty days shall be determined in the same manner such
772 motions are determined by Tennessee Rules of Civil Procedure 55.02.

773 (c) A copy of any Amended Petition or Supplemental Petition shall be served
774 on the respondent attorney pursuant to Section 18.2. The respondent attorney shall
775 serve an answer on Disciplinary Counsel pursuant to Section 18.2 and file the
776 original with the Board within fifteen days after service of the Amended Petition or
777 Supplemental Petition, unless such time is extended by the agreement of Disciplinary
778 Counsel or by leave of the hearing panel assigned to hear the matter.

779 (d) Following the service of the answer to the Petition, or upon failure to
780 answer, the matter shall be assigned by the Chair to a hearing panel. In assigning the
781 members of the hearing panel, the Chair shall select them on a random basis from the
782 members of the district committee in the district in which the respondent practices
783 law; if there is an insufficient number of committee members in that district who are
784 able to serve on the hearing panel, the Chair may appoint one or more members from
785 the district committee of an adjoining district to serve on the panel.

786 (e) A pre-hearing conference shall be held within sixty days of the filing date
787 of any Petition commencing a formal proceeding. The pre-hearing conference shall
788 be conducted by the chair of the assigned hearing panel and at least one other member
789 of the hearing panel. The pre-hearing conference may be conducted in person, by

790 telephone, or by video conference. In the pre-hearing conference, the hearing panel
791 shall schedule deadlines for discovery, the filing of motions, and the exchange of
792 witness and exhibit lists, and it also shall set the hearing date. The hearing panel may
793 discuss with and accept from the parties stipulations of fact and/or stipulations
794 regarding the authenticity of documents and exhibits, may narrow the issues
795 presented by the pleadings, and may address any other matter the panel deems
796 appropriate in the management of the proceeding, including but not limited to the
797 resolution of any discovery disputes except as otherwise provided by Section 19.
798 Subsequent pre-hearing conferences may be held in the discretion of the hearing
799 panel, acting on its own initiative or upon motion of a party. Within five days of each
800 pre-hearing conference, the chair of the hearing panel shall file an order reciting the
801 actions taken by the panel during the conference, including any deadlines imposed
802 and the date set for the hearing. The order shall advise the respondent attorney that
803 he/she is entitled to be represented by counsel, to cross-examine witnesses, and to
804 present evidence in his/her own behalf.

805 (f) In a hearing panel's hearing on the Petition, Disciplinary Counsel may
806 submit evidence of prior discipline against the respondent attorney, including prior
807 private discipline, as an aggravating circumstance. Such evidence may be introduced
808 to the extent it is otherwise admissible under the Tennessee Rules of Evidence.

809 Pursuant to Section 32.4, the respondent attorney may apply to the hearing panel for
810 a protective order concerning the admission of evidence of prior private discipline.

811 (g) In hearings on formal charges of misconduct, Disciplinary Counsel must
812 prove the case by a preponderance of the evidence.

813 **15.3.** (a) In every case, the hearing panel shall submit its findings and
814 judgment, in the form of a final decree of a trial court, to the Board within thirty days
815 after the conclusion of the hearing. The hearing panel's findings and judgment shall
816 contain a notice that the findings and judgment may be appealed pursuant to Section
817 33. The hearing panel may make a written request to the Chair for an extension of
818 time within which to file its findings and judgment. In the event that the hearing
819 panel does not submit its findings and judgment within thirty days or such other time
820 as extended by the Chair, Disciplinary Counsel shall report the same to the Court.
821 The failure of the hearing panel to meet this deadline, however, shall not be grounds
822 for dismissal of the Petition.

823 (b) The Board shall immediately serve a copy of the hearing panel's findings
824 and judgment upon the respondent attorney and the respondent attorney's counsel of
825 record pursuant to Section 18.2. There shall be no petition for rehearing. Any appeal

826 pursuant to Section 33 must be filed within sixty days of the entry of the hearing
827 panel's judgment.

828 (c) If the Board makes application to the hearing panel for the assessment of
829 costs pursuant to Section 31, any appeal pursuant to Section 33 must be filed within
830 sixty days of the entry of the hearing panel's judgment on the application.

831 **15.4.** (a) If the hearing panel finds one or more grounds for discipline of the
832 respondent attorney, the hearing panel's judgment shall specify the type of discipline
833 imposed: disbarment (Section 12.1), suspension (Section 12.2), or public censure
834 (Section 12.4). In the discretion of the hearing panel, the imposition of a portion but
835 not all of a suspension for a fixed period of time (Section 12.2) may be deferred in
836 conjunction with a period of probation ordered pursuant to Section 14. In addition
837 to imposing one of the foregoing types of discipline, the hearing panel may order
838 restitution (Section 12.7). Temporary suspension (Section 12.3), private reprimand
839 (Section 12.5), and private informal admonition (Section 12.6) are not types of
840 discipline available to the hearing panel following the filing of a Petition for
841 Discipline. In determining the appropriate type of discipline, the hearing panel shall
842 consider the applicable provisions of the ABA Standards for Imposing Lawyer
843 Sanctions.

844 (b) If the judgment of the hearing panel is that the respondent attorney shall
845 be disbarred or suspended for any period of time in excess of three months, or for a
846 period of time of three months or less with conditions for reinstatement, and no
847 appeal is perfected within the time allowed , or if there is a settlement providing for
848 a disbarment or suspension for any period of time in excess of three months, or for
849 a period of time of three months or less with conditions for reinstatement, at any
850 stage of disciplinary proceedings, the Board shall file with the Court copies of the
851 Petition, the judgment or settlement, the proposed Order of Enforcement, and a
852 Protocol Memorandum as defined in Section 2. The Board shall serve a copy of the
853 proposed Order of Enforcement and the Protocol Memorandum upon the respondent
854 attorney and the respondent attorney's counsel of record pursuant to Section 18.2.
855 In all cases except those in which the sanction imposed is by agreement, the
856 respondent attorney shall have ten days from service of the foregoing within which
857 to file with the Court and serve upon Disciplinary Counsel pursuant to Section 18.2
858 a response to the Protocol Memorandum. Such response shall be limited to
859 contesting any alleged factual errors in the Protocol Memorandum. The Court shall
860 review the recommended punishment provided in such judgment or settlement with
861 a view to attaining uniformity of punishment throughout the State and
862 appropriateness of punishment under the circumstances of each particular case. The

863 Court may direct that the transcript or record of any proceeding be prepared and filed
864 with the Court for its consideration.

865 (c) If the Court finds that the punishment appears to be inadequate or
866 excessive, it shall issue an order advising the Board and the respondent attorney that
867 it proposes to increase or to decrease the punishment. If the Court proposes to
868 increase the punishment, the respondent attorney shall have twenty days from the date
869 of the order to file a brief and request oral argument; if the Court proposes to decrease
870 the punishment, the Board shall have twenty days from the date of the order within
871 which to file a brief and request oral argument. Reply briefs shall be due within
872 twenty days of the filing of the preceding brief. If a party requests oral argument, the
873 Court may grant it. Upon termination of such proceedings as are requested, the Court
874 may modify the judgment of the hearing panel or the settlement in such manner as it
875 deems appropriate. There shall be no petition for rehearing.

876 (d) If the judgment of a hearing panel is appealed to the circuit or chancery
877 court pursuant to Section 33 and the trial court enters a judgment disbaring or
878 suspending the respondent attorney for any period of time in excess of three months,
879 or for a period of time of three months or less with conditions for reinstatement, and
880 no appeal is perfected within the time allowed , the trial court shall forward for filing

881 a copy of its judgment to the Nashville office of the Clerk of the Supreme Court, and
882 the Court shall enter an Order of Enforcement of said decree.

883 (e) All other final decrees of hearing panels or trial courts shall be forwarded
884 for filing to the Nashville office of the Clerk of the Supreme Court for entry by the
885 Court of an Order of Enforcement.

886 **Section 16. Complaints Against Board Members, District Committee**
887 **Members, or Disciplinary Counsel**

888 **16.1.** (a) Complaints against Disciplinary Counsel or a district committee
889 member alleging violations of the Attorney's Oath of Office or the Rules of
890 Professional Conduct shall be submitted directly to the Board.

891 (b) Disagreement with the official decision of Disciplinary Counsel, a hearing
892 panel, or a district committee member, taken in the course and scope of his or her
893 responsibilities, shall not be grounds for the filing of a disciplinary complaint.

894 (c) The investigation of complaints submitted under Section 16.1 shall proceed
895 in accordance with the procedures contained in Section 15, except that an attorney
896 member of the Board appointed by the Chair shall conduct the investigation and the
897 findings of such investigation shall be reviewed by a committee of the Board

898 appointed by the Chair and Vice Chair. Provided, however, that the Board may
899 request the Court to appoint a Special Disciplinary Counsel to conduct the
900 investigation. Upon application to the Court, the Court may authorize the payment
901 of reasonable fees to Special Disciplinary Counsel.

902 **16.2.** (a) Complaints against attorney members of the Board alleging violations
903 of the Attorney's Oath of Office or the Rules of Professional Conduct shall be
904 submitted directly to the Chief Justice of the Court.

905 (b) Disagreement with the official decision of the Board or a member, taken in
906 the course and scope of his or her responsibilities, shall not be grounds for the filing
907 of a disciplinary complaint.

908 **16.3.** The investigation of complaints submitted under Section 16.2 against
909 attorney members of the Board shall proceed in accordance with the procedures
910 contained in Section 15, with the following modifications:

911 (a) A Special Disciplinary Counsel, whom the Chief Justice shall appoint by
912 order entered under seal, shall take the place and perform all of the functions of
913 Disciplinary Counsel set forth in Section 15.1, including all investigations, whether
914 upon complaint or otherwise. Upon conclusion of an investigation, Special

915 Disciplinary Counsel may recommend dismissal, private informal admonition of the
916 attorney concerned, or a private reprimand, public censure, or prosecution of formal
917 charges before a special hearing panel.

918 (b) One member of the Court, whom the Chief Justice shall designate, shall
919 take the place and perform all of the functions of the Board in all investigations and
920 proceedings governed by this Section, including the review of recommendations of
921 dismissal or private informal admonition of the attorney concerned, or a private
922 reprimand, public censure or prosecution of formal charges, pursuant to Section 15.1.
923 The member so designated shall not participate with the Court in any subsequent
924 proceedings in the same case.

925 (1) If Special Disciplinary Counsel's recommendation is dismissal, it shall be
926 reviewed by the designated member of the Court ("Reviewing Justice"), who may
927 approve or modify it. If the recommendation is approved by the Reviewing Justice,
928 notice of the disposition shall be provided by Special Disciplinary Counsel to the
929 complainant. A complainant who is not satisfied with the disposition of the matter
930 may appeal in writing to the Chief Justice within thirty days of receipt of notice of the
931 Reviewing Justice's approval of the recommended disposition. The Court may
932 approve, modify, or disapprove the disposition, or direct that the matter be

933 investigated further. If the Court approves the recommended disposition of dismissal,
934 the Court shall enter an appropriate order under seal.

935 (2) If Special Disciplinary Counsel's recommendation is private informal
936 admonition, it shall be reviewed by the Reviewing Justice, who may approve or
937 modify it. If the recommendation is approved by the Reviewing Justice, notice shall
938 be provided by Special Disciplinary Counsel to the complainant that the complaint
939 has been resolved in a manner that is confidential under Section 32. The complainant
940 has no right to appeal a disposition of a private informal admonition under this
941 Section.

942 (3) If the recommended disposition is private reprimand, public censure, or
943 prosecution of formal charges before a special hearing panel, the Reviewing Justice
944 shall review the recommendation and shall approve, disapprove, or modify it. The
945 Reviewing Justice may determine whether a matter should be concluded by dismissal
946 or private informal admonition; may approve or impose a private reprimand or public
947 censure; or may direct that a formal proceeding be instituted before a special hearing
948 panel.

949 (4) The respondent attorney shall not be entitled to appeal a private informal
950 admonition approved by the Reviewing Justice; similarly, the respondent attorney
951 may not appeal a private reprimand or public censure approved or imposed by the

952 Reviewing Justice. In either case, however, the respondent attorney may, within
953 twenty days of notice thereof, demand as of right that a formal proceeding be
954 instituted before a special hearing panel. In the event of such demand, the private
955 informal admonition shall be vacated or the recommended private reprimand or
956 public censure shall be withdrawn, and the matter shall be disposed of in the same
957 manner as any other formal hearing instituted before a hearing panel.

958 (c) If the recommendation, as approved or modified by the Reviewing Justice,
959 includes the institution of formal proceedings before a hearing panel, or if the
960 respondent attorney demands in writing to the Chief Justice such formal proceedings
961 as of right, then the Chief Justice shall at that time appoint three persons to act as a
962 special hearing panel. The special hearing panel shall take the place and perform all
963 of the functions of the hearing panel as provided in Sections 6 and 15. The Special
964 Disciplinary Counsel shall continue to perform the functions of Disciplinary Counsel
965 and shall proceed in accordance with the provisions of this Rule governing formal
966 proceedings.

967 (d) The respondent attorney or Special Disciplinary Counsel may appeal the
968 judgment of the special hearing panel as provided in Section 33.

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Section 17. Immunity

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Members of the Board, district committee members, Disciplinary Counsel and staff shall be immune from civil suit for any conduct in the course of their official duties. Complainants and witnesses shall be immune from civil suit with respect to any communications to the Board, district committee members, Disciplinary Counsel or staff relating to attorney misconduct or disability or any testimony in the proceedings regarding the same, unless the information which the complainant or witness provides in such communication or such testimony is false and the complainant or witness had actual knowledge of the falsity.

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Section 18. Service

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18.1. The Petition in any disciplinary proceeding shall be served on the respondent attorney by personal service by any person authorized by the Chair of the Board, or by any form of United States mail providing delivery confirmation, at the primary address shown in the most recent registration statement filed by the respondent attorney pursuant to Section 10.3 or at the respondent attorney's other last known address. If such service is not successfully completed, the Board shall

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985 undertake additional reasonable steps to obtain service, including but not limited to,
986 personal service or service by mail at such alternative addresses as the Board may
987 identify, or service by email at the email address shown in the most recent registration
988 statement filed by the respondent attorney pursuant to Section 10.3 or such other
989 email address as the Board may identify.

990 **18.2.** Service of any other papers or notices required by this Rule shall, unless
991 otherwise provided by this Rule, be made in accordance with Tennessee Rule of
992 Civil Procedure 5.02.

993 **Section 19. Subpoena Power, Witnesses and Pre-trial Proceedings**

994 **19.1.** Any member of a hearing panel in matters before it, and Disciplinary
995 Counsel in matters under investigation or in formal proceedings, may administer
996 oaths and affirmations and may obtain from the circuit or chancery court having
997 jurisdiction subpoenas to compel the attendance of witnesses and the production of
998 pertinent books, papers and documents. A respondent attorney may, similarly, obtain
999 subpoenas to compel the attendance of witnesses and the production of pertinent

1000 books, papers and documents before a hearing panel after formal disciplinary
1001 proceedings are instituted.

1002 **19.2.** Subpoenas shall clearly indicate on their face that the subpoenas are
1003 issued in connection with a confidential investigation under this Rule and that it may
1004 be regarded as contempt of the Court or grounds for discipline under this Rule for
1005 a person subpoenaed to in any way breach the confidentiality of the investigation.
1006 The scope of the confidentiality of the investigation shall be governed by Section 32.
1007 It shall not be regarded as a breach of confidentiality for a person subpoenaed to
1008 consult with an attorney.

1009 **19.3.** The circuit or chancery court in which the attendance or production is
1010 required may, upon proper application, enforce the attendance and testimony of any
1011 witness and the production of any documents so subpoenaed. Subpoena and witness
1012 fees and mileage shall be the same as in the courts of this State.

1013 **19.4.** Any attack on the validity of a subpoena so issued shall be heard and
1014 determined by the court in which enforcement of the subpoena is being sought.

1015 **19.5.** Discovery proceedings by the respondent attorney, prior to institution of
1016 proceedings for a formal hearing, may be had upon the order of the Chair of the
1017 Board for good cause shown.

1018 **19.6.** With the approval of the hearing panel, testimony may be taken by
1019 deposition or by interrogatories if the witness is not subject to service or subpoena or
1020 is unable to attend or testify at the hearing because of age, illness, infirmity, or
1021 incarceration. A complete record of the testimony so taken shall be made and
1022 preserved, but need not be transcribed unless needed for appeal pursuant to Section
1023 33.

1024 **19.7.** The subpoena and deposition procedures shall be subject to the
1025 protective requirements of confidentiality provided in Section 32.

1026 **Section 20. Refusal of Complainant to Proceed, Compromise, etc.**

1027 Neither unwillingness nor neglect of the complainant to sign a complaint or to
1028 prosecute a charge, nor settlement or compromise between the complainant and the

1029 attorney or restitution by the attorney, shall, in itself, justify abatement of the
1030 processing of any complaint.

1031 **Section 21. Matters Involving Related Pending Civil**
1032 **or Criminal Litigation**

1033 Processing of disciplinary complaints shall not be deferred or abated because
1034 of substantial similarity to the material allegations made in other pending criminal or
1035 civil litigation or because the substance of the complaint relates to the respondent
1036 attorney's alleged conduct in pending litigation, unless authorized by the Board, in
1037 its discretion, for good cause shown.

1038 **Section 22. Attorneys Convicted of Crimes**

1039 **22.1.** Upon being advised that an attorney subject to the disciplinary
1040 jurisdiction of the Court has been convicted of a crime, Disciplinary Counsel shall
1041 obtain a an affidavit with a certified copy of the judgment, guilty plea or other
1042 adequate proof of the conviction and forward it to the Nashville office of the Clerk
1043 of the Supreme Court.

1044 **22.2.** (a) Upon the filing with the Court of an affidavit with a certified copy of
1045 the judgment, guilty plea or other adequate proof demonstrating that an attorney who
1046 is a defendant in a criminal case involving a serious crime, as defined in Section 2 ,
1047 has entered a plea of nolo contendere or a plea of guilty or has been found guilty by
1048 verdict of the jury, or the trial court sitting without a jury, the Court shall enter an
1049 order immediately suspending the attorney. Such suspension shall take place
1050 regardless of the pendency of a motion for new trial or other action in the trial court
1051 and regardless of the pendency of an appeal. Such suspension shall remain in effect
1052 pending final disposition of a disciplinary proceeding to be commenced upon such
1053 finding of guilt.

1054 (b) An attorney suspended under the provisions of Subsection (a) will be
1055 reinstated immediately upon the filing of a certificate demonstrating that the
1056 underlying conviction of a serious crime has been reversed, but the reinstatement will
1057 not terminate any formal proceeding then pending against the attorney, the disposition
1058 of which shall be determined by the hearing panel and the Board on the basis of the
1059 available evidence.

1060 **22.3.** An affidavit with adequate proof of a conviction of an attorney for any
1061 crime shall be conclusive evidence of the commission of that crime in any
1062 disciplinary proceeding instituted against the attorney based upon the conviction.

1063 **22.4.** Upon the receipt of an affidavit with adequate proof of conviction of an
1064 attorney for a serious crime, the Court shall, in addition to suspending the attorney
1065 in accordance with the provisions of Section 22.1, also refer the matter to the Board
1066 for the institution of a formal proceeding before a hearing panel in which the sole
1067 issue to be determined shall be the extent of the final discipline to be imposed,
1068 provided that a disciplinary proceeding so instituted will not be brought to hearing
1069 until all appeals from the conviction are concluded.

1070 **22.5.** Upon receipt of an affidavit with adequate proof of a conviction of an
1071 attorney for a crime not constituting a serious crime, the Court shall refer the matter
1072 to the Board for whatever action the Board may deem warranted, including the
1073 institution of an investigation by Disciplinary Counsel, or a formal proceeding before
1074 a hearing panel, provided, however, that the Court may in its discretion make no
1075 reference with respect to convictions for minor offenses.

1076 **22.6.** An order summarily suspending an attorney from the practice of law
1077 pursuant to Section 22.1 shall constitute a suspension of the attorney for the purpose
1078 of Section 28.

1079 **22.7.** An attorney suspended pursuant to Section 22.1 shall receive credit for
1080 any period of suspension served pursuant to Section 22.1 that preceded the
1081 commencement of the term of incarceration. Notwithstanding the provisions of
1082 Section 12.2, any suspension or disbarment ordered pursuant to Section 22.1 shall be
1083 served consecutive to any period of incarceration imposed upon the attorney as a
1084 result of the attorney's conviction in the underlying criminal case.

1085 **Section 23. Disbarment by Consent of Attorneys Under Disciplinary**

1086 **Investigation or Prosecution**

1087 **23.1.** An attorney who is the subject of an investigation into, or a pending
1088 proceeding involving, allegations of misconduct may consent to disbarment, by
1089 delivering to the Board an affidavit stating that such attorney desires to consent to
1090 disbarment and that:

1091 (a) The attorney's consent to disbarment is freely and voluntarily rendered; the
1092 attorney is not being subjected to coercion or duress; the attorney is fully aware of the
1093 implications of submitting consent;

1094 (b) The attorney is aware that there is a presently pending investigation into,
1095 or proceeding involving, allegations that there exist grounds for discipline the nature
1096 of which the attorney shall specifically set forth;

1097 (c) The attorney acknowledges that the material facts so alleged are true; and,

1098 (d) The attorney consents because the attorney knows that if charges were
1099 predicated upon the matters under investigation, or if the proceeding were prosecuted,
1100 no successful defense could be made.

1101 **23.2.** Upon receipt of the required affidavit, the Board shall file it with the
1102 Court and the Court shall enter an order disbarring the attorney on consent.

1103 **23.3.** The order disbarring the attorney on consent shall be a matter of public
1104 record. However, the affidavit required under Section of 23.1 shall not be publicly
1105 disclosed or made available for use in any other proceeding except upon order of the
1106 Court.

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Section 24. Discipline by Consent

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24.1. An attorney against whom formal charges have been served may at any

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stage of the proceedings before the Board, hearing panel or trial court, thereafter

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tender a conditional guilty plea to the petition or to a particular count thereof in

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exchange for a stated form of punishment. Such a tendered plea shall be submitted

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to Disciplinary Counsel and approved or rejected by the Board upon recommendation

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of the hearing panel if the matter has been assigned for hearing, or shall be approved

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or rejected by the trial court if an appeal has been filed pursuant to Section 33;

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subject, however, in either event, to final approval or rejection by the Court if the

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stated form of punishment includes disbarment, suspension or public censure. In

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conjunction with the Court's review as set forth herein, the Board shall submit to the

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Court and provide to respondent attorney and his/her counsel of record a Protocol

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Memorandum as defined in Section 2. The respondent attorney shall not be permitted

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to file a response to the Protocol Memorandum required under this Section.

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24.2. A continuance in a hearing panel proceeding, or before a trial court, on

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the basis of such a tender shall be granted only with the concurrence of Disciplinary

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Counsel. Approval of such a tendered plea by the Board or trial court and, if

1124 required, by the Court shall divest the hearing panel or trial court of further
1125 jurisdiction. The final order of discipline shall be predicated upon the petition and
1126 an approved tendered conditional guilty plea.

1127 **Section 25. Reciprocal Discipline**

1128 **25.1.** All attorneys subject to disciplinary jurisdiction pursuant to Section 8.1
1129 shall, upon being subjected to professional disciplinary action in another jurisdiction
1130 while subject to disciplinary jurisdiction pursuant to Section 8.1, promptly inform
1131 Disciplinary Counsel of such action. Upon being informed that an attorney subject
1132 to disciplinary jurisdiction pursuant to Section 8.1 has been subjected to discipline
1133 in another jurisdiction while subject to disciplinary jurisdiction pursuant to Section
1134 8.1, Disciplinary Counsel shall obtain a certified copy of such disciplinary order and
1135 file the same with the Board and with the Court.

1136 **25.2.** Upon receipt of a certified copy of an order demonstrating that an
1137 attorney subject to disciplinary jurisdiction pursuant to Section 8.1 has been
1138 disciplined in another jurisdiction while subject to disciplinary jurisdiction pursuant

1139 to Section 8.1, the Court shall forthwith serve upon the attorney in accordance with
1140 Section 18.1 a notice containing:

1141 (a) A copy of the order from the other jurisdiction; and

1142 (b) An order directing that the attorney inform the Court, within thirty days
1143 from service of the notice, of any claim by the attorney predicated upon the grounds
1144 set forth in Section 25.4 that the imposition of the identical discipline in this State
1145 would be unwarranted and the reasons therefor.

1146 **25.3.** In the event the discipline imposed in the other jurisdiction has been
1147 stayed there, any reciprocal discipline imposed in this State shall be deferred until
1148 such stay expires. However, Disciplinary Counsel, in his or her discretion, may initiate
1149 and conduct an independent investigation of the attorney pursuant to Section 15.

1150 **25.4.** Upon the expiration of thirty days from service of the notice issued
1151 pursuant to Section of 25.2, the Court shall impose the identical discipline unless
1152 Disciplinary Counsel or the attorney demonstrates, or the Court finds, that upon the
1153 face of the record upon which the discipline is predicated it clearly appears:

1154 (a) That the procedure was so lacking in notice or opportunity to be heard as
1155 to constitute a deprivation of due process; or

1156 (b) That there was such an infirmity of proof establishing the misconduct as to
1157 give rise to the clear conviction that the Court could not, consistent with its duty,
1158 accept as final the conclusion on that subject; or

1159 (c) That the misconduct established warrants substantially different discipline
1160 in this State.

1161 Where the Court determines that any of said elements exist, the Court shall
1162 enter such other order as it deems appropriate.

1163 **25.5.** In all other respects, a final adjudication in another jurisdiction that an
1164 attorney subject to disciplinary jurisdiction pursuant to Section 8.1 has been guilty of
1165 misconduct while subject to disciplinary jurisdiction pursuant to Section 8.1 shall
1166 establish conclusively the misconduct for purposes of a disciplinary proceeding in
1167 this State.

1168 **Section 26. Attorneys Failing to Comply with Tenn. Code Ann.**

1169 **§§ 67-4-1701 - 1710 (Privilege Tax Applicable to Persons**

1170 **Licensed to Practice Law)**

1171 Tenn. Code Ann. § 67-4-1702 levies a tax on the privilege of engaging in
1172 certain vocations, professions, businesses and occupations, including “persons
1173 licensed as attorneys by the supreme court of Tennessee.” Tenn. Code Ann. §
1174 67-4-1704 provides that failure to pay the privilege tax can result in suspension or
1175 revocation of “any license or registration by the appropriate licensing board” and goes
1176 on to state that “the supreme court of Tennessee is encouraged to establish guidelines
1177 to suspend the license of an attorney who fails to comply with the requirements of this
1178 part.” The Court hereby establishes the following procedures to promote compliance
1179 with Tenn. Code Ann. §§ 67-4-1701 - 1710, as those Sections apply to attorneys
1180 licensed by the Court.

1181 **26.1.** The Court designates the Chief Disciplinary Counsel of the Board as the
1182 official to whom the Department of Revenue shall annually send a list of attorneys
1183 licensed by the Court who have failed, for two or more consecutive years, to pay the
1184 privilege tax imposed by Tenn. Code Ann. § 67-4-1702.

1185 **26.2.** Upon receipt of the list of attorneys transmitted by the Department of
1186 Revenue, the Chief Disciplinary Counsel shall send each attorney listed thereon a
1187 Privilege Tax Delinquency Notice (the “Notice”), stating that the Department of

1188 Revenue has informed the Board that the attorney has failed, for two or more
1189 consecutive years, to pay the privilege tax imposed by Tenn. Code Ann. § 67-4-1702
1190 and that the attorney's license is therefore subject to suspension. The Notice shall be
1191 sent to the attorney by a form of United States mail providing delivery confirmation,
1192 at the address shown in the attorney's most recent registration statement filed
1193 pursuant to Section 10.3 or at the attorney's last known address, and at the email
1194 address shown in the attorney's most recent registration statement filed pursuant to
1195 Section 10.3 or at the attorney's last known email address.

1196 **26.3.** (a) Each attorney to whom a Notice is sent pursuant to Section 27.2 shall
1197 file with the Board within thirty days of the date of delivery of the Notice an affidavit
1198 supported by documentary evidence showing that the attorney has paid the delinquent
1199 privilege taxes and any interest and penalties assessed by the Department of Revenue,
1200 and has paid to the Board a delinquent compliance fee of One Hundred
1201 Dollars(\$100.00) to defray the Board's costs in issuing the Notice; or, alternatively,
1202 demonstrating that the Notice was sent to the attorney in error, the attorney having
1203 timely paid the privilege taxes.

1204 (b) Within thirty days of the expiration of the time for an attorney to respond
1205 to the Notice pursuant to Subsection (a) hereof, the Chief Disciplinary Counsel shall

1206 prepare and furnish to the Court a proposed Suspension Order. The proposed
1207 Suspension Order shall list all attorneys who were sent the Notice and who failed to
1208 respond; failed to demonstrate to the satisfaction of the Board that they had paid the
1209 delinquent privilege taxes and any interest and penalties, and had paid to the Board
1210 a delinquent compliance fee of One Hundred Dollars(\$100.00) to defray the Board's
1211 costs in issuing the Notice; or, failed to demonstrate to the satisfaction of the Board
1212 that the Notice had been sent in error. The proposed Suspension Order shall provide
1213 that the license to practice law of each attorney listed therein shall be suspended upon
1214 the Court's filing of the Order and that the license of each attorney listed therein shall
1215 remain suspended until the attorney pays the delinquent privilege taxes and any
1216 interest and penalties, and pays to the Board the One Hundred Dollar (\$100.00)
1217 delinquent compliance fee and a separate reinstatement fee in the amount of Two
1218 Hundred Dollars (\$200.00), and is reinstated pursuant to Subsection (d).

1219 (c) Upon the Court's review and approval of the proposed Suspension Order,
1220 the Court will file the Order summarily suspending the license to practice law of each
1221 attorney listed in the Order. The suspension shall remain in effect until the attorney
1222 pays the delinquent privilege taxes and any interest and penalties, and pays to the
1223 Board the One Hundred Dollar (\$100.00) delinquent compliance fee and the Two
1224 Hundred Dollar (\$200.00) reinstatement fee, and until the attorney is reinstated

1225 pursuant to Subsection (d). An attorney who fails to resolve the suspension within
1226 thirty days of the Court's filing of the Suspension Order shall comply with the
1227 requirements of Section 28.

1228 (d) An attorney suspended by the Court pursuant to Subsection (c) may file
1229 with the Board an application for reinstatement of the attorney's license to practice
1230 law demonstrating that the attorney has paid all delinquent privilege taxes and any
1231 interest and penalties, and has paid to the Board the One Hundred Dollar (\$100.00)
1232 delinquent compliance fee and the Two Hundred Dollar (\$200.00) reinstatement fee;
1233 or, alternatively, demonstrating that the Suspension Order was entered in error as to
1234 the attorney. If the application is satisfactory to the Board and if the attorney
1235 otherwise is eligible for reinstatement, the Board, or the Chief Disciplinary Counsel
1236 acting on its behalf, shall promptly prepare and send to the Court a proposed
1237 Reinstatement Order. The proposed Reinstatement Order shall provide that the
1238 attorney's reinstatement is effective as of the date of the attorney's payment of all
1239 delinquent privilege taxes and any interest and penalties, and the attorney's payment
1240 to the Board of the One Hundred Dollar (\$100.00) delinquent compliance fee and the
1241 Two Hundred Dollar (\$200.00) reinstatement fee ; or, alternatively, as of the date of
1242 entry of the Suspension Order if that Order was entered in error.

1243 **Section 27. Proceedings Where an Attorney Is Declared to Be Incompetent or**
1244 **Is Alleged to Be Incapacitated**

1245 **27.1.** Where an attorney has been judicially declared incompetent or
1246 involuntarily committed on the grounds of incompetency or disability or detained or
1247 placed in the custody of a center for the treatment of mental illness after a probable
1248 cause hearing pursuant to the procedures set forth in Tenn. Code Ann. § 33-6-103, the
1249 Court, upon proper proof of the fact, shall enter an order transferring such attorney
1250 to disability inactive status effective immediately for an indefinite period until further
1251 order of the Court. A copy of such order shall be served upon the attorney, the
1252 attorney's guardian, and/or the director of the institution to which the attorney had
1253 been committed in such manner as the Court may direct.

1254 **27.2.** Whenever during the course of an investigation pursuant to Section 15.1
1255 or formal proceedings pursuant to Section 15.2, Disciplinary Counsel obtains
1256 information calling into question the mental or physical health of the respondent
1257 attorney that raises a substantial concern regarding the respondent attorney's capacity
1258 to continue the practice of law or to respond to or defend against a complaint,
1259 Disciplinary Counsel should request the respondent attorney to voluntarily agree to

1260 submit to an evaluation by the Tennessee Lawyers Assistance Program or an
1261 examination by a qualified medical or mental health expert to determine respondent
1262 attorney's capacity and report the results of the examination to the Board and to the
1263 respondent attorney and the respondent attorney's counsel. In the event the
1264 respondent attorney declines to submit to such evaluation or examination and
1265 reporting, Disciplinary Counsel should petition the Court for an order requiring the
1266 respondent attorney to submit to an evaluation by the Tennessee Lawyers Assistance
1267 Program or an examination by a qualified medical or mental health expert as the
1268 Court shall designate, the results of either of which shall be reported to the Board, the
1269 Court, and the respondent attorney and the respondent attorney's counsel. Failure to
1270 comply with an order issued under this Subsection may serve as the basis for
1271 temporary suspension pursuant to Section 12.3.

1272 **27.3.** If the Board petitions the Court to determine whether an attorney is
1273 incapacitated from continuing the practice of law by reason of mental infirmity or
1274 illness or because of addiction to drugs or intoxicants, or if an attorney, with no
1275 disciplinary proceeding or complaint pending, petitions to be transferred to disability
1276 inactive status, the Court may take or direct such action as it deems necessary or
1277 proper to determine whether the attorney is so incapacitated, including the

1278 examination of the attorney by such qualified medical experts as the Court shall
1279 designate or assignment to a hearing panel for a formal hearing to determine the issue
1280 of capacity. If the Board petitions the Court, the burden of proof shall be upon the
1281 Board and shall be by a preponderance of the evidence. If, upon due consideration
1282 of the matter, the Court concludes that the attorney is incapacitated from continuing
1283 to practice law, it shall enter an order transferring the attorney to disability inactive
1284 status on the ground of such disability for an indefinite period and until the further
1285 order of the Court. If the Board files a petition pursuant to this Section while a
1286 disciplinary proceeding is pending against the respondent attorney, the disciplinary
1287 proceeding shall be suspended pending the determination as to the attorney's alleged
1288 incapacity.

1289 **27.4.** (a) If, during the course of a disciplinary investigation or proceeding,
1290 the respondent attorney contends that the he/she is suffering from a disability by
1291 reason of mental or physical infirmity or illness, or because of addiction to drugs or
1292 intoxicants, which disability makes it impossible for the respondent attorney to
1293 respond to or defend against the complaint, such contention shall place at issue the
1294 respondent attorney's capacity to continue to practice law. The Court thereupon shall
1295 enter an order immediately transferring the respondent attorney to disability inactive

1296 status for an indefinite period and until the further order of the Court. The Court may
1297 take or direct such action as it deems necessary or proper to make a determination as
1298 to the respondent attorney's capacity to continue to practice law and to respond to or
1299 defend against the complaint, including the examination of the respondent attorney
1300 by such qualified medical experts as the Court shall designate or the referral of the
1301 matter to a hearing panel for a formal hearing to determine the respondent attorney's
1302 capacity to continue to practice law and to respond to or defend against the complaint.
1303 In any such proceeding, the burden of proof shall rest upon the respondent attorney
1304 and shall be by a preponderance of the evidence.

1305 (b) If the Court or hearing panel determines that the respondent attorney is
1306 incapacitated from responding to or defending against the complaint, the Court or
1307 hearing panel shall take such action as it deems proper and advisable, including a
1308 direction for the suspension of the disciplinary proceeding against the respondent
1309 attorney.

1310 (c) If the investigation of complaints or disciplinary proceedings has been
1311 suspended pursuant to this Section, the Board may petition the Court to require the
1312 disabled attorney to provide competent evidence from qualified medical experts that
1313 his or her condition continues to be such that the disabled attorney is not capable of
1314 responding to pending disciplinary complaints, or to submit to an examination by

1315 such independent qualified medical experts as the Court shall designate in order to
1316 determine whether the condition continues to be such that the disabled attorney is not
1317 capable of responding to pending complaints or defending against disciplinary
1318 proceedings. The results of such examination shall be reported to the Board, the
1319 Court and the attorney and the attorney's counsel. In the event such experts
1320 determine that the attorney has recovered from the disability to the point that the
1321 attorney is capable of defending against allegations of misconduct, the Board may
1322 petition the Court for an order permitting the disciplinary proceedings to be
1323 reactivated. If the Board files such a petition, the burden of proof shall rest upon the
1324 Board and shall be by a preponderance of the evidence. Should the Court permit the
1325 disciplinary proceedings to proceed, the cost of the independent medical
1326 examinations shall be charged to the respondent attorney.

1327 **27.5.** The Board shall cause a notice of transfer to disability inactive status to
1328 be published pursuant to Section 28.10.

1329 **27.6.** Whenever an attorney has been transferred to disability inactive status
1330 pursuant to either Section 27.1 or Section 27.3; or, whenever the Board, pursuant to
1331 Section 27.2, petitions the Court to determine that an attorney is disabled or

1332 incapacitated from continuing the practice of law, the Board shall request such action
1333 under the provisions of Section 29 as may be indicated in order to protect the interests
1334 of the disabled or allegedly disabled attorney and the attorney's clients.

1335 **27.7.** (a) No attorney transferred to disability inactive status pursuant to
1336 Section 27 may resume active status until reinstated by order of the Court. Any
1337 attorney transferred to disability inactive status pursuant to Section 27 shall be
1338 entitled to petition for reinstatement to active status once a year or at such shorter
1339 intervals as the Court may direct in the order transferring the respondent to disability
1340 inactive status, or any modification thereof. The petition for reinstatement shall be
1341 filed with the Court in the form adopted by the Board. The petitioner shall serve a
1342 copy of the petition upon Disciplinary Counsel, who shall investigate the matter and
1343 file an answer to the petition. The answer shall include a recommendation as to
1344 whether the petition should be granted without a hearing or referred to a hearing
1345 panel for a hearing.

1346 (b) Upon the filing of a petition for reinstatement pursuant to Section 27, the
1347 Court may take or direct such action as it deems necessary or proper to a
1348 determination of whether the attorney's disability has been removed, including a
1349 direction for an examination of the attorney by such qualified medical experts as the

1350 Court shall designate and the furnishing of such expert's report to the Board, the
1351 Court, and the attorney and the attorney's counsel. In its discretion, the Court may
1352 direct that the expense of such an examination shall be paid by the attorney, and that
1353 the attorney establish proof of competence and learning in law, which proof may
1354 include certification by the Board of Law Examiners of the successful completion of
1355 an examination for admission to practice. The Court also may refer the petition to a
1356 hearing panel for a hearing in which the petitioner shall have the burden of proof. The
1357 hearing shall be governed by Sections 30.3-30.6. The petition shall be granted upon
1358 a showing by clear and convincing evidence that the attorney's disability has been
1359 removed and the attorney is fit to resume the practice of law.

1360 (c) Pending disciplinary complaints against the attorney, whether filed before
1361 or after the attorney's transfer to disability inactive status, must be resolved before the
1362 effective date of any reinstatement. Provided, however, that the Court may order
1363 reinstatement pending the completion of any conditional disciplinary action (e.g.,
1364 probation or restitution) imposed upon the attorney or the final completion of the
1365 terms of any agreement executed by the attorney and the Tennessee Lawyers
1366 Assistance Program.

1367 **27.8.** Where an attorney has been transferred to disability inactive status by an
1368 order in accordance with Section 27.1 and, thereafter, in proceedings duly taken, the
1369 attorney has been judicially declared to be competent, this Court may dispense with
1370 further evidence that the attorney's disability has been removed and may direct the
1371 attorney's reinstatement to active status upon such terms as the Court deems proper
1372 and advisable.

1373 **27.9.** The filing of a petition for reinstatement to active status by an attorney
1374 transferred to disability inactive status because of disability shall be deemed to
1375 constitute a waiver of any doctor-patient privilege with respect to any treatment of the
1376 attorney during the period of disability. The attorney shall be required to disclose the
1377 name of every psychiatrist, psychologist, physician and hospital or other institution
1378 by whom or in which the attorney has been examined or treated since the transfer to
1379 disability inactive status, and shall furnish to the Court written consent to each to
1380 divulge such information and records as requested by court appointed medical
1381 experts.

1382 **Section 28. Notice to Clients, Adverse Parties, and Other Counsel**

1383 **28.1. Effective Date of Order.** Orders imposing disbarment, suspension,
1384 transfers to disability inactive status, or temporary suspension are effective on a date
1385 ten days after the date of the order, except where the Court finds that immediate
1386 disbarment, suspension, or temporary suspension is necessary to protect the public.

1387 **28.2. Recipients of Notice; Contents.** By no later than the effective date of
1388 the order, the respondent attorney shall notify or cause to be notified by registered
1389 or certified mail, return receipt requested:

1390 (a) all clients being represented in pending matters;

1391 (b) all co-counsel in pending matters; and

1392 (c) all opposing counsel in pending matters, or in the absence of opposing
1393 counsel, the adverse parties,

1394 of the order of the Court and that the attorney is therefore disqualified to act as
1395 attorney after the effective date of the order. The notice to be given to the attorney(s)
1396 for an adverse party, or, in the absence of opposing counsel, the adverse parties, shall
1397 state the last known address of the client of the respondent attorney. The notice shall
1398 inform the recipient of the effective date of the suspension and the effect it will have
1399 on the attorney's representation of the client in the applicable matter.

1400 **28.3. Special Notice.** The Court may direct the issuance of notice to such
1401 financial institutions or others as may be necessary to protect the interests of clients
1402 or other members of the public.

1403

1404 **28.4. Duty to Maintain Records.** The respondent attorney shall keep and
1405 maintain records of the steps taken to accomplish the requirements of Sections 28.1
1406 and 28.2 and shall make those records available to Disciplinary Counsel on request.

1407 **28.5. Return of Client Property.** The respondent attorney shall deliver to all
1408 clients any papers or other property to which they are entitled and shall notify them
1409 and any counsel representing them of a suitable time and place where the papers and
1410 other property may be obtained, calling attention to any urgency for obtaining the
1411 papers or other property.

1412 **28.6. Refund of Fees.** By no later than the effective date of the order, the
1413 respondent attorney shall refund any part of any fees, expenses, or costs paid in
1414 advance that has not been earned or expended, unless the order directs otherwise.

1415 **28.7. Withdrawal from Representation.** In the event another attorney does
1416 not become attorney of record on behalf of the client before the effective date of the
1417 order, the respondent attorney shall within ten days after the effective date of the
1418 order move in the court, agency or tribunal in which the proceeding is pending for
1419 leave to withdraw. The respondent attorney shall in that event file with the court,
1420 agency, or tribunal before which the proceeding is pending a copy of the notice to
1421 opposing counsel or adverse parties, including the place of residence and all mailing
1422 addresses of the client of the respondent attorney.

1423 **28.8. New Representation Prohibited.** Prior to the effective date of the
1424 order, if not immediately, the respondent attorney shall not undertake any new legal
1425 matters. By no later than the effective date of the order, the respondent attorney shall
1426 cease to maintain a presence or occupy an office where the practice of law is
1427 conducted. Within thirty days after the effective date of the order, the respondent
1428 attorney shall take such action as is necessary to cause the removal of any indicia of
1429 attorney, lawyer, counselor at law, legal assistant, law clerk, or similar title.

1430 **28.9. Affidavit Filed with Board.** Within ten days after the effective date of
1431 the order, the respondent attorney shall file with the Board an affidavit showing:

1432 (a) Compliance with the provisions of the order and with Section 28;

1433 (b) All other state, federal, and administrative jurisdictions to which the
1434 attorney is admitted to practice;

1435 (c) Place of residence and all addresses where communications may thereafter
1436 be directed; and

1437 (d) Service of a copy of the affidavit upon Disciplinary Counsel, which shall
1438 include proof of compliance with Section 28.2.

1439 **28.10. Reinstatement.** Proof of compliance with Section 28 shall be a
1440 condition precedent to any petition for reinstatement.

1441 **28.11. Publication of Notice.** The Board shall provide a notice of the
1442 disbarment, suspension, disability inactive status, temporary suspension or
1443 reinstatement to all State judges and to the Tennessee Bar Association , and shall
1444 cause the same to be published in a newspaper of general circulation in each county
1445 in which the respondent attorney maintained an office for the practice of law, and to
1446 be published in such other publications as the Board may determine to be appropriate.

1447 **Section 29. Appointment of Counsel to Protect Clients’ Interests When Their**
1448 **Attorney Has Been Transferred to Disability Inactive Status, Placed on**
1449 **Temporary Suspension, Suspended or Disbarred, or Has Disappeared,**
1450 **Abandoned a Law Practice, or Died, or is Alleged to be Disabled or**
1451 **Incapacitated Pursuant to Section 27.3**

1452 **29.1. Appointment and Duties of Receiver Attorney.** If an attorney has been
1453 transferred to disability inactive status, placed on temporary suspension, suspended,
1454 or disbarred, and there is evidence that he or she has not complied with Section 28;
1455 or if an attorney has disappeared, abandoned a law practice, or died, or is alleged to
1456 be disabled or incapacitated from continuing the practice of law pursuant to Section
1457 27.3; and no partner, executor, or other responsible party capable of conducting the
1458 attorney’s affairs is known to exist, a person or persons with personal knowledge
1459 shall file with the Presiding Judge in the judicial district in which the attorney
1460 maintained a practice an affidavit(s) setting forth the pertinent facts. The Presiding
1461 Judge thereafter, upon proper proof of the fact, shall appoint an attorney or attorneys
1462 (“Receiver Attorneys”) to take custody of the files of the lawyer and inventory the
1463 same, advise clients of the death and/or disability of the attorney, and the need for the
1464 clients to retain substitute counsel, return the file to the client upon request, or any

1465 other actions as directed by the Presiding Judge. The Receiver Attorney shall take
1466 appropriate steps, subject to the discretion of the Presiding Judge and upon
1467 appropriate order of the court, to sequester client funds of the attorney pursuant to
1468 Section 29.4. The appointment of the Receiver Attorney by the Presiding Judge shall
1469 not be deemed in any manner to create the relationship of attorney and client between
1470 the Receiver Attorney and any person whatsoever.

1471 **29.2. Duty of Presiding Judge.** Upon notification pursuant to Section 29.1
1472 of the transfer of an attorney to disability inactive status, temporary suspension of the
1473 attorney, suspension of the attorney, or disbarment of the attorney, where there is
1474 evidence that the attorney has not complied with Section 28; or of the disappearance,
1475 abandonment of law practice, death, disability, or incapacitation from continued
1476 practice of law pursuant to Section 27.3, the Presiding Judge shall, in addition to
1477 appointing Receiver Attorneys to carry out the duties imposed by this Section, notify
1478 clerks of courts in the judicial district and any appropriate local Bar Associations of
1479 the appointment of the Receiver Attorneys to conduct the duties and responsibilities
1480 imposed by this Section.

1481 **29.3. Protection for Records Subject to Inventory.** Any Receiver Attorney
1482 so appointed shall not be permitted to disclose any information contained in any files
1483 inventoried without the consent of the client to whom the file relates or orders of the
1484 Presiding Judge, except as necessary to carry out the orders of the court which
1485 appointed the Receiver Attorney to make the inventory. The inventory should include
1486 both open and closed files.

1487 **29.4. Custody of Funds.** Any Receiver Attorney appointed pursuant to the
1488 provisions of this Section shall, with the express approval of the Presiding Judge
1489 upon proper application by said Receiver Attorney, be permitted to take custody and
1490 control over the funds contained in bank accounts and other depositories maintained
1491 for the purpose of operating accounts as well as all trust accounts of the attorney for
1492 whom the appointment has been made. The funds thus transferred to the control of
1493 the Receiver Attorney shall be retained by the Receiver Attorney and disbursed,
1494 utilized or expended pursuant to orders of the Presiding Judge.

1495 **29.5. Disposition of Files.** All files subject to the control, supervision and
1496 custody of Receiver Attorneys, pursuant to appointment under the provisions of this
1497 Section, shall be maintained by Receiver Attorneys until the Presiding Judge shall,

1498 upon proper petition, direct an alternative place of preservation or repository as, in
1499 the sole discretion of the Presiding Judge, is appropriate under all known
1500 circumstances.

1501 **29.6. Limitation of Liability.** Any person or entity making a notification to
1502 the Presiding Judge pursuant to the provisions of Section 29, or any attorney
1503 appointed as a Receiver Attorney pursuant to Section 29 by the Presiding Judge of
1504 the judicial district in which the attorney maintained a practice and who is charged
1505 with the responsibility of inventorying files and taking such action as further required
1506 by said appointment by the Presiding Judge, shall be entitled to and receive the full
1507 extent of all immunities and protections given to judges of the circuit and chancery
1508 courts of the State of Tennessee, without exception or limitation, for all acts taken
1509 pursuant to, arising out of, or connected with the appointment and any subsequent
1510 orders of the Presiding Judge.

1511 **Section 30. Reinstatement**

1512 **30.1.** No attorney suspended for one year or more or disbarred may resume
1513 practice until reinstated by order of the Court, except as provided in Section 10.6.

1514 Any attorney suspended for less than one year or for an indefinite period to be
1515 determined by the conditions imposed by the judgment may resume practice without
1516 reinstatement after filing an affidavit with the Board showing that the attorney has
1517 fully complied with the conditions imposed by the judgment, including the payment
1518 of costs incurred by the Board in the prosecution of the preceding disciplinary
1519 proceeding and any court costs assessed against the attorney in any appeal from such
1520 proceeding.

1521 **30.2.** An attorney who has been disbarred after hearing or by consent may not
1522 apply for reinstatement until the expiration of at least five years from the effective
1523 date of the disbarment. An attorney who has previously been disbarred and reinstated
1524 is not eligible for reinstatement following a second disbarment.

1525 **30.3.** Petitions for reinstatement by a disbarred or suspended attorney shall be
1526 filed under this Section, regardless of when or under what procedure the suspension
1527 or disbarment occurred. The qualifications and requirements for reinstatement
1528 existing when the suspension was entered shall apply to any subsequent reinstatement
1529 proceeding. No application for reinstatement shall be filed more than ninety days
1530 prior to the time the disbarred or suspended attorney shall first be eligible for

1531 reinstatement. The petition for reinstatement shall be filed with the Board and served
1532 upon Disciplinary Counsel promptly. Upon receipt of the petition, Disciplinary
1533 Counsel shall investigate the matter and file and serve upon the petitioning attorney
1534 a responsive pleading to the petition. The Board shall promptly refer the petition to
1535 a hearing panel in the disciplinary district in which the petitioning attorney
1536 maintained an office at the time of the disbarment or suspension. The hearing panel
1537 shall schedule a hearing at which the petitioning attorney shall have the burden of
1538 demonstrating by clear and convincing evidence that the petitioning attorney has the
1539 moral qualifications, competency and learning in law required for admission to
1540 practice law in this state and that the resumption of the practice of law within the state
1541 will not be detrimental to the integrity and standing of the bar or the administration
1542 of justice, or subversive to the public interest. The hearing panel shall within thirty
1543 days file a report containing its findings and decision and transmit its report, together
1544 with the record, to the Board. Either party dissatisfied with the hearing panel's
1545 decision may appeal as provided in Section 33.

1546 **30.4.** If it is the decision of the hearing panel that petitioning attorney be
1547 reinstated, the Board shall review the record and within sixty days either appeal as
1548 provided in Section 33 or transmit to the Court the record of the proceedings before

1549 the hearing panel together with its report approving same. The Court will take such
1550 action upon the record so transmitted as it deems appropriate. No attorney will be
1551 reinstated except by order of the Court.

1552 **30.5.** The hearing panel or reviewing court may impose conditions on the
1553 petitioning attorney's reinstatement, including , without limitation, certification by
1554 the Board of Law Examiners of the successful completion of an examination for
1555 admission to practice; and, the assignment of a practice monitor for the purposes and
1556 pursuant to the procedures set forth in Section 12.9. The petitioning attorney shall
1557 pay the costs associated with the conditions of reinstatement, including without
1558 limitation a reasonable fee to the practice monitor pursuant to the procedures in
1559 Section 12.9(d).

1560 **30.6.** In all proceedings upon a petition for reinstatement, cross-examination
1561 of the petitioning attorney's witnesses and the submission of evidence, if any, in
1562 opposition to the petition shall be conducted by Disciplinary Counsel.

1563 **30.7.** Petitions for reinstatement under this Section shall be accompanied by
1564 an advance cost deposit in an amount to be set from time-to-time by the Board to

1565 cover anticipated costs of the reinstatement proceeding. All advance cost deposits
1566 collected hereunder shall be deposited by the Board with the State Treasurer; all such
1567 funds including earnings on investments and all interest and proceeds from said
1568 funds, if any, are deemed to be, and shall be designated as, funds belonging solely to
1569 the Board. Withdrawals from those funds shall only be made by the Board to cover
1570 costs of reinstatement proceedings, and reimbursement of advance cost deposits not
1571 expended. Such advance cost deposit funds shall be maintained, managed, and
1572 administered solely and exclusively by the Board.

1573 **30.8.** If the petitioning attorney is found unfit to resume the practice of law,
1574 the petition shall be dismissed. If the petitioning attorney is found fit to resume the
1575 practice of law, the judgment shall reinstate the petitioning attorney; provided,
1576 however, that the judgment may make such reinstatement conditional upon the
1577 payment of all or part of the costs of the proceeding, and upon the making of partial
1578 or complete restitution to parties harmed by the petitioning attorney's misconduct
1579 which led to the suspension or disbarment; and the reinstatement may be conditioned
1580 upon the furnishing of such proof of competency as may be required by the judgment,
1581 in the discretion of the Court, which proof may include certification by the Board of
1582 Law Examiners of the successful completion of examination for admission to

1583 practice. The reinstatement further may be conditioned upon the assignment of a
1584 practice monitor for the purposes and pursuant to the procedures set forth in Section
1585 12.9. The petitioning attorney shall pay a reasonable fee to the practice monitor
1586 pursuant to the procedures in Section 12.9(d).

1587 **30.9. Successive Petitions.** No petition for reinstatement under this Rule shall
1588 be filed within two years following an adverse judgment upon a petition for
1589 reinstatement filed by or on behalf of the same person, unless otherwise ordered by
1590 the Court in denying the petition for reinstatement.

1591 **Section 31. Expenses, Audit, Reimbursement of Costs**

1592 **31.1. Expenses.** The salaries of Disciplinary Counsel and staff, their expenses,
1593 administrative costs, and the expenses of the members of the Board and of members
1594 of the district committees shall be paid by the Board out of the funds collected under
1595 the provisions of this Rule.

1596 **31.2. Accounting.** The Administrative Office of the Courts performs
1597 accounting functions for the Board, either directly or through its oversight and final
1598 approval of transactions performed by Board personnel.

1599 **31.3. Reimbursement of Costs.**

1600 (a) In the event that a judgment of disbarment, suspension, public censure,
1601 private reprimand, temporary suspension, disability inactive status, reinstatement, or
1602 denial of reinstatement results from formal proceedings, Disciplinary Counsel shall
1603 within fifteen days from the hearing panel's submission of such judgment pursuant
1604 to Section 15.3 make application to the hearing panel for the assessment against the
1605 respondent or petitioning attorney of the necessary and reasonable costs of the
1606 proceedings, including court reporter's expenses for appearances and transcription
1607 of all hearings and depositions, the expenses of the hearing panel in the hearing of the
1608 cause, and the hourly charge of Disciplinary Counsel in investigating and
1609 prosecuting, and shall serve a copy of such application on respondent or petitioning
1610 attorney and the petitioning attorney's counsel of record pursuant to Section 18.2.
1611 The application shall be accompanied by an affidavit and such other documentary
1612 evidence as Disciplinary Counsel deems appropriate documenting the hours expended
1613 and the costs incurred by Disciplinary Counsel in investigating and prosecuting the

1614 complaint or responding to the petition for reinstatement. Such proof shall create a
1615 rebuttable presumption as to the necessity and reasonableness of the hours expended
1616 and the costs incurred. The respondent or petitioning attorney may within fifteen
1617 days after Disciplinary Counsel's application submit to the hearing panel and serve
1618 on Disciplinary Counsel pursuant to Section 18.2 any response in opposition to the
1619 application for an assessment of costs. The burden shall be upon respondent or
1620 petitioning attorney to prove by a preponderance of the evidence that the hours
1621 expended or costs incurred by Disciplinary Counsel were unnecessary or
1622 unreasonable. Disciplinary Counsel or the respondent or petitioning attorney may
1623 request a hearing before the hearing panel, in which event, the hearing panel shall
1624 promptly schedule the same. The hearing panel shall within fifteen days from the
1625 conclusion of such hearing, or in the event no hearing is requested, within fifteen
1626 days from the date on which the respondent or petitioning attorney's response is due
1627 or is submitted, whichever is earlier, submit its findings and judgment with respect
1628 to Disciplinary Counsel's application for the assessment of costs.

1629 (b) In the event that a judgment as set forth in Subsection (a) is appealed to
1630 the circuit or chancery court pursuant to Section 33 and the Board is the prevailing
1631 party in such appeal, Disciplinary Counsel may make application to the circuit or
1632 chancery court for the assessment against the respondent or petitioning attorney of

1633 the necessary and reasonable costs of the trial court proceedings, including court
1634 reporter's expenses for appearances and transcription of all hearings and depositions
1635 and the hourly charge of Disciplinary Counsel for the trial court proceedings.

1636 (c) In the event that the decree of the circuit or chancery court is appealed to
1637 the Court pursuant to Section 33 and the Board is the prevailing party in such appeal,
1638 Disciplinary Counsel may make application to the Court for the assessment against
1639 the respondent or petitioning attorney of the necessary and reasonable costs of the
1640 proceedings before the Court, including court reporter's expenses for appearances and
1641 transcription of all hearings and depositions and the hourly charge of Disciplinary
1642 Counsel for the proceedings before the Court.

1643 (d) The hourly charges of Disciplinary Counsel on formal proceedings shall
1644 be assessed at the rates set forth in Tenn. Sup. Ct. R. 13, Section 2(c)(1) for
1645 compensation of counsel appointed for indigent criminal defendants in non-capital
1646 cases.

1647 (e) Payment of the costs and fees assessed pursuant to this Section shall be
1648 required as a condition precedent to reinstatement of the respondent or petitioning
1649 attorney. In the discretion of the Chief Disciplinary Counsel, the respondent or
1650 petitioning attorney may, upon a showing of extraordinary need, be permitted to pay
1651 costs in periodic payments. If a payment plan is permitted, the respondent or

1652 petitioning attorney also shall pay the Board interest at the statutory rate. If for any
1653 reason, the respondent or petitioning attorney does not abide by the terms of the
1654 payment plan, the Chief Disciplinary Counsel shall revoke the plan and the
1655 respondent or petitioning attorney shall be required to pay the balance of any unpaid
1656 assessment of costs within thirty days thereof.

1657 **Section 32. Confidentiality**

1658 **32.1.** All matters, investigations, or proceedings involving allegations of
1659 misconduct by or the disability of an attorney, including all hearings and all
1660 information, records, minutes, files or other documents of the Board, district
1661 committee members and Disciplinary Counsel shall be confidential and privileged,
1662 and shall not be public records, until or unless:

1663 (a) a recommendation for the imposition of public discipline, without the
1664 initiation of a formal disciplinary proceeding pursuant to Section 15.2, is filed with
1665 the Court by the Board; or

1666 (b) a petition to initiate a formal disciplinary proceeding is filed pursuant to
1667 Section 15.2; or

1668 (c) the respondent attorney requests that the matter be public; or

1669 (d) the investigation is predicated upon conviction of the respondent attorney
1670 for a crime; or

1671 (e) in matters involving alleged disability, the Court enters an order transferring
1672 the respondent attorney to disability inactive status pursuant to Section 27.

1673 **32.2.** In disability proceedings referred to in Sections 27 and 32.1(e), the order
1674 transferring the respondent attorney to disability inactive status shall become a public
1675 record upon filing; however, all other documents relating to the respondent attorney's
1676 disability proceeding, including any subsequent petition for reinstatement after
1677 transfer to disability inactive status, shall not be public records and shall be kept
1678 confidential. An order granting a petition for reinstatement after transfer to disability
1679 inactive status shall become a public record upon filing.

1680 **32.3.** All work product and work files (including internal memoranda,
1681 correspondence, notes and similar documents and files) of the Board, district
1682 committee members, and Disciplinary Counsel shall be confidential and privileged
1683 and shall not be public records.

1684 **32.4.** In order to protect the interests of a complainant, respondent or
1685 petitioning attorney, witness, or third party, the Board may, at any stage of the
1686 proceedings, upon application of any person and for good cause shown, issue a
1687 protective order prohibiting the disclosure of specific information or documents, or
1688 the closure of any hearing, and direct that the proceedings be conducted so as to
1689 implement the order, including requiring that the hearing be conducted in such a way
1690 as to preserve the confidentiality of the information that is the subject of the
1691 application. After the initiation of a formal proceeding, any such application shall be
1692 filed with and decided by the assigned hearing panel.

1693 **32.5.** All participants in any matter, investigation, or proceeding shall conduct
1694 themselves so as to maintain confidentiality. However, unless a protective order has
1695 been entered, nothing in this Section or this Rule shall prohibit the complainant,
1696 respondent or petitioning attorney, or any witness from disclosing the existence or
1697 substance of a complaint, matter, investigation, or proceeding under this Rule or from
1698 disclosing any documents or correspondence filed by, served on, or provided to that
1699 person.

1700 The Board, district committee members, hearing panel members, Disciplinary
1701 Counsel, their assistants, staff and employees shall maintain confidentiality with

1702 respect to all pending matters, investigations and proceedings arising under this Rule,
1703 except that in the event of any of the circumstances set forth in Section 32.1 (a)-(e),
1704 Disciplinary Counsel may disclose the pendency, general subject matter, and status
1705 of the matter.

1706 **32.6.** In those disciplinary proceedings in which an appeal is taken pursuant
1707 to Section 33, the records and hearing in the circuit or chancery court and in the Court
1708 shall be public to the same extent as in all other cases.

1709 **32.7.** The provisions of this Rule shall not be construed to deny access to
1710 relevant information to authorized agencies investigating the qualifications of judicial
1711 candidates; or to other jurisdictions investigating qualifications for admission to
1712 practice; or to law enforcement agencies investigating qualifications for government
1713 employment; or to prevent the Board from reporting evidence of a crime by an
1714 attorney or other person to courts or law enforcement agencies; or to prevent the
1715 Board from reporting to the Tennessee Lawyer Assistance Program evidence of a
1716 disability that impairs the ability of an attorney to practice or serve; or to prevent the
1717 Board or Disciplinary Counsel from defending any action or proceeding now pending
1718 or hereafter brought against either of them. In addition, the Board shall transmit

1719 notice of all public discipline imposed by the Court on an attorney or the transfer to
1720 inactive status due to disability of an attorney to the National Discipline Data Bank
1721 maintained by the American Bar Association.

1722 **32.8.** Nothing in this Section is intended to limit or repeal any confidentiality
1723 or privilege afforded by other law.

1724 **Section 33. Appeal**

1725 **33.1.** (a) The respondent or petitioning attorney or the Board may appeal the
1726 judgment of a hearing panel by filing within sixty days of the date of the hearing
1727 panel's judgment a Petition for Review in the circuit or chancery court of the county
1728 in which the office of the respondent or petitioning attorney was located at the time
1729 the charges were filed with the Board. If the respondent or petitioning attorney was
1730 located outside this State, the Petition for Review shall be filed in the circuit court or
1731 chancery court of Davidson County, Tennessee.

1732 (b) The review shall be on the transcript of the evidence before the hearing
1733 panel and its findings and judgment. If allegations of irregularities in the procedure
1734 before the hearing panel are made, the trial court is authorized to take such additional
1735 proof as may be necessary to resolve such allegations. The court may affirm the
1736 decision of the hearing panel or remand the case for further proceedings. The court
1737 may reverse or modify the decision if the rights of the party filing the Petition for
1738 Review have been prejudiced because the hearing panel's findings, inferences,
1739 conclusions or decisions are: (1) in violation of constitutional or statutory provisions;
1740 (2) in excess of the hearing panel's jurisdiction; (3) made upon unlawful procedure;
1741 (4) arbitrary or capricious or characterized by abuse of discretion or clearly
1742 unwarranted exercise of discretion; or (5) unsupported by evidence which is both
1743 substantial and material in the light of the entire record. In determining the
1744 substantiality of evidence, the court shall take into account whatever in the record
1745 fairly detracts from its weight, but the court shall not substitute its judgment for that
1746 of the hearing panel as to the weight of the evidence on questions of fact.

1747 (c) There shall be no petitions for rehearing in the trial court.

1748 (d) Either party dissatisfied with the decree of the circuit or chancery court
1749 may prosecute an appeal directly to the Court where the cause shall be heard upon the
1750 transcript of the record from the circuit or chancery court, which shall include the

1751 transcript of evidence before the hearing panel. Prior decisions of the Court holding
1752 that appeal of disciplinary proceedings must be taken to the Court of Appeals because
1753 Tenn. Code Ann. § 16-4-108 so requires are expressly overruled. Except as
1754 otherwise provided in this Rule, Tenn. R. App. P. 24, 25, 26, 27, 28, 29 and 30 shall
1755 apply to such appeals to this Court.

1756 **33.2.** The Chief Justice shall designate a trial judge or chancellor, regular or
1757 retired, who shall not reside within the geographic boundaries of the chancery
1758 division or circuit court wherein the office of the respondent or petitioning attorney
1759 was located at the time the charges were filed with the Board. It shall be this judge's
1760 or chancellor's duty to review the case in the manner set forth in Section 33.1 and to
1761 enter judgment upon the minutes of the circuit or chancery court of the county where
1762 the case is heard, and the judgment shall be effective as if the special judge were the
1763 regular presiding judge of said court. The duty is imposed upon the clerks and the
1764 regular trial judge to promptly notify the Chief Justice of the filing of an appeal in
1765 disciplinary cases.

1766 **33.3. (a)** The judgment of the hearing panel may be stayed in the discretion of
1767 the hearing panel, pending any appeal pursuant to Section 33. Upon the filing of a

1768 Petition for Review pursuant to Section 33, and in the event the judgment is not
1769 stayed by the hearing panel, the trial court in its discretion may stay the hearing
1770 panel's judgment upon motion of a party.

1771 (b) The final judgment of the trial court may be stayed in the discretion of the
1772 trial court, pending an appeal to the Court pursuant to Section 33. In the event the
1773 trial court does not issue a stay pending appeal, the Court may issue a stay upon the
1774 motion of a party.

1775 **Section 34. Additional Rules of Procedure**

1776 **34.1.** (a) The Board Chair may authorize the preparation of all or any portion
1777 of the transcript of a hearing upon a written request from the hearing panel stating the
1778 need therefore. If request is made by the hearing panel for only a portion of the
1779 transcript, either Disciplinary Counsel or the respondent or petitioning attorney may
1780 request in writing from the Chair authorization for transcription of any other portion
1781 of the hearing for completeness. Each party shall pay for that portion of the transcript
1782 which the respective party requests.

1783 (b) It is the responsibility of the party seeking review of the hearing panel's
1784 decision to procure and file the transcript of the hearing. However, if there is no

1785 appeal from the judgment of the hearing panel, the hearing shall not be transcribed
1786 unless requested by one of the parties, which party shall pay the expense of
1787 transcription. The court reporter shall preserve the record of the proceedings until the
1788 time for appeal has expired.

1789 **34.2.** Except as is otherwise provided in this Rule, time is directory and not
1790 jurisdictional. Time limitations are administrative, not jurisdictional. Failure to
1791 observe such directory time intervals may result in contempt of the agency having
1792 jurisdiction but will not justify abatement of any disciplinary investigation or
1793 proceeding.

1794 **34.3.** (a) Except as otherwise provided in this Rule, the Tennessee Rules of
1795 Civil Procedure and the Tennessee Rules of Evidence apply in disciplinary case
1796 proceedings before the hearing panel.

1797 (b) Disciplinary Counsel's work product shall not be required to be produced,
1798 nor shall a member of the hearing panel or the Board, the Chief Disciplinary Counsel,
1799 or the staff be subject to deposition, including Tenn. R. Civ. P. 30.02(6) depositions,
1800 or compelled to give testimony, unless ordered by the trial court upon a showing by
1801 the requesting party of substantial need and an inability to obtain substantially

1802 equivalent materials by other means without undue hardship during an appeal
1803 pursuant to Section 33.

1804 **Section 35. Detection and Prevention of Trust Account Violations**

1805 **35.1. Maintenance of Trust Funds in Approved Financial Institutions;**
1806 **Overdraft Notification.**

1807 (a) Clearly Identified Trust Accounts in Approved Financial Institutions
1808 Required.

1809 (1) Attorneys who practice law in Tennessee shall deposit all funds held in trust
1810 in this jurisdiction in accounts clearly identified as “trust” or “escrow” accounts,
1811 referred to herein as “trust accounts,” and shall take all steps necessary to inform the
1812 depository institution of the purpose and identity of the accounts. Funds held in trust
1813 include funds held in any fiduciary capacity in connection with a representation,
1814 whether as trustee, agent, guardian, executor or otherwise. Attorney trust accounts
1815 shall be maintained only in financial institutions approved by the Board, provided
1816 however nothing herein shall be construed as limiting any statutory provisions
1817 dealing with the investment of trust and/or estate assets, or the investment authority
1818 granted in any instrument creating a fiduciary relationship.

1819 (2) Every attorney engaged in the practice of law in Tennessee shall maintain
1820 and preserve for a period of at least five years, after final disposition of the underlying
1821 matter, the records of the accounts, including checkbooks, canceled checks, check
1822 stubs, vouchers, ledgers, journals, closing statements, accounting or other statements
1823 of disbursements rendered to clients or other parties with regard to trust funds or
1824 similar equivalent records clearly and expressly reflecting the date, amount, source
1825 and explanation for all receipts, withdrawals, deliveries and disbursements of the
1826 funds or other property of a client. The five year period for preserving records
1827 created herein is only intended for the application of this rule and does not alter,
1828 change or amend any other requirements for record-keeping as may be required by
1829 other laws, statutes or regulations.

1830 (b) Overdraft Notification Agreement and Acknowledgment of Authorization
1831 Required. A financial institution shall be approved as a depository for attorney trust
1832 accounts if it files with the Board an acknowledgment of the attorney's constructive
1833 consent of disclosure of their trust account financial records as a condition of their
1834 admission to practice law, and the financial institution's agreement, in a form
1835 provided by the Board to report to the Board whenever any properly payable
1836 instrument is presented against an attorney trust account containing insufficient
1837 funds, irrespective of whether or not the instrument is honored. The Board shall

1838 establish rules governing approval and termination of approved status for financial
1839 institutions, and shall annually publish a list of approved financial institutions. No
1840 trust account shall be maintained in any financial institution that does not
1841 acknowledge constructive authorization by the attorney and agree to so report. Any
1842 such acknowledgment and agreement shall apply to all branches of the financial
1843 institution and shall not be canceled except upon thirty days notice in writing to the
1844 Board.

1845 (c) Overdraft Reports. The overdraft notification agreement shall provide that
1846 all reports made by the financial institution shall be in the following format:

1847 (1) In the case of a dishonored instrument, the report shall be identical to the
1848 overdraft notice customarily forwarded to the depositor, and should include a copy
1849 of the dishonored instrument, if such a copy is normally provided to depositors;

1850 (2) In the case of instruments that are presented against insufficient funds but
1851 which instruments are honored, the report shall identify the financial institution, the
1852 attorney or law firm, the account number, the date of presentation for payment, and
1853 the date paid, as well as the amount of overdraft created thereby.

1854 (d) Timing of Reports. Reports under Subpart (c) shall be made
1855 simultaneously with, and within the time provided by law for notice of dishonor, if
1856 any. If an instrument presented against insufficient funds is honored, then the report

1857 shall be made within five banking days of the date of presentation for payment
1858 against insufficient funds.

1859 (e) Consent by Attorneys. Every attorney practicing or admitted to practice
1860 in this jurisdiction shall, as a condition thereof, be conclusively deemed, under the
1861 financial records privacy laws, other similar laws, or otherwise, to have designated
1862 the Board as their agent for the purpose of disclosure of financial records by financial
1863 institutions relating to their trust accounts; conclusively deemed to have authorized
1864 disclosure of financial records relating to their trust accounts to the Board; and,
1865 conclusively deemed to have consented to the reporting and production of financial
1866 records requirements contemplated or mandated by Sections 35.1 or 35.2 of this Rule.

1867 (f) No Liability Created. Nothing herein shall create or operate as a liability
1868 of any kind or nature against any financial institution for any of its actions or
1869 omissions in reporting overdrafts or insufficient funds to the Board.

1870 (g) Costs. Nothing herein shall preclude a financial institution from charging
1871 a particular attorney or law firm for the reasonable cost of producing the reports and
1872 records required by this rule.

1873 (h) Definitions. For the purpose of this Rule:

1874 (1) “Financial institution” includes a bank, savings and loan association, credit
1875 union, savings bank, and any other business or person that accepts for deposit funds
1876 held in trust by attorneys.

1877 (2) “Properly payable” refers to an instrument which, if presented in the normal
1878 course of business, is in a form requiring payment under the laws of this jurisdiction.

1879 (3) “Notice of dishonor” refers to the notice that a financial institution is
1880 required to give, under the laws of this jurisdiction, upon presentation of an
1881 instrument that the institution dishonors.

1882 **35.2. Verification of Bank Accounts.**

1883 (a) Generally. Whenever Disciplinary Counsel has probable cause to believe
1884 that bank accounts of an attorney that contain, should contain or have contained funds
1885 belonging to clients have not been properly maintained or that the funds have not
1886 been properly handled, Disciplinary Counsel shall request the approval of the Chair
1887 or Vice-Chair of the Board to initiate an investigation for the purpose of verifying the
1888 accuracy and integrity of all bank accounts maintained by the attorney. If the Chair
1889 or Vice-Chair approves, Disciplinary Counsel shall proceed to verify the accuracy of
1890 the bank accounts.

1891 (b) Confidentiality. Investigations, examinations, and verifications shall be
1892 conducted so as to preserve the private and confidential nature of the attorney’s
1893 records insofar as is consistent with these rules and the attorney-client privilege;
1894 however, no assertion of attorney-client privilege or confidentiality will prevent an
1895 inspection or audit of a trust account as provided in this Rule.

1896 **Section 36. Tennessee Lawyer Assistance Program**

1897 The Tennessee Lawyers Assistance Program (TLAP) was established by the
1898 Court to provide immediate and continuing help to attorneys, judges, bar applicants,
1899 and law students who suffer from physical or mental disabilities that result from
1900 disease, disorder, trauma, or age and that impair their ability to practice or serve.

1901 **36.1. Referrals to TLAP.**

1902 (a) Pursuant to Rule 33.07(A) of the Rules of the Tennessee Supreme Court,
1903 the Board, its hearing panels or Disciplinary Counsel may provide a written referral
1904 to TLAP of any attorney who the Board, hearing panel, or Disciplinary Counsel
1905 (collectively, “the BPR”) determines:

- 1906 (1) has failed to respond to a disciplinary complaint;
- 1907 (2) has received three or more complaints within a period of twelve months;
- 1908 (3) has received a complaint that includes multiple failures to appear or to
1909 respond or to take any other action in compliance with established rules or time
1910 guidelines;
- 1911 (4) has pleaded impairment or disability as a defense to a complaint;
- 1912 (5) has exhibited behavior or has engaged in behavior that, in the BPR’s
1913 determination, warrants consultation and, if recommended by TLAP, further
1914 assessment, evaluation, treatment, assistance, or monitoring.
- 1915 (6) is seeking readmission or reinstatement where there is a question of either
1916 prior or present impairment or disability; or
- 1917 (7) is requesting TLAP’s involvement.
- 1918 (b) The Executive Director of TLAP shall review any referral by the BPR. If
1919 the Executive Director of TLAP deems that assistance and monitoring of an attorney
1920 is appropriate, the Executive Director will make reasonable efforts to enter into a
1921 Monitoring/Advocacy Agreement (“Agreement”) with the attorney pursuant to Rule
1922 33.05(E) of the Rules of the Tennessee Supreme Court. If the Executive Director of
1923 TLAP determines that TLAP assistance is not appropriate, for whatever reason, the
1924 Executive Director shall report that determination to the BPR, without further

1925 elaboration and without disclosure of information otherwise confidential under Rule
1926 33.10.

1927 (c) The BPR will provide written notification to the Executive Director of
1928 TLAP that TLAP's assistance will be or has been recommended in any matter
1929 pending before the BPR or when TLAP has an ongoing relationship with an attorney
1930 who has a matter pending before the BPR. The BPR will provide such notification
1931 prior to the date of any hearing and will further provide notice of any hearing date.
1932 The Executive Director of TLAP or his or her representative may attend any such
1933 hearing.

1934 (d) The BPR will provide written notification to the Executive Director of
1935 TLAP of any provision concerning the participation of TLAP included in any
1936 proposed order submitted by the BPR to the Court. The Executive Director of TLAP
1937 will notify the BPR of any requested modification of the order and may decline
1938 involvement. If the Executive Director of TLAP declines involvement of TLAP, the
1939 BPR shall not include TLAP's participation in any proposed order submitted to the
1940 Court.

1941 (e) Pursuant to Rule 33.07 (B) of the Rules of the Tennessee Supreme Court,
1942 TLAP will provide the BPR with the following information:

1943 (1) TLAP will notify the BPR of a referred attorney's failure to establish
1944 contact with TLAP or enter into a recommended Agreement.

1945 (2) If the attorney enters into an Agreement with TLAP, TLAP will provide a
1946 copy of the Agreement to the BPR. Such Agreement will provide for notification by
1947 TLAP to the BPR of substantial non-compliance with any of the terms or conditions
1948 of the Agreement. Contemporaneously with any such notification, the Executive
1949 Director of TLAP may make such recommendation to the BPR as TLAP deems
1950 appropriate.

1951 (3) Upon request of the BPR, TLAP will provide the BPR with a status report
1952 of monitoring and compliance pursuant to the Agreement. When appropriate, the
1953 BPR will obtain from TLAP's Executive Director a recommendation concerning the
1954 attorney's compliance with any Agreement.

1955 **36.2. Autonomy.**

1956 The BPR and TLAP shall remain completely independent, and the activities of
1957 one shall in no way be construed to limit or impede the activities of the other.

1958

APPENDIX

1959 Many attorneys freely give their time and talents to improve our profession, our
1960 system of justice and our communities. Gathering information about this volunteer
1961 work by lawyers is essential to efforts to obtain and to maintain funding for civil and
1962 criminal legal services for the indigent and for promoting and maintaining the image
1963 of the legal profession. For that reason, the Court requests that you voluntarily report
1964 the extent of your pro bono activities in the preceding calendar year.

1965 (1) I hereby report that in [year], I worked approximately:

1966 _____ hours in providing legal services without fee or expectation of fee to
1967 personas of limited means, see Tenn. Sup. Ct. R. 8, RPC 6.1(a)(1);

1968 _____ hours in providing legal services without fee or expectation of fee to
1969 charitable, religious, civic, community, governmental, and educational organizations
1970 in matters that are designed primarily to address the needs of persons of limited
1971 means, see Tenn. Sup. Ct. R. 8, RPC 6.1(a)(2);

1972 _____ hours in the delivery of legal services at no fee or at a substantially
1973 reduced fee to individuals, groups, or organizations seeking to secure or protect civil
1974 rights, civil liberties, or public rights, or charitable, religious, civic, community,
1975 governmental, and educational organizations in matters in furtherance of their

1976 organizational purposes, where the payment of standard legal fees would significantly
1977 deplete the organization's economic resources or would be otherwise inappropriate,
1978 see Tenn. Sup. Ct. R. 8, RPC 6.1(b)(1);

1979 _____ hours in the delivery of legal services at a substantially reduced fee to
1980 persons of limited means, see Tenn. Sup. Ct. R. 8, RPC 6.1(b)(2);

1981 _____ hours participating in activities for improving the law, the legal system,
1982 or the legal profession, see Tenn. Sup. Ct. R. 8, RPC 6.1(b)(3).

1983 (2) I voluntarily contributed financial support to organizations that provide
1984 legal services to persons of limited means, see Tenn. Sup. Ct. R. 8, RPC 6.1(c): _____
1985 Yes; _____ No. (Please do not disclose the amount of any such contributions.)

**CHART A: RECONCILIATION OF RULE 9
(NEW TO FORMER)**

NEW SECTION #	TOPIC	FORMER SECTION #
1	Preamble	3.1
2	Definitions	New
3	Disciplinary Districts	2
4	Board	5
5	Ethics Opinions	26
6	District Committees	6
7	Disciplinary Counsel	7
8	Jurisdiction	1
9	Multijurisdictional Practice	33
10	Periodic Assessment of Attorneys	20
11	Grounds for Discipline	3
12	Types of Discipline	4
13	Diversion of Disciplinary Cases	30
14	Probation	8.5
15	Procedure: Investigation and Hearing	8
16	Complaints Against Board, District Committee, or Disciplinary Counsel	9
17	Immunity	27
18	Service	12
19	Subpoenas	13
20	Refusal of Complainant to Proceed	10

NEW SECTION #	TOPIC	FORMER SECTION #
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21	Matters Involving Related Litigation	11
22	Attorneys Convicted of Crimes/Summary Suspension	14
Deleted	Attorneys Adjudged to Have Refused to Comply with Orders/Summary Suspension	31
23	Disbarment by Consent	15
24	Discipline by Consent	16
25	Reciprocal Discipline	17
26	Failure to Comply with Privilege Tax	32
27	Disability	21
28	Notice to Clients, Adverse Parties, Counsel	18
29	Appointment of Counsel to Represent Clients' Interests	22
30	Reinstatement	19
31	Expenses/Reimbursement of Costs	24
32	Confidentiality	25
33	Review/Appeal	1.3-1.6
34	Other Procedures	23
35	Trust Funds	29
36	TLAP	28

**CHART B: RECONCILIATION OF RULE 9
(FORMER TO NEW)**

FORMER SECTION #	TOPIC	NEW SECTION #
1	Jurisdiction	8
1.3-1.6	Review/Appeal	33
2	Disciplinary Districts	3
3	Grounds for Discipline	11
3.1	Preamble	1
4	Types of Discipline	12
5	Board	4
6	District Committees	6
7	Disciplinary Counsel	7
8	Procedure: Investigation and Hearing	15
8.5	Probation	14
9	Complaints Against Board, District Committee, or Disciplinary Counsel	16
10	Refusal of Complainant to Proceed	20
11	Matters Involving Related Litigation	21
12	Service	18
13	Subpoenas	19
14	Attorneys Convicted of Crimes/Summary Suspension	22
15	Disbarment by Consent	23
16	Discipline by Consent	24
17	Reciprocal Discipline	25
18	Notice to Clients, Adverse Parties, Counsel	28
19	Reinstatement	30

FORMER SECTION #	TOPIC	NEW SECTION #
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20	Periodic Assessment of Attorneys	10
21	Disability	27
22	Appointment of Counsel to Represent Clients' Interest	29
23	Other Procedures	34
24	Expenses/Reimbursement of Costs	31
25	Confidentiality	32
26	Ethics Opinions	5
27	Immunity	17
28	TLAP	36
29	Trust Funds	35
30	Diversion of Disciplinary Cases	13
31	Attorneys Adjudged to Have Refused to Comply with Orders/Summary Suspension	Deleted
32	Failure to Comply with Privilege Tax	26
33	Multijurisdictional Practice	9
New	Definitions	2