

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED

March 31, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

**IN RE: RULE 9
 RULES OF THE SUPREME COURT OF TENNESSEE
 DISCIPLINARY ENFORCEMENT**

ORDER

The Court solicits public comment upon the following proposed amendments to Rule 9 of the Rules of the Supreme Court of Tennessee:

Section 4.3 of Rule 9 is amended by deleting the following language:

Such petition for dissolution shall be set for immediate hearing before the Board of Professional Responsibility or a panel of at least three of its members designated by the Chair of the Board or in the Chair's absence the Vice-Chair.

and replacing it with the following:

Such petition for dissolution shall be set for immediate hearing before the Board of Professional Responsibility or a panel of three members, at least two of whom shall be members of the Board of Professional Responsibility and one of whom may be a Hearing Committee Member from the same Disciplinary District as the respondent attorney, designated by the Chair of the Board, or in the Chair's absence, the Vice-Chair. No more than one non-lawyer Board Member may serve on the panel.

Section 9 of Rule 9 is amended by deleting the Section in its entirety and substituting in its place the following:

**SECTION 9: COMPLAINTS AGAINST BOARD MEMBERS,
HEARING COMMITTEE MEMBERS, OR
DISCIPLINARY COUNSEL**

9.1 (a) Complaints against Disciplinary Counsel or a Hearing Committee member alleging violations of the Attorney's Oath of Office, the Code of Professional Responsibility, or Tenn. Code Ann. § 23-3-201 shall be submitted directly to the Board.

(b) Disagreement with the official decision of Disciplinary Counsel, a Hearing Committee, or a Hearing Committee member, taken in the course and scope of their responsibilities, shall not be grounds for the filing of a disciplinary complaint.

9.2 (a) Complaints against attorney members of the Board alleging violations of the Attorney's Oath of Office, the Code of Professional Responsibility, or Tenn. Code Ann. § 23-3-201 shall be submitted directly to the Chief Justice of the Supreme Court.

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

9.3 Nothing herein contained shall be deemed to exempt any attorney admitted to practice in the State of Tennessee from complaints which present a violation of the Attorney's Oath of Office, the Code of Professional Responsibility, or Tenn. Code Ann. § 23-3-201.

9.4 The investigation of complaints submitted under Section 9.2 of Rule 9 against attorney members of the Board shall proceed in accordance with the procedures contained in Section 8 of Rule 9, with the following modifications:

(a) A Special Disciplinary Counsel, whom the Chief Justice shall appoint, shall take the place and perform the functions of Disciplinary Counsel.

(b) One member of the Court, whom the Chief Justice shall designate, shall take the place and perform all the functions of the Board contained in Rule 9, which shall include, for the purposes of this section, the review of recommendations of dismissal or informal admonition. The member so designated shall not participate with the Court in any subsequent proceedings in the same case.

(c) If the recommendation, as approved or modified, includes the institution of formal proceedings before a Hearing Committee, or if the attorney demands such formal proceedings as of right, then the Chief Justice shall at that time appoint three persons to act as a Special Hearing Committee. The Special Hearing Committee shall take the place and perform the functions of the Hearing Committee as provided in Sections 6 and 8 of Rule 9. The Special Disciplinary Counsel shall continue to represent the Board and proceed as provided in Sections 7 and 8 of Rule 9.

(d) The respondent attorney or the Board may obtain review of the judgment of the Special Hearing Committee as provided in Sections 1.3, 1.4, 1.5, and 8.3 of Rule 9.

Section 18 of Rule 9 is amended by deleting the Section in its entirety and substituting in its place the following:

SECTION 18. NOTICE TO CLIENTS, ADVERSE PARTIES, AND OTHER COUNSEL.

18.1 Recipients of Notice; Contents.

Within ten days after the date of the order of this Court imposing discipline, transfer to disability inactive status, or interim suspension, a respondent lawyer who has been disbarred, suspended, transferred to disability inactive status, or placed on interim suspension pursuant to Section 4.3 of this rule, shall notify or cause to be notified by registered or certified mail, return receipt requested,

- (a) all clients being represented in pending matters;
- (b) all co-counsel in pending matters; and
- (c) all opposing counsel in pending matters, or in the absence of opposing counsel, the adverse parties, of the order of the Court and that the lawyer is therefore disqualified to act as lawyer after the effective date of the order. The notice to be given to the lawyer(s) for an adverse party, or, in the absence of opposing counsel, the adverse parties, shall state the last known address of the client of the respondent.

18.2 Special Notice.

The Court may direct the issuance of notice to such financial institutions or others as may be necessary to protect the interests of clients or other members of the public.

18.3 Duty to Maintain Records.

The respondent shall keep and maintain records of the steps taken to accomplish the requirements of Sections 18.1 and 18.2 and shall make those records available to the disciplinary counsel on request.

18.4 Return of Client Property.

The respondent shall deliver to all clients any papers or other property to which they are entitled and shall notify them and any counsel representing them of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property.

18.5 Effective Date of Order; Refund of Fees.

Orders imposing disbarment, suspension, or transfers to disability inactive status are effective on a date ten days after the date of the order, except where the Court finds that immediate disbarment, suspension, or interim suspension is necessary to protect the public. The respondent shall refund within ten days after entry of the order any part of any fees, expenses, or costs paid in advance that has not been earned or expended, unless the order directs otherwise.

18.6 Withdrawal from Representation.

In the event another lawyer does not become attorney of record on behalf of the client before the effective date of the disbarment, suspension, or interim suspension, it shall be the responsibility of the respondent to move in the court or agency in which the proceeding is pending for leave to withdraw. The respondent shall in that event file with the court, agency, or tribunal before which the litigation is pending a copy of the notice to opposing counsel or adverse parties, including the place of residence and all mailing addresses of the client of the respondent.

18.7 New Representation Prohibited.

Prior to the effective date of the order, if not immediately, the respondent shall not undertake any new legal matters. Upon the effective date of the order, the respondent shall not maintain a presence or occupy an office where the practice of law is conducted. The respondent shall take such action as is necessary to cause the removal of any indicia of lawyer, counselor at law, legal assistant, law clerk, or similar title.

18.8 Affidavit Filed with Board.

Within ten days after the effective date of the disbarment or suspension order, order of transfer to disability inactive status, or interim suspension, the respondent shall file with the Board of Professional Responsibility an affidavit showing:

- (a) Compliance with the provisions of the order and with these rules;
- (b) All other state, federal, and administrative jurisdictions to which the lawyer is admitted to practice;
- (c) Place of residence and all addresses where communications may thereafter be directed; and
- (d) Service of a copy of the affidavit upon disciplinary counsel, which shall include proof of compliance with § 18.1.

18.9. Reinstatement.

Proof of compliance with these rules shall be a condition precedent to any petition for reinstatement.

18.10. Publication of Notice.

The Board shall cause a notice of the disbarment, suspension, disability inactive status, or interim suspension to be given to all state judges, to a newspaper of general circulation in each county in which the respondent attorney maintained an office for the practice of law, and in such other publications as the Board may determine to be appropriate.

Section 22 of Rule 9 is amended by deleting the Section in its entirety and substituting in its place the following:

SECTION 22. APPOINTMENT OF COUNSEL TO PROTECT CLIENTS' INTERESTS WHEN THEIR LAWYER HAS BEEN TRANSFERRED TO DISABILITY INACTIVE STATUS, PLACED ON INTERIM SUSPENSION, SUSPENDED, OR DISBARRED, OR HAS DISAPPEARED, ABANDONED A LAW PRACTICE, OR DIED, OR IS ALLEGED TO BE DISABLED OR INCAPACITATED PURSUANT TO SECTION 21.2.

22.1. Inventory of Lawyer Files.

If a lawyer has been transferred to disability inactive status, placed on interim suspension, suspended, or disbarred, and there is evidence that he or she has not complied with Section 18 of this Rule; or if a lawyer has disappeared, abandoned a law practice, or died, or is alleged to be disabled or incapacitated from continuing the practice of law pursuant to Section 21.2; and no partner, executor, or other responsible party capable of conducting the lawyer's affairs is known to exist, the presiding judge in the judicial district in which the lawyer maintained a practice, upon proper proof of the fact, shall appoint a lawyer or lawyers to inventory the files of the lawyer, and to take such action as seems indicated to protect the interests of the lawyer and his or her clients.

22.2. Protection for Records Subject to Inventory.

Any lawyer so appointed shall not be permitted to disclose any information contained in any files inventoried without the consent of the client to whom the file relates, except as necessary to carry out the order of the court which appointed the lawyer to make the inventory.

Rule 9 is further amended by renumbering Section 32 to Section 31. Section 32 is now Section 31.

The period for submitting comments will begin upon the filing of this Order and will end August 31, 1999. All comments should be filed in writing with the Administrative Office of the Courts, Attention: Suzanne G. Keith, Esquire, 600 Nashville City Center, 511 Union Street, Nashville, Tennessee, 37243-0607.

FOR THE COURT:

E. Riley Anderson, Chief Justice