

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

1. IN RE: AMENDMENT TO RULE 9, RULES OF THE TENNESSEE SUPREME
COURT

No. M2004-00382-SC-RL2-RL - Filed February 19, 2004

ORDER

Simultaneously with the entry of this order, the Court is releasing its opinion in John Doe v. Jane Doe, No. M2003-01142-SC-S25-BP. In that opinion, we held that the confidentiality requirement set out in section 25 of Rule 9, Tenn. S. Ct. R., violates the free speech protections of Article I, section 19 of the Tennessee Constitution and of the First Amendment to the United States Constitution. We stated in the opinion that we would publish a proposed amendment to Rule 9, section 25, addressing the constitutional concerns discussed in the opinion.

The Court hereby publishes for public comment a proposed amended Rule 9, section 25, which is attached hereto as [Appendix A](#). Appendix A is hereby adopted as the interim rule, replacing the existing section 25 in its entirety, pending the Court's final action on the proposed amendment after the expiration of the public comment period.

The Court hereby solicits written comments on the proposed amendment from the bench, the bar, and the public. The deadline for submitting written comments is May 20, 2004. Written comments should be addressed to:

Michael W. Catalano, Clerk
Re: Rule 9 Comments
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

The Clerk shall provide a copy of this order and the proposed amendment to counsel for all parties in the case of John Doe v. Jane Doe and to the Board of Professional Responsibility and the Tennessee Bar Association. In addition, this order and the proposed amendment shall be posted on the Tennessee Supreme Court's website.

FOR THE COURT:

FRANK F. DROWOTA, III, CHIEF JUSTICE

APPENDIX A

Rule 9, Tenn. S. Ct. R.

The following amended Section 25 of Rule 9 replaces the existing Section 25, in its entirety, and the

amended Section 25 shall be applied as an interim rule pending the Court's final action on the proposed amendment after the expiration of the public comment period:

Section 25. Confidentiality

25.1 All proceedings involving allegations of misconduct by or the disability of an attorney, including all information, records, minutes, files or other documents of the Board, Hearing Committee Members and Disciplinary Counsel are deemed to be non-public records. All such information, records, minutes, files or other documents shall be kept confidential and privileged until and unless:

- (a) a recommendation for the imposition of public discipline, without the initiation of a formal proceeding under Section 8.2, is filed with the Supreme Court by the Board; or
- (b) a petition to initiate a formal disciplinary proceeding is filed pursuant to Section 8.2; or
- (c) the respondent-attorney requests that the matter be public; or
- (d) the investigation is predicated upon conviction of the respondent-attorney for a crime; or
- (e) in matters involving alleged disability, this Court enters an order transferring the respondent-attorney to disability inactive status pursuant to Section 21. In such disability proceedings, the order transferring the respondent-attorney to disability inactive status shall become a public record upon filing; however, all other documents relating to the respondent-attorney's disability proceeding, including any subsequent petition for reinstatement after transfer to disability inactive status, are not public records and shall be kept confidential. An order granting a petition for reinstatement after transfer to disability inactive status shall become a public record upon filing.

All work product and work files (including internal memoranda, correspondence, notes and similar documents and files) of the Board, Hearing Committee Members, and Disciplinary Counsel shall remain confidential and privileged and shall not be deemed to be a public record.

25.2 In those disciplinary proceedings in which judicial review is sought pursuant to Section 1.3, the records and hearing in the Circuit or Chancery Court and in this Court shall be public to the same extent as other cases.

25.3 All participants in the proceeding shall conduct themselves so as to maintain the confidentiality of the proceeding. However, nothing in these rules shall prohibit the complainant, respondent-attorney, or any witness from disclosing the existence or substance of a complaint or proceeding under these rules or from disclosing any documents or correspondence filed by, served on, or provided to that person.

25.4 The provisions of this rule shall not be construed to deny access to relevant information to authorized agencies investigating the qualifications of judicial candidates; or to other jurisdictions investigating qualifications for admission to practice; or to law enforcement agencies investigating qualifications for government employment; or to prevent the Board from reporting evidence of a crime by an attorney or other person to courts or law enforcement agencies; or to prevent the Board or Disciplinary Counsel from defending any action or proceeding now pending or hereafter brought against either of them. In addition, the Board shall transmit notice of all public discipline imposed

by the Supreme Court or on an attorney or the transfer to inactive status due to disability of an attorney to the National Discipline Data Bank maintained by the American Bar Association.