

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED 01/12/2024 Clerk of the Appellate Courts
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**IN RE: AMENDMENTS TO
TENNESSEE SUPREME COURT RULE 9 , SECTION 16**

No. ADM2023-01437

ORDER

On October 12, 2023, this Court published for public comment proposed amendments to Tennessee Supreme Court Rule 9, section 16, which prescribes the procedure for complaints against members of the Tennessee Board of Professional Responsibility (“Board”), District Committee Members, and Disciplinary Counsel. The deadline for public comments expired December 12, 2023.

The Court appreciates the Board and the Knoxville Bar Association submitting comments. Upon consideration of these comments, the Court declines to adopt the proposed amendments and instead adopts only minor revisions to Tennessee Supreme Court Rule 9, section 16 as set out in the Appendices to this Order. Appendix A shows the amendments by underlining new text and striking through deleted text. Appendix B contains a clean copy of amended Tenn. Sup. Ct. R. 9, section 16.

The Clerk shall provide a copy of this Order and the Appendices to Lexis Nexis and to Thomson Reuters. In addition, this Order and the Appendices shall be posted on the Tennessee Supreme Court’s website.

It is so ORDERED.

PER CURIAM

APPENDIX A

TENNESSEE SUPREME COURT RULE 9, SECTION 16

[New text is indicated by underlining; Deleted text is indicated by strikeout]

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

16.1. (a) Complaints against Disciplinary Counsel or a district committee member alleging violations of the Rules of Professional Conduct shall be submitted directly to the Board.

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

(c) The investigation of complaints against Disciplinary Counsel submitted under Section 16.1 shall proceed in accordance with the procedures contained in Section 15, except that an attorney member of the Board appointed by the Chair shall conduct the investigation and the findings of such investigation shall be reviewed by a committee of no fewer than three members of the Board appointed by the Chair or Vice Chair. Provided, however, that the Board may request the Court to appoint a Special Disciplinary Counsel to conduct the investigation. Upon application to the Court, the Court may authorize the payment of reasonable fees and expenses to Special Disciplinary Counsel.

(d) The investigation of complaints against district committee members shall be conducted by Disciplinary Counsel in accordance with the procedures contained in Section 15. The findings of such investigation shall be reviewed by a committee of no fewer than three members of the Board appointed by the Chair or Vice Chair. Provided, however, that the Board may request the Court to appoint a Special Disciplinary Counsel to conduct the investigation. Upon application to the Court, the Court may authorize the payment of reasonable fees and expenses to Special Disciplinary Counsel.

16.2. (a) Complaints against attorney members of the Board alleging violations of the Rules of Professional Conduct shall be submitted directly to the Chief Justice of the Court.

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

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

(a) A Special Disciplinary Counsel, whom the Chief Justice shall appoint by order, ~~entered under seal~~, shall take the place and perform all of the functions of Disciplinary Counsel set forth in Section 15.1, including all investigations, whether upon complaint or otherwise. Upon conclusion of an investigation, Special Disciplinary Counsel may recommend dismissal, diversion, private informal admonition ~~of the attorney concerned~~, private reprimand, public censure, or prosecution of formal charges before a special hearing panel.

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

(1) If Special Disciplinary Counsel's recommendation is dismissal, it shall be reviewed by the designated member of the Court ("Reviewing Justice"), who may approve or modify it. If the recommendation is approved by the Reviewing Justice, notice of the disposition by dismissal shall be provided by Special Disciplinary Counsel to the complainant. A complainant who is not satisfied with the disposition by dismissal of the matter may appeal in writing to the Chief Justice within thirty days of receipt of notice of the Reviewing Justice's approval of the recommended disposition. The Court may approve, modify, or disapprove the recommended disposition, or direct that the matter be investigated further. If the Court approves the recommended disposition of dismissal, the Court shall enter an appropriate order ~~under seal~~. The complainant has no other or further right of appeal or review under this Rule or otherwise.

(2) If Special Disciplinary Counsel's recommendation is diversion or private informal admonition, it shall be reviewed by the Reviewing Justice, who may approve or modify it. If the recommendation is approved by the Reviewing Justice, notice shall be provided by Special Disciplinary Counsel to the complainant that the complaint has been resolved by diversion or private

informal admonition and that the matter is confidential under Section 32. The complainant has no right to appeal a disposition by diversion or private informal admonition under this Section.

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

(4) If Special Disciplinary Counsel's recommendation is private reprimand, and if the recommendation is approved by the Reviewing Justice, notice shall be provided by Special Disciplinary Counsel to the complainant that the complaint has been resolved by private reprimand and that the matter is confidential under Section 32. The complainant has no right to appeal a disposition by private reprimand under this Section.

(5) The respondent attorney shall not be entitled to appeal a diversion or private informal admonition approved by the Reviewing Justice; similarly, the respondent attorney may not appeal a private reprimand or public censure approved or imposed by the Reviewing Justice. In either case, however, the respondent attorney may, within twenty days of notice thereof, demand as of right that a formal proceeding be instituted before a special hearing panel. In the event of such demand, the diversion or private informal admonition shall be vacated or the recommended private reprimand or public censure shall be withdrawn, and the matter shall be disposed of in the same manner as any other formal hearing instituted before a hearing panel.

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

(d) There shall be no petition for rehearing. The respondent attorney or Special Disciplinary Counsel may appeal the judgment of the special hearing panel as provided in Section 33.

(End of Appendix A)

APPENDIX B

TENNESSEE SUPREME COURT RULE 9, SECTION 16

[Clean copy of Section 16 as amended]

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

16.1. (a) Complaints against Disciplinary Counsel or a district committee member alleging violations of the Rules of Professional Conduct shall be submitted directly to the Board.

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

(c) The investigation of complaints against Disciplinary Counsel submitted under Section 16.1 shall proceed in accordance with the procedures contained in Section 15, except that an attorney member of the Board appointed by the Chair shall conduct the investigation and the findings of such investigation shall be reviewed by a committee of no fewer than three members of the Board appointed by the Chair or Vice Chair. Provided, however, that the Board may request the Court to appoint a Special Disciplinary Counsel to conduct the investigation. Upon application to the Court, the Court may authorize the payment of reasonable fees and expenses to Special Disciplinary Counsel.

(d) The investigation of complaints against district committee members shall be conducted by Disciplinary Counsel in accordance with the procedures contained in Section 15. The findings of such investigation shall be reviewed by a committee of no fewer than three members of the Board appointed by the Chair or Vice Chair. Provided, however, that the Board may request the Court to appoint a Special Disciplinary Counsel to conduct the investigation. Upon application to the Court, the Court may authorize the payment of reasonable fees and expenses to Special Disciplinary Counsel.

16.2. (a) Complaints against attorney members of the Board alleging violations of the Rules of Professional Conduct shall be submitted directly to the Chief Justice of the Court.

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

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

(a) A Special Disciplinary Counsel, whom the Chief Justice shall appoint by order, shall take the place and perform all of the functions of Disciplinary Counsel set forth in Section 15.1, including all investigations, whether upon complaint or otherwise. Upon conclusion of an investigation, Special Disciplinary Counsel may recommend dismissal, diversion, private informal admonition, private reprimand, public censure, or prosecution of formal charges before a special hearing panel.

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

(1) If Special Disciplinary Counsel's recommendation is dismissal, it shall be reviewed by the designated member of the Court ("Reviewing Justice"), who may approve or modify it. If the recommendation is approved by the Reviewing Justice, notice of the disposition by dismissal shall be provided by Special Disciplinary Counsel to the complainant. A complainant who is not satisfied with the disposition by dismissal of the matter may appeal in writing to the Chief Justice within thirty days of receipt of notice of the Reviewing Justice's approval of the recommended disposition. The Court may approve, modify, or disapprove the recommended disposition, or direct that the matter be investigated further. If the Court approves the recommended disposition of dismissal, the Court shall enter an appropriate order. The complainant has no other or further right of appeal or review under this Rule or otherwise.

(2) If Special Disciplinary Counsel's recommendation is diversion or private informal admonition, it shall be reviewed by the Reviewing Justice, who may approve or modify it. If the recommendation is approved by the Reviewing Justice, notice shall be provided by Special Disciplinary Counsel to the complainant that the complaint has been resolved by diversion or private informal admonition and that the matter is confidential under Section 32. The

complainant has no right to appeal a disposition by diversion or private informal admonition under this Section.

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

(4) If Special Disciplinary Counsel's recommendation is private reprimand, and if the recommendation is approved by the Reviewing Justice, notice shall be provided by Special Disciplinary Counsel to the complainant that the complaint has been resolved by private reprimand and that the matter is confidential under Section 32. The complainant has no right to appeal a disposition by private reprimand under this Section.

(5) The respondent attorney shall not be entitled to appeal a diversion or private informal admonition approved by the Reviewing Justice; similarly, the respondent attorney may not appeal a private reprimand or public censure approved or imposed by the Reviewing Justice. In either case, however, the respondent attorney may, within twenty days of notice thereof, demand as of right that a formal proceeding be instituted before a special hearing panel. In the event of such demand, the diversion or private informal admonition shall be vacated or the recommended private reprimand or public censure shall be withdrawn, and the matter shall be disposed of in the same manner as any other formal hearing instituted before a hearing panel.

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

(d) There shall be no petition for rehearing. The respondent attorney or Special Disciplinary Counsel may appeal the judgment of the special hearing panel as provided in Section 33.

(End of Appendix B)