

IN THE DISCIPLINARY DISTRICT V
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE

IN THE MATTER OF:

MICHAEL LLOYD FREEMAN,
BPR No. 28698, Respondent,
An Attorney Licensed to Practice
Law in Tennessee
(Davidson County)

NO. 2017-2711-5-AJ

RESPONDENT(S)

DECISION OF THE HEARING PANEL

This matter came to be heard on September 1-2, 2020, and December 16, 2020, before Kenneth M. Bryant, Christopher Sabis, and William O'Bryan, Jr., upon the Petition for Discipline (as supplemented) filed by the Tennessee Board of Professional Responsibility (hereinafter, "the Board") against Michael Lloyd Freeman (hereinafter "Freeman" or "Respondent").

The Board filed a Petition for Discipline against Mr. Freeman on April 26, 2017. The Respondent filed a response to the Board's Petition on June 19, 2017. The Board filed a Supplemental Petition for Discipline on August 15, 2018, and Mr. Freeman filed a response on February 6, 2019. On February 11, 2020, the Board and Mr. Freeman entered a conditional plea finding Mr. Freeman would receive a three (3) year suspension during which time thirty (30) days would be an active suspension. On April 16, 2020, the Tennessee Supreme Court rejected the conditional plea and the parties set this matter for trial.

Based upon the allegations of the Petition and the Supplemental Petition for Discipline, the Board alleged violations of Tennessee Rules of Professional Conduct 1.1 (competence), 1.3

(diligence), 1.4 (communication), 3.2 (expediting litigation) and 8.4(a) (misconduct) with regard to the complaints of ten (10) individuals: Jaqueline Ferris, Gregory Winn, Alem Meles, Judy Fudge, Melvin Moss, Timmy Lynn, Albertina Hughes, Jessica Reeves, Honorable Joe Thompson, and Pamela Gibbs. On September 1-2, 2020 and December 16, 2020, this Hearing Panel, appointed by the Board pursuant to *Tennessee Supreme Court Rule 9, section 6.4*, held a hearing on the complaints. During the hearing, the parties chose to present each complaint separately. The order was as follows: (1) Albertina Hughes; (2) Alem Meles; (3) Melvin Moss; (4) Gregory Wynn; (5) Jessica Reeves; (6) Timmy Lynn; and (7) Honorable Joe Thompson. However, the Board did not present any testimony or argument regarding the following complainants: (1) Pamela Gibbs; (2) Jaqueline Ferriss; and (3) Judy Fudge. Furthermore, in its proposed Findings of Fact and Conclusions of Law, the Board stated that it was not pursuing the complaints of Gregory Wynn and Jessica Reeves. See Board of Professional Responsibility Proposed Findings of Fact and Conclusions of Law, p. 16, ¶135-136.

The following constitutes the Decision of the Hearing Panel with regard to the evidence presented at the hearing with regard to the disciplinary complaints submitted by Ms. Hughes, Ms. Meles, Mr. Moss, Mr. Lynn, and Mr. Thompson.

FINDINGS OF FACT

Complaint of Albertina Hughes

1. Albertina Hughes retained Mr. Freeman in October 2015 for the purpose of filing a divorce. Based upon the initial conversations with Mrs. Hughes, Mr. Freeman believed the divorce would be uncontested and both Mrs. Hughes and Mr. Freeman were hopeful that her husband would sign a marital dissolution agreement without the need for a contested divorce.

2. Mr. Freeman filed the Complaint for Divorce in January of 2016. Mrs. Hughes' husband declined to sign a marital dissolution agreement and the matter became contested. Despite the fact that Mr. Freeman was retained to represent Mrs. Hughes in an uncontested divorce, he went forward without an additional retainer due to the fact that Mrs. Hughes could not afford the retainer for a contested divorce.

3. As a result of the matter becoming contested, Mrs. Hughes was required to sign a new petition alleging grounds for divorce against her husband. Due to the requirement for a signature, Mr. Freeman and Mrs. Hughes scheduled a series of meetings in order to obtain Mrs. Hughes signature. Mrs. Hughes testified that she arrived at Mr. Freeman's office on September 15, 2016 in order to sign papers for the divorce; however, no one was present at Mr. Freeman's office. Mrs. Hughes further testified that Mr. Freeman's office contacted her stating that someone would come to meet her during her lunch hour on September 16, 2016, in order to obtain the signatures; however, no one ever came.

4. Mr. Freeman testified that his office tried to contact Mrs. Hughes several times in order to obtain her signature; however, he was not able to obtain her signature for a new petition.¹ Ultimately, the trial court dismissed Mrs. Hughes' Petition for Divorce in January, 2018 for failure to prosecute. In his proposed Findings of Fact and Conclusions of Law, the Respondent concedes his violation of the rules of professional conduct with regard to Mrs. Hughes. The Respondent further agrees to provide restitution to Mrs. Hughes by returning the retainer she paid to him in the amount of \$750.00. *See Respondent's Proposed Findings of Fact and Conclusions of Law, p. 4, ¶ 19-20.* Mr. Freeman admits that he should have followed up with Mrs. Hughes in order to obtain

¹ Mr. Freeman presented no written evidence nor any testimony from anyone in his office to confirm this assertion.

her signature. The matter was protracted over several years and it was ultimately dismissed due to failure to prosecute.

5. Given the above, the Panel finds that Mr. Freeman's actions regarding his representation of Mrs. Hughes violated Rules 1.1 (competence), 1.3 (diligence), 1.4 (communication), and 3.2 (expediting litigation). The Panel does not find that Mr. Freeman's actions violated rule 8.4 (conduct involving dishonesty).

Complaint of Alem Meles.

6. Ms. Meles retained Mr. Freeman for representation in a discrimination lawsuit. The retainer agreement signed by Ms. Meles required a payment of \$1,500,00 for costs combined with a contingency attorney's fee based upon the ultimate outcome of the case.

7. After Respondent filed the lawsuit, the Defendant filed a Motion to Dismiss based upon arguments that the Plaintiff failed to provide Rule 26 disclosures.

8. The Court did not grant the Defendant's Motion to Dismiss, but instead limited the Plaintiff's proof to her testimony only. Given this ruling, Ms. Meles non-suited her case and re-filed making claims under the Family Medical Leave Act (FMLA).

9. In her FMLA claim, Ms. Meles claimed that her employer fired her after she requested leave under the FMLA. This claim was made based upon statements made by Ms. Meles to Mr. Freeman when he was drafting the Complaint. Ultimately, it was determined that Ms. Meles' claims were false as she was actually fired before requesting the FMLA leave; therefore, her case was dismissed on Summary Judgment.

10. The Panel finds that Mr. Freeman did not violate any rules of professional conduct regarding his representation of Ms. Meles. Although Mr. Freeman's failure to provide Rule 26 disclosures is troubling, the record is insufficient to raise this discovery issue to the level of an

ethical violation. Moreover, there is no evidence in the record that the non-suit prejudiced Ms. Meles' case. To the contrary, based upon the proof provided, Ms. Meles provided inaccurate information to Mr. Freeman that he relied upon in his representation of her in her lawsuit. Ultimately, this led to a dismissal by summary judgment. Therefore, no disciplinary action is required as a result of this complaint.

Complaint of Melvin Moss

11. In 2016, Mr. Melvin Moss retained Mr. Freeman to represent him in a personal injury action involving a car wreck. Before the car wreck, Mr. Moss had retained Mr. Freeman in several other legal matters wherein he had always been satisfied with Mr. Freeman's representation. Mr. Moss filed a complaint with the Board claiming lack of communication with Mr. Freeman regarding his personal injury action. Mr. Moss testified that he had left 27 messages for Mr. Freeman and needed answers and the status of his medical bills. Mr. Moss testified that he did not receive any documentation about his case from Mr. Freeman as of August 8, 2016.

12. Notwithstanding attempts to get information about the status of his case on August 26, September 7, 12, 14, and December 26, 2016, Mr. Moss did not receive any information from Mr. Freeman. Mr. Freeman had told Mr. Moss that he could access an online portal through his web page (MyCase) and see the status of his case. Mr. Moss checked with the portal and could not find any information about his case.

13. Mr. Moss unsuccessfully attempted to reach Mr. Freeman "over 20-30 times, went to his office mailed letters, called, texted emailed and reached out through social media." The only response he received from Mr. Freeman was to a Facebook post by Mr. Moss on Mr. Freeman's Facebook page. Mr. Freeman responded on Facebook to the effect that his family had seen the post and he was embarrassed by what Mr. Moss had written. Mr. Moss responded to Mr. Freeman's

Facebook post to the effect that he was looking to get a response to his requests for an update on his case. Mr. Moss did not get an update on his case thereafter. Mr. Moss ultimately terminated Mr. Freeman, hired another lawyer and settled this case.

14. Mr. Freeman testified that he spoke with Mr. Moss about the case twice, once in Mr. Moss's shop and once in Mr. Freeman's office. Mr. Freeman also testified that he hand-delivered the complaint to Mr. Moss at Mr. Moss's shop, that he discussed the demand letter and gave him a copy of the demand letter. Mr. Freeman did not introduce any cover letters, emails, text messages or other means of communicating with Mr. Freeman at trial.

15. In response to Mr. Moss's complaint with the Board, Mr. Freeman sent a letter dated December 16, 2016, in which he wrote: "the complaint was filed to preserve the statute of limitations and as soon as a response is filed, we will submit discovery requests." The Docket sheet of Mr. Moss's case reveals that two defendants had filed answers on September 14, 2016, and September 22, 2016, respectively, which was approximately three months before Mr. Freeman's December 16, 2016 letter to the Board. Mr. Freeman initially testified that his December 16, 2016 letter was a form letter but appeared to correct that statement.

16. Given the above, the Panel finds that Mr. Freeman's actions regarding his representation of Mr. Moss violated Rules 1.1 (competence), 1.3 (diligence), 1.4 (communication), and 3.2 (expediting litigation). The Panel does not find that Mr. Freeman's actions violated rule 8.4 (conduct involving dishonesty).

Complaint of Timmy Lynn

17. In approximately May of 2016, Mr. Freeman was retained by Mr. Timmy Lynn regarding a civil rights action against the Overton County, Tennessee Sheriff's Department due to alleged violations of his civil rights while he was incarcerated.

18. Mr. Freeman filed his Notice of Appearance in the federal court action on May 5, 2016. At the time of filing his Notice of Appearance, Mr. Freeman was not aware that the Defendant had filed a Motion for Summary Judgment that was scheduled to be heard on June 15, 2016. Mr. Freeman first became aware of the Summary Judgment Motion when he received the Order setting it for hearing on or about June 7, 2016. At the Summary Judgment hearing, Mr. Freeman stated to the judge that he had only reviewed half of the file and he orally requested more time in order to respond. The trial judge denied the request for additional time and granted the Motion for Summary Judgment.

19. In his proposed Findings of Fact and Conclusions of Law, Mr. Freeman concedes that he did not file a Motion for Extension of Time to File a Response and further admits that he only reviewed some of the case documents before the motion hearing. When asked about taking the 1983 action, Mr. Freeman admitted that he believed he was in over his head. Ultimately, Mr. Lynn secured representation from attorneys with the Bradley Arant law firm and his case was reopened and settled relatively quickly.

20. In his proposed Findings of Fact and Conclusions of Law, the Respondent concedes that his "actions regarding the Timmy Lynn complaint show Mr. Freeman violated Rule 1.1 (competence). *See* Respondent's Proposed Findings of Fact and Conclusions of Law, p. 11, ¶ 60. Given the above, the Panel finds that Mr. Freeman's actions regarding his representation of Mr. Lynn violated Rules 1.1 (competence), 1.3 (diligence), and 3.2 (expediting litigation). The Panel does not find that Mr. Freeman's actions violated rule 8.4 (conduct involving dishonesty).

Complaint of the Hon. Joe Thompson

21. On May 19, 2017, Mr. Freeman filed a Complaint for Divorce on behalf of Whitney Frazier. On August 7, 2017, both Mrs. Frazier and her husband signed the marital dissolution

agreement. Thereafter, Mr. Freeman testified that he believed that his staff filed the marital dissolution agreement with the court and communicated this to Mrs. Frazier². Mr. Freeman soon discovered the marital dissolution agreement was not filed with the court and he caused it to be hand delivered to the clerk's office on October 24, 2017.

22. After Mr. Freeman filed the documents with the Court, Attorney Gary Williams entered a Notice of Appearance on behalf of Mrs. Frazier. Soon thereafter, Mr. Freeman received a Motion related to the case and was notified of an upcoming hearing. Based upon conversations with Mr. Williams' office and the fact that he no longer represented Mrs. Frazier, Mr. Freeman did not feel it was necessary to appear at the hearing. Mr. Freeman did not contact the judge's chambers to ask whether he should appear.

23. The Hearing Panel finds that Mr. Freeman told Mrs. Frazier that the documents had been filed and that he was waiting to hear from the court when in fact the documents had *not* been filed. The record does not contain any evidence that Mr. Freeman, nor anyone else, followed up with the clerk's office to verify that the documents had been received and filed. To the contrary, the fact that Mr. Freeman testified that he honestly thought that the documents had been filed indicated that nothing had been done to confirm that they had been filed.

24. Given the above, the Panel finds that Mr. Freeman's actions regarding his representation of Mrs. Frazier violated Rules 1.1 (competence), 1.3 (diligence), 1.4 (communication), and 3.2 (expediting litigation). The Panel does not find that Mr. Freeman's actions violated rule 8.4 (conduct involving dishonesty).

² Again, Mr. Freeman offered no testimony or other evidence to support his stated belief that his staff had tried (and failed) to make this filing.

Mitigating Factors

25. Among the factors which the panel must consider are mitigating factors presented by the evidence. *Bd. of Prof'l Responsibility v. Barry*, 545 S.W.3d 408, 421 (Tenn. 2018). As stated by the Tennessee Supreme Court, "the ABA Standards suggest the appropriate baseline sanction, and aggravating and mitigating factors may justify an increase or reduction in the degree of punishment to be imposed." *In re Vogel*, 482 S.W.3d 520, 534 (Tenn. 2016). Among the mitigating factors is the absence of dishonest or selfish motive. ABA Model Rules 9.1. At no point did the Board establish by a preponderance of the evidence that Mr. Freeman acted dishonestly. Given this, the Panel finds that this factor weighs in favor of providing leniency to Mr. Freeman for his actions.

26. A second factor the panel takes into consideration is the personal or emotional problems suffered by the Respondent. ABA Model Rule 9.1. Between 2016 and 2018, Mr. Freeman testified that he began suffering from depression. He stated that he has seen several medical practitioners who suggested it might be a form of depressive anxiety. When describing his depression, Mr. Freeman testified that it primarily affects his performance in his civil cases. In civil cases, Mr. Freeman stated that he feels that he is less aggressive and he sees conflicts that impede his ability to practice. As a result of this depression, Mr. Freeman sought help from both doctors and the Tennessee Lawyer's Assistance Program (TLAP). Based upon his interaction with TLAP, Mr. Freeman chose to eliminate any new civil cases from his practice and focus on criminal matters only.

27. When describing his current case load, Mr. Freeman testified that he currently has approximately forty (40) cases of which one (1) is civil in nature. The remainder are criminal which include approximately ten (10) retained and twenty-nine (29) appointed cases. Mr.

Freeman further testified regarding his fears that a prolonged suspension would have on his clients who are currently incarcerated.

28. Given these facts, the Panel finds that Mr. Freeman's personal problems did have an effect on his civil practice which is exemplified by the multiple complaints in this case as well as his actions related to this civil clientele. Given this, the Panel finds that this factor mitigates any discipline which should be imposed on Mr. Freeman.

29. Another factor the Panel must consider is whether Mr. Freeman has made any timely good faith efforts to make restitution or to rectify consequences of his misconduct. ABA Model Rules 9.1. When asked about this factor, Mr. Freeman stated that when Timmy Lynn requested his file back, Mr. Freeman sent his file to the jail, but the jail would not give him the file. Given that, Mr. Freeman printed the 800-page file again and hand delivered it to Mr. Lynn at the jail. Regarding Ms. Hughes and her complaint about lack of diligence, Mr. Freeman testified that he tried to set up several meetings and even offered to deliver the paperwork to her workplace in order to obtain her signature. When asked whether he would return the retainers to his complaining clients, Mr. Freeman agreed to do so.

30. Another factor the panel should consider is whether Mr. Freeman has made full and free disclosures to the disciplinary board and whether he has a cooperative attitude toward the proceedings. ABA Model Rules 9.1. The Board did not present sufficient evidence to establish that Mr. Freeman failed to cooperate with the proceedings or showed any lack of remorse for his actions. Mr. Freeman admitted he could have done better in communicating with clients and agreed that he should have worked more diligently. He testified that he has done everything possible to make sure that these complaints will not happen again. Given this testimony and the

totality of the circumstances, the Panel finds that this factor further mitigates the discipline which should be placed upon Mr. Freeman.

31. Another factor the Panel considers is Mr. Freeman's character and reputation. ABA Model Rules 9.1. In describing his practice, Mr. Freeman testified that he receives numerous appointments from judges in criminal matters. Mr. Freeman further presented the testimony of Ms. Betsy Moon. Ms. Moon is a licensed criminal investigator with the State of Tennessee and she has worked with Mr. Freeman on several criminal defense matters. In describing her experience with Mr. Freeman, Investigator Moon described Mr. Freeman as "one of the easiest attorneys I ever had to get in touch with." If she and Mr. Freeman were working on a case together, they would talk on a daily basis. Given the testimony of Mr. Freeman and Investigator Moon and the lack of any contradictory testimony regarding Mr. Freeman's general reputation provided by the Board, the Panel finds that Mr. Freeman's reputation in criminal defense matters mitigates the discipline which should be imposed by this Panel.

32. Another factor the Panel should consider is Mr. Freeman's remorse regarding his actions. ABA Model Rules 9.1. When asked how he felt regarding his actions, Mr. Freeman testified that he felt that he let his clients down regarding their expectations of an attorney. He admitted before the Panel that he should have taken the clients' expectations "more to heart" and reached out to them regarding their expectations. Given this testimony, the Panel finds that Mr. Freeman has shown remorse for his actions. Therefore, this factor mitigates the discipline which should be imposed by this panel.

33. Although it must consider Mr. Freeman's past disciplinary record, the Panel must also factor in the remoteness of Mr. Freeman's past offenses. ABA Model Rules 9.1. Based upon the complaints before this Panel, the last complaint filed with the Board related to incidents in

2018. Since that complaint, Mr. Freeman has made it a goal to communicate better with his clients. It appears that Mr. Freeman's involvement in TLAP and the systems that he has put in place have helped to eliminate the concerns of the Board. Therefore, this factor further mitigates the discipline that should be imposed by this Panel.

34. With regard to an appropriate sanction, the Tennessee Supreme Court gives guidance to the Panel as follows:

In deciding an appropriate sanction when an attorney is found to have breached the rules governing his or her profession, we are required to review all of the circumstances of the particular case and also, for the sake of uniformity, sanctions imposed in other cases presenting similar circumstances. *Bd. of Prof'l Resp. v. Maddux*, 148 S.W.3d 37, 40 (Tenn. 2004). We are also guided in our decision by the American Bar Association's Standards for Imposing Lawyer Sanctions, which have been adopted by the Board for disciplinary matters. *See id.*

Bd. of Prof'l Resp. v. Allison, 284 S.W.3d 316, 327 (Tenn. 2009) (citing *Bd. of Prof'l Resp. v. Maddux*, 148 S.W.3d 37, 40 (Tenn. 2004)); *see* Tenn. Sup. Ct. R. 9, §15.4 (a) (b). ABA Standard 3.0 states that the four factors to consider are: "the duty violated," "the lawyer's mental state," "the potential or actual injury caused by the lawyer's misconduct," and "the existence of aggravating or mitigating factors." ABA Standard 3.0. "The ABA Standards suggest the appropriate baseline sanction, and aggravating and mitigating factors may justify an increase or reduction in the degree of punishment to be imposed." *Vogel*, 482 S.W.3d at 534 (citing *Maddux*, 148 S.W.3d at 41).

35. Based upon the totality of the testimony and the witnesses, including the Respondent, the documentary evidence, and the arguments of counsel for the Board and the Respondent, the Panel finds that Mr. Freeman's actions regarding his representations of the complainants (Mrs. Hughes, Mr. Moss, Mr. Lynn and Mr. Thompson) violated Rules 1.1 (competence), 1.3 (diligence), 1.4 (communication), and 3.2 (expediting litigation). The Panel does not find that Mr. Freeman's actions violated rule 8.4 (conduct involving dishonesty).

36. As a result, and after due consideration, the Panel has determined that Mr. Freeman should be and hereby is disciplined with a three-year suspension from the practice of law, with three months active suspension pursuant to Tenn. Sup. Ct. R. 9, § 12.2, and the remainder on probation pursuant to Tenn. Sup. Ct. R. 9, § 14.1, subject to the following conditions:

(a) Mr. Freeman shall contact Tennessee Lawyers Assistance Program (TLAP) for an evaluation and, if recommended, enter into a monitoring agreement and comply with its terms. Further, Mr. Freeman shall give TLAP permission to communicate with the Board regarding any monitoring agreement.

(b) Pursuant to Tenn. Sup Ct. R. 9, § 12.9, Mr. Freeman shall, within fifteen days of the entry of the Order of Enforcement imposing the requirement of a practice monitor, provide to the Board a list of three proposed practice monitors, all of whom shall be attorneys licensed to practice law in this State and whose licenses are in good standing with the Board, and none of whom shall be engaged in the practice of law with the respondent, whether in a law firm of any form or structure or in an association of attorneys of any kind or form.

(c) Pursuant to Tenn. Sup. Ct. R. 9, § 12.9, Mr. Freeman shall meet with the practice monitor on a monthly basis to review basic office procedures such as the scheduling and maintenance of case deadlines and the use of written communication and fee agreements. The practice monitor shall send monthly reports of these meetings to the Board during the first year of probation and quarterly thereafter.

(d) Pursuant to Term. Sup. Ct. R. 9, § 12.7, Mr. Freeman shall be required to make restitution to the Albertina Hughes in the amount of \$750.00. Payment of restitution is a condition precedent to reinstatement.

(e) In the event restitution is made by the Tennessee Lawyer's Fund for Client Protection ("TLFCP"), Mr. Freeman will be responsible for reimbursement to the TLFCP of the same amount;

(f) Mr. Freeman shall not, during the period of probation, incur any new complaints of misconduct that relate to conduct occurring during the period of probation and result in a recommendation by the Board that discipline be imposed. In the event that Mr. Freeman violates or otherwise fails to meet said condition of probation, Disciplinary Counsel shall be authorized to file a petition to revoke Mr. Freeman's probation., and upon a finding that revocation is warranted, Mr. Freeman shall serve the previously deferred period of suspension;

37. Before seeking reinstatement, Mr. Freeman must comply with paragraph 9 herein, must meet all CLE requirements; have remitted all outstanding registration fees and outstanding professional privilege taxes, including those due from the date of this suspension until the date of reinstatement; and have remitted all court costs and Board costs in this matter.

38. Mr. Freeman shall comply in all aspects with Tenn. Sup. Ct, R. 9, §§ 28 and 30.4, regarding the obligations and responsibilities of suspended attorneys and the procedure for reinstatement.

IT IS SO ORDERED.


Kenneth M. Bryant, Chair

William R. O'Bryan, Jr.

Christopher C. Sabis

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing has been served upon the persons listed below this ____ day of March, 2021:

Alan Johnson, Esq.
Tennessee Board of Professional Responsibility
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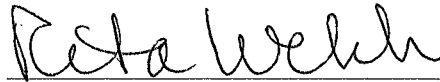
Attorney for: Respondent Michael Freeman

*Attorney for: Tennessee Board of Professional
Responsibility*

by the following indicated methods, in compliance with the requirements of Tenn. R. Civ. Proc. 5 and/or 5A: email pursuant to T.R.C.P. 5.02(2) with accompanying U.S.P.S. mailed "Notice of Electronically Transmitted Documents"

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to Respondent, Michael Lloyd Freeman, c/o David R. Grimmett, Counsel, 3326 Aspen Grove Drive, Suite 310, Franklin, TN 37067, by U.S. First Class Mail, and hand-delivered to Alan Johnson, Disciplinary Counsel, on this the 3rd day of March 2021.

A handwritten signature in cursive script that reads "Rita Webb". The signature is written in black ink and is positioned above a horizontal line.

Rita Webb
Executive Secretary

NOTICE

This judgment may be appealed by filing a Petition for Review in the appropriate Circuit or Chancery Court in accordance with Tenn. Sup. Ct. R. 9, § 33.