

BOARD NOTES

published by the
Board of Professional Responsibility
of the
Supreme Court of Tennessee

Summer 2014



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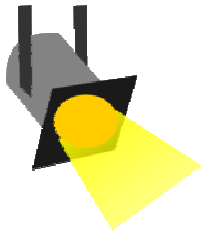
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The Tennessee Board of Professional Responsibility is dedicated to disseminating information that will help the public, attorneys, and judges better understand the Rules of Professional Conduct and the lawyer disciplinary process. To this end, the Board publishes ethics opinions, staffs an ethics hotline, conducts ethics seminars, and provides this semi-annual newsletter to all Tennessee attorneys and judges. I commend the Board for these efforts, and I thank each person reading this edition of *Board Notes* for your contribution to the administration of justice in Tennessee.



When a Client is Hurt, We all Suffer

By Judy Bond-McKissack, J.D., Executive Director
Tennessee Lawyers' Fund for Client Protection

Each year when you pay your registration fees to the Board of Professional Responsibility you're doing more than just getting registered. You are also promoting public confidence in the administration of justice and the integrity of the legal profession. How you ask? A portion of the annual registration fees that you pay each year provides funding for the Tennessee Lawyers' Fund for Client Protection (TLFCP).

You've never heard of it? Ok, it's time to fill in the details. A client protection fund is a program which sets aside funds to protect legal consumers from dishonest conduct in the practice of law. It's one of the ways that we show our professional responsibility as lawyers and right the wrongs done to a client. Back in 1943 Canada began the first fund to reimburse clients for losses due to dishonest conduct by a licensed attorney.

Tennessee's fund began on July 1, 1991. Its purpose is to provide reimbursement in those rare instances of dishonest conduct by lawyers licensed to practice in Tennessee. Lawyers licensed in Tennessee fund the program each year with \$10 from their annual registration fees. That doesn't sound like much but it can mean the difference between devastation to a client and regaining hope. The work of the Fund is done by the Director and Associate Director of the CLE Commission who answer to a Board of Trustees. The Board of Trustees consists of six (6) lawyers (two from each grand division of the state) and three (3) non-lawyers, one from each grand division of the state. The trustees are appointed by the Tennessee Supreme Court and serve for a period of three (3) years. The trustees meet every other month to review claims.

Who serves on the Board of Trustees? Professionals and lawyers like you and me. We've been fortunate to have solo practitioners, criminal defense lawyers, public defenders, district attorneys, state representatives, prosecutors, mediators, corporate attorneys, business executives and of course we can't forget the Supreme Court Justices who serve as liaisons. It's a serious group of people doing a serious job.

Clients file a confidential claim form with the Fund providing detailed information about their loss as well as documentation of the loss. Upon receipt of the claim, a letter is sent to the accused attorney along with a copy of the claim documents asking him or her to respond to the claim. Attorney responses are shared with the claimant. The Fund works jointly with the disciplinary counsel from the Board of Professional Responsibility who conduct investigations into the claims. When the investigation is completed the Fund board is provided with all of the documents from the claim including any findings from the disciplinary committee that reviewed the attorney's conduct and any resulting order of discipline. Claims filed with the Fund include those based on theft of client trust funds, theft of settlement proceeds, theft of guardianship or conservator funds, and loss of funds when an attorney abandons his practice and fails to provide services.

The Fund has strict time limits and rules about the types of losses that can qualify for reimbursement. Most claims filed with the Lawyers' Fund for Client Protection must be filed within one (1) year of the date the loss occurred or within one year of the date that the claimant should have reasonably discovered that a loss had occurred. For losses that occurred after October 1, 2013, the claim must be filed within three (3) years of the date that the loss



When a Client is Hurt, We all Suffer

(continued from the previous page)

occurred or reasonably should have been discovered, but in no event later than five years from the date of the loss. Other rules apply and the following types of losses are not eligible for reimbursement:

1. Spouses, children, parents, grandparents, siblings, partners, associates and employees of lawyer(s) causing the losses are not eligible for reimbursement.
2. Business entities controlled by the lawyer causing the losses are not eligible for reimbursement.
3. The Fund will not pay for losses covered by a bond, surety agreement or insurance that will provide reimbursement for the loss.
4. Losses by a governmental entity or agency are not eligible for reimbursement from the Fund.
5. The Fund does not provide reimbursement for interest, costs or attorney's fees resulting from attempts to recover the loss.

There are also limits on what the Fund can pay. The maximum that the Fund can pay to any single claimant is \$100,000 and the maximum aggregate sum paid with respect to losses caused by any single lawyer is \$250,000. In the 2013-2014 fiscal year the Fund provided reimbursements totaling \$72,903.80 to ten (10) claimants. In the 2012 – 2013 fiscal year the Fund provided \$70,303.50 in reimbursements to seventeen (17) claimants. Recently several large claims have been filed with the fund. Currently the Fund has outstanding claims totaling \$2.2 million dollars.

In 2013 Rule 9, which covers disciplinary enforcement, was amended to include a provision that any order or stipulation imposing discipline upon a lawyer include a provision requiring reimbursement for any payment made to a client from the fund. Such reimbursement is routinely a condition of reinstatement of the lawyer's license.

The next time that you feel like you haven't contributed much just think about TLFCP and the work that it does to help restore a client's hope and faith in the legal profession.

For more information on the Tennessee Lawyers' Fund for Client Protection, please contact:

Tennessee Lawyers' Fund for Client Protection
221 4th Avenue North, Suite 300
Nashville, Tennessee 37219
615-741-3097
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Supreme Court Appoints Hearing Committee Members

By Orders filed on March 17, 2014, the Supreme Court appointed or re-appointed Hearing Committee Members to assist with the disciplinary process. Hearing Committee Members review Disciplinary Counsels' recommendations regarding resolution of complaints and serve on three-member hearing panels conducting formal disciplinary hearings. Hearing Committee Members are not compensated for their service.

The following Hearing Committee Members have been appointed or re-appointed for a three-year term that will expire on March 17, 2017:

District I: Gene P. Gaby

District II: Oliver D. Adams; Heidi Anne Barcus; Sara Compher-Rice; Virginia L. Couch; Karen G. Crutchfield; John P. Dreiser; Kenneth F. Irvine, Jr.; Mark E. Stephens

District III: Melissa T. Blevins; Blair B. Cannon; W. Holt Smith

District IV: Melanie Renee Bean; T. Franklin Gilley, III; Joe Michael Looney; Thomas Michael O'Mara; John Carson Taylor; Adam Ford Tucker; Phillip Andrew Wright, Jr.

District V: Julie M. Burnstein; N. Zale Dowlen; Matthew T. Harris; Barbara D. Holmes; Paul C. Ney, Jr.; Aaron T. Raney; Peter C. Sales; Gary C. Shockley

District VI: Joseph Baugh, Jr.; Ben Boston; Vanessa P. Bryan; R. Lee Davies; Claudia Jack; Paul B. Plant; P. Edward Schell; Timothy P. Underwood; Kirk Vandivort; Jeffery K. Walker

District VII: R. Lowell Finney, III; Dwayne D. Maddox, III; Hugh K. McLean, Jr.

District VIII: Dean Dedmon; Jennifer Deen; Floyd Flippin; Jasper Taylor, IV; Jeffery Washburn

District IX: Rehim Babaoglu; Craig M. Beard; Thomas R. Branch; Thomas P. Cassidy, Jr.; Richard D. Click; Alex Elder; Harriett M. Halmon; Timothy P. Kellum; Gregory Mangrum; Leland McNabb; Arthur Quinn; Marc Reisman; Leah Roen; Michael D. Tauer; Amanda Waddell; John Kevin Walsh



History of the Tennessee Supreme Court's Access to Justice Initiative

By Anne-Louise Wirthlin, Esq., LLM

Access to Justice Coordinator at the Administrative Office of the Courts

There are two major components of the Tennessee Supreme Court's **Access to Justice Initiative**. The first is the Court itself and the significance of the collective determination of all five justices in 2008 that access to justice would be its number one strategic priority for the foreseeable future. An Access to Justice Coordinator position was created at the Administrative Office of the Courts to manage the day-to-day operations of the initiative, including the maintenance of a new website, www.justiceforalltn.com, devoted exclusively to connecting people who need help with lawyers and social service providers who can provide help.

The Court's decision to make access to justice a priority was in response to the growing civil legal needs gap in Tennessee. According to a 2003 Legal Needs Study conducted by the University of Tennessee College of Social Work Office of Research and Public Service, approximately one million Tennesseans qualify for help from legal aid providers based on the Federal Poverty Guidelines. Almost 70 percent of the households included in the Legal Needs Study reported one civil legal problem they faced that could have been resolved with the help of a lawyer. At any given time, there are roughly 85 attorneys working for one of the four federally funded legal aid providers in Tennessee. It is impossible for these legal aid attorneys and other legal service providers who do not receive federal funds to serve the number of low income Tennesseans with civil legal problems.

The Supreme Court modified court rules to make it easier for attorneys to perform pro bono work, including permitting attorneys to provide limited scope representation, allowing judicial assistants to provide some type of pro bono work, and establishing an emeritus attorney program. See RPC 6.5, Sup. Ct. R. 5, and Sup. Ct. R. 50A. The Court also made participation in IOLTA mandatory. See Sup. Ct. R. 43 and RPC 1.15. Further, the Court declared that each attorney should aspire to provide 50 hours of pro bono service per year and requested that attorneys report their pro bono service when they renewed their license with the BPR. See RPC 6.1 and Sup. Ct. R. 9. Attorneys were first asked to report their pro bono hours in 2010 for pro bono work they performed in 2009. In 2010, 18.26% of the attorneys licensed to practice in Tennessee reported performing 294,672 hours of pro bono work during the previous year. In 2014, the percentage of attorneys who reported performing some type of pro bono work in 2013 has increased to 44.31%. The number of hours reported also has increased to 575,760. To emphasize the importance of pro bono work and to provide encouragement to attorneys who are responding to the civil legal needs of low income Tennesseans, the Supreme Court adopted an annual pro bono recognition program, *Attorneys for Justice*. For the first time, the Court will recognize attorneys who reported performing 50 or more hours of pro bono work in 2013. These attorneys will receive certificates signed by the Court and an electronic version of the

History of the Tennessee Supreme Court's Access to Justice Initiative

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recognition program seal that can be used on their website, letterhead, advertising, and in other appropriate ways. The Court will also hold public events in October to recognize these attorneys. Law offices that perform an average of 50 hours of pro bono service per attorney will also be recognized. Law students who perform 50 hours of pro bono service during their law school career will also be recognized as *Law Students for Justice*.

The Access to Justice Commission created by the Court in 2009 is the second major component of the Court's Access to Justice Initiative. The ATJ Commission comprises ten attorneys with varying backgrounds including shareholders in large firms in metropolitan cities, corporate counsel, a law school dean, a director of a statewide non-profit agency, and practitioners in small firms in rural areas. Pursuant to Supreme Court Rule 50, the ATJ Commission operates under a strategic plan that includes initiatives, programs and projects to enhance access to justice in Tennessee.

The ATJ Commission has three primary methods to enhance access to justice. The first is to increase the number of attorneys providing pro bono assistance. The second is to assist self-represented litigants who cannot afford to hire an attorney by developing educational resources and by directing them to various pro bono and legal service providers. The third method is to support existing legal service programs. The ATJ Commission incorporates technology as appropriate to accomplish all three methods.

The ATJ Commission's first strategic plan focused on bringing all of the stakeholders together to determine how the ATJ Commission could bolster their good work. The plan included a goal to co-sponsor with the Court a pro bono summit for representatives of law firms, bar associations, corporate legal departments, law schools, mediation groups, pro bono programs and others. On January 21, 2011, the ATJ Commission met this goal and co-hosted the Pro Bono Summit in Nashville. The sessions focused on needs specific to low income Tennesseans in rural areas, pro bono mediation, collaborations with faith-based organizations, and coordinating law student pro bono work.

A goal of the summit was to introduce participants to a new website, www.onlinetnjustice.org, (OTJ) which provides low income Tennesseans with the opportunity to email their legal questions and receive a response free of charge from volunteer attorneys. The website was developed through a partnership with Baker, Donelson, Bearman, Caldwell, & Berkowitz, PC, the Tennessee Bar Association, and the Tennessee Alliance for Legal Services. Participants were recruited to volunteer with OTJ which was set to launch later that year. Since the launch, more 6,000 questions have been asked through OTJ and more than 4,800 clients have received help.

The second ATJ Commission strategic plan focused on connecting people in need with new and existing resources. The underlying theme was that the ATJ Commission and its many partners had greatly expanded the resources available to low income Tennesseans with civil legal needs but Tennesseans were not aware of these resources. The ATJ Commission's first step in addressing this issue was to compile a list of all recurring pro bono legal advice clinics across the state. That list is available at www.justiceforalltn.com and is updated regularly. The ATJ Commission secured a grant to fund a Pro Bono Coordinator position at the Administrative Office of the Courts to monitor and serve as a resource for existing pro bono programs and to help create additional pro bono programs in Tennessee.

Next, the ATJ Commission proposed the creation of a statewide toll-free legal information hotline. Users would be able to call and find out where they could go in their area for legal help. In January 2013, the ATJ Commission launched the legal information line, 1-888-aLEGALz. aLEGALz is staffed by an attorney from the Tennessee Alliance for Legal Services and was made possible by grant funding received from the Commission on Continuing Legal Education and Specialization

History of the Tennessee Supreme Court's Access to Justice Initiative

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and International Paper Company. In the eighteen months since the launch of aLEGALz, more than 4,500 callers have been helped.

The ATJ Commission is now working under its third strategic plan. The current plan continues the three primary methods of increasing pro bono, assisting self-represented litigants, and supporting existing legal service providers. But the plan goes a step further. The ATJ Commission has committed to measuring the impact of its work on the lives of Tennesseans. The data from the Legal Needs Study was more than ten years old, and the ATJ Commission was successful in getting a grant to conduct an updated Legal Needs Study. The ATJ Commission developed reporting forms, which will be implemented later this summer, for pro bono programs to use in collecting data from their volunteers and their clients. The ATJ Commission will compile the data on the usage of various resources such as educational videos for self-represented litigants and Supreme Court approved plain language forms. This information, coupled with the data collected on OTJ and aLEGALz will help the ATJ Commission and other stakeholders in determining where to focus resources and how to move forward to provide low income Tennesseans access to the judicial system.

For more information on the Supreme Court's Access to Justice Initiative and the Access to Justice Commission, contact the ATJ Coordinator at 615-741-2687 or ATJInfo@tncourts.gov. You can also find information on the websites below.

<http://www.justiceforalltn.com/>

<http://www.tncourts.gov/programs/access-justice>

<https://www.facebook.com/JusticeForAllTN?ref=hl>

<https://twitter.com/JusticeForAllTN>



National Pro Bono Celebration
October 2014

Board of Professional Responsibility

Annual Ethics Workshop - 2014

Registration will open September 15, 2014 for the day-long Tennessee Board of Professional Responsibility's 2014 Ethics Workshop to be held November 7, 2014, at the Nashville School of Law. Featured topics at the 2014 Workshop include confidentiality; criminal law issues; conflicts; reinstatements from disciplinary and administrative suspensions; and every-day ethical dilemmas. The non-refundable registration fee is \$100.00. Speakers include Justice Connie Clark; David Raybin; Peter Strianse; Jodie Bell, Lance Bracy; Laura Chastain; James Vick; Krisann Hodges; Bill Moody and Sandy Garrett. Attorneys interested in attending this year's workshop are encouraged to register early as historically the workshop fills up very quickly. For more information, contact ethicsworkshop@tbpr.org.



Formal Ethics Opinion

2014-F-158

Issued June 13, 2014

by the Board of Professional Responsibility

QUESTION:

Can a lawyer who represented a testator refuse to honor a court order or subpoena to disclose, prior to the client's death, a Will or other testamentary document executed when the testator was competent on the basis that the document is protected against disclosure by the attorney-client privilege or confidentiality?



CONCLUSION:

Generally, the lawyer must comply with RPC 1.6 or 1.9(c) and shall not provide any information or document relating to the representation except: with the informed consent of the current or former client, RPC 1.6(a)(1) and 1.9(c)(1); the disclosure was impliedly authorized, 1.6(a) (2) and 1.9(c)(2); the disclosure is required by order of the court specifically granting authority for such disclosure, RPC 1.6(c)(2) and 1.9(c)(2); the disclosure is required by other law, 1.6(c)(3) and 1.9(c)(2); the information or document is generally known, RPC 1.9(c)(3), as discussed herein, or as otherwise permitted or required by the rules.

A copy of this Opinion is attached.

BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE

FORMAL ETHICS OPINION 2014-F-158

Can a lawyer who represented a testator refuse to honor a court order or subpoena to disclose, prior to the client's death, a Will or other testamentary document executed when the testator was competent on the basis that the document is protected against disclosure by the attorney-client privilege or confidentiality.

QUESTION

The inquiring attorney asserts that it has become increasingly common for courts to appoint attorneys in a representative capacity to represent individuals suffering from dementia and/or Alzheimer's who are the subject of a dispute or litigation regarding management of the individual's funds and/or person. It is asserted that attorneys involved in elder-law practice, guardianships, conservatorships, and guardian-ad-litem (GAL)/attorney-ad-litem (AAL) appointed by the court seek the "ward's" last Will and Testament by request, court order or subpoena from the lawyer or law firm which prepared and/or is in custody of the Will. The Will is sought prior to the death of the testator on the basis of alleged need for the appointed lawyer to engage in "estate planning" on behalf of the ward. The inquiring attorney asks:

- Is the law firm and/or each attorney in the firm responsible for asserting the attorney-client privilege if a person other than the client request delivery of the Last Will and Testament before the client's death?

Response: Yes, if requested in a judicial proceeding and there are non frivolous claims that the Will is protected against disclosure by the attorney client-privilege or other applicable law, as required by Rules of Professional Conduct (RPC) 1.6(c)(2).

- Is the answer any different if a GAL, AAL or Conservator has been appointed over the client by a Court and requests the Will?

Response: This is an issue of substantive law beyond the scope of the Rules of Professional Conduct.

- Can the GAL waive the attorney-client privilege on behalf of the "ward"?

Response: This is an issue of substantive law beyond the scope of the Rules of Professional Conduct.

- Is the answer any different if a Court orders the law firm to turn over the Will on behalf of either (1) the GAL, (2) AAL, and/or (3) the Conservator?

Response: The lawyer must comply with the courts order but only after the lawyer has raised all non frivolous claims that the Will is protected against disclosure by the attorney client-privilege or other applicable law, as required by RPC 1.6 (c)(2).

DISCUSSION

The Rules of Professional Conduct (RPC), Tennessee Supreme Court Rule (SCR) 8, nor the Rules of Disciplinary Enforcement, SCR 9, provide any basis, authority, or jurisdiction upon which the Board of Professional Responsibility (BPR) can opine or authorize lawyers to disregard or refuse to honor an order of a court or subpoena. A court order is given full affect unless and until a party obtains dissolution of the order through operation of the judicial system. *In Re Estate of Rinehart*, 363 S.W.3d 186, 189 (Tn. Ct. App. 2011); *Flautt & Mann v. Council of City of Memphis*, 285 S.W.3d 856, 874 (Tenn. Ct. App. 2008). Ethics opinions of the BPR do not have the force of law and are not binding upon the courts of this state. *State v. Jones*, 726 S.W.2d 515, 519 (Tenn. 1987).

Statute governs to whom a Will is to be produced before and after death.¹ TCA 32-2-112(b)¹ provides that during the lifetime of the testator, the Will can only be delivered to the testator or someone authorized by the testator. Whether a Will or other testamentary document which was prepared and executed at a time when the testator was living and competent is subject to attack or change by someone other than the testator is an issue of substantive law to be determined by the court.

The principles of (1) attorney-client privilege and (2) confidentiality must be considered in responding to this inquiry. Tennessee Formal Ethics Opinion (TFEO) 2013-F-156 addressed differences between the two principles, as follows:

...Although interrelated and often considered essentially the same, the requirements for and exceptions to the (1) attorney-client privilege and (2) confidentiality are substantively different. The attorney-client privilege and its exceptions are governed by statute and common law. Confidentiality and its exceptions are governed by the

¹ Tenn. Code Annotated (TCA) 32-1-112(b) provides that “the will shall, during the lifetime of the testator, be delivered only to the testator, or to some person authorized by the testator by an order in writing, duly proved by the oath of a subscribing witness. Any will that is deposited after the death of the testator shall be delivered only to a person named in the will as executor, to a next of kin of the testator, or to any other person so authorized by law or court order.” TCA 32-1-113(a) provides, in part, that “any person or corporation who has possession of or discovers a written instrument purporting to be the last will and testament of decedent shall mail or deliver that instrument to the personal representative named in the instrument as soon as the person or corporation has knowledge of the death...” (b) requires that in the absence of a personal representative, “then the person having possession of the original instrument shall mail or deliver it to the clerk.”

Rules of Professional Conduct (RPC). Confidentiality is far broader than the attorney-client privilege. Differences between the two are addressed in RPC 1.6, cmt. [3]:

The principle of client-lawyer confidentiality is given effect by related bodies of law: the attorney-client privilege, the work-product doctrine, and the rule of confidentiality established in professional ethics. The attorney-client privilege and work-product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law. *See also* Scope.

Attorney-Client Privilege

By statute and common law, Tennessee recognizes an evidentiary attorney-client privilege by which an attorney may not disclose confidential communications between the client and their lawyer. *See*, Tennessee Code Annotated (TCA) 23-3-105²; *Bryan v. State*, 848 S.W.2d 72, 79-80 (Tenn. Crim. App. 1992) (perm. app. denied).

...Thus, the purpose of the privilege is to shelter confidences a client shares with his or her attorney when seeking legal advice, in the interest of protecting a relationship that is a mainstay of our system of justice...Not only must the communication have occurred pursuant to the attorney-client relationship, it must have been made with the intention of confidentiality...

Bryan, 848 S.W. 2d at 79-80. The attorney-client privilege, however, is not absolute. Because of public policy and judicial administration concerns, several exceptions to the privilege have been fashioned. *See, Hazlett v. Bryant*, 192 Tenn. 251, 241 S.W.2d 121, 123 (Tenn. 1951); *Bryan*, 848 S.W.2d. at 80. The privilege can be waived expressly or by other circumstances. *State v. Buford*, 216 S. W. 3d. 323, 325-326 (Tenn. 2007); *Smith Co. Educ. Assoc. v. Anderson*, 676 S.W. 2d. 328,

² Tennessee Code Annotated 23-3-105 provides:

No attorney, solicitor or counselor shall be permitted, in giving testimony against a client or a person who consulted the attorney, solicitor or counselor professionally, to disclose any communication made to the attorney, solicitor or counselor as such by such person, during the pendency of the suit, before or afterwards, to the person's injury.

333 (Tenn. 1984); *Bryan*, 848 S.W. 2d at 80. “[W]hether the privilege applies to any particular communication is necessarily question, topic or case specific.” *Bryan*, 848 S.W. 2d. at 80. The privilege survives the death of the client. *Estate of Queener v. Helton*, 119 S.W.3d 682, 685 (Tenn. Ct. App. 2003) (perm. app. denied); *Estate of Hamilton v. Morris*, 67 S.W.3d 786, 791-92 (Tenn. Ct. App. 2001) (perm. app. denied); *State v. Leonard*, 2002 Tenn. Crim. App. LEXIS 737 at *21, 2002 WL 1987963, at *8 (Tenn. Crim. App., Aug. 28, 2002).

While the attorney-client privilege may be applicable to protect communications between the testator and their lawyer regarding estate planning or resulting documents from disclosure during the lifetime and after the death of the testator, an exception to the privilege may apply to permit the lawyer to make such discloses to establish the testamentary intent of the testator.^{3,4,5,6} *Id.*

³ The Supreme Court has long accorded privilege to certain communications between attorneys and their clients, while recognizing there are exceptions to this privilege. *Hazlett v. Bryant*, 192 Tenn. 251, 241 S.W.2d 121, 123 (1951). The United States Supreme Court in *Swidler & Berlin v. U.S.*, 524 U. S. 399, 118 S.Ct. 2081, 141 L.Ed.2d 379 (1998) held that the attorney-client privileges survives the death of the client . . .

165 U.S. at 406, 17 S.Ct. 411.

Queener, 119 S.W. 3d at 685

⁴ . . . The Court noted that most courts presume that the privilege survives the death of the client, but they view testamentary disclosure of communications as an exception to the privilege. *Id.* The *Swidler* Court quoted from *United States v. Osborn*, 561 F2d 1334, 1340 (9th Cir. 1977):

[T]he general rule with respect to confidential communications . . . is that such communications are privileged during the testator’s lifetime and, also, after the testator’s death unless sought to be disclosed in litigation between the testator’s heirs . . .

524 U.S. at 405, 118 S.Ct. 2081 (citations omitted). The Court went on to say that, “The rationale for such disclosure is that it furthers the client’s intent.” *Id.*

* * *

In *Glover v. Patten*, 165 US. 394, 17 S.Ct. 411, 41 L.Ed. 760 (1897), a case which has not been overruled in over one-hundred years, the United States Supreme Court set out what we believe is the applicable rule in the case at bar:

. . . we are of the opinion that, in a suit between the devisees under a will, ***statements made by the deceased to counsel respecting the execution of the will, or other similar document, are not privileged.*** While such communications might be privileged if offered by third persons to establish claims against an estate they are not written within the reason of the rule requiring their exclusion, ***when the contest is between the heirs or next of kin.***

165 U.S. at 406, 17 S.Ct. 411 (emphasis added)

Hamilton, 67 S.W. 3d at 791-92

⁵ In this case, the claims presented are against the Estate, and the issue is not concerning the validity of the deceased’s will or claimants there under. In this case, no will of the deceased has been admitted to probate, indeed the record indicates that only a draft of a proposed will was prepared by the attorney. Accordingly, the rationale for the exception by the *Hamilton* Court that this evidence would be admitted to help establish the intent of the maker of a will has no application to the facts of this case.

If a client or former client's Will or other testamentary document is sought in a judicial or other proceeding in which the lawyer may be required to produce the information or document under compulsion of law, whether by order of the court, subpoena or otherwise, the lawyer is required to comply with and be governed by RPC 1.6 (c)(2).^{7,8} In the absence of informed consent of the client,

The Trial Court found the draft document was not a valid will and could not be treated as one, but that it could be treated as evidence of decedent's intentions. The evidence does not establish a basis for an exception to the privilege and the Court was in error to rely on the unexecuted document to establish deceased's intent.

119 S.W. 3d, at 686.

Queener, 119 S.W.3d at 686

⁶ Both *Hamilton* and *Queener* quote with approval from 81 AmJur.2d Witnesses, § 389:

Where the client is dead and the controversy arises concerning the validity of the deceased client's will, or between the claimants thereunder, no privilege exists as to communications between the testator and his attorney concerning the drafting of a will. Thus, communications by a client to the attorney who drafted his will, concerning the will and transactions leading to its execution, generally are not, after the client's death, protected as privileged communications in a suit between the testator's heirs, devisees, or other parties who claim under him, although there is authority for the proposition that the privilege protecting a client's communications to the attorney who drew his will may be invoked against the claimants adverse to the interests of the client, his estate or his successors.

Hamilton, 67 S.W. 3d at 792; *Queener*, 119 S.W. 3d at 685.

⁷ Rule of Professional Conduct (RPC) 1.6 provides:

- (a) A lawyer shall not reveal information relating to the representation of a client unless:
 - (1) the client gives informed consent;
 - (2) the disclosure is impliedly authorized in order to carry out the representation; or
 - (3) the disclosure is permitted by paragraph (b) or required by paragraph (c).
- (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:
 - (1) to prevent the client or another person from committing a crime, including a crime that is reasonably certain to result in substantial injury to the financial interest or property of another, unless disclosure is prohibited or restricted by RPC 3.3;
 - (2) to prevent the client from committing a fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services, unless disclosure is prohibited or restricted by RPC 3.3;
 - (3) to prevent, mitigate, or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a fraud in furtherance of which the client has used the lawyer's services, unless disclosure is prohibited or restricted by RPC 3.3;
 - (4) to secure legal advice about the lawyer's compliance with these Rules; or
 - (5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

the lawyer must reveal the information or document if ordered to so by the tribunal, but only after the lawyer has raised all non-frivolous objections that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. ABA Annotated Model Rules of Professional Conduct, (7th Ed. 2011), p. 96. The lawyer is obligated to disclose no more than the court requires. The rule requires the lawyer to resist disclosure if there are any non frivolous claims that the information is protected from disclosure by the privilege. *See*, ABA Formal Op. 94-385 (1994); ABA Annotated Model Rules, p. 111. If no non-frivolous claims are available, the information or document can be revealed by the lawyer in a judicial proceeding without raising the issue with the tribunal. Whether the attorney-client privilege, an exception to or waiver⁹ of the privilege are applicable is governed by substantive law, not the Rules of Professional Conduct and on which the BPR cannot opine.¹⁰ By the terms of RPC 1.6(c)(2), it is the court or the tribunal, not the BPR, which determines whether the requested information or document is protected from disclosure by the attorney-client privilege or other applicable law. If the court determines that the

(c) A lawyer shall reveal information relating to the representation of a client to the extent the lawyer reasonably believes disclosure is necessary:

- (1) To prevent reasonably certain death or substantial bodily harm;
- (2) to comply with an order of a tribunal requiring disclosure, but only if ordered to do so by the tribunal after the lawyer has asserted on behalf of the client all non-frivolous claims that the information sought by the tribunal is protected against disclosure by the attorney-client privilege or other applicable law;
- (3) to comply with RPC 3.3, 4.1, or other law.

⁸ Comment [14b] to Rule of Professional Conduct (RPC) 1.6 provides:

[14b] A lawyer might be called as a witness to give testimony concerning a client or might be ordered to reveal information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by RPC 1.4. Unless review is sought, however, paragraph (c)(2) permits the lawyer to comply with the court's order.

⁹ *State v. Leonard*, M2001-00368-CCA-R3-CD, 2002 WL 1987963, at *8 (Tenn. Crim. App. Aug. 28, 2002), provides:

...Although an issue of first impression in Tennessee, other jurisdictions have adopted the common law provision that the attorney-client privilege may be waived by the client, his guardian, or conservator, the personal representative of the deceased client, the successor, trustee, or similar representative of a corporation, association or other organization whether or not in existence (citation omitted) . . . Those jurisdictions adopting this provision however, have done so in the limited circumstances involving recovery of real property and will contests. (citation omitted).

...[b]ecause the privilege exists to protect the client, it belongs only to the client and thus may not be asserted by a third party.

¹⁰ The Rules of Professional Conduct, “. . . are not intended to govern or affect judicial application of either the attorney-client privilege or work-product privilege. . . .” Rules of Professional Conduct, Scope [22].

information or document is not protected from disclosure by the privilege, RPC 1.6(c)(2) requires that the information or document be revealed by the lawyer unless the decision of the court is appealed⁸.

Confidentiality

If a client or former client's Will or other testamentary document is sought outside a judicial or other proceeding in which a lawyer may be required to produce evidence, the disclosure is governed by the confidentiality rules of the Rules of Professional Conduct (RPC) 1.6⁷ and 1.9(c)¹¹, respectively, rather than the attorney-client privilege. RPC 1.6(a)⁷ prohibits a lawyer from revealing any information, whatever or whoever its source, relating to the representation of a current client unless (1) the client has given informed consent, (2) the disclosure is impliedly authorized to carry out the representation, or (3) the disclosure falls within one of the exceptions permitted or required by the rule. Any disclosure permitted by an exception referenced in RPC 1.6(c)(3) is limited to that which the lawyer reasonably believes necessary to accomplish the specified purpose. *See*, RPC 1.6, cmt [13]; ABA Annotated Model Rules of Professional Conduct, (7th Ed. 2011), p. 112. RPC 1.8(b) prohibits a lawyer, in the absence of informed consent, from using information relating to the representation of a current client to the client's disadvantage.

RPC 1.9(c)¹¹ prohibits a lawyer from revealing information relating to representation of a former client or using such information to the former client's disadvantage unless (1) the former client gives informed consent, (2) the rules would permit with respect to a current client, or (3) the information has become generally known.¹² RPC 1.9(c)(2) incorporates the bases on which RPC 1.6 permits disclosure for a current client. The duty of confidentiality continues after the client-

¹¹ Rule of Professional Conduct (RPC) 1.9(c) provides:

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter reveal information relating to the representation or use such information to the disadvantage of the former client unless (1) the former client gives informed consent, confirmed in writing, or (2) these Rules would permit or require the lawyer to do so with respect to a client, or (3) the information has become generally known.

¹² Comment [8a] to RPC 1.9 defines generally known as follows:

[8a] Whether information is generally known depends on all circumstances relevant in obtaining the information. Information contained in books or records in public libraries, public-record depositories, such as government offices, or in publicly accessible electronic-data storage is generally known if the particular information is obtainable through publicly available indexes and similar methods of access. Information is not generally known when a person interested in knowing the information could obtain it only by means of special knowledge or substantial difficulty or expense. Special knowledge includes information about the whereabouts or identity of a person or other source from which the information can be acquired, if those facts are not themselves generally known. A lawyer may not, however, justify adverse use or disclosure of client information simply because the information has become known to third persons, if it is not otherwise generally known. Even if permitted to disclose information relating to a former client's representation, a lawyer should not do so unnecessarily.

lawyer relationship has been terminated, RPC 1.9(c), cmt. [3a]¹³ and RPC 1.6, cmt. [17], and survives the death of the client. ABA/BNA Lawyer's Manual on Professional Conduct, 55:106 (2006); ABA Annotated Model Rules, p. 103.¹⁴

Unless permitted or required by RPC 1.6⁷ or 1.9(c)¹¹, a lawyer cannot voluntarily disclose information relating to the representation of the client or former client outside a judicial proceeding. "...A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law." RPC 1.6, cmt. [3]. Conversely, a lawyer may reveal such information if permitted or required by the rules.

Both RPC 1.6 (a)(1)⁷ and 1.9(c)(1)¹¹ permit a lawyer to reveal any information or document which the client or former client has given the lawyer informed consent¹⁵ to reveal.¹⁶ If the client or former client is deceased or incompetent, due to dementia, Alzheimer's or otherwise, they can no longer give informed consent. Ethics opinions of the states are inconsistent regarding whether individuals appointed by the court in various capacities can waive confidentiality on behalf of the client or former client. Neither RPC 1.6(a)(1), RPC 1.9(c)(1) nor the accompanying comments permit someone other than the client or former client to waive confidentiality on behalf of the client. South Carolina Ethics Op. 05-09 (2005). Aside from basis on which the client or former client's lawyer's may disclose information relating to the representation, whether someone other than the client or former client can consent to such disclosure is governed by "other law" beyond the scope of this opinion. RPC 1.6(c)(3)⁷

RPC 1.6(a)(2)⁷ and, by incorporation, RPC 1.9(c)(2)¹¹ permit lawyers to disclose information relating to the representation if impliedly authorized to carry out the representation.¹⁷ The implication is defeated by the testator's instructions to the contrary.¹⁷ In making the determination whether disclosure is impliedly authorized, the lawyer must exercise reasonable professional

¹³ Comment [3a] to RPC 1.9 provides:

. . . The lawyer's duty of loyalty survives the termination of the former representation to the extent that it precludes the lawyer from acting to deprive the former client of the benefit of the lawyer's prior work on the former client's behalf.

¹⁴ See also, South Carolina Ethics Op. 12-10 (2012); Philadelphia Ethics Op. 2008-10 (2008); New York State Ethics Op. 724 (1999); Rhode Island Op. 96-34 (1996); North Carolina Ethics Op. 206 (1995); Virginia Ethics Op. 1207 (1989); Mississippi Ethics Op. 119 (6/5/86).

¹⁵ RPC 1.0(e) provides that " 'Informed consent' denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct."

¹⁶ TCA 34-6-108 and 109(29) permit a client or former client to vest an attorney in fact with the power to reveal confidential legal information.

¹⁷ RPC 1.6, cmt. [5] provides, "[e]xcept to the extent that the client's instructions or special circumstances limit authorization, a lawyer is impliedly authorized to make a disclosure about the client when appropriate in carrying out the representation..."

judgment. Philadelphia Ethics Op. 2007-6 (2007). The analysis is the same for each person who may request such information, although the answer for each will depend on the facts and circumstances of the particular situation and may differ depending on by whom and why the request is made. Florida Bar Op. 10-3(2011); ABA Annotated Model Rules, p. 99. In making the determination a lawyer may consider the client's wishes or intent.¹⁸ Doubt should be resolved in favor of not disclosing. Florida Bar Op. 10-3 (2011).

A lawyer is permitted to disclose information relating to the representation of a deceased former client, but only if the lawyer believes that the disclosure would further the client's interest and that the client would have consented to the disclosure. The ABA/BNA Lawyers' Manual on Professional Conduct, 55:506 (2006)¹⁹ provides:

A lawyer may disclose information relating to the representation of a deceased client only if disclosure would further the client's interests, and only if the lawyer believes that the client would have consented.

Tennessee Advisory Ethics Opinion 2000-A-727, on the basis of the former Rules of Professional Responsibility, provided in part:

Assuming that waiver or court order do not apply, we are of the opinion that the attorney may reveal confidences and secrets if the attorney believes that the revelation is in the best interests of the client and that the client would consent to waiver of the attorney-client privilege...

If a lawyer believes that disclosure of the contents of the will would be in furtherance of client's interest, and the client did not forbid the lawyer to make the disclosure, RPC 1.6(a)(2) permits the lawyer to furnish the Will as being impliedly authorized to carry out the representation of the client. South Carolina Ethics Op. 05-09 (2005). *See also*, District of Columbia Op. 324 (2004). "A lawyer may be impliedly authorized to make appropriate disclosure of client confidential information that would promote the client's estate plan, forestall litigation, preserve assets, and further family understanding of the decedent's intention..." Philadelphia Ethics Op. 2007-6 (2007).¹⁸ The rule permits a lawyer to reveal such information even after the death of a client and even when no personal representative has been appointed. *Id.* North Carolina Ethics Op. 206 (1995) provides:

¹⁸ New York State Bar Op. 970 (2013) (do circumstances meet the standards of implied authorization taking into account factors including deceased's wishes); Kan. Ethics Op. 01-01 (2001) (impliedly authorized to disclose information from deceased client's file to effectuate client's estate plan); Hawaii Ethics Op. 38 (1999) (disclosure is proper if necessary to effectuate client's intended estate plan).

¹⁹ *See, also*; Florida Ethics Op. 10-3 (2011); Philadelphia Ethics Op. 2007-06 (2007); South Carolina Ethics Op. 05-09 (2005); District of Columbia Ethics Op. 324 (2004); Hawaii Ethics Op. 38 (1999);

...It is assumed that a client impliedly authorizes the release of confidential information to the person designated as the personal representative of his estate after his death in order that the estate might be properly and thoroughly administered. Unless the disclosure of confidential information to the personal representative, or a third party at the personal representatives instruction, would be clearly contrary to the goals of the original representation or would be contrary to the express instruction given by the client to his lawyer prior to the client's death, the lawyer may reveal a client's confidential information to the personal representative of the client's estate and ... to third parties at the direction of the personal representative.

If the lawyer determines on the basis of the circumstances of the particular situation that disclosure was not impliedly authorized because contrary to the expressed instructions of the testator or contrary to the testator's intent, wishes or goals of the representation, the lawyer may not disclose the information or document, even to someone appointed by the court or designated by the personal representative. Other bases provided in the rules discussed herein may, however, permit or require disclosure of the information or document.^{17,11}

As discussed in **Attorney-Client Privilege** above, a lawyer is required to comply with RPC 1.6(c)(2) with respect to orders or subpoenas of the court.

RPC 1.6(c)(3)⁷, and by incorporation, RPC 1.9(c)(2)¹¹ require "a lawyer to reveal information relating to the representation of a client to the extent the lawyer reasonably believes disclosure is necessary...to comply with...other law."²⁰ Statute may require the lawyer to disclose the Will¹. GAL, AAL, conservators, guardians and others serving in a representative capacity are appointed by courts or tribunals. The duties, authorities and/or responsibilities of each are governed by statute and/or order of the court, over neither of which the Rules of Professional Conduct nor the Board of Professional Responsibility has authority or jurisdiction. If other law grants specific authority to one acting in a representative capacity to access or disclose the client's or former client's confidential information or documents, RPC 1.6(c)(3) would require that the information or document be revealed or provided by the lawyer.²¹ For instance, T.C.A. 34-3-107(2)(F) provides

²⁰ RPC 1.6, cmt. [12] provides, in part, "...Whether such law supersedes RPC 1.6 is a question of law beyond the scope of these Rules...If...the other law supersedes this Rule and requires disclosure, paragraph (c)(3) requires the lawyer to make such disclosure as are necessary to comply with the law.

²¹ TCA 34-1-104 requires that "the letters of conservatorship shall either: (1) Recite the specific powers to be exercised by the conservator and the specific powers retained by the person with a disability; or (2) Have attached to them the order or orders of the court specifying the powers to be exercised by the conservator and the powers retained by the person with a disability." Likewise, TCA 34-1-129 requires that "the letters conservatorship or guardianship shall either: (1) Recite the specific powers removed from the minor or person with a disability and transferred to the fiduciary; or (2) Have attached to them the order or orders of the court specifying the powers removed from the minor or person with a disability and transferred to the fiduciary..." TCA 34-2-105(3) requires that an order appointing a guardian "state any other authority or direction as the court determines is appropriate to properly care for the person and property of the minor. TCA 34-3-107(2) provides the court shall "enumerate the powers removed from the respondent and those to be vested in the conservator." The statute further specifically provides that "to the extent not specifically removed, the respondent shall retain and exercise all of the powers of a person with a disability." TCA 34-3-107(2)(F) provides that one of the powers which the court may vest in the conservator is "the power to give, receive, release, or authorize disclosure of confidential information."

that the court can vest a conservator with power to receive or release confidential information for their ward.²¹ In the absence of informed consent or other applicable basis which would permit disclosure, if the court's order of appointment does not vest the conservator with power to receive the ward's confidential information, the lawyer may not provide the Will or other information relating to the representation of the client or former client to the conservator. Whether others appointed in other representative capacities have the power or authority to receive the ward's confidential information is less well defined. Such matters are governed by substantive law beyond the scope of an opinion of the BPR.²⁰ If "other law" does not require disclosure of information relating to representation pursuant to RPC 1.6(c)(3), no other exception to the confidentiality rules permit disclosure of such information to a GAL²², conservator, guardian or others appointed in a representative capacity simply by the fact of their appointment by the court.

RPC 1.9(c)(3)¹¹ permits disclosure of information relating to the representation of a former client if the information has become "generally known." If the Will or other testamentary document of a former client is part of the public record, the document is "generally known" and may be revealed or provided by the lawyer. RPC 1.9(c), cmt. [8a].¹²

CONCLUSION

Specific responses to the inquiry are at pages 1-2 herein. Because other possible fact scenarios regarding disclosure of information relating to the representation of a client or former client are too numerous and varied to address individually, lawyers should be governed generally by the foregoing when such information is sought from the lawyer by someone other than the client or former client. Generally, the lawyer must comply with RPC 1.6⁷ or 1.9(c)¹¹ and shall not provide any information or document relating to the representation except: with the informed consent of the current or former client, RPC 1.6(a)(1) and 1.9(c)(1); the disclosure was impliedly authorized, 1.6(a) (2) and 1.9(c)(2); the disclosure is required by order of the court specifically granting authority for such disclosure, RPC 1.6(c)(2) and 1.9(c)(2); the disclosure is required by other law, 1.6(c)(3) and 1.9(c)(2); the information or document is generally known, RPC 1.9(c)(3), as discussed herein, or as otherwise permitted or required by the rules.

²² Depending on the differing circumstances or types of proceeding in which appointment of a GAL is deemed necessary, GALs may be appointed pursuant TCA 34-1-107, TCA 36-4-132, TCA 37-1-149 and Tenn. SCR 40 and 40A. The appointment of a GAL generally does not form an attorney-client relationship between the GAL and the ward. However, SCR 40(c)(1) provides that the GAL represents the child. If the appointment of a GAL forms an attorney-client relationship between the GAL and the ward, the Rules of Professional Conduct, including RPC 1.6 and 1.9(c), are applicable, and the disclosure of information relating the representation by the GAL would be governed as discussed herein.

This 13th day of June, 2014.

ETHICS COMMITTEE

Susan McGannon

J. Russell Parkes

Francis Guess

APPROVED AND ADOPTED BY THE BOARD



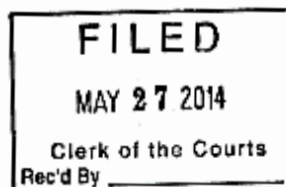
The Supreme Court Revises Rule 9, §§ 26.2 and 26.3

By Order filed May 27, 2014 and effective July 1, 2014, the Supreme Court has amended Tennessee Supreme Court Rule 9, Sections 26.2 and 26.3 pertaining to Tennessee's professional privilege tax. The Court determined these amendments were necessary due to recently amended Tennessee Code Annotated section 67-4-1704, which provides that the Commission of Revenue shall transmit on a monthly basis to the licensing board or agency a list of individuals delinquent ninety (90) days or more from the due date of the professional privilege tax. Upon receipt of the list of attorneys, the Chief Disciplinary Counsel shall send each attorney a privilege tax delinquency notice stating that the Commission of Revenue has informed the Chief Disciplinary Counsel that the attorney has failed for 90 days or more from the due date to pay the privilege tax. Prior to this amendment, the Commission of Revenue transmitted to the Board of Professional on an annual basis a list of Tennessee attorneys delinquent two (2) or more consecutive years from the due date of the professional privilege tax. A copy of this Order is attached.

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: AMENDMENT TO TENNESSEE SUPREME COURT RULE 9

No. ADM2014-00966



ORDER

On August 30, 2013, the Court filed an Order adopting a comprehensive revision of Tennessee Supreme Court Rule 9, which sets out the rules governing disciplinary enforcement with respect to attorneys. As provided in the Order, the revised Tennessee Supreme Court Rule 9 took effect January 1, 2014.

The General Assembly has enacted and the Governor has signed into law amended Tennessee Code Annotated section 67-4-1704, effective April 24, 2014, relative to the professional privilege tax. Among other changes, subsection (d) of the amended statute now provides that the Commissioner of Revenue shall transmit on a monthly basis to the licensing board or agency a list of taxpayers delinquent ninety (90) days or more from the due date of the tax. Subsection (f) of the amended statute provides: "The Supreme Court has established rules to suspend the license of an attorney who fails to pay the privilege tax. The Supreme Court is encouraged to establish additional rules, as the court may determine necessary, to further promote the timely payment of the tax by licensed attorneys."

Having carefully reviewed and considered the amended statute, the Court has determined that an amendment to Revised Tennessee Supreme Court Rule 9, sections 26.2 and 26.3, which address attorneys' non-payment of the professional privilege tax, is necessary. After due consideration, the Court hereby adopts the amendments to sections 26.2 and 26.3 of the revised Tennessee Supreme Court Rule 9, as set out in the attached Appendix. This amendment shall take effect on July 1, 2014.

The Clerk shall provide a copy of this Order to the Tennessee Bar Association, LexisNexis, and Thompson Reuters. In addition, this Order shall be posted on the Court's website.

IT IS SO ORDERED.

PER CURIAM

APPENDIX

[Revised Tenn. Sup. Ct. R. 9, sections 26.2 and 26.3, effective January 1, 2014, are amended as indicated below; deleted text is indicated by overstriking, and new text is indicated by underlining:]

Section 26.2. The Court designates the Chief Disciplinary Counsel of the Board as the official to whom the Department of Revenue shall ~~annually~~ monthly send a list of attorneys licensed by the Court who have failed, for ~~two or more consecutive years~~ ninety (90) days or more from the due date, to pay the privilege tax imposed by Tenn. Code Ann. § 67-4-1702.

Section 26.3. Upon receipt of the list of attorneys transmitted by the Department of Revenue, the Chief Disciplinary Counsel shall send each attorney listed thereon a Privilege Tax Delinquency Notice (the "Notice"), stating that the Department of Revenue has informed the Chief Disciplinary Counsel that the attorney has failed, for ~~two or more consecutive years~~ ninety (90) days or more from the due date, to pay the privilege tax imposed by Tenn. Code Ann. § 67-4-1702 and that the attorney's license is therefore subject to suspension. The Notice shall be sent to the attorney by a form of United States mail providing delivery confirmation, at the primary or preferred address shown in the attorney's most recent registration statement filed pursuant to Section 10.1 or at the attorney's last known address, and at the email address shown in the attorney's most recent registration statement filed pursuant to Section 10.1 or at the attorney's last known email address.

Newly-Admitted Attorneys



On June 3, 2014, the Tennessee Supreme Court administered the oath of admission to 71 lawyers from 11 different states. The majority of these new attorneys sat for the February bar examination and were approved for admission by the Board of Law Examiners. The ceremony, hosted by the Appellate Division of the Supreme Court of Tennessee, was held at the Polk Theater in Nashville with friends and family members of the new admittees in attendance. The Board of Professional Responsibility would like to welcome these attorneys to the practice of law in the State of Tennessee. The following new attorneys participated in the ceremony:

Jennifer Lauren Arce
Bart Edward Ashley Jr.
Christopher James Barrett
Taylor Philip Bayless
Dana Marie Boxmeyer
Steven Blake Bratcher
Benjamin Taylor Brothers
Daniel Andrew Buehler
Erin Leigh Byrum
Laurielle Camille Anne Campbell
Timothy Pate Carter
Ryan T. Cherry
Amanda Leigh Cocanougher
Michael Andrew Cornwell
Fredrick Matthew Curtis
Daniel Ray Daugherty
Terri Lynn Daugherty
Jeremy L Deason
Kimberly Ann deMent
Michelle Maire Dresen
Chelsea E. Parker
James Weakley Fuller Jr.
Lindsey Leigh Gambill

Sandra S Gibbs
Jenna Vee McGahey Glenn
Susan R. Gruber
Laura Katherine Harrington
Emily Hart Rhode
Tammy Lee Hassell
Katherine Farrar Hayes
Zachary T Hinkle
Matthew Joseph Holden
Eugenia Alexandra Izmaylova
David William Johnson
Christopher Allen Jones
Tiffany Kodman
Robert Paul Koewler
David Kenneth Koon
Catherine Callaway LaForce
Lody Rosario Limbird
Marleecia Lizarraga Deck
Joanna Lee Martin
Michael Joseph McLaughlin Jr.
Meghan Kathleen McMahon
Marc J. Meister
William Johnson Milam
Crystal Buchanan Moffat

William Joseph Monahan
Catherine Ann Moore
Roberty Jerrard Pickney
Robert Todd Pinckley
Derek Sharod Potter
Megan Harlan Quillen
Anette Barbara Radonski
Jeffrey Alan Ridsen
Sarah Friedman Roback
Brett L. Rozell
Marie Tedesco Scott
Elizabeth Ann Shipley
Daniel Thomas Shumate
Meghan Elizabeth Smith
Michael Jo'el Smith
April Eunice Thomas
Kavon Togrye
Joanie Lynn Vaughan
Nigel Peter Vorbrich
Christopher Walton Ware
Ronda Denise Webb-Stewart
Lisa Pettibone Webb
Frances Adele Barton Wilson
Deborah Janette Wright



AROUND THE BAR

By: Sandy Garrett

Chief Disciplinary Counsel

Board of Professional Responsibility of the Supreme Court of Tennessee

(This article first appeared in the June, 2014 issue of the Knoxville Bar Association publication, *DICTA*. Reprinted by permission.)

When an Attorney Becomes Unable to Continue Practicing Law

Each story is different. A prominent, well-respected attorney develops dementia. With the assistance of family, friends and the Tennessee Lawyers Assistance Program, the Board of Professional Responsibility petitions the Supreme Court to place the attorney on disability inactive status. A young attorney disappears abandoning his practice. Local judges notify the Board, who petitions the Supreme Court for the attorney's temporary suspension. The local bar association, with the assistance of the Board, petitions the local Chancery Court for appointment of an attorney to close the law practice.

In 2013, 145 attorneys were placed on disability inactive status, suspended, disbarred, disappeared or died. Tennessee Supreme Court Rule 9 § 28 sets forth the process requiring attorneys disbarred, suspended or recently transferred to disability inactive status to notify clients and counsel; return client files and property; refund fees and withdraw from representation. However, attorneys often do not or cannot follow these required safeguards. In those instances, judges, attorneys and family members are faced with the challenges of closing an attorney's law practice.

Problems

When an attorney becomes unable to practice law, protecting clients' interests is paramount. Notification of clients, courts and counsel of the attorney's inability to practice is critical to ensure that duties owed to clients, the public and the legal system are protected. Client files should be collected; reviewed; and delivered to the client or the client's new counsel. Attorney bank accounts including operating accounts, trust/IOLTA accounts and other accounts must be reviewed, properly handled, and funds disbursed. Additionally, the interests of the attorney no longer able to practice should be protected to the extent possible.

Solutions

Historically, bar associations and altruistic attorneys in small towns and big cities across this state have assisted when an attorney's practice was disrupted. Tennessee Supreme Court Rule 9 previously provided that the local presiding judge could appoint an attorney to inventory files and protect clients when an attorney was unable to continue practicing law. Beginning January 1, 2014, the Supreme Court has provided new protections and safeguards for an attorney's interrupted practice in Tennessee Supreme Court Rule 9 § 29. (*Continued on next page.*)

When an Attorney Becomes Unable to Continue Practicing Law

(continued from Page 24)

New Rule 9 § 29 allows the Board of Professional Responsibility, the Tennessee Bar Association, any local bar association, any attorney or any interested person to commence a proceeding in the chancery, circuit or probate court for the appointment of a receiver attorney to close the law practice of the affected attorney who is unable to continue practicing law. Rule 9 § 29.2(a) defines an “affected attorney” as “an attorney who is licensed and engaged in the practice of law in this state and who has no partner, associate, executor or other appropriate successor or representative capable and available to continue or wind-down the attorney’s law practice.” A receiver attorney is the attorney appointed to close the affected attorney’s practice. The receiver attorney’s duties may include taking custody of and reviewing files, records, and bank accounts of the affected attorney; notifying clients, courts and counsel of their appointment; taking custody of and acting as a signatory on bank, trust and IOLTA accounts and disbursing funds. The receiver attorney has immunity and is entitled to reasonable fees for their service.

The appointment of the receiver attorney does not create an attorney-client relationship between the receiver attorney and the affected attorney’s clients; however, the attorney-client privilege does apply to all communications between the receiver attorney and the affected attorney’s clients.

The Board encourages all attorneys to designate in advance a receiver or successor attorney or make other arrangements to continue, sell or close their practice. See Tenn. Sup. Ct. R. 8, RPC 1.17 and Tenn. Sup. Ct. R. 9 § 29. Additionally, an attorney should as part of their competent representation of clients, maintain an up-to-date file containing conflicts checks; calendars, client information, and bank account information.

The Board of Professional Responsibility’s website has a sample Complaint for Appointment of Receiver Attorney and Order Granting Complaint for Appointment of a Receiver Attorney in addition to checklists for attorneys and individuals faced with closing a law practice. To view these documents and for additional information, go to www.tbpr.org.



Disciplinary Actions

- (January 2014 – June 2014)
-

DISBARMENTS

George Ernest Skouteris, Jr. (Memphis)

On February 21, 2014, Mr. Skouteris was disbarred by order of the Tennessee Supreme Court. Mr. Skouteris appealed the decision of a Hearing Panel finding that he should be disbarred from the practice of law and requiring him to pay restitution to two (2) complainants.

Upon review, the Tennessee Supreme Court concluded that the Board of Professional Responsibility presented uncontroverted evidence that after accepting and depositing settlement checks for six (6) clients, Mr. Skouteris failed to maintain sufficient funds in his trust account to cover those settlements. He failed to provide competent representation to his clients and failed to respond to their requests for information. Mr. Skouteris failed to use written contingency fee agreements. He failed to keep client funds separate from his personal funds by depositing one (1) settlement into an operating account. Finally, he failed to respond to the Board of Professional Responsibility regarding three (3) complaints of misconduct. By his conduct, Mr. Skouteris engaged in dishonesty, deceit and misrepresentation, and engaged in conduct that was prejudicial to the administration of justice.

Mr. Skouteris's actions violate the following Rule(s) of Professional Conduct: 1.1 (competence), 1.3 (diligence), 1.4 (communication), 1.5(c) (fees), 1.15(a) and (c) (safekeeping property), 1.16(d) (declining and terminating representation), 8.1(b) (bar admission and disciplinary matters), and 8.4(a), (b), (c), and (d) (misconduct).

Thomas Francis diLustro (Knox County)

On March 25, 2014, Mr. diLustro, formerly of Knoxville, Tennessee, was disbarred by the Tennessee Supreme Court, pursuant to Tennessee Supreme Court Rule 9, Section 4.2. On October 25, 2012, a Petition for Discipline was filed against Mr. diLustro based upon three complaints of misconduct. A Panel determined that Mr. diLustro failed to represent his clients in a diligent manner, failed to keep clients reasonably informed about the status of their cases, failed to promptly respond to numerous reasonable requests for information, forged his client's signature to a parenting plan and submitted the document to the court for approval, falsely testified under oath regarding the signature on the Parenting Plan and failed to act promptly to correct an erroneous child support order.

Mr. diLustro's unethical conduct violated Rules of Professional Conduct 1.3 (diligence), 1.4 (communication), 3.2 (expediting litigation), 3.3 (candor toward the tribunal), 3.4 (fairness to opposing party and counsel), 8.1 (bar admission and disciplinary matters), and 8.4 (misconduct).

DISBARMENTS (continued)

John E. Clemmons (Davidson County)

On May 5, 2014, the Supreme Court of Tennessee disbarred Mr. Clemmons, of Davidson County, Tennessee, retroactive to April 2, 2013, the date on which Mr. Clemmons was temporarily suspended. Mr. Clemmons consented to disbarment because he could not successfully defend charges filed against him with the Board alleging that he misappropriated money from several wards for whom he had been appointed conservator, and pled guilty to four counts of theft in amounts over \$60,000.00, aggravated perjury and TennCare fraud.

Mr. Clemmons' actions violated Rules of Professional Conduct 1.3 (diligence), 1.15 (safekeeping property), 3.4 (fairness to opposing party) and 8.4 (misconduct).

Robert Lawson Cheek, Jr. (Knox County)

On May 15, 2014, Mr. Cheek, Jr. was disbarred by the Tennessee Supreme Court, pursuant to Tennessee Supreme Court Rule 9 Section 4.1. He was ordered to pay restitution to his former clients as a condition of reinstatement.

On May 9, 2013, a Petition for Discipline was filed against Mr. Cheek. The Hearing Panel found that in one case Mr. Cheek settled a personal injury lawsuit without the knowledge and consent of a client, forged his client's name on the settlement check and misappropriated the funds. In another case, Mr. Cheek withheld money from a settlement to pay subrogation claims, paid only a portion of the claims and misappropriated the remainder. Mr. Cheek neglected his cases, failed to communicate with his clients and failed to respond to Disciplinary Counsel.

The Hearing Panel determined that Mr. Cheek violated Rules of Professional Conduct 1.4 (communication), 1.5 (fees), 1.15 (safekeeping property), 8.1 (bar admission and disciplinary matters), 8.4(a) and (d) (misconduct).

James Strong Powell (Hardin County)

On June 5, 2014, Mr. Powell, of Savannah, Tennessee, was disbarred by Order of the Tennessee Supreme Court.

The Tennessee Supreme Court had suspended Mr. Powell on September 21, 2011 pursuant to Tennessee Supreme Court Rule 9, Section 14, based upon of his conviction of aggravated perjury in violation of T.C.A. 39-16-703. The Board of Professional Responsibility instituted a formal proceeding to determine the extent of final discipline to be imposed. Mr. Powell did not respond to the Board's Petition and an Order of Default was entered. The Hearing Panel recommended a sanction of disbarment.

Mr. Powell's actions violated Rules of Professional Conduct 8.4(a), (b), (c) and (d) (misconduct).

DISBARMENTS (continued)

Sharon K. Anderson (Shelby County)

On June 5, 2014, Ms. Anderson, of Memphis, Tennessee, was disbarred by Order of the Tennessee Supreme Court.

The Tennessee Supreme Court had suspended Ms. Anderson on January 21, 2014 pursuant to Tennessee Supreme Court Rule 9, Section 14, based upon her entry of a guilty plea to a serious crime, i.e., fraudulent transmission of money in violation of 18 U.S.C. § 2314. The Board of Professional Responsibility instituted a formal proceeding to determine the extent of final discipline to be imposed. Ms. Anderson entered into a Conditional Guilty Plea accepting a sanction of disbarment.

Ms. Anderson's actions violate the following Rules of Professional Conduct: 8.4 (misconduct).

William A. Lane (Williamson County)

On June 9, 2014, Mr. Lane of Thompsons Station, Tennessee, was disbarred by Order of the Tennessee Supreme Court.

On December 19, 2013, the Board of Professional Responsibility filed a Petition for Discipline against Mr. Lane alleging that he submitted false and deceptive fee claims to the Administrative Office of the Courts. Mr. Lane accepted appointments to represent indigent defendants for several years in which he failed to keep contemporaneous time records; billed for out of court time as if it were in court time; and billed for the full amount of time he was in court for each case even when appearing on multiple cases during one hearing rather than prorating his time. He did not file an answer to the petition nor appear for the final hearing. A Hearing Panel determined that disbarment was the appropriate sanction.

Mr. Lane violated the following Rules of Professional Conduct 1.5 (fees), 3.3(a) (1), (candor toward the tribunal), 3.4(c) (fairness to opposing party and counsel), and 8.4(a), (c) and (d) (misconduct).

SUSPENSIONS

William T. Maxwell (Shelby County)

On January 7, 2014, Mr. Maxwell was suspended from the practice of law by Order of the Tennessee Supreme Court for one (1) year, retroactive to July 19, 2012, the date he was transferred from Disability Inactive Status to Active Status. He must pay the Board of Professional Responsibility's costs and expenses within ninety days of the entry of the Order of Enforcement. Prior to reinstatement, Mr. Maxwell must comply with any recommendations of the Tennessee Lawyers Assistance Program and engage a practice monitor regarding his trust account.

On May 16, 2013, following Mr. Maxwell's self-report that he had misappropriated funds from his real estate trust account, a Petition for Discipline was filed against Mr. Maxwell. Mr. Maxwell returned the

SUSPENSIONS (continued)

misappropriated funds prior to self-reporting his conduct. Mr. Maxwell's actions violated RPC 1.15 (safekeeping property), and 8.4 (a), (b) and (c) (misconduct).

Jesse Walker Dalton, III (Hamilton County)

On January 7, 2014, the law license of Mr. Dalton, of Jasper, Tennessee, was suspended by the Tennessee Supreme Court for a period of one (1) year pursuant to Tennessee Supreme Court Rule 9, Section 4.2. Mr. Dalton shall serve an active suspension of three (3) months with the remaining nine (9) months probated subject to certain terms and conditions including engagement of a practice monitor and assessment by Tennessee Lawyer's Assistance Program.

A Petition for Discipline was filed against Jesse Walker Dalton, III, on February 11, 2013, based upon the complaints of a former paralegal and a former associate that Mr. Dalton appeared late for court and client meetings, missed client conferences, failed to timely return phone calls to clients, appeared in the office with slurred speech, glazed eyes and disheveled dress and fell asleep during client meetings. Further, Mr. Dalton received a cash retainer and failed to deposit the retainer into his trust account.

Mr. Dalton admitted violating Tennessee Rules of Professional Conduct 1.3 (diligence), 1.4 (communication), 1.15 (safekeeping property and funds), 1.16 (declining or terminating representation) and 8.4 (a) and (d) (misconduct).

Sharon K. Anderson (Shelby County)

On January 21, 2014, the Tennessee Supreme Court immediately suspended the law license of Ms. Anderson, pursuant to Section 22 of Tennessee Supreme Court Rule 9. The Court suspended Ms. Anderson's law license based upon her entry of a guilty plea to a serious crime, i.e., fraudulent transmission of money in violation of 18 U.S.C. § 2314.

The Supreme Court further ordered the Board of Professional Responsibility to institute a formal proceeding to determine the extent of final discipline to be imposed as a result of the conviction.

Spence Roberts Bruner (Roane County)

On January 31, 2014, Mr. Bruner, of Harriman, Tennessee, was suspended from the practice of law by Order of the Tennessee Supreme Court for ninety (90) days. Mr. Bruner must pay the Board's costs and expenses and the court costs within ninety days of the entry of the Order of Enforcement.

A Petition for Discipline was filed on February 11, 2013, alleging Mr. Bruner violated the Rules of Professional Conduct in his representation of a client in a criminal matter. A Hearing Panel determined that Mr. Bruner failed to timely file an appellate brief and ignored four (4) orders from the Court of Criminal Appeals directing him to file the appellate brief. Mr. Bruner was found in contempt of court for willful failure to comply with the orders of the Court.

Mr. Bruner's unethical conduct violated Rules of Professional Conduct 3.2 (expediting litigation), 3.4 (fairness to the opposing party and counsel), and 8.4 (misconduct).

SUSPENSIONS (continued)

Rebecca C. Verneti (Knox County)

On March 21, 2014, Ms. Verneti, of Knoxville, Tennessee, was suspended from the practice of law by Order of the Tennessee Supreme Court for three (3) years and ordered to pay the Board's costs and expenses and the court costs within ninety days of the entry of the Order of Enforcement.

A Petition for Discipline was filed on April 10, 2013, alleging Ms. Verneti made misrepresentations to the court and opposing counsel, failed to maintain disputed funds in her trust account, used disputed funds for her personal benefit, shared legal fees with a non-attorney husband and failed to maintain professional independence. Ms. Verneti entered into a Conditional Guilty Plea admitting her misconduct.

Ms. Verneti's unethical conduct violated Rules of Professional Conduct 1.15 (safekeeping property and funds), 3.3 (candor toward the tribunal), 4.1 (truthfulness in statements to others), 5.4 (professional independence of a lawyer), and 8.4 (misconduct).

John Jay Clark (Williamson County)

On March 25, 2014, Mr. Clark of Williamson County, Tennessee was suspended by the Tennessee Supreme Court for one (1) year all of which is to be served on probation subject to the conditions that he engage a practice monitor, comply with the Tennessee Lawyers Assistance Program recommendations, and pay restitution and costs.

The Board of Professional Responsibility filed a Petition for Discipline against Mr. Clark pursuant to Rule 9, Rules of the Supreme Court. The Petition alleged that Mr. Clark failed to adequately communicate with his clients and was not diligent in pursuing their cases. Mr. Clark submitted a Conditional Guilty Plea acknowledging violations of Tennessee Supreme Court Rule 8, Rules of Professional Conduct 1.3 (diligence), 1.4 (communication), and 8.4(a), (misconduct).

Roger David Hyman (Knox County)

On March 31, 2014, the Tennessee Supreme Court suspended Mr. Hyman, of Knoxville, from the practice of law for six (6) months.

The Board of Professional Responsibility filed a petition for discipline against Mr. Hyman containing two (2) complaints of disciplinary misconduct. A Hearing Panel determined that Mr. Hyman communicated with a person who was represented by counsel, threatened a litigant, filed a lien against a litigant that was later declared void, failed to appear at a hearing, and failed to timely pay sanctions required by a court order. Mr. Hyman appealed the decision of the Hearing Panel. The Hearing Panel's decision was affirmed by Knox County Circuit Court and the Tennessee Supreme Court.

Mr. Hyman's actions violate the following Rules of Professional Conduct: 3.1, (meritorious claims and contentions), 3.4 (fairness to opposing party and counsel), 3.5(e) (impartiality and decorum of the tribunal),

SUSPENSIONS (continued)

4.2 (communication with a person represented by counsel) 4.4(a) (respect for the rights of third persons), and 8.4(a) and (d) (misconduct).

Angela Joy Hopson (Madison County)

On April 7, 2014, the law license of Ms. Hopson, of Jackson, Tennessee, was suspended by Order of the Tennessee Supreme Court for one (1) year. The imposition of the sanction was suspended, and Ms. Hopson was placed on probation for one year. Ms. Hopson was ordered to pay restitution in the amount of \$2,760.00 and engage the services of a practice monitor. During her period of probation, Ms. Hopson may not incur any new complaints of misconduct that result in a recommendation by the Board that discipline be imposed.

A Petition for Discipline was filed on August 22, 2013, alleging lack of diligence, lack of communication, unreasonable fees, improper termination of representation and misconduct. Ms. Hobson was retained to represent clients in the adoption of a minor child. After determining the child's parents would not consent to the adoption, Ms. Hobson failed to timely prepare the required Petition to Terminate Parental Rights and did not properly communicate with her clients. After the clients retained a new attorney, Ms. Hopson delayed the transfer of the client's file and failed to promptly refund the fee they paid to her.

Ms. Hopson entered into a Conditional Guilty Plea admitting she violated Rules of Professional Responsibility 1.3 (diligence), 1.4 (communication), 1.5 (fees), 1.16 (declining or terminating representation), and 8.4 (misconduct).

Nathan Scott Moore (Wilson County)

On April 14, 2014, Mr. Moore, of Wilson County, Tennessee, was suspended from the practice of law by Order of the Tennessee Supreme Court for two (2) years, three (3) months of which is to be active and the remainder to be served on probation subject to the condition that he pay restitution within twelve (12) months from the expiration of his active suspension.

A Petition for Discipline was filed on May 7, 2013, alleging that Mr. Moore failed to pay restitution that had been ordered by the Supreme Court on January 9, 2011, that he had accepted fees and failed to perform services for his clients, and that he neglected to communicate with his clients.

Mr. Moore entered into a conditional Guilty Plea admitting to the misconduct. Mr. Moore's actions violated Rules of Professional Conduct 1.3 (diligence), 1.4 (communication), 1.5 (fees), and 8.4 (misconduct).

Jerry Alan Kennon (Davidson County)

On May 15, 2014, Mr. Kennon, of Nashville, Tennessee, was suspended from the practice of law by Order of the Tennessee Supreme Court for one (1) year. Mr. Kennon was ordered to pay restitution in the

SUSPENSIONS (continued)

amount of \$3,760. Finally, Mr. Kennon must pay the Board's costs and expenses and the court costs within ninety days of the entry of the Order of Enforcement.

A Petition for Discipline was filed on October 25, 2013, containing four (4) complaints. Mr. Kennon utilized his trust account as a personal account. He was retained to prepare estate planning documents for two clients but failed to complete the work he was retained to perform over a period of several years, failed to communicate with them and failed to refund the unearned fee. He was retained by one client to file a personal injury case but filed suit against the wrong defendant and failed to appear in court when the case was set resulting in its dismissal. He also failed to communicate with that client. He represented the personal representative of an estate wherein he filed several incorrectly executed statements in lieu of final accounting, failed to obtain a TennCare release, failed to close the estate over a period of several years and failed to appear at a show cause hearing.

Mr. Kennon's actions violated Rules of Professional Conduct 1.1 (competence), 1.3 (diligence), 1.4 (communication), 1.15 (safekeeping property and funds), 1.16 (declining or terminating representation), 3.2 (expediting litigation), and 8.4(a) and (d) (misconduct).

Robert Lawson Cheek, Jr. (Knox County)

On May 21, 2014, the Tennessee Supreme Court immediately suspended Mr. Cheek from the practice of law until further orders of the Court pursuant to Tennessee Supreme Court Rule 9, Section 22.3. Mr. Cheek was suspended based upon his guilty plea to a serious crime; i.e., mail fraud.

The Supreme Court's Order acknowledged Mr. Cheek's disbarment on May 15, 2014, but found the Board of Professional Responsibility retains jurisdiction to address subsequent allegations of misconduct. The Supreme Court ordered the Board to institute a formal proceeding to determine the extent of final discipline to be imposed as a result of Mr. Cheek's guilty plea.

John Robert Hershberger (Memphis)

On May 30, 2014, Mr. Hershberger, of Memphis, was suspended by Order of the Tennessee Supreme Court for two (2) years, with sixty (60) days served as active suspension and the remainder served on probation subject to several conditions including participation with a practice monitor, establishment of an operating account for his law practice, and an evaluation with the Tennessee Lawyer's Assistance Program. Mr. Hershberger is ordered to pay the Board's costs and expenses. Ms. Hershberger may practice law during the probationary period.

The Board of Professional Responsibility filed a Petition for Discipline against Mr. Hershberger alleging that since 2009, he improperly used an attorney trust account for personal and business transactions not related to his law practice. Although there were no client funds in the account, Mr. Hershberger's use of a trust account to deposit personal funds and to pay personal expenses constitutes a violation of Rules of Professional Conduct. Ms. Hershberger entered a guilty plea to the Board's charges.

SUSPENSIONS (continued)

Mr. Hershberger's actions violate the following Rules of Professional Conduct: 1.15 (safekeeping property), and 8.4(a) (misconduct).

James A. Meaney, III (Georgia)

On June 2, 2014, Mr. Meaney, of Dalton, Georgia, was suspended from the practice of law in Tennessee for eleven (11) months and twenty-nine (29) days, with three (3) months to be served as an active suspension and the remainder on probation, subject to several conditions including a practice monitor and compliance with state licensure rules.

The Board of Professional Responsibility filed a Petition for Discipline against Mr. Meaney containing four (4) complaints of misconduct. All of the complaints of ethical misconduct involve the unauthorized practice of law in Tennessee during periods of time when Mr. Meaney was suspended for failure to comply with continuing legal education requirements and failure to pay professional privilege taxes. Mr. Meaney continued to represent clients, sign and enter pleadings, and make appearances in court during these periods. Mr. Meaney did not respond to the disciplinary complaints, resulting in a temporary suspension from March 6, 2012 to December 3, 2013. Mr. Meaney appealed the decision of the Hearing Panel and the Chancery Court of Davidson County finding that suspension was appropriate. Mr. Meaney filed a notice of appeal to the Tennessee Supreme Court; however, the appeal was dismissed on May 1, 2014, due to his failure to pay the litigation tax and to respond to a show cause Order.

Mr. Meaney's ethical misconduct violated Rules of Professional Conduct 1.4 (communication), 5.5 (unauthorized practice of law), 8.1(b) (bar admission and disciplinary matters), and 8.4(a), (d) and (g) (misconduct).

James Michael Marshall (Maury County)

On June 13, 2014, Mr. Marshall of Spring Hill, Tennessee, was suspended from the practice of law by Order of the Tennessee Supreme Court for sixty (60) days. Mr. Marshall was ordered to pay the Board's costs and expenses and the court costs within ninety days of the entry of the Order of Enforcement.

A Petition for Discipline was filed on January 2, 2014, involving three (3) complaints of unethical conduct. In the first complaint, Mr. Marshall ignored a court order to prepare and file a statement of the evidence in compliance with Rule 24 of the Rules of Appellate Procedure. Mr. Marshall's failure to comply with the court order led to the dismissal of the client's appeal. In the second complaint, Mr. Marshall unreasonably delayed for approximately one (1) year setting a motion for argument before the trial court. In the third complaint, Mr. Marshall notarized documents when he did not hold an active Notary Commission and filed the same with the Clerk of the Court and Register of Deeds. Mr. Marshall pled guilty, pursuant to T.C.A. §40-35-313, to six (6) Class C misdemeanors of acting after the expiration of his notary commission in violation of T.C.A. §8-16-120 and was placed on probation.

SUSPENSIONS (continued)

Mr. Marshall entered a Conditional Guilty Plea admitting his conduct violated Rules of Professional Conduct 1.3 (diligence), 3.3(a) and (h) (candor toward the tribunal), 3.4(c) (fairness to opposing party and counsel), 4.1 (truthfulness in statements to others), and 8.4 (misconduct).

TEMPORARY SUSPENSIONS

Billy J. Reed (Knox County)

On January 17, 2014, the Supreme Court of Tennessee temporarily suspended Mr. Reed from the practice of law upon finding that Mr. Reed failed to respond to the Board regarding a complaint of misconduct. Section 4.3 of Supreme Court Rule 9 provides for the immediate summary suspension of an attorney's license to practice law in cases of an attorney's failure to respond to the Board regarding a complaint of misconduct.

Effective January 17, 2014, Mr. Reed is precluded from accepting any new cases, and he must cease representing existing clients by February 16, 2014. After February 16, 2014, Mr. Reed shall not use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence where the practice of law is conducted.

Clayton F. Mayo (Madison County)

On January 27, 2014, the Supreme Court of Tennessee temporarily suspended Mr. Mayo from the practice of law upon finding that Mr. Mayo has abandoned his practice and that he poses a threat of substantial harm to the public.

Effective January 27, 2014, Mr. Mayo is precluded from accepting any new cases and he must cease representing existing clients by February 26, 2014. After February 26, 2014, Mr. Mayo shall not use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence where the practice of law is conducted.

Elizabeth Catherine Cox (Sevier County)

On February 3, 2014, the Supreme Court of Tennessee temporarily suspended Ms. Cox, from the practice of law upon finding that Ms. Cox failed to respond to the Board regarding a complaint of misconduct. Section 4.3 of Supreme Court Rule 9 provides for the immediate summary suspension of an attorney's license to practice law in cases of an attorney's failure to respond to the Board regarding a complaint of misconduct.

Effective February 3, 2014, Ms. Cox is precluded from accepting any new cases, and she must cease representing existing clients by March 5, 2014. After March 5, 2014, Ms. Cox shall not use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence where the practice of law is conducted.

TEMPORARY SUSPENSIONS (continued)

Carl Robert Ogle, Jr. (Jefferson County)

On February 3, 2014, the Supreme Court of Tennessee issued an Order summarily and temporarily suspending Mr. Ogle from the practice of law upon finding that Mr. Ogle has misappropriated funds for his own use and poses a threat of substantial harm to the public. Section 4.3 of Supreme Court Rule 9 provides for the immediate summary suspension of an attorney's license to practice law in cases that an attorney has misappropriated funds and thereby poses the risk of a substantial threat to the public.

Effective February 3, 2014, Mr. Ogle is precluded from accepting any new cases, and he must cease representing existing clients by March 5, 2014. After March 5, 2014, Mr. Ogle shall not use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence where the practice of law is conducted.

Lee Michael Sprouse (Davidson County)

On February 4, 2014, the Supreme Court of Tennessee temporarily suspended the law license of Mr. Sprouse upon finding that Mr. Sprouse failed to respond to the Board regarding a complaint of misconduct. Section 4.3 of Supreme Court Rule 9 provides for the immediate summary suspension of an attorney's license to practice law in cases of an attorney's failure to respond to the Board regarding a complaint of misconduct.

Effective February 4, 2014, Mr. Sprouse is precluded from accepting any new cases, and he must cease representing existing clients by March 6, 2014. After March 6, 2014, Mr. Sprouse shall not use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence where the practice of law is conducted.

Spence Roberts Bruner (Roane County)

On February 19, 2014, the Supreme Court of Tennessee temporarily suspended Mr. Bruner from the practice of law upon finding that Mr. Bruner has failed to respond to the Board regarding a complaint of misconduct. Section 4.3 of Supreme Court Rule 9 provides for the immediate summary suspension of an attorney's license to practice law in cases of an attorney's failure to respond to the Board regarding a complaint of misconduct.

Mr. Bruner was suspended by the Supreme Court of Tennessee by Order entered January 31, 2014, and shall comply with the requirements of Tennessee Supreme Court Rule 9, Section 18, regarding the obligations and responsibilities of suspended attorneys.

Edward L. Swinger (Davidson County)

On February 25, 2014, the Supreme Court of Tennessee temporarily suspended Mr. Swinger from the practice of law upon finding that Mr. Swinger failed to respond to the Board regarding a complaint of misconduct. Section 4.3 of Supreme Court Rule 9 provides for the immediate summary suspension of an attorney's license to practice law in cases of an attorney's failure to respond to the Board regarding a complaint of misconduct.

TEMPORARY SUSPENSIONS (continued)

Effective February 25, 2014, Mr. Swinger is precluded from accepting any new cases, and he must cease representing existing clients by March 27, 2014. After March 27, 2014, Mr. Swinger shall not use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence where the practice of law is conducted.

Michael Lee West (Hamilton County)

On March 18, 2014, the Supreme Court of Tennessee temporarily suspended Mr. West from the practice of law upon finding that Mr. West misappropriated funds to his own use, and his continued practice of law poses a threat of substantial harm to the public. Section 4.3 of Supreme Court Rule 9 provides for the immediate summary suspension of an attorney's license to practice law in matters where an attorney's continued practice of law poses a threat of substantial harm to the public.

Effective March 18, 2014, Mr. West is precluded from accepting any new cases, and he must cease representing existing clients by April 17, 2014. After April 17, 2014, Mr. West shall not use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence where the practice of law is conducted. Further, Mr. West must provide the location and account number for any trust accounts for which he has signatory authority or control and is enjoined from making any withdrawals from said trust accounts without advance approval of Disciplinary Counsel.

Samuel Joseph Harris (Putnam County)

On May 2, 2014, the Supreme Court of Tennessee temporarily suspended Mr. Harris from the practice of law upon finding that Mr. Harris has failed to respond to the Board regarding a complaint of misconduct. Section 4.3 of Supreme Court Rule 9 provides for the immediate summary suspension of an attorney's license to practice law in cases of an attorney's failure to respond to the Board regarding a complaint of misconduct.

Effective May 2, 2014, Mr. Harris is precluded from accepting any new cases, and he must cease representing existing clients by June 1, 2014. After June 1, 2014, Mr. Harris shall not use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence where the practice of law is conducted.

Jacob Edward Erwin (Shelby County)

On May 21, 2014, the Supreme Court of Tennessee temporarily suspended Mr. Erwin from the practice of law upon finding that Mr. Erwin has failed to respond to the Board regarding a complaint of misconduct. Section 4.3 of Supreme Court Rule 9 provides for the immediate summary suspension of an attorney's license to practice law in cases of an attorney's failure to respond to the Board regarding a complaint of misconduct.

Effective May 21, 2014, Mr. Erwin is precluded from accepting any new cases and he must cease representing existing clients by June 20, 2014. After June 20, 2014, Mr. Erwin shall not use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence where the practice of law is conducted.

PUBLIC CENSURES

Raymond Andrew Shirley, Jr. (Anderson County)

On January 6, 2014, Mr. Shirley, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Shirley failed to inform his client that he was suspended from the practice of law on September 27, 2012. By placing into his trust account the \$1,500 that his client had provided to him to secure the return of her car, and by requesting documents from her in July of 2013, Mr. Shirley practiced law while he was suspended.

By these acts, Raymond Andrew Shirley, Jr., has violated Rules of Professional Conduct 1.4 (communication), and 5.5 (unauthorized practice of law), and is hereby Publicly Censured for these violations.

William Lee Wheatley (Sevier County)

On January 6, 2014, Mr. Wheatley, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Wheatley failed to maintain reasonable communication with his client after he was appointed to represent him in dependency and neglect proceedings. Mr. Wheatley did not communicate with his client until after the filing of the disciplinary complaint.

By these acts, William Lee Wheatley, has violated Rules of Professional Conduct 1.3 (diligence), and 1.4 (communication) and is hereby Publicly Censured for these violations.

Stuart Brian Breakstone (Shelby County)

On January 6, 2014, Mr. Breakstone, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Breakstone received \$7,500 from a client. The written retainer agreement that his client signed provided for a nonrefundable fee of \$3,500. This amount was deemed earned upon receipt, so Mr. Breakstone was free to deposit it into his operating account. However, there was no written agreement as to the additional \$4,000 that the client paid. This money should have been deposited into Mr. Breakstone's trust account, but he instead placed it in his operating account.

By these acts, Stuart Brian Breakstone, has violated Rule of Professional Conduct 1.15 (safekeeping property) and is hereby Publicly Censured for this violation.

PUBLIC CENSURES (continued)

Thomas Francis DiLustro (Knox County)

On January 13, 2014, Mr. DiLustro, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

In one case, Mr. DiLustro accepted fees from a client without performing any legal work in the case and deceived his client into believing that a civil action had been filed when it had not. Mr. DiLustro constructively withdrew from the case without returning unearned fees to the client. In another case, Mr. DiLustro failed to turn over his client's file upon request at the conclusion of the representation. In both instances, Mr. DiLustro failed to adequately communicate with his clients and failed to respond to requests for information from the Board of Professional Responsibility.

By these acts, Thomas Francis DiLustro, has violated Rules of Professional Conduct 1.3 (diligence), 1.4 (communication), 1.5 (fees), 1.16 (terminating representation), 8.1(b) (bar admission and disciplinary matters), and 8.4(a), (c) and (d) (misconduct) and is hereby Publicly Censured for these violations.

Philip Rubin Strang (Hamilton County)

On January 13, 2014, Mr. Strang, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Strang paid a personal expense from funds in his trust account resulting in an overdraft. Later, he issued a check to his client for funds collected for his client, but there were insufficient funds in the trust account.

By these acts, Mr. Strang has violated Rule of Professional Conduct 1.15 (safekeeping funds).

Martha Jane Durocher (Marshall County)

On January 14, 2014, Ms. Durocher, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

On July 18, 2012, Ms. Durocher discharged a weapon in public. Ms. Durocher entered a guilty plea to the Class A misdemeanor of reckless endangerment and the Class C misdemeanor of unlawful possession of a weapon.

By these acts, Martha Jane Durocher has violated Rule of Professional Conduct Rule 8.4 (b) (criminal act).

PUBLIC CENSURES (continued)

Tiffany Marcilynne Johns (Williamson County)

On January 22, 2014, Ms. Johns, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Ms. Johns represented a party in a child custody matter in Kentucky for which she was admitted *pro hac vice*. Ms. Johns filed a motion to have the matter transferred to Tennessee where the parties' divorce had been finalized. At a hearing, Ms. Johns falsely told the Kentucky Judge that she had spoken with a Kentucky Court of Appeals Judge about the applicable law in Kentucky. At another hearing, Ms. Johns falsely told the Kentucky Judge that she had spoken with a "female justice, her law clerk" of the Kentucky Court of Appeals on the matter.

After Ms. Johns filed a petition to terminate the opposing party's parental rights in Tennessee, she called the Tennessee Judge and left a message inquiring whether a federal statute would apply to the matter.

In response to a direct question from the Kentucky Judge, Ms. Johns stated that a hearing was set in the Tennessee matter on a particular date. In fact, no hearing had been docketed with the court clerk, and the opposing party had not been served with notice of the hearing or the petition.

By these acts, Ms. Johns has violated Rules of Professional Conduct Rule 3.3(a) (candor to the tribunal) and 3.5(b) (*ex parte* communication with tribunal).

Katherine Evett Smith (Shelby County)

On January 22, 2014, Ms. Smith, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Ms. Smith improperly used her trust account as an operating account for more than one year. On three occasions Ms. Smith commingled client settlement funds with the lawyer's funds. In another matter, after receiving client settlement funds, Ms. Smith issued payment to a client's medical provider by cashier's checks. The medical provider did not receive the cashier's checks and notified Ms. Smith in writing four times. Five months later, Ms. Smith issued new cashier's checks to the provider. As such, Ms. Smith failed to promptly deliver funds to a third party which the third party was entitled to receive. In another matter, Ms. Smith failed to file a final judgment on a petition for custody for five months and failed to respond to requests for information from her client.

By these acts, Katherine Evett Smith has violated Rules of Professional Conduct 1.15(d) (safekeeping funds), 1.3 (diligence), and 1.4 (communication), and is hereby publicly censured for these violations.

PUBLIC CENSURES (continued)

Stephen Todd Hastey (Knox County)

On February 4, 2014, Mr. Hastey, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

After receiving a client's settlement proceeds, Mr. Hastey issued a check to the client's medical provider for \$4,667. The medical provider failed to deposit the check for ten months, at which time the funds were not in the trust account. Mr. Hastey then paid the medical provider from his personal funds.

In another matter, Mr. Hastey paid a filing fee for a client with funds from the trust account. Mr. Hastey later determined that the client had not given him funds to pay the fee. In another matter, Mr. Hastey used trust account funds to pay personal and business expenses. By these acts, Stephen Todd Hastey has violated Rule of Professional Conduct Rule 1.15 (safekeeping funds) and is hereby Publicly Censured for this violation.

Christopher J. Wnuk (Missouri)

On February 13, 2014, Mr. Wnuk, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Wnuk is principally licensed to practice law in the State of Missouri but also holds an active law license in the State of Kansas. Mr. Wnuk practiced law in Tennessee after his *pro hac vice* registration status had expired by filing pleadings, attending mediation, and appearing in court in Tennessee. Additionally, Mr. Wnuk's firm letterhead listed his admission to the State of Louisiana although his license to practice law in Louisiana had been on inactive status since 2002.

By these acts, Christopher J. Wnuk, has violated Rules of Professional Conduct 3.4(c) (fairness to opposing party and counsel), 5.5(a) (unauthorized practice of law), and 7.1 (communications concerning a lawyer's services) and is hereby Publicly Censured for these violations.

Elizabeth Catherine Cox (Sevier County)

On February 13, 2014, Elizabeth Catherine Cox, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Ms. Cox was retained by a client to file a post-trial Motion for Consideration after the client was dissatisfied with the outcome of her divorce. Ms. Cox failed to communicate with her client about the status of the matter and later alleged to her client and the Board that she had timely filed the motion but that the judge had denied the motion without a hearing. After an investigation, it was determined that Ms. Cox had never filed the motion.

PUBLIC CENSURES (continued)

By these acts, Elizabeth Catherine Cox, has violated Rules of Professional Conduct 1.3 (diligence), 1.4 (communication), 8.1(a) (disciplinary matters), and 8.4(c) and (d) (misconduct), and is hereby Publicly Censured for these violations.

Robert Allen Doll, III (Davidson County)

On April 14, 2014, Mr. Doll, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

In conjunction with a probate matter, Mr. Doll failed to render competent representation, failed to act with reasonable diligence, and failed to expedite litigation. Also, Mr. Doll failed to attend hearings and failed to comply with court orders, for which he was ultimately held in contempt.

By these acts, Robert Allen Doll, III, has violated Rules of Professional Conduct 1.1 (competence), 1.3 (diligence), 3.2 (fairness to the opposing party and counsel), and 8.4 (conduct prejudicial to administration of justice) and is hereby Publicly Censured for these violations.

Christopher Paul Westmoreland (Bedford County)

On April 15, 2014, Mr. Westmoreland, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Between March and December 2012 on five separate occasions, Mr. Westmoreland deposited client settlement funds into his operating account instead of his trust account. This resulted in the commingling of client funds with Mr. Westmoreland's funds. In the first instance in March 2012, the client funds remained in Mr. Westmoreland's operating account for more than three months. In each of the other four instances, the client funds remained in his operating account for less than one month.

By these acts, Christopher Paul Westmoreland has violated Rule of Professional Conduct Rule 1.15 (safekeeping property and funds) and is hereby Publicly Censured for this violation.

Brent J. McIntosh (Bradley County)

On May 9, 2014, Mr. McIntosh, of Cleveland, Tennessee, was publicly censured by the Tennessee Supreme Court.

The Board of Professional Responsibility filed a Petition for Discipline against Mr. McIntosh pursuant to Rule 9, Rules of the Supreme Court. A hearing panel determined that, while representing a client, Mr. McIntosh threatened to present a criminal charge against an unrepresented person for the purpose of obtaining an advantage in a civil matter.

PUBLIC CENSURES (continued)

Mr. McIntosh's actions violated Rules of Professional Conduct 4.4(a) (2) (respect for the rights of third persons), and 8.4(a) (misconduct). For these violations, the Tennessee Supreme Court publicly censured Brent J. McIntosh.

Fletcher Whaley Long (Montgomery)

On June 4, 2014, Mr. Long, of Clarksville, Tennessee, was publicly censured by Order of the Tennessee Supreme Court.

The Board of Professional Responsibility filed a Petition for Discipline against Mr. Long alleging that he committed ethical misconduct for failure to deposit a fee into his trust account despite a written agreement to do so, failure to provide an accounting of fees, and failure to refund unearned fees. A hearing panel determined that Mr. Long should receive a public censure for his misconduct. Mr. Long appealed the disciplinary sanction which was affirmed by the Chancery Court and by the Tennessee Supreme Court.

Mr. Long's actions violate the following Rules of Professional Conduct: 1.4, (communication), 1.15 (safekeeping property), 1.16 (declining or terminating representation) and 8.4 (misconduct).

DISABILITY INACTIVE STATUS

Carol Hardwick Stewart (Alabama)

By Order of the Tennessee Supreme Court entered January 21, 2014, the law license of Ms. Stewart was transferred to disability inactive status pursuant to Section 27.3 of Tennessee Supreme Court Rule 9.

Ms. Stewart cannot practice law while on disability inactive status. She may return to the practice of law after reinstatement by the Tennessee Supreme Court upon showing of clear and convincing evidence that the disability has been removed and she is fit to resume the practice of law.

John Albert Walker, Jr. (Knox County)

By Order of the Tennessee Supreme Court entered January 30, 2014, the law license of John Albert Walker, Jr., was transferred to disability inactive status pursuant to Section 27.3 of Tennessee Supreme Court Rule 9.

Mr. Walker cannot practice law while on disability inactive status. He may return to the practice of law after reinstatement by the Tennessee Supreme Court upon showing of clear and convincing evidence that the disability has been removed and he is fit to resume the practice of law.

DISABILITY INACTIVE STATUS (continued)

William Walter Burton, Jr., (Rutherford County)

By Order of the Tennessee Supreme Court entered February 13, 2014, the law license of Mr. William Walter Burton, Jr., was transferred to disability inactive status pursuant to Section 27.3 of Tennessee Supreme Court Rule 9.

Mr. Burton cannot practice law while on disability inactive status. He may return to the practice of law after reinstatement by the Tennessee Supreme Court upon showing of clear and convincing evidence that the disability has been removed and he is fit to resume the practice of law.

Russell Dale Mays (Greene County)

By Order of the Tennessee Supreme Court entered February 25, 2014, the law license of Mr. Dale Mays was transferred to disability inactive status pursuant to Section 27.3 of Tennessee Supreme Court Rule 9.

Mr. Mays cannot practice law while on disability inactive status. He may return to the practice of law after reinstatement by the Tennessee Supreme Court upon showing of clear and convincing evidence that the disability has been removed and he is fit to resume the practice of law.

Frank A. Woods (Davidson County)

By Order of the Tennessee Supreme Court entered March 10, 2014, the law license of Mr. Woods was transferred to disability inactive status pursuant to Section 27.3 of Tennessee Supreme Court Rule 9.

Mr. Woods cannot practice law while on disability inactive status. He may return to the practice of law after reinstatement by the Tennessee Supreme Court upon showing of clear and convincing evidence that the disability has been removed and he is fit to resume the practice of law.

Penny Jo Mills (Davidson County)

By Order of the Tennessee Supreme Court entered March 12, 2014, the law license of Penny Jo Mills was transferred to disability inactive status pursuant to Section 27.3 of Tennessee Supreme Court Rule 9.

Ms. Mills cannot practice law while on disability inactive status. She may return to the practice of law after reinstatement by the Tennessee Supreme Court upon showing of clear and convincing evidence that the disability has been removed and she is fit to resume the practice of law.

DISABILITY INACTIVE STATUS (continued)

Barrett B. Sutton, Jr. (Davidson County)

By Order of the Tennessee Supreme Court entered March 28, 2014, the law license of Mr. Sutton was transferred to disability inactive status pursuant to Section 27.3 of Tennessee Supreme Court Rule 9.

Mr. Sutton cannot practice law while on disability inactive status. He may return to the practice of law after reinstatement by the Tennessee Supreme Court upon showing of clear and convincing evidence that the disability has been removed and he is fit to resume the practice of law.

Arun Rattan (Knox County)

By Order of the Tennessee Supreme Court entered May 20, 2014, the law license of Mr. Rattan was transferred to disability inactive status pursuant to Section 27.3 of Tennessee Supreme Court Rule 9.

Mr. Rattan cannot practice law while on disability inactive status. He may return to the practice of law after reinstatement by the Tennessee Supreme Court upon showing of clear and convincing evidence that the disability has been removed and he is fit to resume the practice of law.

Timothy C. Naifeh (Lake County)

By Order of the Tennessee Supreme Court entered May 27, 2014, the law license of Mr. Naifeh was transferred to disability inactive status pursuant to Section 27.3 of Tennessee Supreme Court Rule 9.

Mr. Naifeh cannot practice law while on disability inactive status. He may return to the practice of law after reinstatement by the Tennessee Supreme Court upon showing of clear and convincing evidence that the disability has been removed and he is fit to resume the practice of law.

Stephanie Derrick Gray (Williamson County)

By Order of the Tennessee Supreme Court entered June 2, 2014, the law license of Ms. Gray was transferred to disability inactive status pursuant to Section 27.3 of Tennessee Supreme Court Rule 9.

Ms. Gray cannot practice law while on disability inactive status. She may return to the practice of law after reinstatement by the Tennessee Supreme Court upon showing of clear and convincing evidence that the disability has been removed and she is fit to resume the practice of law.

Venus Michelle Stanek (Rutherford County)

By Order of the Tennessee Supreme Court entered June 16, 2014, the law license of Venus Michelle Stanek was transferred to disability inactive status pursuant to Section 27.3 of Tennessee Supreme Court Rule 9.

DISABILITY INACTIVE STATUS (continued)

Ms. Stanek cannot practice law while on disability inactive status. She may return to the practice of law after reinstatement by the Tennessee Supreme Court upon showing of clear and convincing evidence that the disability has been removed and she is fit to resume the practice of law.

K. Karl Spalvins (Knox County)

By Order of the Tennessee Supreme Court entered June 16, 2014, the law license of Mr. Spalvins was transferred to disability inactive status pursuant to Section 27.3 of Tennessee Supreme Court Rule 9.

Mr. Spalvins cannot practice law while on disability inactive status. He may return to the practice of law after reinstatement by the Tennessee Supreme Court upon showing of clear and convincing evidence that the disability has been removed and he is fit to resume the practice of law.

John Alley (Hamilton County)

By Order of the Tennessee Supreme Court entered June 19, 2014, the law license of Mr. Alley was transferred to disability inactive status pursuant to Section 27.3 of Tennessee Supreme Court Rule 9.

Mr. Alley cannot practice law while on disability inactive status. He may return to the practice of law after reinstatement by the Tennessee Supreme Court upon showing of clear and convincing evidence that the disability has been removed and he is fit to resume the practice of law.

REINSTATEMENTS

David Gregory Hays (Shelby County)

On January 17, 2014, the Supreme Court of Tennessee reinstated the law license of Mr. Hays. Mr. Hays had been temporarily suspended by the Supreme Court of Tennessee on December 9, 2013 for failing to respond to the Board of Professional Responsibility regarding a complaint of misconduct.

Supreme Court Rule 9 provides for the immediate summary suspension of an attorney's license to practice law in cases of an attorney's failure to respond to the Board regarding a complaint of misconduct. Mr. Hays filed a Petition to Dissolve the temporary suspension on December 27, 2013, asking the Court to reinstate him. A Hearing Panel appointed to hear the Petition recommended to the Supreme Court that the temporary suspension be dissolved. Mr. Hays was ordered to pay costs and expenses of the proceeding.

Michael D. Kellum (Washington County)

On February 10, 2014, the Supreme Court of Tennessee reinstated the law license of Mr. Kellum. Mr. Kellum had been suspended by the Supreme Court of Tennessee on May 25, 2012, for thirty-three (33) months

REINSTATEMENTS (continued)

with credit for twenty-two (22) months served. A Hearing Panel appointed to hear his Petition for Reinstatement found that he proved, by clear and convincing evidence, that he has the moral qualifications, competency and learning in law required for admission to practice law in this State, and that the resumption of the practice of law within the State will not be detrimental to the integrity and standing of the bar or the administration of justice, or subversive to the public interest.

Lee Michael Sprouse (Davidson County)

On March 10, 2014, the Supreme Court of Tennessee reinstated the law license of Mr. Sprouse. Mr. Sprouse had been temporarily suspended by the Supreme Court of Tennessee on February 4, 2014, for failing to respond to the Board of Professional Responsibility regarding a complaint of misconduct. Supreme Court Rule 9 provides for the immediate summary suspension of an attorney's license to practice law in cases of an attorney's failure to respond to the Board regarding a complaint of misconduct. Mr. Sprouse filed a Petition to Dissolve the temporary suspension on February 13, 2014, asking the Court to reinstate him. A Hearing Panel appointed to hear the Petition recommended to the Supreme Court that the temporary suspension be dissolved. Mr. Sprouse was ordered to pay costs and expenses of the proceeding.

Martin Lynn Howie (Dyer County)

On April 14, 2014, the Supreme Court of Tennessee reinstated Mr. Howie to the practice of law subject to several conditions, including a practice monitor and continued compliance with his TLAP monitoring agreement.

Mr. Howie had been suspended by the Supreme Court of Tennessee on April 5, 2013, for a period of three (3) years, with one (1) year served as an active suspension, retroactive to February 8, 2011. On October 24, 2013, Mr. Howie filed a Petition for Reinstatement to the practice of law and a hearing was held before a Hearing Panel on March 5, 2014.

The Hearing Panel found that Mr. Howie complied with the terms and conditions of his suspension, and further found that he had demonstrated the moral qualifications, competency and learning in the law required for the practice of law, and that his resumption of the practice of law will not be detrimental to the integrity or standing of the bar or administration of justice, or subversive to the public interest. Based upon the Hearing Panel's recommendation, the Supreme Court reinstated Mr. Howie's license to practice law.