

BOARD NOTES

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Greeting from Lela Hollabaugh, Board Chair

The Board is mindful of the services we provide to attorneys. Information regarding several of these resources available to attorneys are featured in this edition of *Board Notes*, including the Board's CLE presentations and informal and formal ethics opinions. I hope you find this publication enlightening.



What's Happening at the CLE Commission (TCCLES)

By Judy Bond-McKissack, J.D.
Executive Director

The Tennessee Commission on Continuing Legal Education and Specialization (TCCLES) is an agency of the Supreme Court of Tennessee created by Supreme Court Rule 21. The Commission operates with a total staff of six persons. The Commission awards or denies CLE credit to over 9,000 continuing legal education courses across the country each year. We also track CLE attendance and compliance for over 19,000 Tennessee attorneys. TCCLES certifies over 330 Tennessee attorneys as specialists in 14 areas of law. In January the Commission received authority from the Supreme Court to implement a mentoring program. This mentoring program provides an opportunity for experienced lawyers to share their knowledge and expertise with a beginning lawyer and to help guide them to become the best lawyer that they can be.

CLE Compliance

Tennessee is a mandatory CLE state. Attorneys are required to earn and report 12 General hours and 3 Ethics hours of CLE credit each year. CLE credits are earned based upon a calendar year. Tennessee accredits CLE courses based upon a sixty minute hour. Many attorneys think that when they have earned the 12 general hours and 3 ethics hours that they are compliant. That's partly true. In reality there are two parts to CLE compliance- earning the required hours plus paying any fees that are due by Court established deadlines. There are two types of fees that an attorney can incur - course reporting fees and non compliance fees. The course reporting fee is \$2.00 per credit hour and, based on Section 8.03 of Rule 21, is due at the time that the course is reported. Providers of courses that are held in Tennessee must report and pay course reporting fees as a condition of accreditation of their courses. Some attorneys report excess credits. Attorneys should be aware that they will incur a charge for any hours reported where the course provider does not pay the fee. To avoid charges for excess credits attorneys should monitor their CLE record and only report credits sufficient for the current and the next compliance year. CLE credits can only carry forward for a single year. Attorneys should also be aware that their payments are ***not*** applied for a particular course but rather as a payment against their account. It is not necessary to remit individual checks if you report more than one course. That can save a lot of time since the state operates with a multiple entry system. Law firms can also send a single check for all attorneys and courses. Just attach a list with a breakout of how the payment should be applied and we'll take it from there. Better still, law firms can register their attorneys on our website and making payments becomes even easier. Register your law firm at <https://www.cletn.com/LawFirmArea.aspx>.

Most attorneys seeking course credit will provide the Commission with the form, [Request for Out-of-State, On-Line and Other Unpaid Credits](#) and pay the course reporting fee. Sometimes an attorney will omit the fee which delays the posting of credits. All forms to request credits including out of state, online, and indigent defense credits are available on the Commission website, www.cletn.com. Reports of attendance for *pro bono* activity are reported to the Commission by the

pro bono organization. As of January 2012, there is not a fee to report *pro bono* credits. The change applies to *pro bono* credits only and not credits for indigent defense. *Pro bono* activity only qualifies for Ethics credit—**not** Dual credit. That means an attorney can only count 3 hours each year. Three hours of *pro bono* CLE credit can carry forward for one year.

Exceeding the CAP on Distance Learning

We are seeing more attorneys exceeding the cap on distance learning as attorneys increasingly turn to the internet to earn CLE credits. The maximum number of distance learning CLE credits that an attorney can use in a year is eight (8). The remaining seven (7) hours must be earned in live courses. Distance learning hours include hours earned online (including live or real time webcasts) and conference calls with interactive components. Attorneys should also be aware that if they have 8 hours of distance learning credit that carries forward, those hours will be used for compliance first. Any new distance learning hours will only carry forward to the next compliance year.

Annual Report Statements (ARS) and Progress Reports

At the end of January of each year the Commission mails out an Annual Report Statement. The statement tells an attorney how many hours they have earned towards their CLE compliance. It also highlights the courses that were earned by distance learning and provides information on any fees that may be due. If a fee is shown on the ARS you **must** return the ARS statement and establish compliance by the March 1st deadline. The Commission sends a courtesy mailing in late September/ early October which provides an update for attorneys on their CLE status. If you don't receive one of these mailings, contact the Commission. We retain a copy of all reports and can provide a replacement copy.

Exemptions

Rule 21 provides certain exemptions that must be claimed on an annual basis. You must claim your exemption by March 1st in order to avoid a non compliance penalty. There are over 22,000 attorneys licensed in Tennessee. We do not look at every individual record to see if we can find an exemption.

Inactive Status or Retired Status

Attorneys should be aware that a change of status to Inactive or Retired with the Board of Professional Responsibility has no effect on their annual CLE requirement with the CLE Commission.

Mentoring

On January 11th of this year, the Supreme Court approved Section 4.07 of Rule 21 which provides CLE credit for participation in a mentoring plan with a Court Approved Mentor. CLE credit becomes available on the effective date of the amendment to Rule 21 which is July 1, 2013. Section 4.07 expires on December 31, 2014 unless the Supreme Court affirmatively re-adopts that section. Attorney response to mentoring will determine whether mentoring continues in the future. Mentors and Beginning attorneys can earn up to 6 hours of Dual CLE credit for participating in a mentoring plan. The mentoring programs are operated by Sponsoring Organizations. The Commission has approved two Sponsoring Organizations: Nashville School of Law and the University of Tennessee School of Law. The University of Memphis Cecil C. Humphreys School of Law has expressed interest in being a sponsoring organization and we anticipate receiving a formal proposal from them in the very near future. The Commission will refer attorneys who are interested in participating in a

mentoring program as a Mentor or as a Beginning Attorney to the Sponsoring Organization(s) in their geographic area. There is not a sponsoring organization in the Chattanooga area at the present time. The response from the law schools in the state has been extremely encouraging and we are hopeful that some of the bar associations or legal organizations across the state will step up and become sponsoring organizations so that there are sponsoring organizations available in all parts of the state.

One of the requirements in order to become an Approved Mentor is participation in mentor training. Supreme Court approved regulations require that the Commission conduct the initial training. The Commission has contracted to provide mentor training in order for attorneys to become approved Mentors. Information on mentor training is updated on the Commission's website as new training locations are approved. Attorneys who meet the requirements of Regulation 5K are certified for a seven year period. Although the Commission is charged with conducting the initial mentor training, that is not the primary work of the Commission and the Commission encourages bar associations and other providers to consider developing and conducting training for mentors. Information on Mentoring can be found on the Commission's website at <http://www.cletn.com/Mentor1.aspx>.

Specialization

The Commission has received and approved applications from over 330 attorneys seeking approval as Specialists in the law. Specialists must have significant experience in their specialty fields, pass a national examination, meet continuing legal education requirements for their fields, provide positive references from their clients and other lawyers and carry malpractice insurance.

The Commission approves specialists in the following fourteen specialty areas:

- Accounting Malpractice Specialist
- Business Bankruptcy Specialist
- Civil Trial Specialist
- Consumer Bankruptcy Specialist
- Creditor Rights Specialist
- Criminal Trial Specialist
- DUI Defense Specialist
- Elder Law Specialist
- Estate Planning Specialist
- Family Law Specialist
- Juvenile Law - Child Welfare
- Legal Malpractice Specialist
- Medical Malpractice Specialist
- Social Security Disability Spec.

For more information on any of these topics, contact:

Tennessee Commission on Continuing Legal Education and Specialization
221 Fourth Avenue North, # 300
Nashville, TN 37219
615-741-3096
615-532-2477 (fax)
www.cletn.com

Supreme Court Appoints New Board Members

The Tennessee Supreme Court has recently appointed H. Scott Reams and Margaret Craddock as members of the Board of Professional Responsibility of the Supreme Court of Tennessee. The Board considers and votes on disciplinary actions against attorneys and issues ethics opinions interpreting the Rules of Professional Conduct. Board members do not receive compensation for their service. The Board consists of nine lawyers from each disciplinary district and three public (non-lawyer) members from each of the grand divisions of the state.

Mr. Reams is the Managing Partner with the law firm of Taylor, Reams, Tilson & Harrison in Morristown, Tennessee, and will serve a three-year term on the Board effective January 1, 2013.

Ms. Craddock is the Executive Director of the Thomas W. Briggs Foundation in Memphis, Tennessee, and will serve on the Board from March 7, 2013 through December 31, 2013.



H. Scott Reams



Margaret Craddock

Recognition of former Board Members William C. Bovender and Kate H. Gooch

The Board of Professional Responsibility wishes to publicly recognize and thank former Board members Kate H. Gooch and William C. Bovender for their hard work and conscientious involvement during their tenures as members of the Board. The Supreme Court appointed Mr. Bovender to the Board on January 1, 2010 where he served until December 31, 2012. The Court appointed Ms. Gooch on January 1, 2011. She served on the Board until March 7, 2013.

Mr. Bovender and Ms. Gooch both gave freely of their time and expertise, and their contributions to the legal community, the general public and the staff of the Board of Professional Responsibility are greatly appreciated.



William C. Bovender*

*No photo available for Kate Gooch.

The Board Hires New Litigation Disciplinary Counsel

The Board of Professional Responsibility of the Supreme Court of Tennessee is pleased to welcome Alan D. Johnson and William C. Moody to its staff as Disciplinary Counsel in the Board's litigation section.

Alan Johnson is a graduate of Vanderbilt University and Cumberland School of Law. Most recently, in solo-private practice in Nashville, Alan was a former partner in the law firm Johnson & Herbert and Willis & Knight, PLC. Alan brings to the Board thirty years of litigation experience in the state and federal trial and appellate courts.

Bill Moody is a graduate of Samford University and Cumberland School of Law. Bill was a partner in the Nashville firm Moody, Whitfield & Castellarin and brings to the Board thirty-four years of experience as a trial lawyer. Bill and Alan will represent the Board in prosecution of complaints of attorney misconduct before Hearing Panels, Chancery and Circuit Courts and the Supreme Court.



Alan D. Johnson



William C. Moody

Hearing Committee Members Appointed or Re-appointed in 2013

By Orders filed on March 18, 2013; April 23, 2013; May 1, 2013; and June 21, 2013, the Tennessee Supreme Court appointed or re-appointed Hearing Committee Members to assist with the disciplinary process. Pursuant to Tennessee Supreme Court Rule 9, Section 6, 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 by the Supreme Court for a three-year term that will expire on March 17, 2016:

- District I: S. Douglas Drinnon; C. Dwaine Evans; Charles T. Herndon, IV; J. Eddie Lauderback; William E. Phillips; Sandra S. Spivey; Steven W. Terry
- District II: G. Keith Alley; Donald A. Bosch; Kristi M. Davis; Joseph R. Ford; Carl P. McDonald; James G. O'Kane; Hugh B. Ward
- District III: Ginger W. Buchanan; Stephen T. Greer; Michael E. Jenne; Alison B. Martin; Alicia B. Oliver; Scott Morgan Shaw; Lynne D. Swafford
- District V: Waverly D. Crenshaw, Jr.; Robert J. Mendes; Matthew Potempa; Maria M. Salas; Matthew Sweeney; Gary R. Wilkinson
- District VI: David L. Allen; Patrick A. Flynn; Markley R. Gill; Charles W. Holt, Jr.; Larry A. Rocconi, Jr.
- District IX: Phyllis L. Aluko; Marjorie S. Baker; David L. Bearman; Vivian R. Donelson; R. Layne Holley; Hayden D. Lait; Lisa LaVigne; Max L. Ostrow; Richard W. Wackerfuss

2013 Ethics Workshop November 1, 2013

Registration will open September 16, 2013 for the Tennessee Board of Professional Responsibility's 2013 Ethics Workshop to be held November 1, 2013, at the Nashville School of Law. The workshop is approved for 6.5 hours of dual CLE credit. Featured speakers for the 2013 Workshop are Justice Cornelia A. Clark; Board of Professional Responsibility Chair, Lela Hollabaugh; Board Member, Judge Joe Riley; Chief Disciplinary Counsel, Sandy Garrett; Deputy Chief Disciplinary Counsel – Investigations and Ethics Counsel, James A. Vick; Deputy Chief Disciplinary Counsel – Litigation, Krisann Hodges; and other Board Disciplinary Counsel. The non-refundable registration fee is \$100.00. Attorneys interested in attending this year's workshop are encouraged to register early as historically the class fills up very quickly. For more information, contact Ann Jones at ajones@tbpr.org.

Board CLEs and Opinions

The Board is committed to assisting the legal profession by maintaining high standards of skill and conduct. Consistent with this mission statement, in calendar year 2012, Disciplinary Counsel presented fifty-six (56) continuing legal education courses sponsored by various organizations, including bar associations, Legal Aid and Legal Service Societies, and law schools. Also in 2012, Ethics Counsel James Vick and other Disciplinary Counsel provided ethical guidance to attorneys by responding to 2,081 ethics inquiries submitted by telephone, email, or regular mail. The Board of Professional Responsibility also issued two Formal Ethics Opinions in 2012. Formal Ethics Opinion 2012-F-91(c) addressed the extent lawyers admitted to practice in other jurisdictions may practice in Tennessee pending their Tennessee admission. Formal Ethics Opinion 2012-F-155 outlined how District Attorneys should comply with T.C.A. 40-32-101(a) regarding expungement of convictions.

To date in calendar year 2013, Disciplinary Counsel have presented eighteen (18) continuing legal education courses and responded to 1,152 requests for ethics advice. Additionally, on June 14, 2013, the Board issued Formal Ethics Opinion 2013-F-156 regarding non-judicial supervised communications between prosecutors and criminal defense attorneys alleged to have committed ineffective assistance of counsel. Opinion 2013-F-156 is included in this issue of *Board Notes*.

Requests for ethics advice and for continuing legal education presentations may be directed to Ethics Counsel James Vick at jvick@tbpr.org and/or (615) 361-7500, extension 212.

Formal Ethics Opinion 2013-F-156

On June 14, 2013, the Board of Professional Responsibility issued Formal Ethics Opinion 2013-F-156 regarding duties of criminal defense attorneys alleged to have rendered ineffective assistance of counsel outside a court-supervised setting. In summary, the opinion concludes the Tennessee Rules of Professional Conduct do not strictly prohibit a former defense attorney alleged to have rendered ineffective assistance of counsel from providing information to the prosecution prior to or outside an in-court proceeding. A copy of this Opinion is attached.

**BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**

FORMAL ETHICS OPINION 2013-F-156

May a criminal defense lawyer alleged by a former criminal client to have rendered ineffective assistance of counsel voluntarily provide information to the prosecutor defending the claim outside the court supervised setting?

QUESTION

A formal ethics opinion has been requested as follows:

Outside of the court-supervised setting contemplated by ABA 456, may a Tennessee lawyer accused of ineffective assistance of counsel disclose information about the former representation to the extent that the lawyer believes it is reasonably necessary to establish a defense to the accusation? Specifically, in response to prosecutors' inquiries, but before a court has ordered the lawyer to do so, may the lawyer disclose information about the representation of a former client that the lawyer believes is reasonably necessary to respond to a claim of ineffective assistance of counsel in the former client's petition for post-conviction relief?

OPINION

Exceptions to the confidentiality rules permit, but do not require, the former defense lawyer alleged to have rendered ineffective assistance of counsel to make limited voluntary disclosure to the prosecution of information relating to the representation of the former client outside the in-court proceeding without judicial supervision or approval. Indiscriminate, unlimited nor *carte blanche* disclosure of information relating to the former representation possessed by or in the file(s) of the former defense lawyer is not permitted. The disclosure must be limited only to information (1) which the lawyer reasonably believes necessary to respond to the specific claims or allegations in the petition as required by RPC 1.6(b)(5) or (2) which has become "generally known" as defined in RPC 1.9, cmt. [8a]. The lawyer must carefully evaluate and determine (1) whether it is reasonably necessary to make any disclosure and, if so, (2) narrow the disclosure only to what and how much information is reasonably necessary to meet the merits of the petition in light of the particular facts, the specific allegations of the petition and content of the lawyer's file(s). The disclosure should be no greater than reasonably necessary to accomplish the

exceptions purposes. If no disclosure is reasonably necessary, no disclosure can be made outside the in-court proceeding. Consideration must be given to whether and/or how the information disclosed could subsequently be used by the prosecution against the former client should the former client's claim be successful. Any disclosure which is not reasonably necessary outside the in-court proceeding must be revealed by the former defense lawyer only in the in-court proceeding consistent with RPC 1.6(c)(2)¹ where the disclosure will be subject to objection by the former client and to the supervision and rulings of the court.

DISCUSSION

A former client seeking relief from a criminal conviction on the basis of ineffective assistance of counsel must establish that the former defense lawyer's performance fell below an objective standard of reasonableness and that the performance, or lack thereof, prejudiced the former client. Strickland v. Washington, 466 U.S. 668, 686 (1984). The prosecution is placed in the position of having to defend against the allegations of ineffective assistance by the former defense lawyer to preserve the conviction. Both the prosecution and the former defense lawyer, therefore, have an interest in defending against the claim. The question arises when the prosecution seeks or requests the former defense lawyer to provide information, their file(s) or an informal interview prior to or outside the in-court judicial proceeding. While ABA Formal Op. 10-456 stated "...it is highly unusual" for a trial lawyer accused of providing ineffective representation to assist the prosecution in advance of testifying in a judicial proceeding, anecdotally, it does not appear unusual in Tennessee.

ABA Formal Ethics Opinion 10-456 (2010) has raised concerns regarding whether the former defense lawyer can voluntarily provide information relating to the former representation outside an in-court proceeding where there would be no judicial supervision and the former client could not raise objections and seek rulings of the court regarding the disclosure. The ABA opinion concluded that it is "highly unlikely" that it will be "justifiable" for the defense lawyer to provide information to the prosecution outside the in-court supervised proceeding, stating, in part, as follows:

Against this background, it is highly unlikely that a disclosure in response to a prosecution request, prior to a court-supervised response by way of testimony or otherwise, will be justifiable. It will be rare to confront circumstances where trial counsel can reasonably believe that

¹ RPC 1.6 (c)(2) provides:

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

such prior, ex parte disclosure, is necessary to respond to the allegations against the lawyer. . . . This concern can almost always be addressed by disclosing relevant client information in a setting subject to judicial supervision. . . . If the lawyer's evidence is required, the lawyer can provide evidence fully, subject to judicial determinations of relevance and privilege that provide a check on the lawyer disclosing more than is necessary to resolve the defendant's claim. . . . Thus it will be extremely difficult for defense counsel to conclude that there is a reasonable need in self defense to disclose client confidences to the prosecutor outside a court-supervised setting.

In answering this inquiry, the principles of (1) attorney-client privilege and (2) confidentiality must be considered. 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 statute² and common law. Confidentiality and its exceptions are governed by the 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

² TCA 23-3-105. Privileged Communications provides:

No attorney, solicitor or counselor shall be permitted, in giving testimony against a client or 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 afterward, to the person's injury.

disclose such information except as authorized or required by the Rules of Professional Conduct or other law. *See also* Scope.³

(emphasis added)

“It is universally accepted that a defendant who attacks his conviction on the basis of ineffective assistance thereby waives the attorney-client privilege for relevant communications.” ABA/BNA Lawyer’s Manual on Professional Conduct 55:705-706. See, *Bryan v. State*, 848 S.W.2d 72, 81-82 (Tenn. Crim. App. 1992).

Even though the former client waives the attorney-client privilege by alleging ineffective assistance of counsel and is denied the right to invoke the privilege to prohibit his former lawyer from disclosing privileged communications between the two in an in-court judicial or similar proceeding, that waiver does not free the former lawyer to voluntarily disclose confidential client information outside the in-court proceeding. Even if the lawyer could be compelled to disclose information in the in-court proceeding because the information does not fall within the attorney-client privilege or because the privilege is waived, the Rules of Professional Conduct (RPC) 1.6(a)⁴ and 1.9(c)⁵ prohibit a lawyer from revealing any information relating to the representation of a current and former client outside the in-court proceeding, unless the client or former client gives informed consent or as otherwise provided in the rules. The confidentiality rule applies not only to communications between the client and the lawyer, but “...to all information relating to the representation, whatever its source.” RPC 1.6, cmt. [3]. As provided in RPC 1.6, cmt. [2] “a fundamental principle in the client-lawyer relationship is that, in the absence of the client’s informed consent, the

³ Scope [22] of the Tennessee Rules of Professional Conduct provides:

Moreover, these Rules are not intended to govern or affect judicial application of either the attorney-client or work product privilege. Those privileges were developed to promote compliance with law and fairness in litigation....The fact that in exceptional situations the lawyer under the Rules has a limited discretion to disclose a client confidence does not vitiate the proposition that, as a general matter, the client has a reasonable expectation that information relating to the client will not be voluntarily disclosed and that disclosure of such information may be judicially compelled only in accordance with recognized exceptions to the attorney-client and work product privileges.

⁴ RPC 1.6(a) 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).

⁵ RPC 1.9(c) provides:

- (c) A lawyer who 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.

lawyer must not reveal information relating to the representation. . . . This contributes to the trust that is the hallmark of the client-lawyer relationship.”

Informed consent of the former client is not required if the information relating to the former representation (1) falls within one of the exceptions provided in RPC 1.6(b) or (c) or (2) has become “generally known” as defined in RPC 1.9, cmt. [8a]⁶. The question then becomes, are there exceptions to the confidentiality rules which would permit the former defense lawyer to reveal or disclose confidential information prior to and/or outside the in-court proceeding. Neither anger nor retaliation toward the former client for having alleged ineffective assistance of counsel justify the former lawyer to disclose such information outside the in-court proceeding.

RPC 1.6(b)(5)⁷ provides a permissive “self-defense” exception to confidentiality. The rule, in applicable part, provides, “[a] lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary . . . to respond to allegations in any proceeding concerning the lawyer’s representation of the client.” (emphasis added). The exception is, by its terms, limited and permits, but does not require, the former defense lawyer to disclose information relating to the former representation, but only to the “extent the lawyer reasonably believes necessary.” “Reasonably believes” is an objective standard which “denotes that the lawyer believes the matter in question and that the circumstances are such that a lawyer of reasonable prudence and competence would ascertain the matter in question.” RPC 1.0(j) The exception gives the lawyer discretion to determine not only whether to make a disclosure but, if so, what disclosure will be made. “A lawyer’s decision not to disclose as permitted by paragraph (b) does not violate this Rule.” RPC 1.6, cmt. [14] If a disclosure is made, the exception requires the lawyer to narrow or limit his disclosure only to information that the lawyer reasonably believes necessary to respond to the specific allegations of the petition, no greater than is necessary to accomplish of the exception’s purpose. See RPC 1.6, cmts. [13][14]. The exception

⁶ RPC 1.9 [8a] provides:

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 . . . 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.

⁷ RPC 1.6 (b)(5) provides:

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:...(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.

does not require that the disclosures be made in an in-court supervised proceeding or setting nor with the supervision or approval of the court.

ABA Formal Op. 10-456 stated concerns regarding voluntary disclosure by defense counsel to the prosecution outside the in-court setting, as follows:

Permitting disclosure of client confidential information outside court-supervised proceedings undermines important interests protected by the confidentiality rule. Because the extent of trial counsel's disclosure to the prosecution would be unsupervised by the court, there would be a risk that trial counsel would disclose information that could not ultimately be disclosed in the adjudicative proceeding. Disclosure of such information might prejudice the defendant in the event of a retrial. Further, allowing criminal defense lawyers voluntarily to assist law enforcement authorities by providing them with protected client information might potentially chill some future defendants from fully confiding in their lawyers.

Two states have considered ABA Formal Op. 10-456, declined to accept its conclusions and held that the self-defense exception to the confidentiality rule permits limited voluntary disclosure by defense counsel to the prosecution outside the in-court proceeding consistent with the limits of the exception. District of Columbia Op. 364 (1/13) ("we do not share the opinion's view that extrajudicial disclosure will not be justifiable."); North Carolina Formal Ethics Op. 16 (1/27/12) ("we decline to adopt ABA Formal Op. 10-456"). District of Columbia Op. 364 concluded that:

D.C. Rule 1.6(e)(3) permits a defense lawyer whose conduct has been placed in issue by a former client's ineffective assistance of counsel claim to make, without judicial approval or supervision, such disclosures of information protected by Rule 1.6 as are reasonably necessary to respond to the client's specific allegations about the lawyer's performance. Even so, a lawyer should reflect before making disclosures of protected information to prosecutors, courts, or others. . . . Nor does the limited "self-defense" exception to confidentiality in Rule 1.6(e)(3) open the door to unlimited disclosures to prosecutors, courts or others of protected information. The rule allows a lawyer to disclose protected information only to the extent "reasonably necessary" to respond to "specific allegations" by the former client.

North Carolina Formal Ethics Op. 16 concluded:

In reaching this conclusion, . . . both N.C. Gen. Stat. § 15A-1415(e) and Rule 1.6(b)(6) clearly admonish lawyers who choose to respond to claims of ineffective assistance of counsel, regardless of the setting, to respond in a manner that is narrowly tailored to address the specific facts underlying the specific claim. Simply put, the pursuit of an ineffective assistance of counsel claim by a former client does not give the lawyer *carte blanche* to disclose all information contained in a

former client's file. . . . Disclosure should be no greater than what is reasonably necessary to accomplish the purpose. Therefore, once a lawyer has determined that disclosure of confidential or privileged information is necessary to respond to a claim of ineffective assistance of counsel, and once the lawyer has decided to make that disclosure, the lawyer still has a duty to avoid the disclosure of information that is not responsive to the specific claim. In the same vein, a prosecutor requesting information from defense counsel in relation to an ineffective assistance of counsel claim must limit his request to information relevant to the defendant's specific allegations of ineffective assistance. *See* Rule 3.8; Rule 4.4.

Virginia Informal Ethics Op. 1859 (6/6/12) addressed the same question in the context of an allegation of ineffective assistance of counsel in a habeas corpus petition. The opinion applied its version of the exception to the confidentiality rule in finding that "it was unlikely that it is reasonably necessary for the lawyer to disclose confidential information when filed, when the court has not made a determination of whether the petition is legally and procedurally sufficient." The opinion discussed that if the same outcome can be reached by disclosing information in the in-court supervised proceeding, it is not reasonably necessary to reveal the information prior to and outside the in-court proceeding.

While the concerns expressed in ABA 10-456 are reasonable, it did not strictly prohibit the voluntarily providing information to the prosecution outside the in-court proceeding. The limitations imposed on such disclosures by the other opinions discussed herein are consistent with the Tennessee Rules of Professional Conduct and are sufficient to limit the disclosure of information relating to the former representation of the former client who has alleged ineffective assistance of counsel, consistent with RPC 1.6.

CONCLUSION

In conclusion, the Tennessee Rules of Professional Conduct do not strictly prohibit a former defense lawyer alleged to have rendered ineffective assistance of counsel from providing information to the prosecution prior to or outside an in-court proceeding. Exceptions to the confidentiality rules permit, but do not require, the former defense lawyer to make limited voluntary disclosures of information to the prosecution outside the in-court supervised proceeding. Neither RPC 1.6(b)(5) nor the “generally known” exception to RPC 1.9(c) require that the disclosure be made in an in-court proceeding or supervised or approved by the court for the former defense lawyer to reveal information which falls within those exceptions. Such disclosures may be made only as stated in the OPINION provided herein.

This 14th day of June, 2013.

ETHICS COMMITTEE:

Wade Davies

Eleanor Yoakum

Scott Reams

APPROVED AND ADOPTED BY THE BOARD

Tennessee Supreme Court Rule 9 -- Update

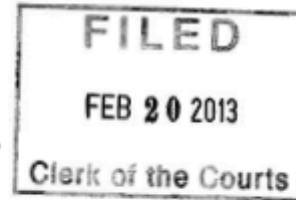
The Tennessee Supreme Court determined that Supreme Court Rule 9, which governs lawyer discipline, needed substantial restructuring and revision. Accordingly, on August 8, 2012, the Supreme Court entered an Order soliciting comments on a proposed revised Rule 9. The Tennessee Lawyers Assistance Program (TLAP); the Board of Professional Responsibility; the Tennessee Bar Association; Assistant Attorney General Talmage Watts; and the Knoxville Bar Association filed comments to the Supreme Court's proposed Rule 9.

After consideration of filed comments, on April 18, 2013, the Supreme Court entered an Order proposing additional revisions to Tennessee Supreme Court Rule 9 and allowing comments to be filed until June 14, 2013. The Board of Professional Responsibility and others filed Comments to the Supreme Court's proposed Rule 9. The Board anticipates the Court's issuance of the revised Rule 9 in the coming months. Disciplinary Counsel will be offering continuing legal education on the new Rule 9 once it is issued. To schedule a continuing legal education for your local bar association or group, please contact Ethics Counsel James Vick at jvick@tbpr.org or (615) 361-7500, ext. 212.

Tennessee Supreme Court Rule 43: Interest on Lawyers' Trust Accounts (IOLTA)

On February 20, 2013, the Supreme Court entered an Order *nunc pro tunc* to January 1, 2012 amending Sections 14, 15 and 16 of IOLTA Rule 43, making its timelines consistent with the timelines in annual birth month in Supreme Court Rule 9. A copy of the Court's Amended Order is included with this issue of *Board Notes*.

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE



IN RE: PROPOSED AMENDMENT TO SUPREME COURT RULE 43

No. M2013-00391-SC-RL1-RL - Filed: February 20, 2013

AMENDED ORDER

On February 7, 2013, the Board of Professional Responsibility ("BPR") filed a petition asking the Court to amend Rule 43, Sections 15 and 16, of the Rules of the Tennessee Supreme Court, *nunc pro tunc* to January 1, 2012, to make the timelines in Rule 43 consistent with Rule 9 of the Rules of the Tennessee Supreme Court. On February 15, 2013, the Court entered an Order amending Rule 43, Sections 14, 15, and 16, of the Rules of the Tennessee Supreme Court. Due to typographical errors in the content of the Appendix to the Court's original Order, the Court now enters this Amended Order and Appendix.

After due consideration, the Court hereby amends Rule 43, Sections 14, 15, and 16, of the Rules of the Tennessee Supreme Court by repealing the existing Sections in their entirety and replacing them with the new Sections set out in the attached Appendix to this Amended Order. This Amended Order is entered *nunc pro tunc* to January 1, 2012, and the effective date of these amendments is January 1, 2012.

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

IT IS SO ORDERED.

PER CURIAM

APPENDIX

Tenn. Sup. Ct. R. 43 Interest on Lawyers' Trust Accounts

Section 14. Unless exempt under this Section 14, every lawyer admitted to practice in Tennessee shall certify in the lawyer's annual registration statement required by Tennessee Supreme Court Rule 9, as a condition of licensure, that all funds in the lawyer's possession that are required pursuant to RPC 1.1 5(b) to be held in an IOLTA account are, in fact, so held and shall list the name(s) of the financial institution(s) and account number(s) where such funds are deposited. This certification shall be made on a form provided by the Board of Professional Responsibility and shall be submitted by the lawyer within the time period set forth in Rule 9 for the annual registration statement. A lawyer licensed in Tennessee is exempt, and shall so certify on the lawyer's annual registration statement, if:

- (a) the lawyer is not engaged in the private practice of law in the State of Tennessee;
- (b) the lawyer serves as a Judge, Attorney General, Public Defender, U.S. Attorney, District Attorney, in-house counsel, teacher of law, on active duty in the armed forces or employed by state, local or federal government and not otherwise engaged in the private practice of law;
- (c) the lawyer does not have an office in Tennessee; however, for purposes of this Rule, a lawyer who practices, as a principal, employee, of counsel, or in any other capacity, with a firm that has an office in Tennessee shall be deemed for purposes of this Rule to have an office in Tennessee if the lawyer utilizes one or more offices of the firm located in Tennessee more than the lawyer utilizes one or more offices of the firm located in any other single state;
- (d) under regulations adopted by the Board of Professional Responsibility under criteria established upon recommendation of the Tennessee Bar Foundation, the lawyer or law firm is exempted from maintaining an IOLTA account because such an IOLTA account has not and cannot reasonably be expected to produce interest or dividends in excess of allowable reasonable fees; or
- (e) the lawyer is exempted by the Tennessee Bar Foundation from the application of this Rule following a written request for exemption by the lawyer and determination by the Tennessee Bar Foundation that no eligible financial institution (as defined and determined in accordance with this Rule 43) is located within reasonable proximity of that lawyer.

Section 15. As a part of the annual birth month registration process, as provided in Supreme Court Rule 9, the Board of Professional Responsibility shall receive and review a lawyer's certification required by Section 14. In the event a lawyer fails to submit the required certification or should the certification be facially defective, such noncompliance with this Rule will result in the following action:

(a) On or before the 15th day following the date on which the certification required by Section 14 is due, the Board of Professional Responsibility shall serve such lawyer a Notice of Noncompliance requiring the lawyer to remedy any deficiencies identified in the Notice within 30 days following the mailing of the Notice. Each lawyer to whom a Notice of Noncompliance is issued shall pay to the Board of Professional Responsibility a Noncompliance Fee of One Hundred Dollars (\$100.00). Such Noncompliance Fee shall be paid on or before the 30th day following the mailing of the Notice, unless the lawyer shows to the satisfaction of the Chief Disciplinary Counsel that the Notice of Noncompliance was erroneously issued, in which case no such fee shall be due.

(b) On or before the 30th day following the mailing of the Notice, each lawyer on whom a Notice of Noncompliance is served also shall submit to the Board of Professional Responsibility the lawyer's completed certification. In the event a lawyer fails to timely submit the lawyer certification required by this Rule and payment of the \$100.00 Noncompliance Fee by the 30th day following the mailing of the Notice, the lawyer shall pay to the Board of Professional Responsibility, in addition to the Noncompliance Fee, a Delinquent Compliance Fee of Two Hundred Dollars (\$200.00).

(c) On or before the 45th day following the mailing of each month's Notices of Noncompliance, the Board of Professional Responsibility shall:

- (i) prepare a proposed Suspension Order listing all lawyers who were issued Notices of Noncompliance for that month's birth month registration cycle and who failed to remedy timely their deficiencies;

- (ii) submit the proposed Suspension Order to the Supreme Court; and

- (iii) serve a copy of the proposed Suspension Order on each lawyer named in the Order.

The Supreme Court will review the proposed Suspension Order and enter such order as the Court may deem appropriate suspending the law license of each lawyer deemed by the Court to be not in compliance with the requirements of this Rule.

(d) Each lawyer named in the Suspension Order entered by the Court shall submit to the Board of Professional Responsibility the lawyer certification required by the Rule and shall pay to the Board of Professional Responsibility, in addition to the Noncompliance Fee and the Delinquent Compliance Fee, a Five Hundred Dollar (\$500.00) Suspension Fee as a condition of reactivation of his or her law license. Submission of the lawyer certification and payment of all fees imposed by this section shall be a requirement for compliance with this Rule and for reactivation of a license. The Board of Professional Responsibility shall not reactivate the license of any lawyer whose license is suspended pursuant to this Rule until the Chief Disciplinary Counsel certifies compliance with the requirements of this Rule.

(e) Upon receipt of the lawyer's certification required by this Rule and payment of all fees

imposed, the Board of Professional Responsibility shall forward the lawyer's completed certification to the Tennessee Bar Foundation.

(f) All notices required or permitted to be served on a lawyer under the provisions of this Rule shall be served by United States Postal Service Certified Mail, return receipt requested, at the preferred address shown in the most recent registration statement filed by the lawyer pursuant to Supreme Court Rule 9 and shall be deemed to have been served as of the postmark date shown on the Certified Mail Receipt.

Section 16. Upon its receipt of a lawyer's certification under Section 14 of this Rule, the Tennessee Bar Foundation shall report monthly to the Board of Professional Responsibility any evidence of the lawyer's noncompliance known by the Tennessee Bar Foundation. Noncompliance with this Rule will result in the following action:

(a) On or before the 15th day following the date the Tennessee Bar Foundation provides its report to the Board of Professional Responsibility, the Board of Professional Responsibility shall serve each such lawyer a Notice of Noncompliance requiring the lawyer to remedy any deficiencies identified in the Notice within 30 days. Each lawyer to whom a Notice of Noncompliance is issued shall pay to the Board of Professional Responsibility a Noncompliance Fee of One Hundred Dollars (\$100.00). Such Noncompliance Fee shall be paid on or before the 30th day following the mailing of the Notice, unless the lawyer shows to the satisfaction of the Chief Disciplinary Counsel that the Notice of Noncompliance was erroneously issued, in which case no such fee shall be due.

(b) On or before the 30th day following the mailing of the Notice, each lawyer on whom a Notice of Noncompliance is served also shall file with the Board of Professional Responsibility an affidavit, in the form specified by the Board of Professional Responsibility, attesting that any identified deficiencies have been remedied. In the event a lawyer fails to timely remedy any such deficiency or fails to timely file such affidavit, the lawyer shall pay to the Board of Professional Responsibility, in addition to the Noncompliance Fee, a Delinquent Compliance Fee of Two Hundred Dollars (\$200.00).

(c) On or before the 45th day following the mailing of each month's Notices of Noncompliance, the Board of Professional Responsibility shall:

(i) prepare a proposed Suspension Order listing all lawyers who were issued Notices of Noncompliance for that month's birth month registration cycle and who failed to remedy timely their deficiencies;

(ii) submit the proposed Suspension Order to the Supreme Court; and

(iii) serve a copy of the proposed Suspension Order on each lawyer named in the Order.

(d) The Supreme Court will review the proposed Suspension Order and enter such order as the Court may deem appropriate suspending the law license of each lawyer deemed by the Court to be not in compliance with the requirements of this Rule.

(e) Each lawyer named in the Suspension Order entered by the Court shall file with the Board of Professional Responsibility an affidavit in the form specified by the Board of Professional Responsibility, attesting that any identified deficiencies have been remedied and shall pay to the Board of Professional Responsibility, in addition to the Noncompliance Fee and the Delinquent Compliance Fee, a Five Hundred Dollar (\$500.00) Suspension Fee as a condition of reactivation of his or her law license. Payment of all fees imposed by this section shall be a requirement for compliance with this Rule and for reactivation of a license. The Board of Professional Responsibility shall not reactivate the license of any lawyer whose license is suspended pursuant to this Rule until the Chief Disciplinary Counsel certifies compliance with the requirements of this Rule.

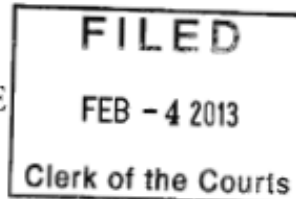
(f) All notices required or permitted to be served on a lawyer under the provisions of this Rule shall be served by United States Postal Service Certified Mail, return receipt requested, at the preferred address shown in the most recent registration statement filed by the lawyer pursuant to Supreme Court Rule 9 and shall be deemed to have been served as of the postmark date shown on the Certified Mail Receipt.

Tennessee Supreme Court Rule 19:

Appearance Pro Hac Vice

On February 4, 2013, the Supreme Court entered an Order amending Rule 19 to apply to lawyers not licensed in Tennessee but appearing *pro hac vice* in contested case proceedings before a department, commission, board or agency. A copy of the Court's order is included with this issue of *Board Notes*.

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE



IN RE: PROPOSED AMENDMENT TO
SUPREME COURT RULE 19

No. M2012-01587-SC-RL1-RL - Filed: February 4, 2013

ORDER

On July 31, 2012, the Board of Professional Responsibility and the Judges of the Administrative Procedures Division of the office of the Tennessee Secretary of State jointly filed a petition asking the Court to amend Tenn. Sup. Ct. R. 19 "to require lawyers residing and licensed in states other than Tennessee, who appear as counsel of record before an administrative law judge, hearing officer or other state entity having authority to resolve controversies, to be admitted *pro hac vice*." The Petitioners attached to the petition an exhibit setting out their proposed revision of Tenn. Sup. Ct. R. 19.

On October 16, 2012, the Court filed an order publishing a modified version of the proposed revision of Tenn. Sup. Ct. R. 19 and soliciting public comments on the modified proposal. The public comment period expired on December 17, 2012. The sole comment received by the Court was filed by the Tennessee Bar Association, which stated that it "strongly supports" the adoption of the modified revision of Tenn. Sup. Ct. R. 19.

After due consideration of the petition and the written comment submitted by the Tennessee Bar Association, the Court hereby repeals the current Tenn. Sup. Ct. R. 19 in its entirety and replaces it with the revised rule set out in the appendix to this order, effective upon the filing of this order.

It is so ORDERED.

PER CURIAM

APPENDIX

Revised Tenn. Sup. Ct. R. 19, effective February 4, 2013

A lawyer not licensed to practice law in Tennessee, licensed in another United States jurisdiction, and who resides outside Tennessee shall be permitted to appear pro hac vice, file pleadings, motions, briefs, and other papers and to fully participate in a particular proceeding before a trial or appellate court of Tennessee, or in a contested case proceeding before a state department, commission, board, or agency (hereinafter “agency”), if the lawyer complies with the following conditions:

(a) A lawyer not licensed to practice law in Tennessee and who resides outside Tennessee is eligible for admission pro hac vice in a particular proceeding pending before a court or agency of the State of Tennessee:

(1) if the lawyer is licensed, in good standing, and admitted to practice before the court of last resort in another state or territory of the United States or the District of Columbia in which the lawyer maintains a residence or an office for the practice of law;

(2) if the lawyer is in good standing in all other jurisdictions in which the lawyer is licensed to practice law; and

(3) if the lawyer has been retained by a client to appear in the proceeding pending before that court or agency.

(b) In its discretion, a state court or agency may, in a particular proceeding pending before it, deny a lawyer’s motion to appear pro hac vice only where:

(1) the applicant’s conduct as a lawyer, including conduct in proceedings in Tennessee in which the applicant has appeared pro hac vice and conduct in other jurisdictions in which the lawyer has practiced, raises reasonable doubt that the lawyer will comply with the Tennessee Rules of Professional Conduct and other rules and law governing the conduct of lawyers who appear before the courts and agencies of the State of Tennessee; or

(2) the applicant has engaged in such frequent appearances as to constitute regular practice in this state.

In any proceeding in which a state court or agency denies a lawyer’s motion to appear pro hac vice, the court or agency shall set forth findings of fact and conclusions of law that constitute the grounds for its action. In addition, the court or agency shall send a copy of the order denying the motion to the Board of Professional Responsibility of the Supreme Court of Tennessee.

(c) A lawyer admitted pro hac vice under this Rule may not continue to so appear unless all requirements of the Rule continue to be met. Admission granted under this Rule may be revoked by the court or agency granting such admission upon appropriate notice to the lawyer and upon an affirmative finding by the court or agency that the lawyer has ceased to satisfy the requirements of this Rule. In any proceeding in which a court or agency revokes an admission pro hac vice, the court or agency shall set forth findings of fact and conclusions of law that constitute the grounds for its action; in addition, the court or agency shall send a copy of the order revoking the admission pro hac vice to the Board of Professional Responsibility of the Supreme Court of Tennessee.

(d) A lawyer seeking admission under this Rule shall file a motion in the court or agency before which the lawyer seeks to appear not later than the first occasion on which the lawyer files any pleading or paper with the court or agency or otherwise personally appears. In support of the motion, the lawyer shall file with the court or agency a certificate of good standing from the court of last resort of the licensing jurisdiction in which the lawyer principally practices and an affidavit by the lawyer containing the following information:

(1) the lawyer's full name, residence address, office address, any registration or identifying number associated with the lawyer's licensure in each jurisdiction in which the lawyer is licensed, the full name or style of the case in which the lawyer seeks to appear, and the name of the client or clients the lawyer seeks to represent;

(2) the jurisdictions in which the lawyer is or has been licensed to practice law, with dates of admission, and any other courts before which the lawyer has been or is generally admitted to practice (including, for example, membership in the bar of a United States District Court), with dates of admission, and a statement by the lawyer that the lawyer is in good standing in all other jurisdictions in which the lawyer is licensed to practice law;

(3) the full name or style of each case in which the lawyer has been admitted or sought to be admitted pro hac vice in any court or agency of the State of Tennessee within the preceding three years, the date of any such admission or the date of any such motion that was filed but not granted, and the status of any such case in which the lawyer was admitted;

(4) a statement concerning whether the lawyer has been denied admission pro hac vice or has had an admission pro hac vice revoked by any court in any jurisdiction and, if so, a full description of the circumstances, including the full name or style of the case;

(5) a statement concerning whether the lawyer has ever been disciplined or sanctioned by the Board of Professional Responsibility of the Supreme Court of Tennessee, by any similar lawyer disciplinary agency in any jurisdiction, or by any similar lawyer disciplinary authority (including, for example, any United States District Court), and, if so, a full description of the circumstances, including the full name or style of the matter;

(6) a statement concerning whether any disciplinary action or investigation concerning the lawyer's conduct is pending before the Board of Professional Responsibility of the Supreme

Court of Tennessee, before any similar lawyer disciplinary agency in any jurisdiction, or before any similar lawyer disciplinary authority (including, for example, any United States District Court), and, if so, a full description of the circumstances, including the full name or style of the matter;

(7) a statement that the lawyer is familiar with the Tennessee Rules of Professional Conduct and the rules governing the proceedings of the court or agency before which the lawyer seeks to practice;

(8) a statement by the lawyer that the lawyer consents to the disciplinary jurisdiction of the Board of Professional Responsibility of the Supreme Court of Tennessee and the courts or agencies of Tennessee in any matter arising out of the lawyer's conduct in the proceeding and that the lawyer agrees to be bound by the Tennessee Rules of Professional Conduct and any other rules of conduct applicable to lawyers generally admitted in Tennessee;

(9) the name, address, telephone number, and Board of Professional Responsibility's registration number of a lawyer with whom the lawyer is associated in accordance with Section (g) of this Rule;

(10) a statement that the lawyer has paid all fees required by this Rule in connection with the motion for admission;

(11) at the option of the lawyer, any other information supporting the lawyer's admission; and

(12) a statement indicating service of the motion and all associated papers upon all counsel of record in the proceeding and upon the Board of Professional Responsibility of the Supreme Court of Tennessee.

(e) A lawyer who seeks or is granted admission under this Rule shall be subject to the disciplinary jurisdiction of the Board of Professional Responsibility of the Supreme Court of Tennessee and the courts and agencies of Tennessee in any matter arising out of the lawyer's conduct in the proceeding.

(f) At or before the time the lawyer files a motion for admission and supporting papers under this Rule with the court or agency before which the lawyer seeks admission, the lawyer shall file with the Board of Professional Responsibility of the Supreme Court of Tennessee a copy of the motion and supporting papers filed under this Rule and shall pay to the Board a fee in an amount the total of which equals the fees required of Tennessee lawyers under Tennessee Supreme Court Rule 9, Section 20.1, Tennessee Supreme Court Rule 25, Section 2.01, and Tennessee Supreme Court Rule 33.01(C). This fee shall be used for purposes set forth in these respective Rules, and the Board of Professional Responsibility shall collect and remit the appropriate portion of any such fee to the Tennessee Lawyers' Fund for Client Protection and the Tennessee Lawyers Assistance Program. No applicant for admission under this Rule shall be required to pay more than one total fee in any one calendar year. All fees under this Rule shall be waived if the lawyer will not charge an attorney's fee in the

proceeding; in such cases, however, the lawyer still must comply with the filing requirement of this paragraph.

(g) A motion for admission pro hac vice under this Rule shall not be granted unless the lawyer is associated in the proceeding with a lawyer licensed to practice law in Tennessee, in good standing, admitted to practice before the Supreme Court of Tennessee, and who resides in and maintains an office in Tennessee. Both the Tennessee lawyer and the lawyer appearing pro hac vice shall sign all pleadings, motions, and other papers filed or served in the proceeding; the Tennessee lawyer, or another Tennessee lawyer acting on behalf of the first Tennessee lawyer at his or her request, shall personally appear for all court or agency proceedings, including all proceedings conducted pursuant to the authority of the court or agency, unless excused by the court or agency. The court or agency may establish conditions relating to the participation of associated counsel in an order granting admission under this Rule or otherwise.

(h) A trial or intermediate appellate court's denial of a motion to appear pro hac vice pursuant to paragraph (b), or a trial or intermediate appellate court's revocation of admission pro hac vice pursuant to paragraph (c), may be appealed pursuant to Rule 10, Tenn. R. App. P. An agency's denial of a motion to appear pro hac vice pursuant to paragraph (b), or an agency's revocation of admission pro hac vice pursuant to paragraph (c), may be appealed by filing a petition for judicial review pursuant to Tenn. Code Ann. § 4-5-322. A lawyer whose admission pro hac vice is denied or revoked by the Supreme Court of Tennessee may seek a rehearing on that issue pursuant to Rule 39, Tenn. R. App. P.

Disciplinary Actions

- (January 2013 – June 2013)

DISBARMENTS

James F. Taylor (Hawkins County)

On January 7, 2013, Mr. Taylor was disbarred from the practice of law and ordered to pay restitution prior to any reinstatement. Mr. Taylor submitted a Conditional Guilty Plea to Petitions for Discipline charging Mr. Taylor with misappropriation of client funds, foundation funds and filing false claims with the Administrative Office of the Courts. Mr. Taylor's Guilty Plea was approved by a Hearing Panel, the Board of Professional Responsibility and the Supreme Court of Tennessee. Mr. Taylor's actions violated Rules of Professional Conduct 1.1 (Competence); 1.2 (Scope of Representation); 1.3 (Diligence); 1.4 (Communication); 1.5 (Fees); 1.8 (Conflict of Interest); 1.12 (Former Judge); 1.15 (Safekeeping Property and Funds); 8.1 (Disciplinary Matters); 8.2 (Judicial and Legal Officials); and 8.4 (Misconduct).

David J. Johnson (Shelby County)

On April 22, 2013, the Tennessee Supreme Court disbarred Mr. Johnson retroactively to his previous disbarment effective November 25, 2011. Mr. Johnson consented to disbarment because he could not successfully defend himself on charges filed against him with the Board alleging that he had been convicted of the offense of Wire Fraud, in violation of 18 U.S.C. § 1343. Mr. Johnson's actions violated Rules of Professional Conduct 8.4 (Misconduct).

William Thomas Winchester (Shelby County)

On May 21, 2013, the Tennessee Supreme Court entered an Order of Enforcement disbaring Mr. Winchester, formerly of Memphis, Tennessee, from the practice of law. Mr. Winchester is also ordered to pay restitution to five (5) former clients. Since August 5, 2011, Mr. Winchester has been serving a two (2) year suspension from the practice of law in another case of misconduct. On December 3, 2010, Mr. Winchester was suspended for failure to pay his professional privilege tax. On August 31, 2011, Mr. Winchester was suspended for failing to comply with continuing legal education requirements. To date, Mr. Winchester has not been reinstated from these suspensions.

The Board of Professional Responsibility filed a Petition for Discipline on February 25, 2010 against Mr. Winchester based upon ten (10) complaints of ethical misconduct alleging lack of diligence, lack of communication, incompetent representation, misrepresentations to clients, misrepresentations made to other lawyers, and misrepresentations made to the Board. Mr. Winchester also abandoned his law practice. A Hearing Panel determined that Mr. Winchester should be disbarred for his misconduct. Mr. Winchester's appeal of the Hearing Panel Judgment to the Chancery Court for Shelby County was dismissed.

DISBARMENTS (Continued)

Mr. Winchester's ethical misconduct violates Rules of Professional Conduct 1.3 (Diligence); 1.4 (Communication); 1.5 (Fees); 1.15 (Safekeeping Property); 1.16 (Declining and Terminating Representation); 8.1 (Bar Admission and Disciplinary Matters); and 8.4 (Misconduct).

SUSPENSIONS

William Alan Alder (Davidson County)

On December 28, 2012, Mr. Alder was suspended from the practice of law by the Supreme Court of Tennessee for a period of one year. Mr. Alder was also ordered to pay restitution to a former client and undergo an assessment with the Tennessee Lawyers' Assistance Program as a condition of reinstatement. Mr. Alder improperly used his trust account for personal use, failed to provide agreed legal services to clients, was not diligent in handling client matters and failed to adequately communicate with clients. Mr. Alder's actions violated Rules of Professional Conduct 1.1 (Competence); 1.3 (Diligence); 1.4 (Communication); 1.15 (Safekeeping Property); 1.16 (Terminating Representation); 8.1(b) (Failure to Respond to Disciplinary Authority); and 8.4 (a), (c) and (d) (Misconduct).

Jerry Kennon (Davidson County)

On January 18, 2013, Mr. Kennon was suspended from the practice of law by Order of the Supreme Court of Tennessee for eighteen months, consisting of thirty (30) days active suspension and the remainder served on probation. Mr. Kennon was also ordered to make restitution, engage a practice monitor during his period of probation and comply with the Tennessee Lawyers' Assistance Program. On August 31, 2011 Mr. Kennon was suspended for failure to complete CLE credits. During that suspension, Mr. Kennon continued to represent clients and file pleadings. Mr. Kennon also failed to properly prepare trust documents, failed to timely file a lawsuit and failed to return client documents. Mr. Kennon's actions violated Rules of Professional Conduct 1.1 (Competence); 1.3 (Diligence); 1.4 (Communication); 1.5 (a) and (c) (Fees); 1.16 (d) (Declining and Terminating Representation); 5.5 (a) (Unauthorized Practice of Law); and 8.4 (a), (d) and (g) (Misconduct).

Vanessa Lynn Lemons (Knox County)

On January 25, 2013, Ms. Lemons was suspended from the practice of Law by Order of the Supreme Court of Tennessee for four (4) years and indefinitely thereafter until she provides proof of completion of conditions including restitution to former clients, evaluation by Tennessee Lawyers' Assistance Program (TLAP) and compliance with the terms and conditions of any monitoring agreement determined by TLAP to be appropriate. Ms. Lemons undertook representation of five (5) separate clients and thereafter failed to communicate with her clients, neglected their legal matters and failed to properly terminate her representation. Ms. Lemons also accepted a fee and failed to perform services, refused or failed to refund the retainer to her client and misrepresented to one client that she had paid the client's court costs. When confronted with these allegations, Ms. Lemons failed to respond to the disciplinary complaints or to the Board's requests for information. Ms. Lemons' actions violated Rules of Professional Conduct 1.3 (Diligence); 1.4 (Communication); 1.5 (Fees); 1.16 (Declining and Terminating Representation); 8.1 (Bar Admission and Disciplinary Matters) and 8.4 (Misconduct).

SUSPENSIONS (Continued)

Michael R. Tucker (Shelby County)

On February 4, 2013 Mr. Tucker was suspended from the practice of law by Order of the Supreme Court of Tennessee for five (5) years. Mr. Tucker was ordered to pay restitution to his client, or to the Lawyers' Fund for Client Protection, if appropriate, in the amount of \$66,667.67. Mr. Tucker entered into a Conditional Guilty Plea admitting to his failure to disburse settlement funds to a client, converting the client's funds for his personal use, making misrepresentations to the client about repayment of the money and failing to communicate with the client in a reasonable manner. Mr. Tucker's actions violated Rules of Professional Conduct 1.4 (a) (Communication); 1.5 (Fees); 4.1 (a) (Truthfulness in Statements to Others); and 8.4 (a), (c) and (d) (Misconduct).

Philip K. Lyon (Davidson County)

On March 22, 2013, the Supreme Court of Tennessee suspended Mr. Lyon's law license for a period of one (1) year. Mr. Lyon was also ordered to enter into a secured promissory note payable to a former client in the amount of \$42,500 and make full restitution to the former client as a condition precedent to reinstatement. On May 9, 2012, the Board filed a Petition for Discipline based upon Mr. Lyon's self-report that he was improperly dealing with funds in his client trust account. Mr. Lyon admitted that he failed to protect client property and that he used funds for his personal benefit. Mr. Lyon's actions violated Rules of Professional Conduct 1.15 (b) and (d) (Safekeeping Property and Funds) and 8.4 (a), (b) and (c) (Misconduct).

Martin Lynn Howie (Dyer County)

On April 5, 2013, Mr. Howie was suspended by Order of the Tennessee Supreme Court for a total period of three (3) years with one (1) year served as an active suspension, retroactive to February 8, 2011. The remaining two (2) years of the suspension shall be probated subject to several conditions. The conditions include restitution to former clients, participation with the Tennessee Lawyer's Assistance Program, and a practice monitor.

The Board of Professional Responsibility filed a Petition for Discipline against Mr. Howie based upon eleven (11) client complaints alleging that Mr. Howie accepted fees and then neglected clients' cases and that he failed to communicate with clients and the Board. In addition to the client complaints, another complaint was filed for his failure to provide the Court with advance notice before the day of trial in a criminal case of his suspension for noncompliance with continuing legal education requirements.

Mr. Howie's actions violate the following Rule(s) of Professional Conduct: 1.1, (Competence); 1.3, (Diligence); 1.4 (Communication); 1.16, (Declining and Terminating Representation); 3.2, (Expediting Litigation); 8.1, (Bar Admission and Disciplinary Matters); and 8.4, (Misconduct).

SUSPENSIONS (Continued)

Derek Alan Artrip (Rutherford County)

On May 9, 2013, Mr. Artrip, formerly of Murfreesboro, Tennessee, was suspended from the practice of law for one (1) year by the Tennessee Supreme Court. He was also ordered to participate with the Tennessee Lawyer's Assistance Program. Further, Mr. Artrip is required to engage a practice monitor for one (1) year upon reinstatement. On July 14, 2012, Mr. Artrip was temporarily suspended for failure to respond to disciplinary complaints. Although he sought reinstatement, Mr. Artrip failed to meet the conditions of reinstatement and, therefore, he has remained suspended since that time.

On August 15, 2012, a Petition for Discipline was filed against Mr. Artrip containing three (3) complaints of disciplinary misconduct. A Hearing Panel determined that Mr. Artrip failed to exercise reasonable diligence and he failed to adequately communicate with his clients. In one case, the client terminated representation due to lack of communication. Mr. Artrip never took steps to withdraw from the representation until the Board complaint was initiated, but he has now withdrawn. Mr. Artrip failed to submit a final order to the court in an adoption matter despite promising to do so. In all three cases, Mr. Artrip failed to act with appropriate diligence in the representation of these clients.

Mr. Artrip's actions violate the following Rules of Professional Conduct: 1.1, (Competence); 1.3 (Diligence); 1.4, (Communication); 1.16(d), (Declining and Terminating Representation); 3.2 (Expediting Litigation); 8.1(b), (Bar Admission and Disciplinary Matters); and 8.4(a) and (d), (Misconduct).

James Strong Powell (Hardin County)

On May 9, 2013, Mr. Powell was suspended for two years. Additionally, Mr. Powell was ordered to pay restitution to a former client in the amount of \$750.00.

Mr. Powell caused several overdrafts to occur to his client trust account and neglected the representation of a former client, causing the former client's case to be dismissed for failure to prosecute. Mr. Powell also failed to respond to the Board concerning complaints that had been filed against him.

Mr. Powell's actions violated Rules of Professional Conduct 1.3 (Diligence); 1.4 (Communication); 1.16 (d) (Declining and Terminating Representation); 3.2 (Expediting Litigation); 8.1 (Bar Admission and Disciplinary Matters) and 8.4 (a), (c) and (d) (Misconduct).

Karen Wilson Tyler (Shelby County)

On June 19, 2013, Ms. Tyler was suspended by Order of the Tennessee Supreme Court for one year, retroactive to April 5, 2012, when she was temporarily suspended for failure to respond to a complaint. She must also pay the Board of Professional Responsibility's costs in this matter.

On September 7, 2012, the Board filed a Petition for Discipline alleging that Ms. Tyler failed to competently and diligently handle the administration of an estate, for making a statement against the integrity of a Chancellor, and upon her failure to properly respond to a request for information from the Board.

SUSPENSIONS (Continued)

Ms. Tyler's actions violated the following Rules of Professional Conduct: 1.1, (Competence); 1.3, (Diligence); 1.4(b) (Communication); 1.16(c), (Declining and Terminating Representation); 3.2, (Expediting Litigation); 3.4(c), (Fairness to Opposing Party and Counsel); 8.1(b), (Bar Admission and Disciplinary Matters); 8.2(a)(1), (Judicial and Legal Officials); and 8.4(d), (Misconduct).

James Phillips Bradley (Humphreys County)

On June 25, 2013, Mr. Bradley was suspended from the practice of law by Order of the Tennessee Supreme Court for thirty (30) days. In addition, Mr. Bradley must attend an Ethics Workshop Seminar and pay the Board's costs and expenses and court costs within ninety days of the entry of the Order of Enforcement.

A Petition for Discipline was filed on February 15, 2013, alleging that Mr. Bradley signed his client's name to a Petition in a child-endangerment matter and notarized the signature as that of the client. Thereafter, Mr. Bradley filed the Petition with the trial court and obtained an ex parte custody order. The trial court dismissed the Petition upon learning that Mr. Bradley had signed the client's name. Mr. Bradley self-reported his conduct, cooperated with the Board and entered into a Conditional Guilty Plea admitting to the misconduct.

Mr. Bradley's actions violated Rules of Professional Conduct 3.3 (Candor toward Tribunal), 3.4 (Fairness to Opposing Party and Counsel) and 8.4 (Misconduct).

TEMPORARY/SUMMARY SUSPENSIONS

Robert Lawson Cheek, Jr. (Knox County)

On December 28, 2012, the Supreme Court of Tennessee issued an Order summarily and temporarily suspending Mr. Cheek, Jr. from the practice of law upon finding that Mr. Cheek has misappropriated funds for his own use, abandoned his law practice and poses a threat of substantial harm to the public. Mr. Cheek is precluded from accepting any new cases and he must cease representing existing clients by January 27, 2013. After January 27, 2013, Mr. Cheek shall not use any indicia of lawyer, legal assistant or law clerk nor maintain a presence where the practice of law is conducted. Mr. Cheek must notify all clients being represented in pending matters, as well as co-counsel and opposing counsel of the Supreme Court's Order suspending his law license.

Angela Joy Hopson (Madison County)

On January 30, 2013, Ms. Hopson was suspended from the practice of law by Order of the Supreme Court of Tennessee for one (1) year, however, the entire suspension is probated contingent that Ms. Hopson must engage a practice monitor for the period of her probation and she must comply with the Tennessee Lawyers' Assistance Program. The Board filed a Petition for Discipline based upon two (2) complaints of misconduct. In the first complaint, Ms. Hopson failed to properly communicate with her client, a defendant in a post-conviction trial and appeal. The second complaint was based upon an Order by the Court of Criminal Appeals finding Ms. Hopson in contempt for her failure to file a timely brief and to follow the prior orders of the court regarding the filing of a status report. Ms. Hopson's actions violated 1.1 (Competence); 1.3 (Diligence); 1.4 (Communication); 3.2

TEMPORARY/SUMMARY SUSPENSIONS (Continued)

(Expediting Litigation); 8.1 (b) (Bar Admission and Disciplinary Matters) and 8.4 (a), (b) and (d) (Misconduct).

David J. Johnson (Shelby County)

On February 15, 2013, the Supreme Court of Tennessee suspended Mr. Johnson's law license based upon his conviction of a serious crime, i.e. Wire Fraud, in violation of United States Code § 1343. 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. Mr. Johnson was ordered to fully comply with the provisions of Tennessee Supreme Court Rule 9, § 18, which requires, in part, withdrawal from representation and prohibits undertaking any new representation. This suspension shall remain in effect until it is dissolved or amended by order of the Supreme Court of Tennessee.

James D. McWilliams (Davidson County)

On March 19, 2013, the Supreme Court of Tennessee suspended the law license of Mr. McWilliams based upon his plea of guilty to a serious crime, i.e. Child Abuse. 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. Mr. McWilliams was ordered to fully comply with the provisions of Tennessee Supreme Court Rule 9, § 18, which requires, in part, withdrawal from representation and prohibits undertaking any new representation. This suspension shall remain in effect until it is dissolved or amended by order of the Supreme Court of Tennessee.

John E. Clemmons (Davidson County)

On April 2, 2013, the Supreme Court of Tennessee temporarily suspended the law license of Mr. Clemmons upon finding that Mr. Clemmons misappropriated funds to his own use and that his continued practice of law poses a threat of substantial harm to the public. Section 4.3 of Tennessee Supreme Court Rule 9 provides for the immediate summary suspension of an attorney's license to practice law in cases where it has been demonstrated that the attorney has misappropriated funds and poses a threat of substantial harm to the public.

Effective April 2, 2013, Mr. Clemmons is precluded from accepting any new cases and he must cease representing existing clients by May 2, 2013. After May 2, 2013, Mr. Clemmons shall not use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence where the practice of law is conducted.

Whitney Suzanne Bailey (Knox County)

On April 26, 2013, the Supreme Court of Tennessee temporarily suspended the law license of Ms. Bailey pursuant to Section 4.3 of Tennessee Supreme Court Rule 9. The Board of Professional Responsibility petitioned the Court to temporarily suspend Ms. Bailey's law license due to her failure to respond to a complaint of ethical misconduct.

TEMPORARY/SUMMARY SUSPENSIONS (Continued)

Effective April 26, 2013, Ms. Bailey is precluded from accepting any new cases and she must cease representing existing clients by May 26, 2013. After May 26, 2013, Ms. Bailey shall not use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence where the practice of law is conducted.

Bryan Bradley Martin (Washington County)

On April 30, 2013, the Supreme Court of Tennessee issued an Order summarily and temporarily suspending Mr. Martin from the practice of law upon finding that Mr. Martin 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 April 30, 2013, Mr. Martin is precluded from accepting any new cases and he must cease representing existing clients by May 30, 2013. After May 30, 2013 Mr. Martin shall not use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence where the practice of law is conducted.

Charlotte Prather Milton (Shelby County)

On April 30, 2013, the Supreme Court of Tennessee issued an Order summarily and temporarily suspending Ms. Milton from the practice of law upon finding that Ms. Milton 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 April 30, 2013, Ms. Milton is precluded from accepting any new cases and she must cease representing existing clients by May 30, 2013. After May 30, 2013, Ms. Milton shall not use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence where the practice of law is conducted.

William Leon Hendricks (Shelby County)

On April 30, 2013, the Supreme Court of Tennessee issued an Order summarily and temporarily suspending Mr. Hendricks from the practice of law upon finding that Mr. Hendricks 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 April 30, 2013, Mr. Hendricks is precluded from accepting any new cases and he must cease representing existing clients by May 30, 2013. After May 30, 2013, Mr. Hendricks shall not use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence where the practice of law is conducted.

TEMPORARY/SUMMARY SUSPENSIONS (Continued)

Charles Randy Pettigrew (Madison County)

On May 16, 2013, the Supreme Court of Tennessee temporarily suspended the law license of Mr. Pettigrew upon finding that Mr. Pettigrew misappropriated funds to his own use and that his continued practice of law poses a threat of substantial harm to the public. Section 4.3 of Tennessee Supreme Court Rule 9 provides for the immediate summary suspension of an attorney's license to practice law in cases where it has been demonstrated that the attorney has misappropriated funds and poses a threat of substantial harm to the public.

Effective May 16, 2013, Mr. Pettigrew is precluded from accepting any new cases and he must cease representing existing clients by June 15, 2013. After June 15, 2013, Mr. Pettigrew shall not use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence where the practice of law is conducted.

Daniel Rafael Solla (Knox County)

On May 22, 2013, the Supreme Court of Tennessee temporarily suspended the law license of Mr. Solla upon finding that Mr. Solla's continued practice of law poses a threat of substantial harm to the public. Section 4.3 of Tennessee Supreme Court Rule 9 provides for the immediate summary suspension of an attorney's license to practice law in cases where it has been demonstrated that the attorney poses a threat of substantial harm to the public.

Effective May 22, 2013, Mr. Solla is precluded from accepting any new cases and he must cease representing existing clients by June 21, 2013. After June 21, 2013, Mr. Solla shall not use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence where the practice of law is conducted.

Gregory Wayne Minton (Gibson County)

On June 14, 2013, the Supreme Court of Tennessee temporarily suspended Mr. Minton from the practice of law upon finding that Mr. Minton 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 June 14, 2013, Mr. Minton is precluded from accepting any new cases, and he must cease representing existing clients by July 14, 2013. After July 14, 2013, Mr. Minton shall not use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence where the practice of law is conducted.

Christopher Lee Brown (Shelby County)

On June 21, 2013, the Supreme Court of Tennessee issued an Order temporarily suspending Mr. Brown from the practice of law upon finding that Mr. Brown has misappropriated funds for his own use and his continued practice of law poses a threat of substantial harm to the public.

TEMPORARY/SUMMARY SUSPENSIONS (Continued)

Effective June 21, 2013, Mr. Brown is precluded from accepting any new cases, and he must cease representing existing clients by July 21, 2013. After July 21, 2013, Mr. Brown 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

Quenton White (Davidson County)

On January 11, 2013, Mr. White received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court. Mr. White practiced law for over a month while his license to practice law was administratively suspended for IOLTA noncompliance and failure to pay the annual registration fee. Mr. White's action violated Rules of Professional Conduct 5.5 (Unauthorized Practice of Law).

William Norman Ligon (Sumner County)

On January 17, 2013, Mr. Ligon received a Public Censure from the Board of Professional Responsibility of the Supreme Court of Tennessee. Mr. Ligon's law license is currently suspended. Without being licensed to do so, Mr. Ligon provided legal advice to a client for a period of more than two months. He consulted with the client regarding a request to view records of the client; he provided advice regarding correspondence related to the records request; and on more than one occasion the client identified Mr. Ligon as his legal counsel. The client suffered potential harm by relying on the advice of Mr. Ligon and not seeking representation by a licensed attorney. Mr. Ligon's actions violated Rules of Professional Conduct 5.5 (Unauthorized Practice of Law).

Mark E. Chapman (Davidson County)

On January 17, 2013, Mr. Chapman received a Public Censure from the Board of Professional Responsibility of the Supreme Court of Tennessee. Mr. Chapman instructed a paralegal to attend mediation with a client at which the opposing party was represented by counsel. Opposing counsel and the two mediators believed the paralegal was an attorney. The paralegal engaged in the unauthorized practice of law by signing with his own name, the Agreement to Mediate and the Community Mediation Status Agreement Form which was filed with the court; by negotiating with opposing counsel and the mediators without the clients present; and by agreeing to resolve some issues on behalf of the client. Mr. Chapman is responsible for the supervision of the paralegal. Mr. Chapman's actions violated Rules of Professional Conduct 5.3 (Responsibilities Regarding Non-Lawyer Assistants) and 1.3 (Diligence).

John Allen Murphy, Jr. (Bradley County)

On January 22, 2013, Mr. Murphy received a Public Censure by the Supreme Court of Tennessee. Mr. Murphy was administratively suspended on June 14, 2011, for failing to comply with his mandatory IOLTA reporting requirements. During his suspension, Mr. Murphy filed pleadings on behalf of several clients with the courts in Bradley County. Mr. Murphy was reinstated to the practice

PUBLIC CENSURES (Continued)

of law on July 25, 2011. Mr. Murphy's actions violated Rules of Professional Conduct 5.5 (a) (Unauthorized Practice of Law).

Johnny V. Dunaway (Campbell County)

On January 25, 2013, Mr. Dunaway received a Public Censure from the Supreme Court of Tennessee. Mr. Dunaway submitted a Conditional Guilty Plea acknowledging his violation of Rules of Professional Conduct 1.5 (c) and (d) (Fees), which prohibit contingency fees in domestic relations cases. Mr. Dunaway charged and received a contingent fee from his client in exchange for handling the appeal of her case under circumstances which made the fee violative of the Rules of Professional Conduct.

Paul Forrest Craig (Shelby County)

On January 24, 2013, Mr. Craig received a Public Censure from the Board of Professional Responsibility of the Supreme Court of Tennessee. Mr. Craig practiced law in Mississippi without a license. Mr. Craig's actions violated Rules of Professional Conduct 5.5 (Unauthorized Practice of Law) and 8.5 (Disciplinary Authority).

John Michael Giglio (Georgia)

On February 26, 2013, Mr. Giglio received a Public Censure from the Board of Professional Responsibility of the Supreme Court of Tennessee. In an estate matter, Mr. Giglio informed his client that he would charge a fifteen percent contingency fee, but did not provide a written contract documenting the terms of the fee agreement. Because he was not licensed in Tennessee, Mr. Giglio associated and divided his fee with a Tennessee attorney. The client contested the reasonableness of Mr. Giglio's \$70,000 attorney fee before the Probate Court because he charged fifteen percent of the \$500,000 that the client had received from one insurance company without Mr. Giglio's assistance. The Probate Court Clerk and Master found that a reasonable fee for Mr. Giglio's services would be \$20,000 and ordered him to refund \$50,000 plus the costs of the fee proceeding. Mr. Giglio's actions violated Rules of Professional Conduct 1.5 (a) (Requiring Reasonable Fees); 1.5 (c) (Requiring Written Contingency Fee Agreements) and 1.5 (e) (Requiring Written Consent Prior to Division of Fees Between Lawyers).

Philip M. Kleinsmith (Colorado)

On March 4, 2013, Mr. Kleinsmith received a Public Censure from the Supreme Court of Tennessee as a result of reciprocal discipline imposed by the Supreme Court of Arizona. On February 15, 2013, the Board of Professional Responsibility filed a petition for reciprocal discipline after the Supreme Court of Arizona issued Mr. Kleinsmith a Public Reprimand and placed him on probation for a period of one (1) year, subject to early termination, upon completion of "Ethics School" provided by the Office of Attorney Regulation Counsel of the Colorado Supreme Court. Mr. Kleinsmith successfully complied with the terms of probation and the probation is now completed.

PUBLIC CENSURES (Continued)

Ta Kisha Monette Fitzgerald (Knox County)

On April 16, 2013, Ms. Fitzgerald received a Public Censure from the Tennessee Supreme Court.

The Board of Professional Responsibility filed a Petition for Discipline against Ms. Fitzgerald. Ms. Fitzgerald submitted a conditional guilty plea acknowledging violations of Tennessee Supreme Court Rule 8, Rules of Professional Conduct 3.4(d), (Fairness to the Opposing Party and Counsel); 3.8(d), (Special Responsibilities of a Prosecutor); and 8.4(a) and (d), (Misconduct). In her capacity as an Assistant District Attorney, Ms. Fitzgerald failed to make a timely disclosure to the defense of letters written by the defendant and of phone calls by the defendant.

Bradley Glenn Kirk (Henderson County)

On April 18, 2013, Mr. Kirk received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

In 2010, a client retained Mr. Kirk to represent him in a personal injury case. After several months, the client contacted the court clerk's office and learned that apart from filing the complaint, Mr. Kirk had taken no additional action in the case. The client attempted to contact Mr. Kirk, but his calls went unreturned.

Mr. Kirk abandoned his client's case and failed to return his file. By doing so, Mr. Kirk's actions violated Rules of Professional Conduct 1.3 (Diligence); 1.4 (Communication); 1.5, (Fees); 1.5 (Declining and Terminating Representation); and 8.4 (Misconduct).

Duncan Cates Cave (Greene County)

On May 8, 2013, Mr. Cave received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court. After being ordered to prepare an order for the Court, Mr. Cave failed to prepare an order. After being personally served with a Show Cause Order commanding him to appear and show cause why he had not submitted the order, Mr. Cave failed to attend the hearing on the Show Cause. The Court held Mr. Cave in contempt of court for continually and willfully failing to comply with an order of the court and failing to appear.

Mr. Cave's actions violated Rules of Professional Conduct 8.4 (Misconduct).

Richard Mark Nummi (Shelby County)

On April 23, 2013, Mr. Nummi received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Nummi is not licensed to practice law in Tennessee. He accepted employment as general counsel for a Tennessee company on November 1, 2010. He did not apply for registration as In-House Counsel within the time frame by Tenn. Sup. Ct. R. 7, § 10.01. His failure to comply with this rule resulted in the unauthorized practice of law by Mr. Nummi.

PUBLIC CENSURES (Continued)

Mr. Nummi's actions violated Rules of Professional Conduct 5.5 (Unauthorized Practice of Law).

PROBATION

Ashley Denise Preston (Davidson County)

On April 18, 2013, Ms. Preston was suspended by Order of the Tennessee Supreme Court for one year with the entire suspension being probated subject to several conditions including a practice monitor and participation with the Tennessee Lawyer's Assistance Program. Ms. Preston may continue to practice law during the probationary period.

The Board of Professional Responsibility filed a Petition for Discipline against Ms. Preston based upon four (4) complaints alleging that Ms. Preston neglected clients' cases and failed to communicate with clients and the Board. In addition to client complaints, another complaint was filed for her failure to respond to Court orders after failing to file a brief in a criminal case. Ms. Preston entered a guilty plea to the Board's charges.

Ms. Preston's actions violated 1.3 (Diligence); 1.4 (Communication); 3.2 (Expediting Litigation); 8.1 (Bar Admission and Disciplinary Matters) and 8.4 (Misconduct).

DISABILITY INACTIVE STATUS

Jeffrey A. Stinnett (Hamilton County)

On March 1, 2013, by Order of the Supreme Court of Tennessee, Mr. Stinnett's law license was transferred to disability inactive status. Mr. Stinnett cannot practice law while on disability inactive status.

Jay Lloyd Grytdahl (Shelby County)

On May 13, 2013, by Order of the Supreme Court of Tennessee, Mr. Grytdahl's law license was transferred to disability inactive status. Mr. Grytdahl cannot practice law while on disability inactive status.

Beverly Buster Clemmer (Knox County)

On May 13, 2013, by Order of the Supreme Court of Tennessee, Ms. Clemmer's law license was transferred to disability inactive status. Ms. Clemmer cannot practice law while on disability inactive status.

Joe Lee Wyatt (Shelby County)

On May 31, 2013, by Order of the Supreme Court of Tennessee, Mr. Wyatt's law license was transferred to disability inactive status. Mr. Wyatt cannot practice law while on disability inactive status.

DISABILITY INACTIVE STATUS (Continued)

Cindy Lynn Burgess (California)

On June 10, 2013, by Order of the Supreme Court of Tennessee, Mr. Grytdahl's law license was transferred to disability inactive status. Mr. Grytdahl cannot practice law while on disability inactive status.

Samuel Wilson Bartholomew, Jr. (Davidson County)

On June 11, 2013, by Order of the Supreme Court of Tennessee, Mr. Bartholomew's law license was transferred to disability inactive status. Mr. Bartholomew cannot practice law while on disability inactive status.

Robert David Strickland (Dyer County)

On June 19, 2013, by Order of the Supreme Court of Tennessee, Mr. Strickland was transferred to disability inactive status. Mr. Strickland cannot practice law while on disability inactive status.

REINSTATEMENTS

Cleveland C. Turner (Montgomery County)

On January 11, 2013, Mr. Turner was reinstated to the practice of law by Order of the Supreme Court of Tennessee. Mr. Turner's license was transferred to disability inactive status by Order of the Supreme Court on January 14, 1997. On July 6, 2012 Mr. Turner filed A Petition for Reinstatement. A Hearing Panel determined that Mr. Turner should be reinstated to the practice of law upon the conditions that he pay all cost of the disciplinary proceeding, remain in compliance with his TLAP Monitoring Agreement and resolve any unresolved disciplinary complaints against him. Mr. Turner has met all of the conditions for his reinstatement to the practice of law.

Whitney Suzanne Bailey (Knox County)

Ms. Bailey has been reinstated to the practice of law by Order of the Tennessee Supreme Court entered May 31, 2013, subject to several conditions. The conditions include evaluation by Tennessee Lawyer's Assistant Program and engagement of a practice monitor. Ms. Bailey is also ordered to pay the Board's costs in this matter.

Ms. Bailey was temporarily suspended from the practice of law by Order of the Supreme Court on April 26, 2013, for failing to respond to a request for information. On May 1, 2013, Ms. Bailey filed a Petition for Dissolution of the Temporary Suspension. On May 24, 2013, a Hearing Panel entered a recommendation that the temporary suspension be dissolved, subject to conditions.

REINSTATEMENTS (Continued)

Walter Ray Culp, III (Williamson County)

On June 24, 2013, the Tennessee Supreme Court ruled that Mr. Culp is not entitled to reinstatement of his Tennessee law license which was suspended in 2006 after he pleaded guilty to the crime of attempted extortion in federal court. The Court noted that attorneys who have been suspended or disbarred may petition for reinstatement, but Mr. Culp's attempt to extort millions of dollars for the testimony of a witness was "threatening to the very core of a legal system based on probity and honor."

Based on the egregious nature of the conduct and Mr. Culp's lack of credibility, the Court ruled that Mr. Culp should not be readmitted to the practice of law in Tennessee.

COSTS

Herbert Sanford Moncier, Jr. (Knox County)

On May 24, 2013, the Tennessee Supreme Court ruled that Knoxville attorney Herbert S. Moncier must pay the costs incurred prosecuting the disciplinary proceeding that resulted in his one-year suspension from the practice of law in Tennessee.

On June 1, 2011, the Supreme Court assessed costs totaling \$22,038.32 against Mr. Moncier. Afterward, Mr. Moncier petitioned for relief from costs, arguing that the disciplinary proceedings resulting in his suspension were unfair and unconstitutional. A three-member panel of the Tennessee Board of Professional Responsibility (BPR) refused to grant him relief from costs. Mr. Moncier appealed to the Supreme Court, again arguing that he should not be required to pay costs because the disciplinary proceedings that resulted in his suspension were unfair and unconstitutional. Mr. Moncier also argued that the members of the BPR panel assigned to hear his petition for relief from costs were biased against him.

The Supreme Court addressed and rejected Mr. Moncier's arguments and affirmed the BPR panel's decision denying him relief from costs. Among other things, the Court concluded that Tennessee's attorney-disciplinary procedure is consistent with the due process requirements of the Tennessee and United States constitutions and that disqualification standards applicable to judges do not apply to members of the Board of Professional Responsibility.