

BOARD NOTES

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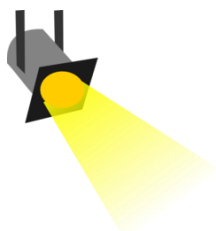
Greeting from Justice Holly Kirby

Supreme Court Liaison, Board of Professional Responsibility

This Board Notes Newsletter comes to you in the midst of the ongoing global COVID-19 pandemic. We have all had to make profound changes in how we operate. I'm proud to say that our Board of Professional Responsibility has not missed a beat. Many employees are working remotely and many proceedings have gone virtual, but the Board has continued its important work to protect the public from unethical lawyers, administer the disciplinary process for lawyers, provide information to lawyers and the public, and interpret and apply the Court's disciplinary rules. Tennessee's legal community has stepped up too; lawyers have found creative ways to communicate with their clients and work with judges and court personnel to get their cases heard.

Under normal circumstances, lawyers are at risk for depression and substance abuse, which can lead to ethics problems. The ongoing COVID crisis has increased that risk. Remote work, social distancing, inability to gather together—all of those things remove normal supports and rob us of our sense of community and connection. As you work to take care of your clients, be sure to take care of yourself too. Exercise, get outside, and nurture your friendships, especially friendships with other lawyers. Other lawyers will understand the pressures you are under. Trouble shared is trouble halved.

Stay strong and stay well, brothers and sisters in the law.



Tennessee on the Cutting Edge with PMBR

The Tennessee Lawyer Self-Assessment Program is a voluntary proactive management-based regulation (PMBR) program created to help lawyers with their professional development. It is designed to mitigate risk, elevate competence, and enhance the quality of legal services delivered to clients. It gives the attorney the chance to see what is working and what could be improved when it comes to law firm management and meeting professional obligations. The goal is to prevent problems before they arise.

In 2009, a study in Australia found law firms that undergo self-assessment to ensure compliance with ethical standards experience up to a two-thirds drop in the number of disciplinary complaints after the self-assessment.¹ A subsequent study found this reduction in complaints occurred because firms completing the self-assessment took steps to improve their procedures after taking the self-assessment.²

In 2019, the American Bar Association (ABA) House of Delegates adopted Resolution 107 urging states to study and adopt proactive management-based regulatory programs.

Tennessee joins other innovative jurisdictions such as Colorado, Illinois, New Mexico and Iowa in implementing this program.

Tennessee's online self-assessment is patterned after Colorado's program. The Tennessee program covers the following ten practice areas:

1. Developing Competent Practices;
2. Communicating in an Effective, Timely, Professional Manner;
3. Ensuring that Confidentiality Requirements are Met;
4. Avoiding Conflicts of Interest;
5. Retaining and Managing Secure Files;
6. Managing the Law Firm/Legal Entity and Staff;
7. Charging Appropriate Fees and Making Appropriate Disbursements;
8. Ensuring the Use of Reliable Trust Account Practices;
9. Access to Justice and Client Development; and
10. Promoting Wellness.

For each subject area, the program identifies applicable Tennessee Rules of Professional Conduct and resources including articles, cases, forms and ethics opinions. The Board's PMBR program is

¹ Fortney and Gordan, "Adopting Law Firm Management Systems to Survive and Thrive: A Study of the Australian Approach to Management-Based Regulation," 10 *U. St. Thomas L.J.* 166-67 (2013) (citing Gordon et al., "Regulating Law Firm Ethics Management: An Empirical Assessment of the Regulation of Incorporated Legal Practices in NSW," Univ. Melbourne Legal Studies Research Paper No. 453 (2009)). See also Schneyer, "The Case for Proactive Management-Based Regulation to Improve Professional Self-Regulation for U.S. Lawyers," 42 *Hofstra L. Rev.* 233 (2013).

² *id.*

available on the [Board's website](#) and is offered at no cost to all Tennessee attorneys. Attorneys completing the confidential self-assessment will receive an email from the software developer which attorneys may submit to the Tennessee Continuing Legal Education and Specialization for three (3) hours of dual CLE credit.

Legal Ethics During the COVID-19 Pandemic

By: Steven J. Christopher¹

The COVID-19 pandemic has created unprecedented challenges for the provision of legal services. This article is intended to provide guidance to lawyers as they seek to fulfill their professional and ethical obligations considering the logistical difficulties created by the pandemic.

COVID-19 does not obviate an attorney's obligation to fulfill their professional and ethical obligations. A lawyer is required to fulfill their ethical obligations despite opposition, obstruction, and personal inconvenience.² During a global pandemic, like other personal or overriding cultural circumstances that create obstruction to your law practice, you are required to anticipate the challenges that such circumstances will present to your law practice, and preemptively make whatever adjustments are necessary to ensure that your clients are protected.

An attorney is likewise required to keep abreast of any changes in the law and its practice arising out of such circumstances.³ For example, the Tennessee Supreme Court has entered standing orders modifying the schedule of court proceedings during COVID.⁴ Local judicial districts, in compliance with directives in these Tennessee Supreme Court standing orders, have entered their own standing orders relating to the modification in local court schedules and applicable deadlines.⁵ An attorney's practice may

¹ Deputy Chief Disciplinary Counsel, Investigations Section, Tennessee Board of Professional Responsibility of the Tennessee Supreme Court.

² RPC 1.3, Comment [1].

³ RPC 1.1, Comment [8].

⁴ These orders may be accessed on the Tennessee Administrative Office of the Court's website at <http://www.tsc.state.tn.us/Coronavirus>.

⁵ *Id.*

also be materially impacted by overriding executive orders entered by state and local authorities restricting or limiting public gatherings. An attorney's ethical obligations, including the provision of diligent representation and client communication, requires keeping up to date on changes to court procedures and governmental orders.

While you are required to continue to meet your professional and ethical obligations during COVID, your ethical obligations are governed by an overall standard of objective reasonableness.⁶ What is reasonably expected from a competent and prudent lawyer regarding the provision of diligent representation, client communication, and other responsibilities may change in light of the pandemic. Likewise, you are not required to take action which would compromise your safety, your family's safety, or that of your employees. For example, it may take longer to move court proceedings towards a conclusion due to standing court orders limiting in person hearings. A law firm may need to transition to remote work or quarantine employees due to a COVID diagnosis, which may lengthen the time required to advance a client's objectives. Such modifications of your practice do not breach your ethical responsibilities if this standard of objective reasonableness is otherwise met.

Working Remotely

Many law firms have shifted partially or entirely to working remotely, due to government directives imposed by COVID and to help ensure the health and safety of employees, clients, and third parties. Some law firms, like firms in other fields, were already moving in the direction of remote work prior to the pandemic.

⁶ "Reasonably" denotes the conduct of a reasonably prudent and competent lawyer. RPC 1.0(h).

Whether practicing in a conventional office space or using a remote work model, attorneys are obligated to have structures in place to ensure that their firm complies with the Tennessee Rules of Professional Conduct.⁷ To this end, attorneys must create and maintain protocols to ensure that they and their attorney and non-attorney employees comply with the Rules of Professional Conduct.⁸

Attorneys with managerial authority in a firm are vicariously liable for ethical violations that arise from a breach of this obligation.⁹ Likewise, attorneys are vicariously liable for the conduct of subordinate attorneys and non-attorney staff to the extent that breaches in ethical obligations arise out of a failure to maintain such protocols.¹⁰ These responsibilities apply to attorneys with managerial authority regardless of the nature of their firm.¹¹ In addition to applying to lawyers in traditional partnerships and shareholders in a law firm organized as a professional corporation, these rules apply to lawyers in government departments and legal services organizations.¹²

There is nothing per se improper about a law firm moving to a remote work model. However, remote work presents potential ethical pitfalls that are not present when working out of a conventional office space. These pitfalls must be anticipated and addressed by attorneys exercising the managerial authority and responsibilities defined at RPC 5.1.

⁷ RPC 5.1(a).

⁸ RPC 5.1, Comment [2].

⁹ RPC 5.1(c)(1)-(2).

¹⁰ RPC 5.3(a)-(c).

¹¹ RPC 5.1, Comment [1]. See also RPC 1.0(c); RPC 1.0, Comment [2] (defining a “firm” for purposes of the Rules of Professional Conduct).

¹² Id.

When transitioning from a conventional workspace to remote work, it is strongly recommended that a firm reduce any modifications in firm protocols to writing and obtain written consent from firm employees confirming their understanding and agreement to such modifications. These protocols should provide sufficient specificity to firm employees so that they are able to properly navigate the logistical changes to their work that will arise in the transition to remote work.

Firms transitioning to remote work need to take particular care to ensure that client confidentiality is maintained. One of an attorney's most fundamental obligations is to maintain confidentiality regarding any information relating to the representation of a client.¹³ In accordance with this obligation, a lawyer is required to make reasonable efforts to prevent the inadvertent or unauthorized disclosure of or unauthorized access to, information relating to the representation of a client.¹⁴ Confidentiality applies to all information relating to the representation of a client, not only client communications protected by attorney-client privilege.¹⁵

Remote work creates numerous potential circumstances where confidential information may be inadvertently disclosed. For example, attorneys who operate out of a home office need to ensure that files are maintained in a safe location and that family member and visitors will not have access to confidential information. Calling clients from home creates the danger that non-employees will overhear conversations.

While firms must take care to ensure that confidentiality is maintained, the unauthorized access to or unauthorized disclosure of information relating to the representation of a client does not constitute a

¹³ RPC 1.6(a).

¹⁴ RPC 1.6(d).

¹⁵ RPC 1.6, Comment [3].

violation of RPC 1.6(d) if the lawyer has made reasonable efforts to prevent the access or disclosure.¹⁶ Whether a firm operates out of a conventional or remote space, any breach of confidentiality will be measured by the same objective reasonableness standard.

The transition to remote work may involve the incorporation or expanded use of new technologies, such as remote meetings and reliance on cloud computing. An attorneys' duty to provide competent representation requires lawyers to consider the benefits and risks associated with relevant technology.¹⁷ A lawyer is required to use reasonable care to select a mode of communication for remote work that will best protect confidential client information.¹⁸ On this basis, whatever new medium is used, the attorney must ensure that their ethical obligations are met.¹⁹

For solo practitioners and firms who do not have an IT professional on staff or on contract who can provide guidance and directives with regard to security, firms need to consult with an IT professional and do independent research to ensure that the platform or medium used is sufficiently secure. An attorney's ethical responsibilities do not require that they become experts in applicable technologies, but

¹⁶ RPC 1.6, Comment [18]. Factors to be considered in determining the reasonableness of the lawyer's efforts include the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing such safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients. Id.

¹⁷ RPC 1.1, Comment [8]. See also ABA Standing Committee on Ethics and Professional Responsibility Formal Opinion 477R (May 22, 2017) ("a lawyer generally may transmit information over the internet without violating ethical rules where the lawyer has taken reasonable efforts to prevent inadvertent or unauthorized access.")

¹⁸ While addressing the narrow issue of cloud computing, Tennessee Formal Ethics Opinion 2015-F-159 is instructive on the broader issue concerning the application of any new technology. 2015 WL 8357782. Firms are permitted to store confidential information in the "cloud" provided that the firm takes reasonable care to ensure that all materials remain confidential and that reasonable safeguards are employed to ensure that the data is protected from breach and data loss.

¹⁹ See id. at *2.

an attorney must nevertheless have a general understanding of the manner in which confidential information is maintained in the technological platform or medium that is employed.²⁰

Regardless of whatever communication medium is used, you are required to take particular care to ensure that your clients have the technological understanding and equipment to use that medium. If a client is unable to use a particular medium, the lawyer, as part of their general duty to maintain communication with the client, must accommodate the client. A lawyer has a duty to respond to reasonable requests for information and to keep the client informed about the status of the representation.²¹ If a new communication medium is established, it is the lawyer's responsibility to ensure that each client is able to use that medium, and if not, to use another medium for that particular client.

What to Do If You Test Positive For COVID

If you or someone else in your office tests positive for COVID, your primary objectives are to consider the action that needs to be taken to protect your clients, and to ensure your own safety and that of your employees and their families. Your client should be promptly notified of the diagnosis. Such disclosure is required to comply with RPC 1.4, as the diagnosis constitutes material information relating to the representation. The client should be given the option of terminating the representation if they wish, which would then require your withdrawal.²² You may advise the client of the option of having the case transferred to another lawyer in the firm or a local lawyer temporarily, but this should be the client's decision.

²⁰ Id.

²¹ RPC 1.4(a).

²² A lawyer is required to withdraw from the representation of a client if discharged. RPC 1.16(a)(3).

Unless discharged by the client, you are only required terminate the representation of a client if your physical or mental condition materially impairs your ability to represent your client.²³ If you are diagnosed with COVID, consult with your medical providers to find out approximately how long you will be unable to practice. Whether you are required to withdraw from the representation of a particular client will depend on the nature of the representation and whether immediate action needs to be taken for the client.²⁴ Steps should be taken through consultation with your medical providers to ensure the health and safety of co-workers, clients, and visitors. Follow any directives of your treating doctors regarding quarantine.

If you are diagnosed with COVID and do not believe that you will be materially impacted in your representation of a client, you nevertheless have valid grounds to seek permissive withdrawal if there is no material adverse impact on the client.²⁵ In the alternative, even where such material adverse impact is present, you could additionally seek to withdraw on the ground that your diagnosis constitutes “good cause,” or through informed client consent to withdrawal.²⁶

The most prudent action you can take for your own sake and that of your clients occurs prior to a COVID diagnosis through adoption of a firm succession plan or through updating a preexisting succession plan or business continuity plan to reflect a COVID response. Your succession plan should be drafted considering the overriding goals of minimizing interruption to your law practice and avoiding adverse impact on your clients. The best means of accomplishing these objectives may differ depending on the nature of your law practice. For example, if you practice in a firm, your plan could involve transfer of

²³ RPC 1.16(a)(2).

²⁴ See RPC 3.2, Comment [1]. It is not improper for a lawyer to properly seek postponement for personal reasons, such as illness or a conflict with an important family engagement.

²⁵ RPC 1.16(b)(1).

²⁶ RPC 1.16(b)(7)-(8).

cases to another lawyer in the firm temporarily until you recover from COVID. If you are a solo practitioner, your plan could include a reciprocal arrangement with another lawyer in your local bar to take over cases. Make sure successor counsel knows the location of client physical and digital files. Your plan should include a mechanism for conflicts checking if cases are transferred to a lawyer outside your firm. Provide prompt written notice of successor counsel to clients and opposing counsel and promptly file notices of substitution of counsel in any pending proceedings.

Optimally, you should obtain prior written consent from your clients in your fee agreements authorizing and permitting the transfer of responsibilities to another lawyer in the event of incapacity. Absent such prior consent, transfer of cases to a lawyer outside your law firm would breach your confidentiality obligations, as you would be disclosing information relating to the representation.²⁷ Transfer of case responsibilities absent prior written agreement with your client within a law firm would not breach your confidentiality obligations, but such transfer would at least require consultation with your client, as such conduct constitutes a change in the means to accomplish the client's objectives.²⁸

What to Do If A Client Tests Positive for COVID

When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment, or some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.²⁹

²⁷ RPC 1.6(a).

²⁸ RPC 1.4(a)(2). A lawyer is required to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations, this duty will require consultation prior to taking action. RPC 1.4, Comment [3].

²⁹ RPC 1.14(a).

It is recommended that lawyers take preemptive action prior to any client COVID diagnosis by obtaining written informed client consent to communicate through an attorney-in-fact or other emergency contact in the event of a COVID diagnosis or other circumstance that results in a client's incapacity or reduced capacity. If notified of any diagnosis, find out from the client through their consultation with medical professionals how long the client's capacity will be impacted and the anticipated length of any quarantine.

Information relating to the COVID diagnosis is protected by confidentiality, as it is information relating to the representation of the client within the scope of RPC 1.6.³⁰ When taking protective action on behalf of a client with a COVID diagnosis, the lawyer may be impliedly authorized under RPC 1.6(a)(2) to reveal information about the client, but only to the extent reasonably necessary. However, rather than relying upon the argument that disclosure is permitted as impliedly authorized under RPC 1.6(a)(2), it is better practice to obtain a client's informed written consent to disclose their COVID diagnosis when reasonably necessary to carry out the representation (e.g. to request continuance of a court date). Disclosure should be avoided to the extent reasonably possible while continuing to zealously pursue the client's objectives.³¹

It is not improper to limit face to face meetings with clients who test positive for COVID. Similarly, it is not improper to request that clients decline to appear in your office space until medically cleared. Attorneys are required to keep clients reasonably informed about the status of the representation. This does not necessarily require face to face communication or any other form of communication so long as there is a means of keeping the client reasonably informed about their case and a mechanism to respond

³⁰ RPC 1.14(c).

³¹ Disclosure of a COVID diagnosis, like other information protected by RPC 1.6, is only permitted when such disclosure is reasonably necessary. See RPC 1.6(a).

to client inquiries.³² If a client demands to meet face to face with a lawyer during a period of active COVID, demands to appear in person with staff, or otherwise threatens the safety of your office, you may refuse and if the client persists, you may seek leave to withdraw.³³

What to Do If Opposing Counsel Tests Positive for COVID

If opposing counsel tests positive for COVID, they may request reasonable accommodation regarding any pending proceeding, such as requesting a continuance of any upcoming hearings or an extension of deadlines. Your primary obligation is to zealously represent your client's interests, not accommodate opposing counsel or third parties. However, a lawyer has authority to exercise professional discretion in determining the means by which the matter should be pursued.³⁴

A lawyer's duty to act with diligence does not require the use of offensive tactics or preclude treating all persons in the legal process with courtesy and respect.³⁵ On this basis, an agreement to reasonably accommodate opposing counsel diagnosed with COVID is not a breach of your duty to provide zealous advocacy. Under these circumstances, you must balance the countervailing interests of the provision of zealous advocacy to your client with the need to be conscious of opposing counsel's concerns over their health and safety.

³² See RPC 1.4(a). See also RPC 1.4, Comment [7] (concluding that circumstances might require a delay in transmittal of information to a client).

³³ Withdrawal under these circumstances is permitted under RPC 1.16(b)(4), as the client is insisting upon taking action the lawyer considers imprudent.

³⁴ See RPC 1.3, Comment [1].

³⁵ Id.

If a lawyer is going to accommodate opposing counsel by agreeing to continue a hearing or postpone an applicable deadline, the lawyer should consult with the client, as this is part of the means of achieving the client's objectives.³⁶ As the decision to accommodate opposing counsel concerns the means to achieve a client's objectives, and not the objectives themselves, a lawyer may refuse to comply with a client's directive to decline to continue a hearing.³⁷ If the client persists, withdraw may be required or permitted.³⁸

Wellness

Lawyers should use any available resources during COVID to ensure their own physical, mental, and emotional well-being, and encourage their employees to draw upon any available resources as well. Lawyers are specifically encouraged to use the resources of the Tennessee Lawyer Assistance Program (hereinafter, "TLAP"). TLAP is a Tennessee Supreme Court agency that provides confidential services for attorneys struggling with mental health and substance abuse issues. TLAP's services include consultation, crisis stabilization, assessments, referrals, and peer support services. For additional information, contact the Tennessee Lawyer Assistance Program at (615) 741-3238, (877) 424-8527. Additional information is available on their website at www.tlap.org. Additional resources for lawyers addressing the issues created by COVID are maintained by the ABA Commission on Lawyer Assistance Programs at www.americanbar.org/groups/lawyer_assistance/resources/covid-19-mental-health-resources.

³⁶ RPC 1.4(a)(2).

³⁷ RPC 1.4, Comment 2.

³⁸ A lawyer may withdraw from the representation of a client if withdrawal can be accomplished without material adverse effect on the client. RPC 1.16(b)(1). Additionally, even where such material adverse effect potentially exists, a lawyer has grounds for permissive withdrawal if the client persists in taking action the lawyer considers repugnant or imprudent. RPC 1.16(b)(4).

**Tennessee Supreme Court Approves Amendments to
Tennessee Supreme Court Rule 8, Section 1.15(f)**

On June 5, 2020, the Tennessee Supreme Court approved amendments to Tennessee Supreme Court Rule 8, Section 1.15(f) which provides that if after 12 months of unsuccessfully ascertaining ownership of unidentified funds in an IOLTA account, the attorney is required to remit the unidentified fund the Tennessee Lawyers' Fund for Client Protection (TLFCP). The June 5, 2020 Order is below along with a form to use when remitting funds to TLFCP. This form is also available on the Board of Professional Responsibility's website at www.tbpr.org, and on the TLFCP's website at www.tlfcg.tn.gov.

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| <p style="margin: 0;">IN THE SUPREME COURT OF TENNESSEE AT NASHVILLE</p> <p style="margin: 10px 0 0 0;">IN RE: PETITION FOR THE ADOPTION OF A NEW TENN. SUP. CT. R. 8, RPC 1.15(f)</p> <div style="margin: 20px 0 0 0;"><div style="border-top: 1px solid black; width: 100%;"></div><p style="text-align: center; margin: 0;">No. ADM2019-02079</p><div style="border-top: 1px solid black; width: 100%;"></div></div> <p style="text-align: center; margin: 20px 0 0 0;">ORDER</p> <p style="margin: 10px 0 0 0;">On November 21, 2019, the Tennessee Board of Professional Responsibility ("BPR") and the Tennessee Lawyers' Fund for Client Protection ("TLFCP") filed a petition asking the Court to amend Rule 8, RPC 1.15 of the Rules of the Tennessee Supreme Court by adopting a new RPC 1.15(f).</p> <p style="margin: 10px 0 0 0;">On December 3, 2019, the Court entered an order soliciting public comments on the proposed amendment. The deadline for submitting written comments was February 3, 2020. The Tennessee Bar Association ("TBA") was granted two extensions for comment, extending the comment period to June 3, 2020. The TBA filed its comment on June 3, 2020, stating that the TBA supports the proposed amendment. The TBA's comment was the only comment the Court received during the comment period.</p> <p style="margin: 10px 0 0 0;">After due consideration, the Court hereby adopts the amendment to Tennessee Supreme Court Rule 8, RPC 1.15 as set out in the attached Appendix. The amendment shall take effect immediately upon the filing of this Order.</p> <p style="margin: 10px 0 0 0;">The Clerk shall provide a copy of this Order, including the Appendix, to LexisNexis and to Thomson Reuters. In addition, this Order, including the Appendix, shall be posted on the Court's website.</p> <p style="margin: 10px 0 0 0;">It is so ORDERED.</p> <p style="text-align: right; margin: 10px 0 0 0;">PER CURIAM</p> | <div style="border: 1px solid black; padding: 5px; margin: 0 auto; width: 80%;"><p style="margin: 0;">FILED 06/05/2020 <small>Clerk of the Appellate Courts</small></p></div> |
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APPENDIX

TENN. SUP. CT. R. 8, RPC 1.15

[New text is indicated by underlining]

(a) A lawyer shall hold property and funds of clients or third persons that are in a lawyer's possession in connection with a representation separate from the lawyer's own property and funds.

(b) Funds belonging to clients or third persons shall be deposited in a separate account maintained in a financial institution, deposits of which are insured by the Federal Deposit Insurance Corporation (FDIC) and/or National Credit Union Association (NCUA), having a deposit-accepting office located in the state where the lawyer's office is situated (or elsewhere with the consent of the client or third person) and which participates in the required overdraft notification program as required by Supreme Court Rule 9, Section 35.1. A lawyer may deposit the lawyer's own funds in such an account for the sole purpose of paying financial institution service charges or fees on that account, but only in an amount reasonably necessary for that purpose. Other property shall be identified as such and appropriately safeguarded. Complete records of such funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(1) Except as provided by subparagraph (b)(2), interest earned on accounts in which the funds of clients or third persons are deposited, less any deduction for financial institution service charges or fees (other than overdraft charges) and intangible taxes collected with respect to the deposited funds, shall belong to the clients or third persons whose funds are deposited, and the lawyer shall have no right or claim to such interest. Overdraft charges shall not be deducted from accrued interest and shall be the responsibility of the lawyer.

(2) A lawyer shall deposit all funds of clients and third persons that are nominal in amount or expected to be held for a short period of time such that the funds cannot earn income for the benefit of the client or third persons in excess of the costs incurred to secure such income in one or more pooled accounts known as an "Interest on Lawyers' Trust Account" ("IOLTA"), in accordance with the requirements of Supreme Court Rule 43. A lawyer shall not deposit funds in any account for the purpose of complying with this sub-section unless the account participates in the IOLTA program under Rule 43.

(3) The determination of whether funds are required to be deposited in an IOLTA account pursuant to subparagraph (b)(2) rests in the sound discretion of the lawyer. No charge of ethical impropriety or other breach of professional conduct shall attend a lawyer's exercise of good faith judgment in making such a determination.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such funds or other property.

(e) When in the course of representation a lawyer is in possession of property or funds in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property or funds as to which the interests are not in dispute.

(f) A lawyer who learns of unidentified funds in an IOLTA account must make periodic efforts to identify and return the funds to the rightful owner. If after 12 months of the discovery of the unidentified funds the lawyer determines that ascertaining the ownership or securing the return of the funds will not succeed, the lawyer must remit the funds to the Tennessee Lawyers' Fund for Client Protection (TLFCP). No charge of ethical impropriety or other breach of professional conduct shall attend to a lawyer's exercise of reasonable judgment under this paragraph (f).

A lawyer who either remits funds in error or later ascertains the ownership of remitted funds may make a claim to TLFCP, which after verification of the claim will return the funds to the lawyer.

TENNESSEE LAWYERS' FUND

for CLIENT PROTECTION

**Request to Remit Unidentified Funds to
Tennessee Lawyers' Fund for Client Protection (TLFCP) Pursuant
to Tennessee Supreme Court Rule 8, RPC 1.15(f)**

Amount of funds to be remitted to TLFCP:

Attorney/Law Firm:

Date of Remittance:

I certify that it has been at least 12 months after the discovery of the unidentified funds and have determined that ascertaining the ownership or securing the return of the funds will not succeed*.

Name of Remitter (Printed)

Name of Remitter (Signature)

Date

*Pursuant to Tenn. Sup. Ct. R. 8, RPC 1.15(f), "A lawyer who either remits funds in error or later ascertains the ownership of remitted funds may make a claim to TLFCP, which after verification of the claim will return the funds to the lawyer."

Board Offers Trust Account Workshop

The Tennessee Board of Professional Responsibility will offer a three-hour workshop in trust account management from 9:00 AM to noon on Wednesday, March 24, 2021, in the Creekside Conference room at 10 Cadillac Drive, Brentwood, Tennessee, 37027. A remote option will also be provided for participants in lieu of in-person attendance. The workshop has been approved by the Tennessee Commission on Continuing Legal Education for three hours of dual CLE credit.

There is a \$50 fee to attend the workshop. The workshop will be led by Steven J. Christopher, Deputy Chief Disciplinary Counsel of the Board's Investigations Section, and other Disciplinary Counsel at the Board.

The workshop will cover the Rules of Professional Conduct and Tennessee Supreme Court Rules governing lawyer trust accounts, tips for avoiding overdrafts, best practices for recordkeeping, and an overview of a lawyer's ethical obligations regarding client fees. Suggestions will also be provided for problems commonly encountered by Tennessee lawyers in connection with trust account management. The workshop is open to both attorneys and non-attorney staff.

To enroll, contact Kelly Heflin at the Tennessee Board of Professional Responsibility, at kheflin@tbpr.org or (615) 695-0940.

So, how do you administer a bar examination during a pandemic?

By: Lisa Perlen, Executive Director
Tennessee Board of Law Examiners

For the first time in my 16 administrations of the bar examination, there were multiple people who were “actively sick”¹ during the February exam, some of whom wished to continue testing.² Although it was a few days after the February 2020 examination when we learned about this new virus that was rapidly spreading across the globe, it raised immediate concern about the health and welfare of our exam-takers, proctors, and the BLE staff. Fortunately, the Board did not receive any reports of widespread illness from our examinees or proctors following the February exam. But it did raise the immediate question for the Board and the Supreme Court: How do you administer a bar examination during a pandemic?

To appreciate that question and the consequences resulting from how it is answered, it is important to understand the fundamental concept behind professional licensing examinations. The bar examination is a high-stakes professional examination designed to test basic knowledge, skills, and abilities needed to practice law—adequate knowledge of the law, sound analytical reasoning skills, and the ability to communicate clearly—and serves as a measure for basic competency.³ Passing a bar examination, such as the Uniform Bar Exam as administered in Tennessee or in another jurisdiction, is one of the foundational requirements for admission to practice law in Tennessee. *See* Tenn. Sup. Ct. R., §§ 3.01 – 3.11, 5.01 – 5.03. The bar exam serves the purpose of providing an independent and objective tool by which courts, as arms of the States, can “ensure that practitioners are proficient to provide legal services to the public.”⁴ Tennessee’s exam requirement, along with other foundational requirements such as requisite character and fitness, ensures that persons admitted to the bar will be able to serve the public well and avoid harm. The legal field is one of many professions that rely on public trust that require a competency test in addition to educational requirements for licensing. Others include medicine, nursing, accountings, and architecture.

When the application period for the July 2020 examination opened on March 1, little was known about the spread of the virus in the United States, but by March 10, the BLE staff members had left the office to work from home due to the rapid progression of the pandemic. Shortly thereafter, many law students were told to not return to their schools after Spring Break and as time and the virus progressed, law schools switched to online learning and we remained at home. Throughout this time, applications for admission by examination for the July 2020 UBE were open. The Board had to adapt its processes to

¹ An “actively sick” examinee is one who experiences non-anxiety related physical illness during the exam, or reports bouts of nausea or vomiting or feeling faint to a proctor. We have seen isolated incidents at previous exams and the applicants usually opted to leave the exam.

² We moved these applicants to vacant tables towards the back of the examination rooms.

³ Rebecca White Berch and Ruth V. McGregor, *INSIGHT: Covid-19 and Bar Exams—ABA’s Proposal Strikes a Needed Balance*, BLOOMBERG LAW, May 21, 2020, <https://news.bloomberglaw.com/us-law-week/insight-covid-19-and-bar-exams-abas-proposal-strikes-a-needed-balance>.

⁴ *See id.*

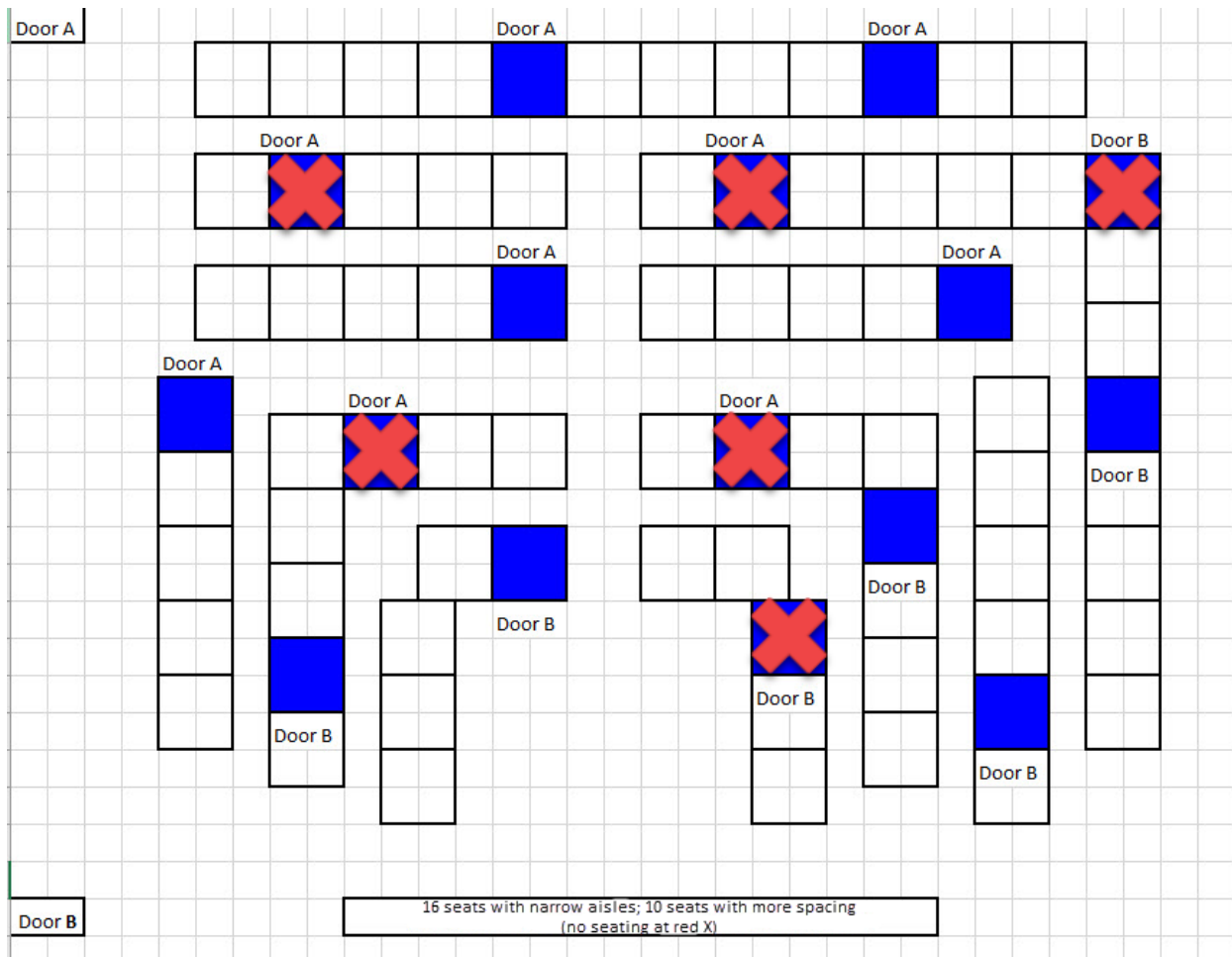
provide secure ways for third parties to transmit information that did not involve hard-copy delivery of original documents. By the end of March, Uniform Bar Examination jurisdictions⁵ began limiting seats for or canceling their July 2020 bar examination administrations. On April 3, the National Conference of Bar Examiners (the “NCBE”) offered unprecedented options to jurisdictions when it agreed to deploy the Uniform Bar Examination⁶ (“UBE”) on two alternate dates in addition to the traditional July examination date.

Tennessee continued to plan for in-person testing with examinations in July and in late September. For assistance in planning the safest way to administer an in-person exam at a time when large gatherings were contrary to emergency public health orders, the Board relied on guidance from public health professionals to devise registration and testing plans aimed at reducing potential virus exposure to an applicant pool of over 800 people. The plan provided for larger testing spaces so that exam-takers could be socially distanced within the testing rooms, use of multiple entrances and staggered arrival times to separate applicants during registration, creating specific paths for navigating the space to minimize the chance a person would come within 6 feet of another person, establishing mandatory mask requirements and temperature checks, and utilizing multiple restrooms within the space to facilitate regular cleaning of the facilities during the testing. The Board could provide sufficient space between examinees at each testing location and implement other recommended policies and procedures but doing so would reduce seating capacity for the July 2020 exam by 50% or more. The Board had over 25,000 square feet of space reserved for the September examination for anyone who elected to sit for the later administration or who the Board could not seat in July. And, if the July examination had to be canceled, the Board had secured sufficient space for all applicants for the September examination. With new phases of emergency orders lifting some restrictions on gatherings, it appeared Tennessee was on course to administer two in-person examinations before the end of 2020, albeit with special restrictions and new requirements in place.

COVID-19 counts, which had initially flattened through quarantine efforts, increased in early July. The cities in which the exams were being administered reverted to earlier public health orders limiting the size of in-person gatherings. Each exam location seats between 150 and 425 people. If permission could not be obtained to seat a large group of people at each location, the Board would need at least 40 and up to 85 separate, smaller examination rooms and still would not be able to adequately separate applicants during registration and breaks. As noted above, there are many issues to consider in seating applicants during a pandemic, as well as routine spacing requirements enforced to reduce the possibility of cheating. For example, in a law school classroom with tiered, u-shaped seating, that would normally seat 77 people, 16 applicants could be seated with sufficient spacing so that no one could see anyone else’s computer screen and the main exposure would be when passing behind someone when exiting for a restroom break because of narrow aisle width:

⁵ For example, New York canceled its planned administration of the July 2020 UBE on March 2, 2020: https://www.nybarexam.org/Press/PressRelease_NY_BarExam.pd

⁶ The Uniform Bar Examination, which is administered in Tennessee, consists of materials developed by the National Conference of Bar Examiners and results in a score that can be transferred to another jurisdiction and used for admission.



If seating is limited to every other row to provide more distance around each seat, the result would be seating 8 people in a room with 77 seats.

As the virus spread and other jurisdictions canceled exams, Applicants became fearful of testing in-person, but worried about job prospects if they had to wait 2 months to test in September or 7 months to test in February. Tennessee has long had provisions in the licensing rule, Tennessee Supreme Court Rule 7, permitting practice under supervision for recent law school graduates,⁷ and the Supreme Court was quick to extend the time applicants could practice under supervision so that delays would not impact their employment or their ability to engage in supervised practice.⁸ The Tennessee supervised practice rules and extension of the time during which applicants could practice were recognized by the American Bar Association in its Resolution recommending adoption of supervised practice rules.⁹

⁷ Tenn. Sup. Ct. R. 7, Sec. 10.04

⁸ For more information on Supervised Practice and Practice Pending Admission, please visit https://www.tnble.org/?page_id=189.

⁹ <https://www.americanbar.org/news/abanews/aba-news-archives/2020/04/bog-action-law-students/>; <https://www.americanbar.org/content/dam/aba/administrative/news/2020/04/bog-040720.pdf>.

In June, the NCBE announced that it would provide jurisdictions an option in lieu of an in-person examination by providing half the materials usually used in a Uniform Bar Examination administration to be used for a remotely-administered examination. The remote examination offered an alternative to the in-person examination that balanced the need to mitigate the risk associated with giving an in-person exam to applicants, proctors, and staff, while providing a measurable assessment that is similar to the traditional bar examination.

Due to the sharp increase in COVID-19 cases in Tennessee in early July, the Supreme Court canceled all in-person examinations for the remainder of 2020, finding that the risks associated with giving an in-person examination during a pandemic far outweighed the benefits of administering an in-person examination.¹⁰ The Court adopted use of the remote examination. Because the remote examination used NCBE materials, test-takers did not have to alter their preparations for the exam. By utilizing the remote examination option, recent law school graduates were able to take the bar examination and move towards licensing with minimal delays. Not all applicants wanted to take a remotely-administered exam so the Court provided options to the July 2020 applicants. They were given the option to withdraw their application, to transfer the application to the February 2021 examination, or to transfer their application to a concurrent UBE score transfer application if they would be taking a UBE in another jurisdiction prior to the remote exam.

What the remote examination did not offer was a portable UBE score for applicants who wanted to be licensed in Tennessee and another UBE jurisdiction. As part of the transition to the remote examination, Tennessee entered into reciprocity agreements with other jurisdictions administering the exam under the same conditions as required in Tennessee so that scores can be transferred among the jurisdictions, just as UBE scores are portable to other UBE jurisdictions. All jurisdictions contracted with a nationally recognized psychometrician with years of experience working with NCBE exams and scores to compute and scale the remote examination scores.

Although test-takers did not have to alter their preparations for the exam, administrators had to redesign pre-exam and exam day policies and procedures to account for a remote examination without live proctoring. The Board had to establish secure methods for delivering passwords, institute new documentation requirements to validate the identity of test takers, and establish new codes of conduct in a very short time frame. Additionally, rather than real-time proctoring when live proctors can identify activities by applicants that violate the code of conduct and Board Policies and Procedures, videos of applicants taking the exam are reviewed after the exam to detect such behaviors.

The remote exam was administered on October 5 and 6, 2020. In Tennessee, 691 applicants downloaded the exam files and 683 people completed the examination. Fewer than 0.3% of exam takers experienced issues on exam day. There were some delays in delivery of passwords but applicants were immediately directed to alternate delivery methods and were able to login and complete the examination. There are approximately 1,050 hours of monitoring video of Tennessee applicants to review for violations

¹⁰ In Re: COVID-19 Pandemic, ADM2020-0428 (July 13, 2020).

of the Code of Conduct. The initial review is by Artificial Intelligence, followed by live proctor review. This process is ongoing but will be completed prior to grade release on December 7, 2020.

According to the NCBE,¹¹ a total of 6,289 people completed an in-person bar examination between July and late September:

- 5,678 people in 23 jurisdictions completed the July 2020 bar examination;
- 1,811 people in 8 jurisdictions completed the early September examination; and
- 500 people in 5 jurisdictions completed the late September examination.

The remote examination administered October 5 and 6, was given to approximately 30,000 examinees, including the 683 Tennessee applicants.

- Nationally, 98% of the applicants who downloaded the exam software and test files started the exam as planned.
- Of the 2% who did not start the exam, 1.7% were “no shows” and the balance (0.3%) had technical issues, most commonly that the computer on which they were testing did not meet the minimum system requirements.
- In Tennessee, 98.84% of applicants who downloaded the exam software and test files started the exam as planned.
- Of the 1.16% who did not start the exam, 2 had technical issues that prevented them from completing the exam, representing 0.29% of Tennessee applicants who experienced technical issues. The others who did not participate in the exam were either no shows or applicants who withdrew the weekend prior to or during the exam.

So, what is in store for 2021? The Court recently announced that the February 2021 examination will be administered remotely because of the ongoing pandemic and infection rates in Tennessee.¹² This decision provides certainty to applicants who, at the time of submitting the application, will know the February 2021 examination will be a computer-based examination with remote monitoring. The remote examination will be a full Uniform Bar Examination, which means that the score will be portable, the Multistate Bar Exam will be equated and scored by the NCBE, and the final score will be scaled by the NCBE.

While the long-term preference is for in-person testing, the Supreme Court and the Board understand that offering a viable, measurable assessment for recent law school graduates is necessary. Extended delays in licensing that would result if no examination could be administered would be detrimental to the applicants. Remote testing provides a reasonable alternative to in-person testing in a time when in-person gatherings carry significant risks.

¹¹ <https://www.ncbex.org/news/2020-bar-exam-process-comes-to-an-end-approximately-38000-applicants-took-bar-exam-in-july-september-or-october/>

¹² <http://www.tncourts.gov/press/2020/10/23/tennessee-supreme-court-orders-remote-administration-february-2021-uniform-bar>

In-House Counsel Registration

By: Eileen Burkhalter-Smith, Disciplinary Counsel

So! You just accepted an in-house counsel position in Tennessee? And you are not licensed to practice law in Tennessee? Here's the skinny:

Rule 5.5 of the Tennessee Rules of Professional Conduct says you cannot practice law in Tennessee without a license, and that applies to In-House Counsel, too. If you have accepted an In-House Counsel position, and are not licensed to practice law in Tennessee, but you are licensed somewhere else, you will need to register to practice under Tennessee Supreme Court Rule 7, Section 10.01.

To register, you have to file an application with the Board of Law Examiners (BLE). Instructions and details are on the website for the BLE here: https://www.tnble.org/?page_id=330, and here is a summary.

1. Read Tennessee Supreme Court Rule 7, Section 10.01. This is the Rule that allows you to practice In-House if you are properly registered.
2. You have to complete a Character and Fitness Application with the National Conference of Bar Examiners. Create your account here: www.ncbex.org and complete the application.
3. Next, complete your application for In-House registration at the BLE website: synergy.tnble.com. Create an account on the website, and then you will get an email to continue.
4. Once your application is submitted to the BLE, you will need to upload required documents. They are listed here: https://www.tnble.org/?page_id=330, and include a copy of your application with the National Conference of Bar Examiners, a certificate of good standing from your state of licensure, and an affidavit from your employer.
5. Pay the required fee of \$600.

Your application must be submitted within 180 days of commencement of employment. If you are late in the application, you may be subject to discipline, you will be required to pay a late registration fee, and will be ineligible for licensure under Section 5.01, Admission to Practice Without Examination. See Tennessee Supreme Rule 7, Section 10.01(h).

It is worth repeating: the application must be submitted within 180 days of commencement of employment.

Wait! You're not done yet! Once your registration is completed with the BLE, you will receive an email from the Board of Professional Responsibility providing additional information. This information can also be found on the Board of Professional Responsibility's website here <https://www.tbpr.org/legal-professionals/attorney-license-information/information-for-new-attorneys>. Among other things, you need to register your contact information with the Board of Professional Responsibility and pay a prorated annual registration fee on its on-line portal, <https://www.tbpr.org/>. This registration must be completed within 30 days.

Once you are registered as In-House Counsel, your registration is tied to your employment. So, what happens if you change employment, but are still In-House Counsel? First, you must notify both the

Board of Professional Responsibility and the Board of Law Examiners in writing. Next, you must file an application to reinstate your In-House registration with a new employer. This process is done on paper with the BLE, and the details, plus the application form for reinstatement, are here: https://www.tnble.org/?page_id=330.

For more questions, contact the Board of Law Examiners at ble.administrator@tncourts.gov and the Board of Professional Responsibility at registration@tbpr.org.

Lastly, but most importantly, Welcome!

Board of Professional Responsibility

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Board of Professional Responsibility Organization and Composition

The Tennessee Supreme Court regulates and supervises the practice of law in Tennessee pursuant to Tennessee Supreme Court Rule 9. The Court appoints twelve members to the Board of Professional Responsibility (the Board) to effectuate Tenn. Sup. Ct. R. 9 and the Court's disciplinary enforcement.

The Board consists of nine (9) attorneys and three (3) public (non-attorney) members who serve three-year terms and geographically represent the entire state. In 2019-2020, Board members volunteered 584 hours and received no compensation for their service. Members of the Board include:

Floyd Flippin (Chair)
Joe M. Looney (Vice-Chair)
Stacey B. Edmonson
Ruth Ellis
Jennifer S. Hagerman
John D. Kitch
Jon Lundberg (Lay Member)
Jimmie Miller
Tyreese Miller* (Lay Member)
Juanita Patton (Lay Member)
Jody Pickens
Bridget Willhite

The Court appoints a Chief Disciplinary Counsel who reports to the Board. The Board also employs attorneys as Disciplinary Counsel and support staff to assist with attorney registration; consumer assistance; investigation and litigation. A staff directory is attached as Exhibit A.

District Committee Members

The Tennessee Supreme Court appoints attorneys to serve as district committee members from each disciplinary district in the state. In 2019-2020, 178 attorneys assisted the Court and the Board as district committee members reviewing Disciplinary Counsel's recommendations on investigative files and sitting on hearing panels conducting formal disciplinary charges. Of the 178 members, 169 reported volunteering 2,436 hours in 2019-2020 for which they received no compensation for their services. A roster of current district committee members is attached as Exhibit B.

*Resigned after confirmation as U.S. Marshal for West Tennessee

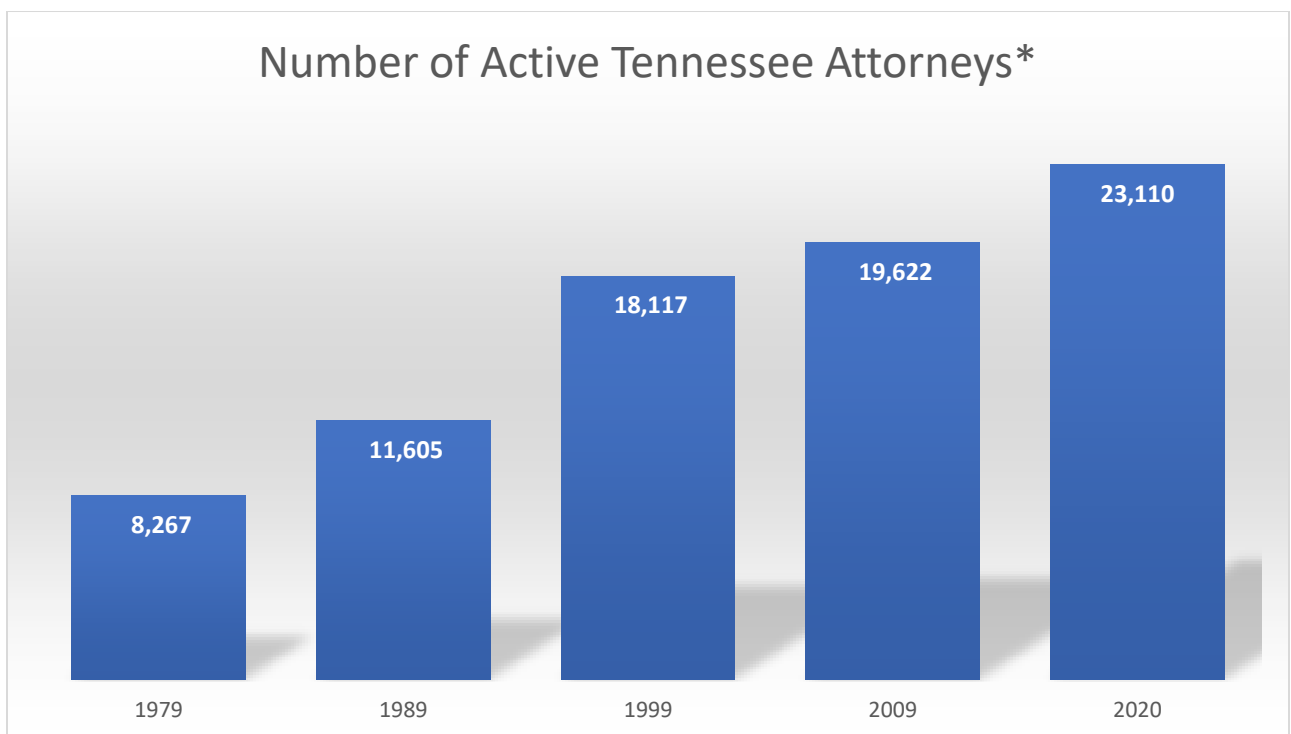
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Tennessee Attorney Information

The Board of Professional Responsibility provides an easy-to-use online registration system that allows lawyers to fulfill their annual registration requirements. We collect and make available public registration information on our website to allow the judiciary, lawyers and the public to access licensing, registration and contact information about lawyers.

Active Attorneys: 23,110



Active Attorney Statistics:

- | | | | |
|-------------------|----------------|---------------------------|----------------|
| ▪ Years Licensed: | <5 yrs: 16% | • Age: | 21-29 yrs: 5% |
| | 5-10 yrs: 16% | | 30-39 yrs: 23% |
| | 10-15 yrs: 16% | | 40-49 yrs: 24% |
| | 15-20 yrs: 12% | | 50-59 yrs: 20% |
| | 20-25 yrs: 11% | | 60-69 yrs: 18% |
| | 25-30 yrs: 8% | | 70+ yrs: 10% |
| | 30+ yrs: 21% | | |
| ▪ Gender: | Male: 62% | • In-state Attorneys: | 82% |
| | Female: 35% | • Out-of-state Attorneys: | 18% |
| | Unreported: 3% | | |

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Inactive Attorneys

Pursuant to Tennessee Supreme Court Rule 9, Section 10.3, inactive attorneys include attorneys serving as justice, judge or magistrate of a court of the United States of America or who serve in any federal office in which the attorney is prohibited by federal law from engaging in the practice of law; retired attorneys; attorneys on temporary duty with the armed forces; faculty members of Tennessee law schools who do not practice law; and attorneys not engaged in the practice of law in Tennessee. In 2019-2020, 5,263 attorneys on inactive status were registered with the Board of Professional Responsibility.

▪ **Non-disciplinary/Administrative Suspensions:**

Pursuant to Supreme Court Rules, the Supreme Court suspends attorneys who fail to pay their annual fee (Tenn. Sup. Ct. R. 9 § 10.6); fail to complete annual continuing legal education requirements (Tenn. Sup. Ct. R. 21 § 7); fail to comply with Interest on Lawyers Trust Account requirements (Tenn. Sup. Ct. R. 43 § 15); fail to pay the Tennessee professional privilege tax (Tenn. Sup. Ct. R. 9 § 26); or default on student loans (Tenn. Sup. Ct. R. 9 § 37). No attorney suspended pursuant to these Rules may resume practice until reinstated by Order of the Supreme Court. Attorneys were administratively suspended during fiscal year 2019-2020 as follows:

| | |
|---|-----------|
| Non-payment of Annual Fee: | 216 |
| Continuing Legal Education non-compliance: | 178 |
| Interest on Lawyer's Trust Accounts non-compliance: | 49 |
| Professional Privilege Tax non-compliance: | 106 |
| Default on a Student Loan: | 0 |
| Total: | <hr/> 549 |

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Assistance, Investigation and Prosecution

▪ Consumer Assistance Program (CAP)

Non-frivolous complaints against attorneys submitted by clients, lawyers, judges and the public are referred to the Board's Consumer Assistance Program (CAP) for assistance or opened and assigned to Disciplinary Counsel for investigation. CAP answers questions, provides information, informally mediates disputes, and refers matters to Disciplinary Counsel for investigation.

Caseload

| | |
|------------------------|-------|
| Number of Cases Opened | 2,278 |
|------------------------|-------|

Timeliness of Resolution

| | |
|-----------------|-------|
| 0 to 15 days | 65.2% |
| 16 to 30 days | 20.9% |
| 31 to 60 days | 10% |
| 61 or more days | 4% |

Actions Taken

| | |
|---------------------|--------|
| Mediate | 34.6 % |
| Advise | 45.6% |
| Referrals | 12.7% |
| Provide Information | 7.1% |

▪ Trust Account Overdraft Notifications

Pursuant to Tennessee Supreme Court Rule 9, Section 35.1(b), financial institutions report to the Board whenever any properly payable instrument is presented against an attorney trust account containing insufficient funds. After receiving notification of an overdraft, Board Staff request financial information and explanation from the attorney.

| | |
|-----------------------------|-----|
| <u>Total Notifications:</u> | 103 |
|-----------------------------|-----|

Actions Taken

| | |
|---------------------------------|----|
| Referred to Investigations: | 31 |
| Referred to Litigation: | 2 |
| Resolved without Investigation: | 72 |

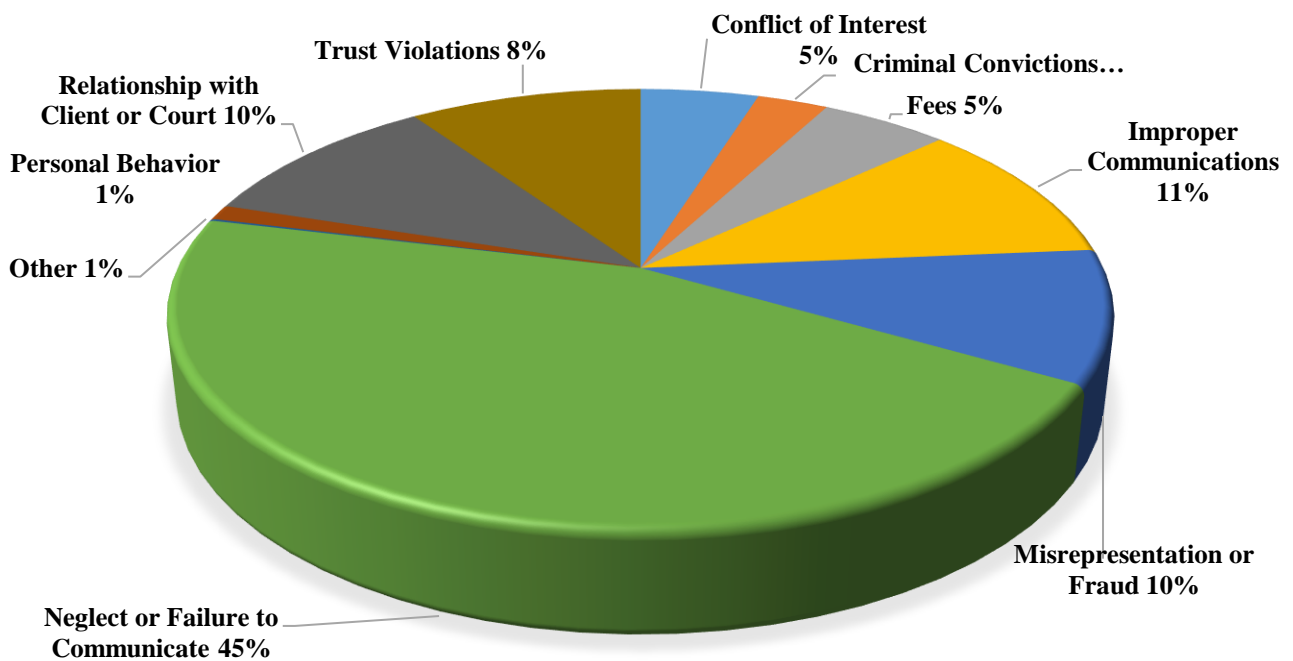
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■ Investigation

Disciplinary Counsel investigate complaints alleging unethical conduct. After investigation, Disciplinary Counsel recommend dismissal of the complaint if there is insufficient proof of a violation of the Rules of Professional Conduct. If the investigated complaint reflects a violation of the Rules of Professional Conduct, Disciplinary Counsel recommend diversion, private informal admonition, private reprimand, public censure, or the filing of formal disciplinary charges. A district committee member reviews and approves or disapproves Disciplinary Counsel's recommendation for dismissal, diversion, and private informal admonition. The Board of Professional Responsibility reviews and approves or disapproves Disciplinary Counsel's recommendation for private reprimand, public censure, and the filing of formal disciplinary charges.

A. Nature of Complaints



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B. Investigative Complaint Caseload

| | |
|---|------------|
| Complaints Received: | 1,242 |
| Complaints Pending at beginning of Fiscal Year: | <u>426</u> |
| Total Complaints: | 1,668 |

C. Investigative Complaint Disposition:

| | |
|----------------------------------|-----------|
| Administrative Dismissals: | 511 |
| Investigative Dismissals: | 508 |
| Diversions: | 41 |
| Private Informal Admonitions: | 30 |
| Private Reprimands: | 29 |
| Informal Public Censures: | 45 |
| Transfer to Disability Inactive: | 3 |
| Placed on Retired Status: | 34 |
| Other: ¹ | <u>11</u> |
| Total: | 1,212 |

¹ Abated by death; complaint withdrawn; duplicate file.

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▪ **Formal Disciplinary Proceedings:**

After the Board of Professional Responsibility authorizes Disciplinary Counsel to file formal disciplinary charges (i.e., a petition for discipline) against an attorney, the matter is assigned to three district committee members who constitute a hearing panel. The Hearing Panel sets the disciplinary proceeding for a hearing which is open to the public unless a protective order has been entered. The Tennessee Rules of Evidence and Rules of Civil Procedure apply unless Tennessee Supreme Court Rule 9 provides otherwise.

The Board of Professional Responsibility must prove an attorney's ethical misconduct by a preponderance of the evidence. Hearing Panels may recommend dismissal, public censure, suspension or disbarment.

A. Caseload

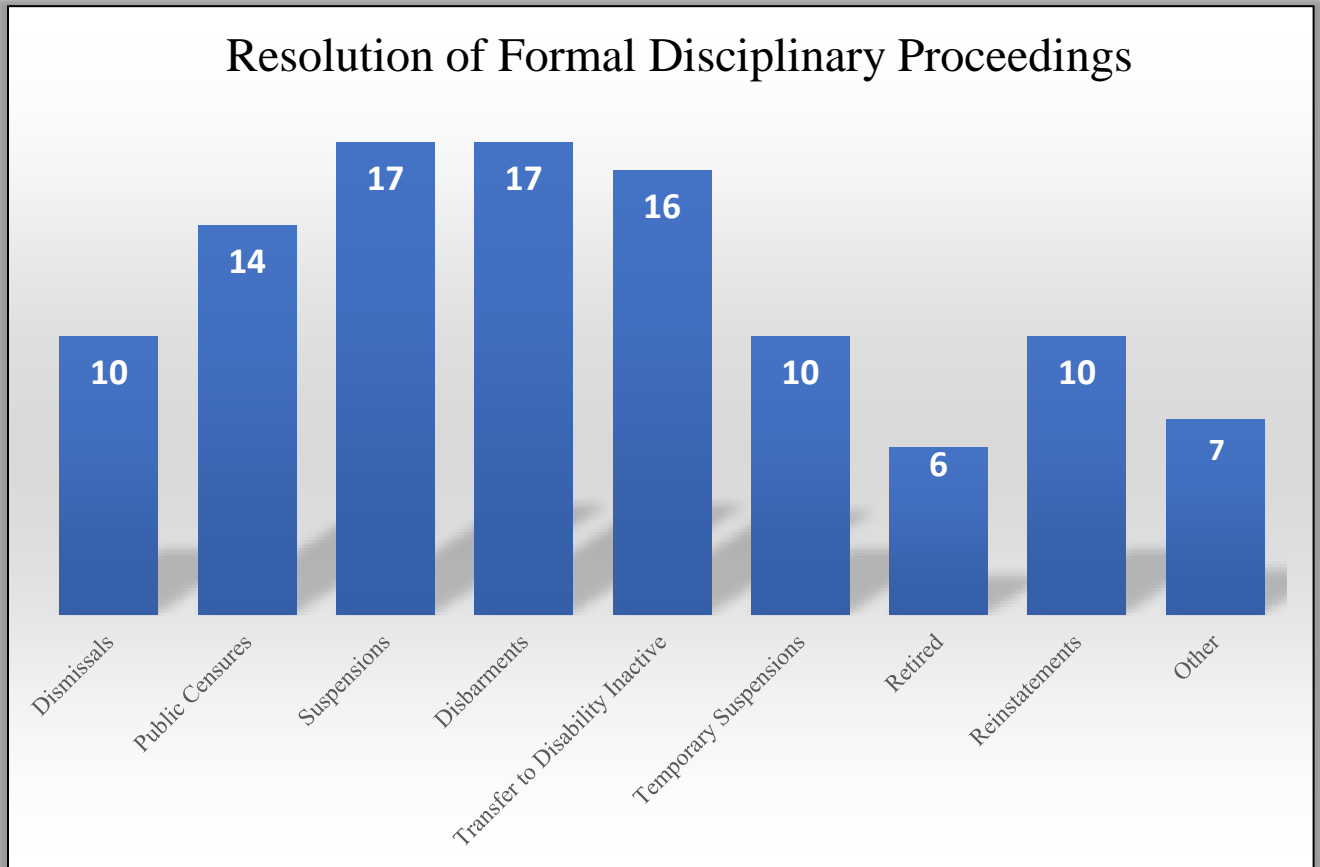
| | |
|---|---------|
| Formal cases filed during Fiscal Year: | 89 |
| Formal cases pending at beginning of Fiscal Year: | 110 |
| Total formal proceedings: | 199 |
| Public hearings conducted in Fiscal Year: | 31 |

B. Formal Disciplinary Proceedings Disposition:

| | |
|----------------------------------|----------|
| Dismissals: | 10 |
| Public Censures: | 14 |
| Suspensions: | 17 |
| Disbarments: | 17 |
| Transfer to Disability Inactive: | 16 |
| Temporary Suspensions: | 10 |
| Retired: | 6 |
| Reinstatements: | 10 |
| Other ² : | <u>7</u> |
| Total: | 114 |

² Abated by death; voluntary non-suited; denied; withdrawn; nonserious crime.

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▪ Education and Information

The Board issues Formal Ethics Opinions and staff respond to informal ethics questions by phone and internet. Disciplinary Counsel present continuing legal education seminars and workshops, publish *Board Notes*, a bi-annual newsletter, and update the Board's website with rule changes, disciplinary decisions and news for attorneys, judges and the public.

A. Ethics Opinions

i. Informal Opinions

Ethics Counsel and Disciplinary Counsel responded to a total of 2,533 phone and internet inquiries from attorneys seeking ethical guidance.³

ii. Formal Opinions

The Board did not issue any formal ethics opinions this fiscal year.

B. Continuing Legal Education (CLE) Presentations:

Between July 1, 2019 and June 30, 2020, Disciplinary Counsel presented fifty-three (53) CLE seminars, attended by approximately 3,491 attorneys.

C. Board Notes:

In 2019-2020, the Board emailed both Fall and Spring issues of *Board Notes*, the Board's semi-annual newsletter to all attorneys and judges and published it on the Board's website.

³ Tennessee attorneys may submit ethics inquiries to the Board by calling 615-361-7500, ext. 212, or via the Board's website at www.tbpr.org.

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D. Workshops

- a. The Board of Professional Responsibility hosted its annual Ethics Workshop on October 25, 2019 at the Nashville School of Law with over 400 attorneys attending. Due to the COVID-19 Pandemic, this year's Ethics Workshop has been cancelled. The Board is hopeful that the Ethics Workshop will return in the Fall of 2021.
- b. Since August 2018, the Board of Professional Responsibility has offered a Trust Account workshop to attorneys receiving diversion and/or discipline for trust account violations. One trust account workshop was held in 2019/2020.

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Board of Professional Responsibility
Staff Directory

| Name | Title | Extension |
|-------------------------|---|-----------|
| Kevin Balkwill | Disciplinary Counsel | 223 |
| Doug Bergeron | Disciplinary Counsel | 239 |
| Carol Bershatsky | Receptionist | 200 |
| Patty Burton | Assistant Director | 216 |
| Joe Byrd | Disciplinary Counsel | 246 |
| Melanie Cail | Legal Assistant - Litigation | 237 |
| Laura Chastain | Ethics Counsel | 212 |
| Steve Christopher | Deputy Chief Disciplinary Counsel - Investigations | 203 |
| Dana Dunn | Executive Assistant | 209 |
| Sandy Garrett | Chief Disciplinary Counsel | 211 |
| Reynold Gaulden, Jr. | Registration Assistant II | 244 |
| Elizabeth Gray | Administrative Assistant-Registration/ Scanning | 202 |
| Penny Greene | Administrative Payables Clerk | 219 |
| Kelly Heflin | Legal Assistant - Investigations | 242 |
| McKenzie Hollars | CAP Legal Assistant | 228 |
| Alan Johnson | Disciplinary Counsel | 207 |
| Katherine Jennings | Lead Legal Assistant - Investigations | 218 |
| Cheryl Lang | Administrative Scan Clerk | 234 |
| Brittany Lavalley | Disciplinary Counsel | 214 |
| Molly Liens | CAP Legal Assistant | 252 |
| Mary McKnight | Registration Manager | 213 |
| Jerry Morgan | Disciplinary Counsel | 245 |
| Missy Nesbitt | Lead Legal Assistant – Litigation | 221 |
| Tony Pros | Network Administrator | 230 |
| Liz Radford | Legal Assistant – Investigations and Litigation | 238 |
| Beverly Sharpe | Director of Consumer Assistance Program | 226 |
| Eileen Burkhalter Smith | Disciplinary Counsel | 210 |
| Candis Story | Case Manager | 229 |
| Giselle Sutherland | Paralegal | 224 |
| Suzie Thurber | Administrative Receivables Clerk | 241 |
| Cheri Weaver | CAP Paralegal | 208 |
| Rita Webb | Executive Secretary | 206 |
| Lani White | Registration and Scan Clerk | 234 |
| Russ Willis | Deputy Chief Disciplinary Counsel - Litigation | 214 |

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District Committee Member Roster

| District | First Name | Last Name | District | First Name | Last Name | District | First Name | Last Name |
|----------|---------------|--------------|----------|----------------|--------------|----------|----------------|------------------|
| 1 | Guy W. | Blackwell | 4 | Michael | Corley | 6 | Tracy | Moore |
| 1 | Julie | Canter | 4 | Christina | Duncan | 6 | Dalton | Mounger |
| 1 | McKenna L. | Cox | 4 | Joy | Gothard | 6 | Paul | Plant |
| 1 | James B. | Dunn | 4 | Kyle B. | Heckman | 6 | James Y. | Ross, Sr. |
| 1 | William B. | Harper | 4 | Jeffrey | Henry | 6 | Michael Stuart | Saylor |
| 1 | James W. | Harrison | 4 | Robert W. | Newman | 6 | Edward | Schell |
| 1 | Olen | Haynes, Jr. | 4 | Lynn | Omohundro | 6 | Jerry V. | Smith |
| 1 | K. Kidwell | King, Jr. | 4 | Tommy | Thompson | 6 | Timothy | Underwood |
| 1 | Richard E. | Ladd, Jr. | 4 | Randall | York | 6 | Jeffery | Walker |
| 1 | Polly A. | Peterson | 5 | John M. | Baird | 6 | Jake | Wolaver |
| 1 | Nikki C. | Pierce | 5 | Keene W. | Bartley | 7 | Andy | Anderson |
| 1 | Mark A. | Skelton | 5 | Robert C. | Bigelow | 7 | Lowe | Finney |
| 1 | Andrew T. | Wampler | 5 | Martha | Boyd | 7 | Matthew A. | Floyd |
| 1 | Laura | Woods | 5 | Kenneth | Bryant | 7 | Paul | Hessing |
| 2 | Oliver Dawson | Adams | 5 | Michael M. | Castellarin | 7 | Joseph | Howell |
| 2 | Wm. Dale | Amburn | 5 | Zale | Dowlen | 7 | Dwayne | Maddox, III |
| 2 | Msha | Ayesh | 5 | Jad A. | Duncan | 7 | Teresa | Marshall |
| 2 | Heidi | Barcus | 5 | Johnny | Ellis | 7 | William J. | Milam |
| 2 | Amanda M. | Busby | 5 | Christopher B. | Fowler | 7 | Jay | Reynolds |
| 2 | John W. | Butler | 5 | Craig V. | Gabbert, Jr. | 7 | Clint | Scott |
| 2 | Robert | Carpenter | 5 | Candi R. | Henry | 7 | Vincent | Seiler |
| 2 | James C. | Cone | 5 | Adam | Hill | 7 | Michelle | Shirley |
| 2 | Virginia | Couch | 5 | Lucas | Jenkins | 7 | Leanne | Thorne |
| 2 | Loretta G. | Cravens | 5 | Stanley A. | Kweller | 7 | Edwin | Townsend, Jr. |
| 2 | Karen | Crutchfield | 5 | Richard | McGee | 7 | Joe | VanDyke |
| 2 | David A. | Draper | 5 | Bill | O'Bryan | 8 | Bill | Bowen |
| 2 | John Paul | Dreiser | 5 | Steven D. | Parman | 8 | Dean | Dedmon |
| 2 | Shannon | Egle | 5 | Andrea P. | Perry | 8 | Jeff | Lay |
| 2 | John E. | Eldridge | 5 | Lee | Pope | 8 | Tony | Maness |
| 2 | Gene Paul | Gaby | 5 | Raymond G. | Prince | 8 | Amber | Shaw |
| 2 | Christopher | Hall | 5 | Aaron | Raney | 8 | Joseph E. | Tubbs |
| 2 | Lisa J. | Hall | 5 | Peter C. | Robison | 8 | John | Warner, III |
| 2 | Josh | Hedrick | 5 | Edgar M. | Rothschild | 8 | Vanessa | Webb |
| 2 | Kenneth | Irvine, Jr. | 5 | Abby | Rubenfeld | 8 | Allison S. | Whitledge |
| 2 | Russell | Johnson | 5 | Christopher C. | Sabis | 9 | Imad | Abdullah |
| 2 | Brian K. | Krumm | 5 | Michael J. | Sandler, Sr. | 9 | Thomas | Branch |
| 2 | Stephen A. | Marcum | 5 | Jennifer Lynne | Sheppard | 9 | Karen | Campbell |
| 2 | Carl P. | McDonald | 5 | Gary | Shockley | 9 | Stuart | Canale |
| 2 | Eric J. | Morrison | 5 | Rebekah | Shulman | 9 | Tom | Cassidy, Jr. |
| 2 | Marshall H. | Peterson | 5 | Liz | Sitgreaves | 9 | Margaret | Chesney |
| 2 | Mary Ann | Stackhouse | 5 | Lesz | Skoney | 9 | Frank | Childress |
| 2 | Mark | Stephens | 5 | Jeffrey | Spark | 9 | Rick | Click |
| 2 | Kevin | Teeters | 5 | Taylor C. | Sutherland | 9 | Anne B. | Davis |
| 2 | Victoria B. | Tillman | 5 | David J. | Tarpley | 9 | Laura | Deakins |
| 2 | Hanson R. | Tipton | 5 | James Patrick | Warfield | 9 | Asia | Diggs |
| 2 | Elizabeth | Tonkin | 5 | Bernadette | Welch | 9 | Jessica | Ferrante |
| 2 | Brian | Wanamaker | 5 | Gerald C. | Wigger | 9 | Amber | Floyd |
| 2 | Shelly | Wilson | 5 | Stephen | Zralek | 9 | Harriett | Halmon |
| 2 | Clint | Woodfin | 6 | Douglas T. | Bates, III | 9 | Lauren | Holloway |
| 2 | Broderick | Young | 6 | Caroline G. | Besuchamp | 9 | Sean A. | Hunt |
| 3 | Peter | Alliman | 6 | Richard | Boehms | 9 | Robbin | Hutton |
| 3 | John H. | Cameron, Jr. | 6 | Nathan | Brown | 9 | Adam | Johnson |
| 3 | Blair | Cannon | 6 | Vanessa | Bryan | 9 | Julia | Kavanagh |
| 3 | John M. | Carson III | 6 | Greg | Burlison | 9 | Timothy | Kellum |
| 3 | Larry | Cash | 6 | Jim | Catalano | 9 | E. Patrick | Lancaster |
| 3 | Stephen D. | Crump | 6 | Anita Lynn | Coffinberry | 9 | Andre | Mathis |
| 3 | Rosemarie L. | Hill | 6 | Hilary | Duke | 9 | Zachary | Moore |
| 3 | Cameron S. | Hill, Sr. | 6 | Ryan P. | Durham | 9 | Charles | Morrow |
| 3 | Philip | Jacobs | 6 | Nichole | Dusché | 9 | Kimbrough | Mullins |
| 3 | Michael | Jenne | 6 | Michael | Fahey, II | 9 | Ashley | Patterson |
| 3 | Bill | Killian | 6 | Rebekah | Fisher | 9 | Michael C. | Patton |
| 3 | John F. | Kimball | 6 | Jennifer F. | Franks | 9 | Eugene | Podesta |
| 3 | Jeffrey | Maddux | 6 | Robert H. | Hassell, II | 9 | Steve | Ragland |
| 3 | Stevie | Phillips | 6 | Kim | Helper | 9 | Terrence | Reed |
| 3 | H. Chris | Trew | 6 | Patricia | Holder | 9 | Marc | Reisman |
| 3 | William | Weiss | 6 | Clint | Kelly | 9 | Holly J. | Renken |
| 4 | Doug | Aaron | 6 | David | Kozlowski | 9 | Jennifer | Sink |
| 4 | William | Acuff | 6 | Eric | Larsen | 9 | Kamilah | Turner |
| 4 | Phillip | Bivens | 6 | Patricia A. | McDade | 9 | Andre | Wharton |
| 4 | Todd | Bobo | 6 | James | Brandon | 9 | Leslie | Yohey (Isaacman) |
| | | | 6 | James W. | Milam | | | |

Disciplinary Actions

- (April, 2020 – September, 2020)
-

PERMANENT DISBARMENTS:

***JACKIE LYNN GARTON, BPR #016106
DICKSON COUNTY***

Effective September 10, 2020, the Supreme Court of Tennessee permanently disbarred Jackie Lynn Garton from the practice of law and ordered restitution in the amount of \$1,365,203.42 and costs of the disciplinary proceeding be paid.

Mr. Garton was previously suspended by the Supreme Court of Tennessee on May 29, 2019, after pleading guilty to a serious crime. On April 22, 2019, Mr. Garton pled guilty to Wire Fraud in violation 18 USC §1343, Aggravated Identity Theft in violation of 18 USC §1028A, and Tax Fraud in violation of 26 USC §7206(1). The Board of Professional Responsibility instituted a formal proceeding to determine the extent of final discipline to be imposed.

In the first case, Mr. Garton knowingly and intentionally misappropriated funds held in trust for a minor child. In the second case, Mr. Garton knowingly, intentionally and systematically misappropriated funds in a probate matter and converted the funds to his personal or business use.

Mr. Garton violated Tennessee Rules of Professional Conduct 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 1.7 (Conflict of Interest), 1.15 (Safekeeping Property), 1.16 (Declining and Terminating Representation), 3.3 (Candor toward the Tribunal), 4.1 (Truthfulness and Candor in Statements to Others), 8.1 (Bar Admission and Disciplinary Matters), and 8.4 (a), (b), (c), and (d) (Misconduct).

Mr. Garton must comply with the requirements of Tennessee Supreme Court Rule 9, Section 28, regarding the obligations and responsibilities of disbarred attorneys.

***ARTHUR WAYNE HENRY, BPR #009484
LOUDON COUNTY***

Effective July 15, 2020, the Tennessee Supreme Court permanently disbarred Arthur Wayne Henry of Loudon County, Tennessee, from the practice of law. Mr. Henry consented to disbarment because he could not successfully defend the charges alleged in a complaint filed against him with the Board.

Mr. Henry's ethical misconduct violated Rules of Professional Conduct 1.1 (competence), 1.3 (diligence), 1.4 (communication), 8.1(b) (bar admission and disciplinary matters), and 8.4(a), (c), (d) and (g) (misconduct).

Mr. Henry must comply with the requirements of Tennessee Supreme Court Rule 9, Sections 28 and 30.4, regarding the obligations and responsibilities of disbarred attorneys.

***KIMBERLY OGDEN SUTTON, BPR #025715
TENNESSEE LAWYER***

Effective September 11, 2020, the Tennessee Supreme Court permanently disbarred Kimberly Ogden Sutton of Bentonville, Arkansas from the practice of law. Ms. Sutton consented to disbarment because she could not successfully defend the charges alleged in complaints filed against her with the Board.

Ms. Sutton represented six clients in immigration related matters. Ms. Sutton was paid to provide legal services but failed to complete such services. Ms. Sutton collected fees which were not yet earned, and which should have remained in her trust account. Ms. Sutton effectively terminated her representation of the clients without notification to them and without returning client files or unearned fees. Ms. Sutton abandoned her legal practice without providing sufficient client protection. Ms. Sutton failed to respond to the disciplinary complaints filed against her and was temporarily suspended as a result. Ms. Sutton failed to comply with the notification requirements of suspended attorneys.

Ms. Sutton's ethical misconduct violated Rules of Professional Conduct 1.3 (diligence), 1.4 (communication), 1.5 (fees), 1.15 (safekeeping property), 1.16 (terminating representation), 3.4(c) (disobeying obligations under rules of a tribunal), 8.1 (disciplinary matters), and 8.4(a) and (d) (misconduct). Ms. Sutton must comply with the requirements of Tennessee Supreme Court Rule 9, Sections 28 and 30.4, regarding the obligations and responsibilities of disbarred attorneys.

DISBARMENTS:

***MATTHEW DAVID DUNN, BPR #030759
WILLIAMSON COUNTY***

Effective June 10, 2020, the Supreme Court of Tennessee disbarred Matthew David Dunn from the practice of law and ordered restitution in the amount of \$95,621.00, and costs of the disciplinary proceeding be paid. This order disbaring Mr. Dunn is based upon a Petition for Discipline involving thirty-one (31) separate disciplinary complaints filed against Mr. Dunn.

In twelve of the disciplinary complaints filed, Mr. Dunn participated in a timeshare relief system that did not actually provide any relief to the complainants. Mr. Dunn would send a form letter to the timeshare agency, but then he abandoned each client. The remaining complaints involve Mr. Dunn assigning client files to associates within his firm. The associate would leave the firm, and the client would remain with the Dunn

Law Firm. However, Mr. Dunn failed to communicate or work the client's file. Mr. Dunn abandoned his practice and failed to respond to the complaints filed against him.

Mr. Dunn admitted violating Tennessee Rules of Professional Conduct 1.2 (scope of representation and allocation of authority between client and lawyer), 8.1(b) (bar and disciplinary matters), and 8.4(a) (misconduct), 3.2 (expediting litigation), 3.4(c) (fairness to the opposing party and counsel), 5.1 (responsibility of a partner, managing lawyer, or supervising lawyer), 5.3 (responsibilities regarding non-lawyer assistants), 5.4(a) (professional independence of a lawyer), 7.1 (communications concerning a lawyer's services), 7.6 (intermediary organizations), 8.1(b) (bar admissions and disciplinary matters) and 8.4(a) and (d) (misconduct).

Mr. Dunn must comply with the requirements of Tennessee Supreme Court Rule 9, Sections 18 and 30, regarding the obligations and responsibilities of disbarred attorneys and may not return to the active practice of law until an order of reinstatement has been entered by the Supreme Court.

WILLIAM E. MCMANUS, JR., BPR #029520
WASHINGTON COUNTY

Effective June 26, 2020, the Tennessee Supreme Court disbarred William E. McManus, Jr., of Washington County, Tennessee, from the practice of law.

Mr. McManus consented to disbarment acknowledging he could not successfully defend the charges alleged in a complaint filed against him with the Board. Mr. McManus' conduct violated Rules of Professional Conduct 8.4(a), (b), (c), (d) and (e) (Misconduct).

Mr. McManus must comply with the requirements of Tennessee Supreme Court Rule 9, Sections 28 and 30.4, regarding the obligations and responsibilities of disbarred attorneys and may not return to the active practice of law until an order of reinstatement has been entered by the Supreme Court.

MICHAEL CONSTANTINE SKOUTERIS, BPR #017566
SHELBY COUNTY

Effective May 7, 2020, the Supreme Court of Tennessee disbarred Michael Constantine Skouteris from the practice of law and ordered restitution in the amount of \$1,023,344.70 and costs of the disciplinary proceeding be paid.

This order is based upon a Petition for Discipline, Supplemental Petition for Discipline, Second Supplemental Petition for Discipline, and Third Supplemental Petition for Discipline involving nineteen (19) separate disciplinary complaints.

Mr. Skouteris submitted a Conditional Guilty Plea on February 18, 2020, admitting he knowingly and intentionally misappropriated client funds received in the settlement of personal injury litigation claims; knowingly misled clients regarding the status of their cases and the filing of pleadings, and failed to

communicate. Mr. Skouteris forged client signatures on settlement paperwork and began new representations while temporarily suspended by the Tennessee Supreme Court.

Mr. Skouteris admitted violating Tennessee Rules of Professional Conduct 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer), 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 1.15 (Safekeeping Property and Funds), 1.16 (Declining or Terminating Representation), 3.3 (Candor Toward the Tribunal), 3.4 (Fairness to Opposing Party and Counsel), 4.1 (Truthfulness in Statements to Others), 5.5 (Unauthorized Practice of Law), 8.1 (Disciplinary Matters), and 8.4 (Misconduct).

Mr. Skouteris must comply with the requirements of Tennessee Supreme Court Rule 9, Sections 28 and 30, regarding the obligations and responsibilities of disbarred attorneys and may not return to the active practice of law until an order of reinstatement has been entered by the Supreme Court.

PAUL JAMES SPRINGER, BPR #021267
SHELBY COUNTY

Effective May 22, 2020, the Supreme Court of Tennessee disbarred Paul James Springer from the practice of law and ordered him to pay restitution to three clients in the amount of \$59,250, and expenses and costs of this matter to the Board in the amount of \$1,939.12.

Three Petitions for Discipline containing a total of five complaints were filed against Mr. Springer. A Hearing Panel determined that Mr. Springer misappropriated settlement funds belonging to his client; engaged in criminal conduct as well as conduct involving dishonesty, deceit, misrepresentations and fraud; made material misrepresentations to his clients; failed to reasonably communicate with his clients; engaged in the unauthorized practice of law and failed to notify clients of his suspension and withdraw as attorney of record.

Mr. Springer's professional misconduct violated Rules of Professional Conduct 1.1 (competence); 1.2 (scope of representation and allocation of authority between client and lawyer); 1.3 (diligence); 1.4 (communication); 1.7 (conflict of interest); 1.15 (safekeeping property and funds); 1.16 (declining or terminating representation); 4.2 (communication with a person represented by counsel); 5.5 (unauthorized practice of law); 8.1 (bar admission and disciplinary matters); and 8.4 (a), (b), (c), and (g) (misconduct).

Mr. Springer must comply with the requirements of Tennessee Supreme Court Rule 9, Sections 28 and 30, regarding the obligations and responsibilities of disbarred attorneys.

SUSPENSIONS

BENJAMIN DEMPSEY, BPR #009041
CARROLL COUNTY

On August 21, 2020, the Supreme Court of Tennessee entered an order suspending Benjamin Dempsey from the practice of law, pursuant to Tennessee Supreme Court Rule 9, Section 12.2, for a period of five (5) years, with three (3) years active, and the remainder on probation. Mr. Dempsey's active suspension shall be retroactive to August 16, 2018. Mr. Dempsey is required to pay the Board for all costs in the disciplinary proceeding.

Mr. Dempsey admitted violating the Rules of Professional Conduct in two matters. In the first matter, Mr. Dempsey entered an Alford plea and was convicted of the Class B misdemeanor offense of simple assault by offensive touching. In the second matter, Mr. Dempsey was suspended for three (3) years by the United States Bankruptcy Court for the Western District of Tennessee for misappropriating funds, engaging in improper trust accounting, making misrepresentations to his client and the Court, and failing to refund fees to his client in a timely manner.

Mr. Dempsey admitted his conduct violated Rules of Professional Conduct 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 1.15 (Safekeeping Property and Funds), 1.16 (Declining or Terminating Representation), 3.4 (Fairness to Opposing Counsel), 5.3 (Responsibilities Regarding Nonlawyer Assistance), and 8.4(a), (b), (c), and (d) (Misconduct).

Mr. Dempsey must comply with the requirements of Tennessee Supreme Court Rule 9, Sections 28 and 30.4, regarding the obligations and responsibilities of suspended attorneys and the procedure for reinstatement.

***ROBERT JOHN FOY, BPR #025919
RUTHERFORD COUNTY***

On August 17, 2020, the Supreme Court of Tennessee entered an order suspending Robert John Foy from the practice of law for a period of seven (7) years, with five (5) years active, and the remainder on probation pursuant to Tennessee Supreme Court Rule 9, Section 12.2. Mr. Foy was further ordered to obtain an evaluation with the Tennessee Lawyers Assistance Program and engage the services of a Practice Monitor. Mr. Foy must pay the Board of Professional Responsibility's costs and expenses and court costs within ninety (90) days.

Mr. Foy converted client settlement funds to his own business and personal use. He also failed to promptly pay third-party lien holders from the settlement funds. During the investigation of this matter, Mr. Foy falsified bank records to prevent discovery of his misappropriation. In addition, Mr. Foy failed to keep client funds and estate funds in his trust account. Mr. Foy reimbursed the estate and his clients in full for the funds he misappropriated.

Mr. Foy executed a conditional guilty plea acknowledging his conduct violated Rules of Professional Conduct (RPC) 1.15 (safekeeping property); 3.4 (fairness to the opposing party and counsel); 4.1 (truthfulness and candor in statements to others); and 8.4 (a) and (c), (misconduct).

Mr. Foy must comply with the requirements of Tennessee Supreme Court Rule 9, Sections 28 and 30.4 regarding the obligations and responsibilities of suspended attorneys and the procedure for reinstatement.

***DAVID DWAYNE HARRIS BPR #
WILLIAMSON COUNTY***

On May 1, 2020, the Supreme Court of Tennessee entered an order suspending David Dwayne Harris from the practice of law for a period of two (2) years with sixty (60) days active suspension and the remainder on probation pursuant to Tennessee Supreme Court Rule 9, Section 12.2, and the payment to the Board for all costs in the disciplinary proceeding as well as restitution in the amount of \$10,000.

Mr. Harris admitted to violating the Rules of Professional Conduct in five client matters. Mr. Harris failed to communicate with his clients and failed to file petitions for clients. He also communicated with a party in a case where he knew that party was represented by counsel.

Mr. Harris admitted his conduct violated the Rules of Professional Conduct 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 1.7 (Conflict of Interest), 4.2 (Communication with a Person Represented by Counsel), and 8.4 (a) (Misconduct).

Mr. Harris must comply with the requirements of Tennessee Supreme Court Rule 9, Sections 28 and 30.4 regarding the obligations and responsibilities of suspended attorneys and the procedure for reinstatement.

***ANDREW HARRISON MALONEY, BPR #028722
DAVIDSON COUNTY***

Effective June 22, 2020, the Supreme Court of Tennessee suspended Andrew Harrison Maloney from the practice of law for eighteen (18) months, pursuant to Tennessee Supreme Court Rule 9, Section 12.2, with ten (10) months active, and the remainder on probation. Mr. Maloney's active suspension shall be retroactive to September 18, 2019, pursuant to Tennessee Supreme Court Rule 9, Section 12.2(b). During the period of probation, Mr. Maloney shall engage the services of a Practice Monitor who will assess Mr. Maloney's case load and progress in disbursing funds to third parties. Additionally, Mr. Maloney must reimburse the Board the costs and expenses of this proceeding.

Mr. Maloney improperly used funds held in escrow for his business and personal use, failed to timely disburse funds owed to third-parties and failed to escheat certain funds to the State of Tennessee as required. Mr. Maloney executed a conditional guilty plea acknowledging his conduct violated Rules 1.15 (safekeeping property and funds) and 8.4(a) and (c) (misconduct) of the Tennessee Rules of Professional Conduct.

During the period of suspension and probation, Mr. Maloney shall incur no new complaints of misconduct that relate to conduct occurring during the period of suspension and probation which result in the recommendation by the Board that discipline be imposed.

Mr. Maloney must comply with the requirements of Tennessee Supreme Court Rule 9, Sections 28 and 30.4, regarding the obligations and responsibilities of suspended attorneys and the procedure for reinstatement.

JASON R. MCLELLAN, BPR #024596
SULLIVAN COUNTY

Effective May 12, 2020, the Supreme Court of Tennessee entered an order suspending Jason R. McLellan from the practice of law for one (1) year, with two (2) months active suspension and the remainder on probation, pursuant to Tennessee Supreme Court Rule 9, Section 12.2, and the payment to the Board for all costs in the disciplinary proceeding, along with restitution to one former client.

Mr. McLellan admitted to violating the Rules of Professional Conduct in representing one client. Mr. McLellan represented a client involved in a criminal investigation. Mr. McLellan further represented the same client in university disciplinary proceedings that resulted from the criminal investigation. While the client's mother authorized three charges to be made to a credit card for fees, Mr. McLellan made several additional charges. Mr. McLellan failed to respond to communications from the client about the fees, failed to have the client sign an employment agreement, and failed to provide the client any invoices justifying the fees he charged. Mr. McLellan further terminated his representation without notifying the client.

Mr. McLellan has admitted that he violated Rules of Professional Conduct 1.2 (scope of representation), 1.4 (communication), 1.5 (fees), 1.15 (safekeeping property and funds), 1.16 (terminating representation), and 8.4(a) and (d) (misconduct).

Mr. McLellan must comply with the requirements of Tennessee Supreme Court Rule 9, Sections 28 and 30.4, regarding the obligations and responsibilities of suspended attorneys and the procedure for reinstatement.

KEVIN WILLIAM TEETS, JR., BPR #029981
DAVIDSON COUNTY

Effective June 10, 2020, the Supreme Court of Tennessee entered an order suspending Kevin William Teets, Jr. from the practice of law for thirty (30) days active suspension; for the period of one (1) year following the date of the order of reinstatement Mr. Teets shall engage a practice monitor; and Mr. Teets must pay to the Board all costs in the disciplinary proceeding.

Mr. Teets assisted with the incorporation of a non-profit entity in exchange for being named treasurer of the non-profit. Mr. Teets admitted to misappropriating funds from the non-profit while acting as its treasurer. The hearing panel determined that Mr. Teets' actions violated Rules of Professional Conduct 8.4.

Mr. Teets is immediately suspended from the practice of law and prohibited from using any indicia of lawyer, legal assistant, or law clerk or maintaining a presence where the practice of law is conducted. Mr. Teets 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 and shall deliver to all clients any papers or property to which they are entitled.

Mr. Teets must comply with the requirements of Tennessee Supreme Court Rule 9, Sections 28 and 30.4, regarding the obligations and responsibilities of suspended attorneys and the procedure for reinstatement.

GEORGE H. THOMPSON, BPR #003024
DAVIDSON COUNTY

On April 28, 2020, the Tennessee Supreme Court entered an order suspending George H. Thompson from the practice of law in Tennessee for a period of one (1) year, with thirty (30) days active.

The Board of Professional Responsibility filed a petition for discipline against Mr. Thompson alleging misconduct during the representation of a client. The Hearing Panel found that Mr. Thompson filed suit on behalf of his client, and then filed a voluntary nonsuit. The Hearing Panel held that even though he intended to refile the case, he failed to do so, and the statute of limitations expired. Mr. Thompson entered an agreement with his client to settle a potential malpractice claim and made a payment to his client, but did not advise his client in writing to consult another attorney regarding that agreement. The Hearing Panel held that Mr. Thompson violated Tennessee Rules of Professional Conduct 1.1 (competence); 1.3 (diligence); 1.8(h)(2) (conflict of interest); and 8.4(c) (misconduct involving dishonesty, fraud, deceit, or misrepresentation).

On appeal, the trial court upheld the judgment of the Hearing Panel, and the Supreme Court affirmed, finding the same violations.

Pursuant to Tennessee Supreme Court Rule 9, Section 28.1, the suspension is effective upon entry of the order by the Court. Mr. Thompson must comply with the requirements of Tennessee Supreme Court Rule 9, Sections 28 and 30, regarding the obligations and responsibilities of suspended attorneys and may not return to the active practice of law in Tennessee until an order of reinstatement has been entered by the Supreme Court.

CANDACE LENETTE WILLIAMSON, BPR #028933
TENNESSEE LAWYER

On July 20, 2020, the Tennessee Supreme Court suspended Candace Lenette Williamson of Southaven, Mississippi, from the practice of law for two (2) years, retroactive to the date of her temporary suspension of December 21, 2018, pursuant to Tennessee Supreme Court Rule 9, Section 12.2(b). One (1) year shall be served as an active suspension followed by one (1) year of probation pursuant to Tennessee Supreme Court Rule 9, Section 14.1. Ms. Williamson must pay the Board of Professional Responsibility's costs and expenses and court costs within ninety days.

On April 8, 2020, the Board filed a Petition for Discipline against Ms. Williamson. The Petition included four complaints of misconduct and one self-report of misconduct. The Hearing Panel found that Ms. Williamson failed to adequately communicate with her clients, did not provide competent and diligent representation, engaged in the unauthorized practice of law, and failed to advise opposing counsel, her clients, and the court that she had been temporarily suspended from the practice of law. In mitigation, Ms. Williamson was undergoing significant personal problems that she is now addressing.

Ms. Williamson's misconduct violates Rules of Professional Conduct (RPC) 1.1 (competence); 1.3 (diligence); 1.4 (communication); 1.16(d) (terminating representation); 3.2 (expediting litigation); 3.3 (candor toward the tribunal); 5.5 (unauthorized practice of law); 8.1 (bar and disciplinary matters) and 8.4 (a) and (g) (misconduct).

Ms. Williamson shall comply in all aspects with Tennessee Supreme Court Rule 9, Sections 28 and 30.4, regarding the obligations and responsibilities of suspended attorneys and the procedure for reinstatement.

BARBARA MORRIS ZOCCOLA, BPR #013020
SHELBY COUNTY

On April 20, 2020, the Supreme Court of Tennessee entered an order suspending Barbara Morris Zoccola from the practice of law for a period of two (2) months retroactive to her suspension on January 15, 2020, pursuant to Tennessee Supreme Court Rule 9, Section 22.3, and requiring Ms. Zoccola to pay the Board all costs of the disciplinary proceeding.

Ms. Zoccola pled guilty to the misdemeanor charge of Theft of Public Money, Property, or Thing of Value (18 USC §641), in the matter of United States of America v. Barbara Morris Zoccola, Case Number: 19-20282-WLC and was sentenced to one (1) year probation and ordered to pay restitution and a fine.

Ms. Zoccola entered a conditional guilty plea and admitted her misconduct violated Rule of Professional Conduct 8.4 (misconduct).

Ms. Zoccola must comply with the requirements of Tennessee Supreme Court Rule 9, Sections 28 and 30.4 regarding the obligations and responsibilities of suspended attorneys and the procedure for reinstatement.

TEMPORARY SUSPENSIONS

KEVIN CARMACK ANGEL, BPR #019950 ANDERSON COUNTY

On August 18, 2020, the Supreme Court of Tennessee temporarily suspended Kevin Carmack Angel from the practice of law upon finding that Mr. Angel poses a threat of substantial harm to himself and the public. Section 12.3 of Supreme Court Rule 9 provides for the immediate summary suspension of an attorney's license to practice law in cases of an attorney who poses a threat of substantial harm to the public.

Mr. Angel is immediately precluded from accepting any new cases, and he must cease representing existing clients by September 18, 2020. After September 18, 2020, Mr. Angel shall not use any indicia of lawyer, legal assistant, or law clerk or maintain a presence where the practice of law is conducted.

Mr. Angel 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. Mr. Angel is required to deliver to all clients any papers or property to which they are entitled.

This suspension remains in effect until dissolution or modification by the Supreme Court. Mr. Angel may for good cause request dissolution or modification of the suspension by petition to the Supreme Court.

ANDREW NATHAN HALL, BPR #013481 MORGAN COUNTY

On September 4, 2020, the Supreme Court of Tennessee temporarily suspended Andrew Nathan Hall from the practice of law upon finding Mr. Hall failed to respond to the Board concerning a complaint of misconduct. Section 12.3 of Supreme Court Rule 9 provides for the immediate summary suspension of an attorney's license to practice law if an attorney fails to respond to a complaint of misconduct.

Mr. Hall is immediately precluded from accepting any new cases and must cease representing existing clients by October 4, 2020. After October 4, 2020, Mr. Hall shall not use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence where the practice of law is conducted. Mr. Hall shall 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 and deliver to all clients any papers or property to which they are entitled.

Mr. Hall must comply with the requirements of Tennessee Supreme Court Rule 9, Sections 28 and 12.3(d), regarding the obligations and responsibilities of temporarily suspended attorneys and the procedure for reinstatement.

This suspension remains in effect until dissolution or modification by the Supreme Court. Mr. Hall may for good cause request dissolution or modification of the suspension by petition to the Supreme Court.

NEWTON S. HOLIDAY, BPR #012990
DAVIDSON COUNTY

On June 18, 2020, the Supreme Court of Tennessee temporarily suspended Newton S. Holiday from the practice of law upon finding that Mr. Holiday failed to respond to the Board of Professional Responsibility. Section 12.3 of Supreme Court Rule 9 provides for the immediate temporary suspension of an attorney's license to practice law in cases where an attorney fails to respond to a disciplinary complaint.

Mr. Holiday is immediately precluded from accepting any new cases, and he must cease representing existing clients by July 18, 2020. After July 18, 2020, Mr. Holiday shall not use any indicia of lawyer, legal assistant, or law clerk or maintain a presence where the practice of law is conducted.

Mr. Holiday 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. Mr. Holiday is required to deliver to all clients any papers or property to which they are entitled.

This suspension remains in effect until dissolution or modification by the Supreme Court. Mr. Holiday may for good cause request dissolution or modification of the suspension by petition to the Supreme Court.

ROBERT R. REXRODE, BPR #016508
TENNESSEE LAWYER

On September 25, 2020, the Supreme Court of Tennessee temporarily suspended Robert R. Rexrode from the practice of law upon finding Mr. Rexrode failed to respond to the Board concerning a complaint of misconduct. Section 12.3 of Supreme Court Rule 9 provides for the immediate summary suspension of an attorney's license to practice law if an attorney fails to respond to a complaint of misconduct.

Mr. Rexrode is immediately precluded from accepting any new cases and must cease representing existing clients by October 25, 2020. After October 25, 2020, Mr. Rexrode shall not use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence or occupy an office where the practice of law is conducted. Mr. Rexrode shall 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 and deliver to all clients any papers or property to which they are entitled.

Mr. Rexrode must comply with the requirements of Tennessee Supreme Court Rule 9, Sections 28 and 12.3(d), regarding the obligations and responsibilities of temporarily suspended attorneys and the procedure for reinstatement.

This suspension remains in effect until dissolution or modification by the Supreme Court. Mr. Rexrode may for good cause request dissolution or modification of the suspension by petition to the Supreme Court.

KIMBERLY OGDEN SUTTON, BPR #025715
TENNESSEE LAWYER

On June 5, 2020, the Supreme Court of Tennessee temporarily suspended Kimberly Ogden Sutton from the practice of law upon finding that Ms. Sutton failed to respond to the Board regarding a complaint of misconduct. Section 12.3 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.

Ms. Sutton is immediately precluded from accepting any new cases, and she must cease representing existing clients by July 5, 2020. After July 5, 2020, Ms. Sutton shall not use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence where the practice of law is conducted.

Ms. Sutton must notify all clients being represented in pending matters, as well as co-counsel and opposing counsel of the Supreme Court's Order suspending her law license. Ms. Sutton is required to deliver to all clients any papers or property to which they are entitled.

Ms. Sutton must comply with the requirements of Tennessee Supreme Court Rule 9, Sections 28 and 12.3, regarding the obligations and responsibilities of temporarily suspended attorneys and the procedure for reinstatement.

This suspension remains in effect until dissolution or modification by the Supreme Court. Ms. Sutton may for good cause request dissolution or modification of the suspension by petition to the Supreme Court.

DAVID BRENT WHELAN, BPR #032494
RUTHERFORD COUNTY

On September 10, 2020, the Supreme Court of Tennessee temporarily suspended David Brent Whelan from the practice of law upon finding Mr. Whelan failed to respond to the Board regarding a complaint of misconduct and poses a risk of substantial harm to the public. Section 12.3 of Supreme Court Rule 9 provides for the immediate summary suspension of an attorney's license to practice law in cases where the attorney fails to respond to the Board regarding a complaint of misconduct or poses a risk of substantial harm to the public.

Mr. Whelan is immediately precluded from accepting any new cases, and he must cease representing existing clients by October 10, 2020. After October 10, 2020, Mr. Whelan shall not engage in the practice of law or use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence where the practice of law is conducted.

Mr. Whelan 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 and deliver to all clients any papers or property to which they are entitled.

Mr. Whelan must comply with the requirements of Tennessee Supreme Court Rule 9, Sections 28 and 12.3(d), regarding the obligations and responsibilities of temporarily suspended attorneys and the procedure for reinstatement.

This suspension remains in effect until dissolution or modification by the Supreme Court. Mr. Whelan may for good cause request dissolution or modification of the suspension by petition to the Supreme Court.

PUBLIC CENSURES

BEDE O.M. ANYANWU, BPR #24293 MADISON COUNTY

On July 17, 2020, Bede O.M. Anyanwu, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Anyanwu raised claims in a civil pleading which had no factual or legal basis. Mr. Anyanwu had an obligation to withdraw such claims upon his determination that the claims could not be supported but failed to do so. Mr. Anyanwu failed to keep his client informed of fees he had billed during the representation and many of Mr. Anyanwu's fees were unreasonable based upon the amount of time charged for simple and administrative tasks. Mr. Anyanwu also revealed confidential information in his Motion to Withdraw by stating that his client's claims were personally repugnant and could not be defended.

By these acts, Bede O.M. Anyanwu has violated Rule of Professional Conduct 1.4 (communication), 1.5 (fees), 1.6 (confidentiality), 3.1 (meritorious claims), and 8.4(a) and (d) (misconduct), and is hereby Publicly Censured for these violations. As a condition of the Public Censure, Mr. Anyanwu is prohibited from seeking payment for any outstanding balance owed by his client.

A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law.

MICHAEL ROBIE BUCHANAN, BPR #022702 HAMILTON COUNTY

On August 17, 2020, Michael Robie Buchanan, an attorney licensed to practice law in Tennessee, was publicly censured by the Supreme Court of Tennessee conditioned upon payment of fees to the Board of Professional Responsibility.

Mr. Buchanan failed to timely remit agreed employee deferral contributions to the firm's 401(k) plan and matching contributions. By these acts, Mr. Buchanan executed a conditional guilty plea acknowledging

his conduct violated Rules of Professional Conduct 1.15 (safeguarding funds) and 5.3 (responsibilities regarding nonlawyer assistance).

A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law.

ADDIE MARIE BURKS, BPR #011805
SHELBY COUNTY

On April 14, 2020, Addie Marie Burks, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

A client hired Addie Marie Burks to represent him in defense of a civil collection matter. After the plaintiff filed a motion for default, Ms. Burks filed a Notice of Appearance with a certificate of service indicating it was mailed to opposing counsel on that date. Ms. Burks, however, did not mail the notice to opposing counsel until a few days later. Ms. Burks did not appear at the hearing on the motion for default, and the motion was granted.

Addie Marie Burks then filed a motion to set aside the default, but this motion was never served on opposing counsel and was eventually struck by the court. Ms. Burks did not appear at the hearing on the final judgment, and a final judgment was entered against her client for \$40,000.

By these acts, Addie Marie Burks has violated Rules of Professional Conduct 3.3 (candor to the tribunal), 1.1 (competence) and 8.4(d) (prejudice to the administration of justice) and is hereby Publicly Censured for these acts.

A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law.

ERIN DANIELLE BRYSON, #031049
STEWART COUNTY

On April 14, 2020, Erin Danielle Bryson, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Ms. Bryson is an Assistant District Attorney in Stewart County. At a preliminary hearing, on April 7, 2017, an investigator employed by the Stewart County Sheriff's Office leaned over to Ms. Bryson while the hearing was proceeding and told her that he had samples of the evidence at issue "in my car." On direct examination, she asked the investigator if he had samples of the evidence, and he testified "I do. That's being held in evidence." On cross examination, defense counsel asked where the samples were, and the investigator testified "currently in the sheriff's office. . . [i]n the evidence . . . room."

After the hearing, Ms. Bryson checked with the sheriff's office and determined the evidence was not in the evidence room. On April 11, 2017, the investigator prepared an amended "Investigative Report" which

explained his incorrect testimony. On April 28, 2017, Ms. Bryson prepared a memorandum to her file about the investigator's testimony. She received the transcript of the hearing on June 13, 2017. On October 23, 2017, Ms. Bryson extended by email a settlement offer to one defendant with a copy of her April 28, 2017, memorandum.

Ms. Bryson did not inform opposing counsel of the false testimony of the investigator for six months, and she did not inform the tribunal at any time. Ms. Bryson is in violation of Rule 3.3(h) (candor to the tribunal), which requires an attorney to "promptly report the improper conduct to the tribunal"; and Rule 3.8(d) (special responsibilities of a prosecutor) in failing to "timely" disclose to the defense information known to her which "tends" to "mitigate[] the offense." Ms. Bryson is also in violation of Rule 8.4(d) (prejudice to the administration of justice).

By these acts, Erin Danielle Bryson has violated Rules of Professional Conduct 3.3(h) (candor to the tribunal), 3.8(d) (special responsibilities of a prosecutor) and 8.4(d) (prejudice to the administration of justice) and is hereby Publicly Censured for these acts.

A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law.

***KATHLEEN LAIRD CALDWELL, BPR #9916
MEMPHIS LAWYER***

On April 1, 2020, Kathleen Laird Caldwell, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Ms. Caldwell verbally agreed to represent a client in a post-conviction criminal case and on appeal for a flat fee of \$7,500.00. Ms. Caldwell's office received \$3,500.00 toward the fee and deposited the refundable fee directly into an operating account without a written fee agreement signed by the client. Ms. Caldwell met with the client in the Shelby County Jail but had not reviewed materials related to the client's criminal case, had not filed any post-trial motions, had not entered an appearance with the criminal court, and had not begun the appeal process. Less than one month after the representation began, Ms. Caldwell's representation was terminated and the client requested a refund of the unearned portion of the fee. Ms. Caldwell only offered to refund \$950.00 to the client and provided an invoice for services billed at the rate of \$300.00 per hour which Ms. Caldwell acknowledged had never previously been discussed with the client.

By these acts, Kathleen Laird Caldwell has violated Rule of Professional Conduct 1.2 (scope of representation), 1.4 (communication), 1.5 (fees), and 1.15 (safekeeping property), and is hereby Publicly Censured for these violations. As a condition of the Public Censure, Ms. Caldwell shall reimburse \$2,750.00 in fees directly to her former client within 120 days less any funds previously refunded by Ms. Caldwell.

A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law.

STEVEN CARL FRAZIER, BPR #007098
SULLIVAN COUNTY

On July 17, 2020, Steven Carl Frazier, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Frazier improperly shared a fee with an attorney outside his firm without obtaining the written consent of his client. Mr. Frazier failed to diligently prosecute a civil action for his client which resulted in the court's sua sponte dismissal of the action for lack of prosecution. Mr. Frazier was later able to have the dismissal set aside. Mr. Frazier failed to adequately communicate with both his client during the representation and the Board during the disciplinary process which resulted in his temporary suspension for a short period.

By these acts, Steven Carl Frazier has violated Rule of Professional Conduct 1.3 (diligence), 1.4 (communication), 1.5(e) (fees), 3.2 (expediting litigation), 8.1(b) (disciplinary matters), and 8.4(a) and (d) (misconduct), and is hereby Publicly Censured for these violations. As a condition of the Public Censure, Mr. Frazier shall reimburse \$2,500.00 to his client within 90 days from July 17, 2020.

A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law.

MARGARET BEEBE HELD, #018033
KNOX COUNTY

On April 13, 2020, Margaret Beebe Held, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court conditioned upon payment of fees to the Board of Professional Responsibility and restitution to her client.

The Board of Professional Responsibility filed a Petition for Discipline against Ms. Held pursuant to Rule 9 of the Rules of the Supreme Court of Tennessee. Ms. Held had a conflict of interest between her client and her client's expert witness. Ms. Held self-reported the incident and made a good faith effort to mitigate adverse consequences. Ms. Held was ordered to pay the costs of the disciplinary proceeding and restitution to her client.

Ms. Held executed a conditional guilty plea in which she acknowledged her misconduct violated Tennessee Rules of Professional Conduct 1.4 (communication) and 1.7 (conflict of interest: current clients) and is hereby Publicly Censured for these violations.

A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law.

***ANGELA LASHANDA JENKINS-HINES, BPR #020151
FAYETTE COUNTY***

On April 8, 2020, Angela Lashanda Jenkins-Hines, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court. Ms. Jenkins-Hines notarized the acknowledgement of an individual on a Release and Indemnity Agreement but did not witness the signature nor did she have personal knowledge of such individual or her signature. By these acts, Angela Lashanda Jenkins-Hines has violated Rule of Professional Conduct 8.4(a), (c), and (d) (misconduct), and is hereby Publicly Censured for these violations.

A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law.

***JASON DANIEL HOLLEMAN, #019806
DAVIDSON COUNTY***

On April 14, 2020, Jason Daniel Holleman, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Holleman placed a concealed tracking device on the motor vehicle of an ex-girlfriend and traced her whereabouts without her consent for a period of approximately six months. Mr. Holleman's actions were prohibited by law.

By these acts, Jason Daniel Holleman has violated Rule of Professional Conduct 8.4(a), (b), and (c) (misconduct), and is hereby Publicly Censured for these violations.

A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law.

***JASON DANIEL HOLLEMAN, BPR #019806
DAVIDSON COUNTY***

On July 21, 2020, Jason Daniel Holleman, an attorney licensed to practice law in Tennessee, received a Public Censure from the Supreme Court of Tennessee and was ordered to pay costs to the Board of Professional Responsibility.

The Board of Professional Responsibility filed a Petition for Discipline on February 28, 2018, regarding Mr. Holleman's representation of clients who sought to obtain a cemetery by adverse possession and move it to another location.

Mr. Holleman filed a Petition to Quiet Title and Termination of a Cemetery known as the Rains Cemetery. The Hearing Panel found and the Trial Court affirmed that Mr. Holleman delegated to a non-lawyer the responsibility of contacting descendants of the Rains family and publishing Notice of the Petition in the Nashville Ledger without communicating directions appropriate to reasonably assure the non-lawyer's conduct was compatible with Mr. Holleman's professional obligations. Mr. Holleman misrepresented to the court that notice of the Petition to Quiet Title had been served by publication when, in fact, the notice had not been published. Mr. Holleman misrepresented to the court that a descendant of the family buried in the cemetery had agreed to re-inter the bodies at a perpetual care cemetery, and obtained a default judgment on pleadings that, at the time the motion was filed, were no longer true as the historic cemetery had been restored.

Mr. Holleman's conduct violated Tennessee Rules of Professional Conduct 1.1 (competence), 1.3 (diligence), 3.1 (meritorious claims and contentions), 5.3 (responsibilities regarding nonlawyer assistants), and 5.4 (professional independence of a lawyer).

A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law.

KENT THOMAS JONES, #020158
HAMILTON COUNTY

On July 6, 2020, Kent Thomas Jones, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Jones received a \$2,000 flat fee for the representation of a client on a DUI. The client signed a written fee agreement that said the fee was a flat fee. The fee agreement did not state that the fee was nonrefundable. On the day of court, however, in September 2017, Mr. Jones appeared late, smelled of alcohol, and was acting erratically. Court personnel removed Mr. Jones from the courthouse, and he was later charged with public intoxication. By email later that day, Mr. Jones agreed to provide his client a full refund. The criminal charges against Mr. Jones were later dismissed.

In the two and a half years since then, Mr. Jones has made three partial reimbursement payments to his client amounting to \$1,650. Mr. Jones did not keep the fee in his trust account.

By these acts, Mr. Jones has violated Rules of Professional Conduct 1.15 (safekeeping funds), 8.4(b) (criminal conduct), 1.5 (fees) and 8.4(d) (prejudice to the administration of justice). He is hereby publicly censured for these violations with the condition that he refund \$350 to his client within 60 days.

A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law.

ERIC TRYGVE OLSON, BPR #035432
WILLIAMSON COUNTY

On July 8, 2020, Eric Trygve Olson, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Olson was hired in September 2016 as in-house counsel. At the time, he was licensed in two other states. He did not complete his registration with the Tennessee Board of Law Examiners within 180 days of the start of his employment as required by Tennessee Supreme Court Rule 7, Section 10.01.

In January 2019, Mr. Olson applied for comity admission to the Board of Law Examiners and incorrectly stated that he had never registered as in-house counsel. In April 2019, Mr. Olson went to work as in-house counsel for a different company. He did not notify the Board of Law Examiners of his termination with the first company, and he did not register as in-house counsel with the Board of Law Examiners within 180 days of the date that second employment began.

By these acts, Eric Trygve Olson has violated Rule of Professional Conduct 5.5 (unauthorized practice of law) and is hereby publicly censured for this violation.

A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law.

STEPHEN WALKER PATE, BPR #6758
RUTHERFORD COUNTY

On April 8, 2020, Stephen Walker Pate, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Pate engaged in an inappropriate personal relationship with a client who retained him for representation in a pending divorce action. Mr. Pate's conduct presented the risk of impairment of Mr. Pate's independent professional judgment and to communications protected by attorney-client privilege.

By these acts, Stephen Walker Pate has violated Rule of Professional Conduct 1.7 (conflict of interest) and is hereby Publicly Censured for this violation.

A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law.

JOHN TERENCE TENNYSON, BPR #032777
NASHVILLE LAWYER CENSURED

On April 8, 2020, John Terence Tennyson, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Tennyson failed to comply with the conditions of a prior Public Censure requiring him to reimburse funds to a former client within a prescribed period of time. Mr. Tennyson did ultimately provide the former

client with the required amount of reimbursed funds but was over 100 days delinquent in his compliance with such obligation.

By these acts, John Terence Tennyson has violated Rule of Professional Conduct 3.4(c) (disobeying an obligation under the rules of a tribunal) and 8.4(a) and (d) (misconduct) and is hereby Publicly Censured for these violations.

A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law.

***MICHAEL EUGENE RICHARDSON BPR #007191
HAMILTON COUNTY***

On June 10, 2020, Michael Eugene Richardson, an attorney licensed to practice law in Tennessee, received a Public Censure from Supreme Court of Tennessee conditioned upon payment of fees to the Board of Professional Responsibility.

Mr. Richardson represented a client in a detainer and eviction action. Mr. Richardson designated his fee as nonrefundable; however, he failed to obtain a written agreement signed by his client confirming the fee was non-refundable. The Hearing Panel found his conduct violated RPC 1.5 (Fees) and 8.4 (Misconduct).

A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law.

***HAROLD SCOTT SAUL, BPR #023000
NASHVILLE LAWYER***

On April 20, 2020, Harold Scott Saul, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Saul represented a client in a contemplated uncontested divorce action and an action to expunge an old criminal charge. Mr. Saul failed to adequately communicate with his client and was not diligent in the representation which caused the client to terminate the attorney-client relationship. Mr. Saul made a partial reimbursement to his client of previously advanced fees and costs directly from his operating account. Mr. Saul failed to reimburse additional fees advanced to him for the divorce, but such fees were deemed unreasonable as Mr. Saul had not provided any substantive representation in the matter.

By these acts, Harold Scott Saul has violated Rule of Professional Conduct 1.3 (diligence), 1.4 (communication), 1.5 (fees), 1.15 (safekeeping property), and 8.4(a) and (d) (misconduct) and is hereby Publicly Censured for these violations. As a condition of the Public Censure, Mr. Saul shall be required to reimburse \$750.00 in fees directly to his former client within 60 days.

A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law.

***LISA COLLINS WERNER, BPR #023116
KNOX COUNTY***

On April 13, 2020, Lisa Collins Werner, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court conditioned upon payment of fees to the Board of Professional Responsibility.

The Board of Professional Responsibility filed a Petition for Discipline against Ms. Werner pursuant to Rule 9 of the Rules of the Supreme Court of Tennessee. While representing a father in a custody dispute, Ms. Werner met privately with a minor outside of the presence of a guardian ad litem.

Ms. Werner executed a conditional guilty plea in which she acknowledged her misconduct violated Tennessee Rules of Professional Conduct 4.2 (communication with a person represented by counsel) and is hereby Publicly Censured for that violation.

A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law.

***CHRISTOPHER M. VLACHOS
FLORIDA LAWYER***

On August 20, 2020, Christopher M. Vlachos, an attorney licensed to practice law in Florida and Michigan, and with admission to practice in Tennessee pending, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Vlachos accepted a job at a law firm in Nashville and timely filed an application for comity admission to practice law in Tennessee. On December 11, 2018, Mr. Vlachos received approval to practice law pending admission to Tennessee, pursuant to Tennessee Supreme Court Rule 7, Section 10.07 (identified as Section 5.01(g) at that time).

Mr. Vlachos represented clients for his law firm in at least three active court matters, without filing for pro hac vice admission in those courts as required by Tennessee Supreme Court Rule 7. Mr. Vlachos signed multiple pleadings with a signature block that listed his name followed by the Board of Professional Responsibility (BPR) number of his supervising attorney, also his supervising attorney's name with the same BPR number. The signature block did not otherwise indicate that Mr. Vlachos was practicing "pending admission" in Tennessee. In at least one matter, opposing Counsel was confused by Mr. Vlachos' signature block. The firm's website also incorrectly listed Mr. Vlachos as licensed to practice law in Michigan, Florida and Tennessee at that time.

By these acts, Christopher M. Vlachos has violated Rules of Professional Conduct 5.5 (unauthorized practice of law), 7.1 (communication concerning a lawyer's services) and 3.4 (fairness to opposing party and counsel) and is hereby publicly censured for these acts.

A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law.