

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED
10/07/2020
Clerk of the
Appellate Courts

**IN RE: AMENDMENT TO RULE 9, SECTION 27.4
RULES OF THE TENNESSEE SUPREME COURT**

No. ADM2020-01180

ORDER

On September 1, 2020, this Court entered an order soliciting written comments on a proposed amendment to Tennessee Supreme Court Rule 9, section 27.4, as it pertains to the status of an attorney seeking transfer to disability inactive status during the course of disciplinary proceedings.

The deadline for submitting written comments was October 1, 2020. The Board of Professional Responsibility (“BPR”) filed a comment on September 14, 2020, stating that it supports the proposed amendment. The BPR’s comment was the only comment the Court received during the comment period.

After due consideration, the Court hereby adopts the amendments to Tennessee Supreme Court Rule 9, section 27.4, as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order.

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.

It is so ORDERED.

PER CURIAM

TENN. SUP. CT. R. 9, SECTION 27.4

[New text is indicated by underlining/Deleted text is indicated by striking]

(a) If, during the course of a disciplinary investigation or proceeding involving an attorney who presently is not suspended or disbarred, the respondent attorney contends that he/she is suffering from a disability by reason of mental or physical infirmity or illness, or because of addiction to drugs or intoxicants, which disability makes it impossible for the respondent attorney to respond to or defend against the complaint, such contention shall place at issue the respondent attorney's capacity to continue to practice law. Disciplinary Counsel, the respondent attorney or the attorney for the respondent attorney shall file in the Nashville office of the Clerk of the Supreme Court a Notice advising the Court of such contention within ten days of learning of the contention, if the Court has not been otherwise notified. The Court thereupon ~~shall~~ may enter an order immediately transferring the respondent attorney to disability inactive status for an indefinite period and until the further order of the Court. The Court may take or direct such action as it deems necessary or proper to make a determination as to the respondent attorney's capacity to continue to practice law and to respond to or defend against the complaint, including the examination of the respondent attorney by such qualified medical or mental health experts as the Court shall designate or the referral of the matter to a hearing panel for a formal hearing to determine the respondent attorney's capacity to continue to practice law and to respond to or defend against the complaint. In any such proceeding, the burden of proof shall rest upon the respondent attorney and shall be by a preponderance of the evidence.

(b) If, during the course of a disciplinary investigation or proceeding involving an attorney who is suspended or disbarred, the respondent attorney contends that he/she is suffering from a disability by reason of mental or physical infirmity or illness, or because of addiction to drugs or intoxicants, which disability makes it impossible for the respondent attorney to respond to or defend against the complaint, such contention shall place at issue the respondent attorney's capacity to continue to the disciplinary proceedings. Disciplinary Counsel, the respondent attorney or the attorney for the respondent attorney shall file in the Nashville office of the Clerk of the Supreme Court a Notice advising the Court of such contention within ten days of learning of the contention, if the Court has not been otherwise notified. The Court may take or direct such action as it deems necessary or proper to make a determination as to the respondent attorney's capacity to respond to or defend against the complaint, including the examination of the respondent attorney by such qualified medical or mental health experts as the Court shall designate or the referral of the matter to a hearing panel for a formal hearing to determine the respondent attorney's capacity to continue to practice law and to respond to or defend against the complaint. In any such proceeding, the burden of proof shall rest upon the respondent attorney and shall be by a preponderance of the evidence.

~~(b)~~(c) If the Court or hearing panel determines that the respondent attorney is incapacitated from responding to or defending against the complaint, the Court or hearing panel shall take such action as it deems proper and advisable, including a direction for the suspension of the disciplinary proceeding against the respondent attorney.

—(e)(d) If the investigation of complaints or disciplinary proceedings has been suspended pursuant to this Section, the Board may petition the Court to require the disabled attorney to provide competent evidence from qualified medical or mental health experts that his or her condition continues to be such that the disabled attorney is not capable of responding to pending disciplinary complaints, or to submit to an examination by such independent qualified medical or mental health experts as the Court shall designate in order to determine whether the condition continues to be such that the disabled attorney is not capable of responding to pending complaints or defending against disciplinary proceedings. The results of such examination shall be reported to the Disciplinary Counsel, the Court and the attorney and the attorney's counsel. In the event such experts determine that the attorney has recovered from the disability to the point that the attorney is capable of defending against allegations of misconduct, the Board may petition the Court for an order permitting the disciplinary proceedings to be reactivated. If the Board files such a petition, the burden of proof shall rest upon the Board and shall be by a preponderance of the evidence. Should the Court permit the disciplinary proceedings to proceed, the cost of the independent medical or mental health examinations shall be charged to the respondent attorney.