

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED

04/20/2020

Clerk of the
Appellate Courts

**IN RE: AMENDMENTS TO RULE 9, SECTION 26
RULES OF THE TENNESSEE SUPREME COURT**

No. ADM2018-02237

ORDER

On December 18, 2018, this Court entered an order soliciting written comments on proposed amendments to Tennessee Supreme Court Rule 9, section 26, regarding the payment of the professional privilege tax by attorneys. After the expiration of the public-comment period, the Court considered further revisions to the proposed amendments.

On December 13, 2019, the Court entered an order soliciting written comments to the revised proposed amendments. During the second comment period, the Court received written comments from the Board of Professional Responsibility (“BPR”). The Court thanks the BPR for its input.

After due consideration, the Court hereby adopts the amendments to Tennessee Supreme Court Rule 9, section 26, 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 26

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

Section 26. Attorneys Failing to Comply with Tenn. Code Ann. §§ 67-4-1701—1710 (Privilege Tax Applicable to Persons Licensed to Practice Law)

26.1. Tenn. Code Ann. § 67-4-1702 levies a tax on the privilege of engaging in certain vocations, professions, businesses and occupations, including “persons licensed as attorneys by the supreme court of Tennessee.” Tenn. Code Ann. § 67-4-1704 provides that failure to pay the privilege tax can result in suspension or revocation of “any license or registration by the appropriate licensing board” and goes on to state that “the supreme court of Tennessee is encouraged to establish guidelines to suspend the license of an attorney who fails to comply with the requirements of this part.” The Court hereby establishes the following procedures to promote compliance with Tenn. Code Ann. §§ 67-4-1701—1710, as those Sections apply to attorneys licensed by the Court.

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

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

26.4. (a) Each attorney to whom a Notice is sent pursuant to Section 26.3 shall file with the Board within thirty days of the date of delivery of the Notice an affidavit or declaration under penalty of perjury supported by documentary evidence showing that the attorney has paid the delinquent privilege taxes and any interest and penalties assessed by the Department of Revenue, and has paid to the Board a delinquent compliance fee of One Hundred Dollars(\$100.00) to defray the Board’s costs in issuing the Notice; or, alternatively, demonstrating that the Notice was sent to the attorney in error, the attorney having timely paid the privilege taxes.

(b) ~~Within~~ Upon the expiration of thirty days ~~of the expiration of the time for an attorney to respond to~~ from the date of the Notice pursuant to Subsection (a) hereof, the Chief Disciplinary Counsel shall submit to the Court a proposed Suspension Order. The proposed Suspension Order shall list all attorneys who were sent the Notice and who failed to respond; failed to demonstrate to the satisfaction of the Chief Disciplinary Counsel that they had paid the delinquent privilege taxes and any interest and penalties, and ~~had paid~~ failed to pay to the Board a delinquent compliance fee of One Hundred Dollars(\$100.00) to defray the Board’s costs in issuing the Notice; or, failed to demonstrate to the satisfaction of the Chief Disciplinary Counsel that the Notice had been sent in error. The proposed Suspension Order shall provide that the license to practice law of each attorney listed therein shall be suspended upon the Court’s filing of the Order and that the license of each attorney listed therein shall remain suspended until the attorney pays the delinquent

privilege taxes and any interest and penalties, and pays to the Board the One Hundred Dollar (\$100.00) delinquent compliance fee and a separate reinstatement fee of Two Hundred Dollars (\$200.00), and is reinstated pursuant to Subsection (d).

(c) Upon the Court's review and approval of the proposed Suspension Order, the Court will file the Order summarily suspending the license to practice law of each attorney listed in the Order. The suspension shall remain in effect until the attorney pays the delinquent privilege taxes and any interest and penalties, and pays to the Board the One Hundred Dollar (\$100.00) delinquent compliance fee and the Two Hundred Dollar (\$200.00) reinstatement fee, and until the attorney is reinstated pursuant to Subsection (d). An attorney who fails to resolve the suspension within thirty days of the Court's filing of the Suspension Order shall comply with the requirements of Section 28.

(d) Reinstatement following a suspension pursuant to Subsection (c) shall require an order of the Court but shall not require a reinstatement proceeding pursuant to Section 30.4, unless ordered by the Court.

(1) An attorney suspended by the Court pursuant to Subsection (c) who wishes to be reinstated and who has remained suspended for one year or less before the filing of a petition for reinstatement shall file with the Board a petition for reinstatement of the attorney's license to practice law demonstrating that the attorney has paid all delinquent privilege taxes and any interest and penalties, and has paid to the Board the One Hundred Dollar (\$100.00) delinquent compliance fee and the Two Hundred Dollar (\$200.00) reinstatement fee; or, alternatively, demonstrating that the Suspension Order was entered in error as to the attorney. If the petition is satisfactory to the Chief Disciplinary Counsel and if the attorney otherwise is eligible for reinstatement, the Chief Disciplinary Counsel shall promptly submit to the Court a proposed Reinstatement Order. The proposed Reinstatement Order shall provide that the attorney's reinstatement is effective as of the date of the attorney's payment of all delinquent privilege taxes and any interest and penalties, and the attorney's payment to the Board of the One Hundred Dollar (\$100.00) delinquent compliance fee and the Two Hundred Dollar (\$200.00) reinstatement fee; or, alternatively, as of the date of entry of the Suspension Order if that Order was entered in error. If the petition for reinstatement is denied by the Chief Disciplinary Counsel, the attorney seeking reinstatement may appeal to the Board within fifteen days of notice of the denial. The Board, or a committee of no fewer than three of its members, shall review the documentation provided by the attorney and approve or reverse the determination of the Chief Disciplinary Counsel. There shall be no petition for rehearing. An attorney resolves a suspension within thirty days for purposes of Section 26.4 if a proposed Reinstatement Order has been submitted to the Court within thirty days of the Court's filing of the Suspension Order.

(2) An attorney suspended by the Court pursuant to Subsection (c) who wishes to be reinstated and who has remained suspended for more than one year before the filing of a petition for reinstatement shall file with the Court a petition for reinstatement of the attorney's license to practice law demonstrating that the attorney has paid all delinquent privilege taxes and any interest and penalties, and has paid the One Hundred Dollar (\$100.00) delinquent compliance fee and the Two Hundred Dollar (\$200.00) reinstatement fee; or, alternatively, demonstrating that the Suspension Order was entered in error as to the attorney. The petitioner shall serve a copy of the petition upon Disciplinary Counsel, who shall investigate the matter and file an answer to the petition within thirty days. The Court shall review the record and determine whether to grant or deny the petition for reinstatement. If the Court grants the petition, the Reinstatement Order shall provide that the attorney's reinstatement is effective as of the date of the attorney's payment of all delinquent privilege taxes and any interest and penalties, and the attorney's payment of the One Hundred Dollar (\$100.00) delinquent compliance fee and the Two Hundred Dollar (\$200.00)

reinstatement fee; or, alternatively, as of the date of entry of the Suspension Order if that Order was entered in error.