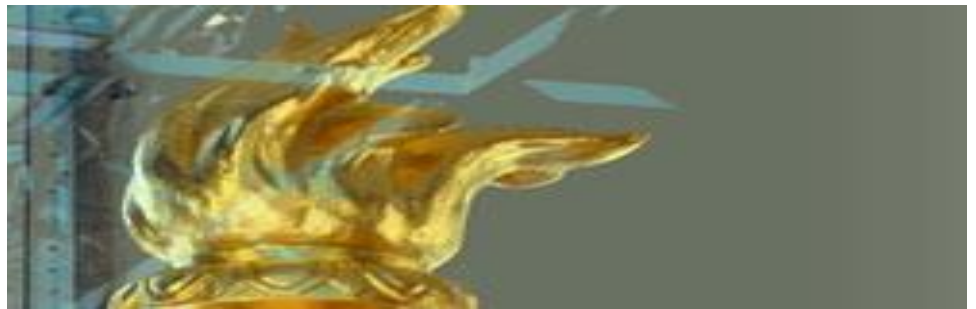


BOARD NOTES

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Inside:

2 [Spotlight: 2021 Ethics Workshop](#)

3 It's Not My Problem...Or Is It?

6 Creating a Modern CLE Rule for a Modern Age

11 Responding to Online Criticism

19 Board of Professional Responsibility - New Disciplinary Counsel

20 Tennessee Lawyers' Fund for Client Protection - New Board Members

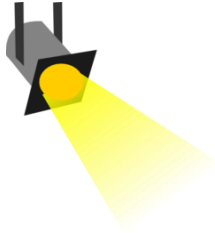
22 Board of Professional Responsibility - New Board Members

23 Disciplinary Actions October 2020 - March 2021

Greeting from Sandy Garrett

Chief Disciplinary Counsel, Board of Professional Responsibility

"I'm not a cat." ([Link to video](#)) One attorney's struggle to remove a filter during a zoom hearing gave us smiles and taught us these lessons: be competent with technology and professional and compassionate in dealing with others. I am grateful that during the pandemic, Board of Professional Responsibility staff have been able to work remotely and in the office to assist lawyers and judges with registration, ethics questions and continuing legal education while also protecting the public by investigating and prosecuting complaints of misconduct. Stay well and take care.



2021 Ethics Workshop



**WE'RE BACK IN
"Bee"siness***

The Board of Professional Responsibility is excited to announce the return of the Ethics Workshop. After a brief hiatus in 2020 due to the pandemic, the Board is hosting the 2021 Ethics Workshop on November 12, 2021 in a hybrid format. As always, attendees will have the opportunity to earn 6.5 dual CLE credits. Tickets will go on sale via Eventbrite in early August 2021. Once tickets are on sale, an email will be sent to all Tennessee attorneys with instructions to register. Stay tuned for more details in the coming months. Updates will be posted to the Board's website (www.tbpr.org).

* Bee puns really sting.

It's Not My Problem . . . Or Is It?

Buddy Stockwell
Executive Director, TLAP

In the last five years, TLAP and other state LAPs have witnessed a national mental health and well-being movement in the legal profession. Across the nation, courts, bar associations, and bar counsel have come together to both acknowledge and address the severe mental health and wellness concerns that are now so prevalent in our profession.

Fortunately, the stigma associated with reaching out for help with mental health issues is waning somewhat, but there are still major barriers that must be overcome if we are to really heal our profession.

One barrier is presented when people fail to acknowledge that mental health issues such as addiction and depression are actual diseases. They may say something like “that person chose to drink too much alcohol and it’s their fault they became an alcoholic, so why should it be my problem? They did this to themselves!” The truth is that no one chooses to drink too much and become an alcoholic, and willpower is ineffective in fighting the disease if you are unfortunate enough to have contracted it.

The common thread that runs through these types of viewpoints is an underlying tone of “it’s not my problem.”

Of course, people are certainly entitled to their viewpoints and TLAP fully respects that. But to those who may feel that the mental health of the profession is not their problem (simply because they are personally okay), we at TLAP encourage them to seriously reconsider that line of thinking.

The fact is that in the practice of law we often cannot choose who we will or won’t interact with, be it co-counsel, opposing counsel, or the judge presiding over the matter.

When there is an impaired professional in our ranks, and when we personally encounter them in a legal case, it can be severely problematic and stressful, tremendously costly to all involved, and can even block the path to the public’s access to fairness and justice.

An impaired or disruptive lawyer or judge is everyone’s problem.

I have practiced in large firm, small firm, and solo settings. During those years I encountered a few opposing counsel (and once in a very great while a judge) who were all extremely problematic to deal with. They all earned widespread reputations in the profession for being “difficult” on one end of the spectrum or the other. Either they were extremely aggressive and disruptive, or so passive that moving a case forward seemed impossible . . . and all while the rest of us simply did our best to make headway while weathering their troublesome behavior.

In such cases, there are also direct monetary costs visited upon our clients in the form of increased initial client retainers once the opposing lawyer has been identified as routinely disruptive and difficult, etc.

It is certainly an extremely touchy subject, but from a purely clinical viewpoint, it is more likely than not that some of these unusually disruptive professionals are impaired on some level by a mental health, addiction, or personality disorder issue that can drive such aberrant behavior.

Law, like any other industry, suffers significant harm from undiagnosed and untreated mental health issues such as alcoholism, drug addiction, and depression. According to the American Journal of Preventive Medicine, excessive drinking negatively impacts our bottom lines by as much as \$223.5 billion annually.¹

As to drug addiction, the National Institute on Drug Abuse cites that drug use disorders (both illicit and prescription), are very costly to our nation “exacting more than \$740 billion annually in costs related to crime, lost work productivity and health care.”²

Per the American Psychiatric Association Center for Workplace Mental Health: “Depression costs employers an estimated \$44 billion each year in lost productivity. About half of employees with depression are untreated. Yet with proper treatment, people with depression can get better. The key is to help employees access effective care.”³

And while all of the above information demonstrates how we are all affected by the problems, TLAP encourages a shift in everyone’s viewpoint toward solutions and compassion for their brothers and sisters in the profession who, through no fault of their own, developed mental health issues under the pressures of practicing law. The ripple effect of recovery is powerful, and we all benefit from it.

In the legal profession here in Tennessee, TLAP is a key to effective care. TLAP is your highly specialized program that offers professional clinical assistance specifically tailored to the demanding needs of impaired lawyers and judges. Be it depression, addiction, an anxiety disorder, or some other mental health issue, TLAP can help that disruptive or disengaged lawyer get better, and that benefits all of us.

Early intervention is key to reducing consequences and damage to both the person and the profession. Of course, TLAP encourages people to reach out confidentially before a mental health issue ripens into a situation that includes both mental health challenges and allegations of unethical conduct and potential licensure issues. When someone receives confidential and effective clinical help from TLAP early on, the person, their family, their peers, their clients, the profession, and the public all benefit. Everyone wins.

But what about the cases where a person was not able to get help early on, and now they face disciplinary issues in addition to mental health issues? There is still powerful hope and help through

¹ <https://www.sciencedirect.com/science/article/pii/S0749379711005381>

² <https://www.drugabuse.gov/related-topics/trends-statistics>

³ <http://workplacementalhealth.org/Mental-Health-Topics/Depression>

TLAP to objectively demonstrate that the person has been reliably diagnosed, successfully treated, and is being monitored in such a way that fully supports their recovery and fitness to practice law. In those cases, everyone still wins and successful TLAP monitoring can also be a mitigating factor in disciplinary matters.

If you think you have (or are concerned about someone else regarding) a problem with alcohol, drugs, depression, or any other mental health condition, contact TLAP. Your call or email is confidential. You do not even have to give your name. Whether you need immediate help or want general information TLAP is there! Call (615) 741-3238 or email to Tlap@tncourts.gov.

Creating a Modern CLE Rule for a Modern Age

By Judy Bond-McKissack

Executive Director, Tennessee Commission on CLE

On December 30, 2020, the Commission on Continuing Legal Education (CLE) filed an amendment to Rule 21. The Supreme Court has established May 17, 2021 as the deadline for any interested person to file comments with the Court.

The Commission's petition presents eight (8) proposals to the Court. To assist interested persons in understanding the proposals, each proposal is discussed below. The Commission hopes this discussion brings added clarity to the understanding of the Commission's proposals.

1. The Proposal to Allow for Partial Year Exemptions

Since the inception of Rule 21, active attorneys have had a mandatory continuing legal education requirement. That requirement has been a "all or none" continuing legal education requirement. An attorney must earn and report the required number of credits in the correct category for each compliance year. This has been true without exception and without regard for any hardship the attorney may suffer, in particular medical impairments and surgical interventions needed by an attorney which renders the attorney unable to meet his or her CLE obligation. The Commission has engaged with attorneys having visual, ambulatory, neurological and other conditions. As a result of this knowledge the Commission seeks to bring some relief and equity to the rule in these types of situations. The Commission's proposal is not intended to address life-long conditions and eliminate the CLE obligations of those attorneys. Rule 21, Section 3 has long addressed those attorneys with disabilities and already provides a process that those attorneys can use to address their needs.

2. Requests for Accommodations and Exceptional Relief

Rule 21, Section 2.04 grants the Commission the authority to grant exceptional relief for requests including requests for appropriate waivers, extensions of time, hardship, and extenuating circumstances. The current regulations under which the Commission operated does not address or provide any guidance for Commission Members or attorneys about the operation of Rule 21, Section 2.04 and 3.02 (a) and (b). The proposed rule change would give the Commission specific authority to develop regulations providing detailed information to provide guidance to the Commission, its staff, and attorneys. In anticipation of this request pending before the Court, the Commission had drafted and made available on its website a single combined form for attorneys to use to request relief.

3. Correcting the Omission from the 2019 Rule Change

The Commission's request to amend Section 4.07(a) is a housekeeping provision intended to correct an unintended removal of a previously enacted authorization to provide CLE credit to attorneys serving on the BPR Board or any of its hearing committees. The Commission is asking the Court to revise this provision and return it to its original position within Rule 21. The Commission did not discover the omission of the BPR credit provision until it was comparing the proposed rule to the existing rule. Being unaware of the omission, the Commission had continued to allow CLE credit for BPR members and committee members and therefore there are not any attorneys who have suffered a loss of CLE credit. However, the Commission understands that its authority rests on the language of the rule and that it is necessary to restore this provision to continue to award this credit. The Commission also recognizes the degree of work being provided by these attorneys to assist the Court and the Board of Professional Responsibility in carrying out the disciplinary provisions of its mission.

4. Revised CLE Credit for Discretionary Credit

a) Pro Bono vs Indigent Defense Credit. Since its inception as part of Rule 21, the Commission has awarded CLE credit to attorneys who provide Court appointed pro bono work or pro bono work for organizations who are grantees under the Legal Services Corporation(LSC) Act, and pro bono mediation services. The list of such organizations has changed over the years as Tennessee LSC funded organizations have merged however the credit has always been available to attorneys since the Court mandated three (3) hours of ethics credit each compliance year. When the rule became effective on December 10, 1998, attorneys were required to provide eight (8) hours of pro bono work to qualify for one ethics credit. Later, on April 3, 2009, the Supreme Court decreased the requirement to five (5) hours of pro bono work for each CLE credit. In November of 2014, the Commission conducted an analysis of the impact of Pro Bono work and recommended that the reduced five (5) for one (1) requirement be made permanent.

b) Indigent Defense credit was allowed at a lower rate because attorneys who provided indigent defense work also were eligible to receive State compensation for their work. The Commission is aware that the State awarded compensation has never fully compensated these attorneys and has not kept up with the rate of inflation and without a COLA adjustment, the attorneys who provide indigent defense work have worked for many years at a rate that has been inadequate. The Commission is also mindful of the recent increase in the state rate being paid to attorneys who provide indigent defense. Despite the increase, the state rate still does not fully compensate these attorneys. It is the Commission's hope that the increase in the amount of credit awarded for indigent defense to match the amount awarded for pro bono work will fill this void)

c) As an agency of the Tennessee Supreme Court, the Commission operates at the pleasure of and the auspices of the Supreme Court. In reviewing the Court's minutes and history of the award of CLE credit for Public Service work, the Commission became aware that the current public service credit was broader than intended based on the history of the discussions by the Court around this issue. The Commission takes the position that to carry out its mandate, the language of Rule 21 must be revised to carry out the original intent of the Court. Over the years the staff of the Commission has had conversations with present and past members of the Court and the messaging around this issue has always been that the discretionary credit is broader than the Court intended originally and present day.

5. Clarification Of Course Requirements

Section 5.01(f) clarifies that courses are accredited for a period of one year from the date of creation of the course and that the course can be re-accredited for an additional year so long as the course content is current. The Commission has used this same standard for course accreditation for over thirty (30) years.

In April, 2019, the Commission revised Rule 21 to specify twelve (12) activities that are eligible for live CLE credit. They are found at section 5.01 (g)1-12.

5.01 (g) 1 deletes the reference to the section number of the Regulations which is being changed by the re-numbering of the proposed revised Regulations which will be submitted to the Supreme Court.

5.01 (g) 3 clarifies that ethics credit can only be earned for teaching at a law school. The Commission understands that business, corporate and other behavior directed at how to be a good corporate citizen may be included in the curriculum at other educational institutions. However, legal ethics are not the same as business, corporate or other ethical behavior. Continuing Legal Education's focus on ethics is that which is focused on the legal obligations of attorneys.

The other changes to section 5.01(g) were discussed above under public service credit.

Section 5.01 (h) simply corrects the case of the verb in the sentence from "is" to "are" and is housekeeping in nature.

6. Adding the New Provision to Clarify the Timing of Reporting of CLE Attendance

Attorneys who attend CLE programming have a right and expectation that credit for the course they have completed will be submitted to the Commission in a timely manner. CLE providers are aware of the compliance reporting deadlines in the states where they have courses accredited. They advertise those deadlines as part of the promotion of the CLE Courses they sell. Despite this knowledge, Commission staff see attendance reporting by some providers months and years after courses are completed. This late reporting has a direct and detrimental impact on attorney compliance. The Commission does not have any way of knowing when attorneys complete courses unless and until that information is reported to the Commission. Therefore, it is essential that attendance be reported in a timely manner. This new provision will ensure that there is no ambiguity about when attendance is to be reported.

7. Authorization to Provide Statements, Reports, and other Documents by Electronic Means.

Since the beginning of the requirement for mandatory continuing legal education, the Commission has provided reports to attorneys in a paper format. As time has passed, the Commission had heard complaints from attorneys who are being pushed by the growing and increasing impact of living in a society where everyone is being pushed to a paperless society. We are all aware of businesses who have discontinued mailing paper statements and who charge an additional fee to individuals who do not opt into electronic statements. These changes are driven by many factors including rapid and easy delivery and reduced economic cost (after implementation) and a growing desire of many individuals to find a simple, quick solution to the myriad demand placed on them as part of their daily lives. The Commission is sensitive to and sees the same pressures. As a result, the Commission placed a notice on its website several years ago alerting attorneys that the Commission was moving to electronic delivery of documents and encouraging them to make sure their electronic mail address on record with the Board of Professional Responsibility was accurate. As an adjunct to this notice, the Commission has been working with a team of developers to build out new capacity in the MCLE system which would track document delivery, retain copies of each report, update compliance records when information is updated and other essential actions. The MCLE system is linked to the Commission's website. For over ten (10) years electronic notices have been delivered by e-mail notification through the Commission's website notifying attorneys when course attendance posts to their record and when submitted attendance cannot be posted to their record due to insufficient funds on the attorney account to pay the posting fee. In addition, over 10 years ago, the Commission began to offer attorneys an electronic survey to claim non-resident exemption. Currently over 80% of non-resident attorneys choose this option. The Commission receives electronic messages from these attorneys stating how quick and easy the process is and thanking the Commission for offering this service.

The Commission has concluded that the time has arrived to take this next step with electronic delivery of compliance documents. Attorneys licensed in Tennessee have grown accustomed to electronic delivery of documents related to their licensure. The Department of Revenue moved to online payment of the professional privilege tax in January 2013. The Board of Professional Responsibility has offered online registration for an extended period of time and updated their online filing system in 2017. Both agencies charge attorneys additional fees for paper delivery of documents.

8. Requirement to Pay for Attendance at the time of Reporting.

For over ten (10) years Rule 21 has contained a provision requiring attorneys to pay for attendance at the time the attendance is submitted. The Rule has been silent about the requirement for providers. That has resulted in providers becoming more and more lax in making timely payments for attendance that is submitted. Rule 21 Section 8.02 establishes a deadline of thirty (30) days for providers to report an attorney's attendance at a continuing legal education program. While it is reasonable and a common business practice to expect a provider to pay for that attendance at the time it is submitted, the staff of the Commission has observed that providers will submit attendance and fail to pay the reporting fee for months even after being sent reminders that the fee is due and that credits do not post to attorney records until paid. The new language makes it clear

to providers that payment of attendance fees is required to assure that attorneys receive the benefit of reported attendance in a timely manner.

The Commission offers the proposed changes as part of its mission to monitor developments in the operation of Rule 21, to design, promulgate for discussion, test and recommend modifications to the Supreme Court and to propose changes to modernize the Rule in the best interest of all participants in the CLE process.

Responding to Online Criticism

Steven J. Christopher
Deputy Chief Disciplinary Counsel – Investigations
Board of Professional Responsibility

Purchasers of legal services are increasingly turning to the internet when seeking to find a lawyer, in the same manner as consumers of other goods and services. Research reveals that an internet search is now the most popular method of locating a lawyer.⁴ Thirty eight percent (38%) of those interviewed in a study by Findlaw.com and Thomson Reuters Corporation stated that they would search for a lawyer primarily through the internet.⁵ Twenty nine percent (29%) would seek a recommendation from a relative or friend, and ten percent (10%) would consult a local bar association.⁶ The yellow pages, previously a primary means of locating a lawyer, was only identified by four percent (4%) of respondents.⁷ A survey by Software Advice similarly revealed that seventy five percent (75%) of prospective clients would travel further to seek representation with an attorney with favorable online reviews over an attorney with negative reviews.⁸ Research further reveals that a greater percentage of persons view a lawyer’s website or do a general online search (eighty one percent (81%) and sixty three percent (63%), respectively) in seeking legal representation, than those who attempt to locate a lawyer through a referral from a friend or colleague.⁹

As online searches for legal representation become increasingly pervasive, negative online reviews by clients and third parties can materially impair a lawyer’s ability to attract new clients. However, unlike the providers of most other goods and services, a lawyer’s duty of confidentiality limits the way a lawyer may respond to online critics. While there is not yet any legal authority on point in Tennessee, the manner in which an attorney may respond to online negative reviews has been the subject of a number of formal ethics opinions, most prominently in ABA Formal Ethics Opinion 21-496 (2021), issued January 13, 2021.¹⁰ This article will provide an analysis of an attorney’s ethical responsibilities in connection with responding to negative online reviews, as well as a summary of best practices.

The Duty of Confidentiality

The principal ethical rule implicated in responding to negative postings by clients, former clients, and third parties, is confidentiality. For current clients, lawyers are prohibited from disclosing

⁴ “The Internet is Now the Most Popular Way to Find and Research a Lawyer, Says FindLaw Survey,” Press Release, Apr. 17, 2014, <http://thomsonreuters.com/press-releases/042014/internet-lawyer-search-survey>. Cited in John G. Browning, State Bar of Texas, 2018 Advanced Fam. L. 22-IV.

⁵ Id.

⁶ Id.

⁷ Id.

⁸ Cited in “How Should Lawyers Respond to Negative Online Reviews?”, Everest Legal Marketing, Doug Bradley, Nov. 16, 2018.

⁹ Sherry Karabin, Marketing Legal Services in a Brave New Internet World, Law Technology News (Mar. 31, 2014), <http://www.lawtechnologynews.com/id=1396262346123/Marketing-Legal-Services-in-a-Brave-new-Internet-World>. See also John G. Browning, State Bar of Texas, 2018 Advanced Fam. L. 22-IV.

¹⁰ ABA Formal Op. 21-496 (Jan. 13, 2021).

any information relating to the representation, unless the client gives informed consent to the disclosure, the disclosure is impliedly authorized to carry out the representation, or one of the grounds for permissive or mandatory disclosure codified at RPC 1.6(b)-(c) applies.¹¹

The disclosure of information relating to the representation of a former client is governed by RPC 1.9.¹² A lawyer who has formerly represented a client in a matter shall not thereafter reveal information relating to the representation of the client unless the former client gives informed consent in writing, disclosure would be permissible or required with respect to a present client under RPC 1.6, or the information has become generally known.¹³ The distinction between a lawyer's confidentiality obligations to current and former clients in the context of online reviews will be discussed in greater detail below.

The confidentiality rule is broadly construed to include information obtained from any source, not just the client.¹⁴ Consequently, the duty of confidentiality is far broader in scope than attorney-client privilege, which applies only to communications between lawyers and clients for the purpose of providing legal advice or representation.¹⁵ The prohibition not only applies to disclosures of information relating to the representation, but any disclosure that could reasonably lead to the discovery of such information by a third party.¹⁶ Additionally, disclosure is narrowly construed and only permitted to the extent reasonably necessary to accomplish one of the enumerated exceptions.¹⁷ Consequently, before exercising any ground of permissive or mandatory disclosure, the lawyer should give significant thought to whether the disclosure is reasonably necessary to effect the purpose of the exception to disclosure, and whether the objective could be effected by other means.

Within the context of online reviews, an attorney's duty of confidentiality is therefore implicated by any statement by the lawyer regarding a client that discloses information relating to the representation. Consequently, as an attorney is prohibited from disclosing information relating to the representation, an attorney's duty of confidentiality will attach to any online review regardless of whether the reviewer is a current or former client.

Attorneys Are Strongly Discouraged from Seeking a Client's Waiver of Confidentiality Permitting a Response to a Negative Review

As indicated above, RPC 1.6(a) provides that an attorney may disclose information relating to the representation if the client provides informed consent. However, from a practical standpoint, it can be safely assumed that a client who posts a negative review will not be receptive to an attorney's

¹¹ TENN. SUP. CT. R. 8, § 1.6(a). Tennessee's Rules of Professional Conduct, codified at Rule 8 of the Tennessee Supreme Court Rules, will be cited herein using the citation form "RPC _._." The ABA Model Rules of Professional Conduct will be cited herein using the citation form "Model Rule _._."

¹² See RPC 1.6, Comment [20]. "The duty of confidentiality continues after the client-lawyer relationship has terminated."

¹³ RPC 1.9(c).

¹⁴ RPC 1.6, Comment [3].

¹⁵ Id.

¹⁶ RPC 1.6, Comment [4]. "A disclosure of information in a way that cannot reasonably be linked to the client does not reveal information relating to the representation of a client in violation of RPC 1.6. For example, a lawyer's use of hypotheticals to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved."

¹⁷ RPC 1.6 Comment [15].

request that the client to waive confidentiality in order to permit the attorney to post a response which will likely include information disparaging to the client. Additionally, prospectively obtaining a client's blanket waiver of confidentiality at the commencement of the representation or otherwise prior to the circumstances that result in the negative review would not be feasible considering the requirements for obtaining a client's informed consent.

"Informed consent" is defined as "the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct." RPC 1.0(e). A client's confidentiality waiver is not required to be reduced to writing.¹⁸ However, the guidance provided for obtaining informed consent in the comments to RPC 1.0 places a very high burden on the attorney.¹⁹ It would not be sufficient, for example, for a lawyer to merely include generalized language in their fee agreement permitting the lawyer to respond to a negative posting if subsequently made by the client. A lawyer seeking informed consent where required under the Rules of Professional Conduct is instead required to provide reasonably sufficient information to the client with regard to their waiver to permit them to make an informed decision.²⁰ Ordinarily, this will include consultation with the client that explains the advantages and disadvantages of the proposed waiver, and a discussion of reasonable alternatives.²¹ In some circumstances, this consultation will require the advisability of seeking the advice of independent counsel.²²

At the commencement of the representation, the specific circumstances regarding the attorney's conduct which ultimately leads to a negative posting could not yet be known or anticipated. Consequently, the lawyer would not be in a position to obtain informed consent to the waiver of information relating to the representation, as the information at issue would not yet be known. Under these circumstances, it is simply not feasible for a lawyer to fulfill the lawyer's obligations in seeking an informed waiver of the client's confidentiality for the purpose of posting a negative review.

The Disclosure of Information for Purposes of Responding To Negative Online Postings Regarding Current Clients Does Not Fall Within Any Permissive or Mandatory Exception to Tennessee's Confidentiality Rule

Of the permissive and mandatory grounds for disclosure of information relating to an attorney's representation of a client defined at RPC 1.6(b)-(c), the only ground that would potentially permit an attorney to respond to online reviews is RPC 1.6(b)(5), which states as follows:

A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to

¹⁸ RPC 1.6(a)(1). There is no discussion of the requirements for obtaining informed consent specific to confidentiality in the comments to RPC 1.6, but guidance is found in Comments [6] and [7] to RPC 1.0, where "informed consent" is defined. While not directly on point, the discussion regarding informed consent for conflict waivers at Comments [20] and [22] of RPC 1.7 is also instructive.

¹⁹ RPC 1.0 Comment [6] and [7].

²⁰ RPC 1.0 Comment [6].

²¹ Id.

²² Id.

respond to allegations in any proceeding concerning the lawyer's representation of the client.²³

While this exception has not been the subject matter of a formal ethics opinion in Tennessee, the applicability of this exception to negative online reviews has been analyzed by legal authorities in a number of jurisdictions, most notably by the American Bar Association in ABA Formal Ethics Opinion 21-496.²⁴ The overall conclusion reached by the ABA Committee was that the exception was inapplicable to an attorney responding to online negative reviews, and that as no other permissive or mandatory ground for disclosure applies, attorneys are strictly prohibited from disclosing any information relating to the representation solely to respond to a negative online posting.²⁵

The ABA Committee reasoned that a negative online review, standing alone, does not constitute a "controversy" between a lawyer and client, due to its "informal nature."²⁶ Likewise, ABA Committee argued that the term "proceeding" in Model Rule 1.6(b)(5) is limited to a matter pending before a tribunal.²⁷ Additionally, even to the extent that a client's grievance aired on an internet platform could be construed as a controversy within the scope of Model Rule 1.6(b)(5), a response by the attorney would not be reasonably necessary to establish a claim or defense by the lawyer.²⁸ For example, a client posting false claims might provide the lawyer with a potential claim for defamation.²⁹ A responsive posting is not required as a precondition to filing suit, and the lawyer could pursue other means of addressing the posting, such as a demand letter sent privately to the client requesting that the post be amended or deleted.

Formal ethics opinions from other jurisdictions have reached the same conclusion as the ABA Committee in their analyses.³⁰ For example, the Pennsylvania State Bar Ethics Committee concluded that an online dispute between lawyer and client regarding the lawyer's legal services is not a "controversy" and no "proceeding is pending or imminent just because the client impugns the lawyer online."³¹ The State Bar of Texas likewise concluded that the exception relating to

²³ RPC 1.6(b)(5).

²⁴ Tennessee adopted Model Rule 1.6(b)(5), so as the ABA Committee applied the Model Rules of Professional Conduct to its analysis, this formal ethics opinion is particularly instructive.

²⁵ ABA Formal Eth. Op. 21-496 (Jan. 13, 2021).

²⁶ Id.

²⁷ Id.

²⁸ Id. Model Rule 1.6 and RPC 1.6 only permits disclosure of information relating to the representation of a client to the extent reasonably necessary to effect the purpose of disclosure. See Model Rule 1.6(b)-(c); RPC 1.6(b)-(c).

²⁹ The issue of a lawyer filing a defamation claim against a client for negative online postings is outside the scope of this article. While the Tennessee Rules of Professional Conduct do not directly address the issue, lawyers should exercise extreme care in fully considering the implications of threatening or filing suit against clients in light of their ethical requirements.

³⁰ See, e.g., New York State Ethics Op. 1032 (lawyer prohibited from disclosure of confidential information just to respond to only criticism); Pa. Ethics Op. 2014-200 (lawyer may not give detailed response to online criticism of the lawyer by a client; the self-defense exception is not triggered solely by a negative online review); W. Va. Legal Ethics Op. 2015-02 (lawyer may respond to online reviews but may not disclose confidential information while doing so); Los Angeles County Ethics Op. 525 (lawyer can respond online to a client's disparaging comments only if confidential information is not disclosed); Fla. Bar Ethics Op. 20-01 (lawyer may not disclose information relating to a client's representation in response to a negative online review); State Bar of Tex. Professional Ethics Comm. Op. No. 662 (lawyer may not publish a response to a former client's negative review on the internet if the response reveals confidential information).

³¹ Pa. Ethics Op. 2014-200.

controversies between lawyer and client “only applies to formal actions, proceedings, or charges” and “cannot reasonably be interpreted to allow public disclosure of a former client’s confidences just because a former client has chosen to make negative comments about the lawyer.”³²

Only two jurisdictions, Colorado and the District of Columbia, have reached a contrary result. In Colorado, Colorado Ethics Op. 136 (2019), the Colorado Ethics Committee concluded that online criticism could potentially rise to the level to constitute a “controversy.”³³ However, the drafters encouraged the exercise of caution for attorneys in the information ultimately disclosed.³⁴ This Opinion was cited and discussed unfavorably in the ABA Formal Ethics Op. 496.³⁵

The District of Columbia’s conclusion potentially permitting disclosure of information in response to online reviews appears to arise out the fact that this jurisdiction’s confidentiality rules provides broader grounds for disclosure.³⁶ The District of Columbia’s Rule 1.6(e)(3) provides that a lawyer may “reveal client confidences to the extent reasonably necessary to respond to specific allegations by the client concerning the lawyer’s representation of the client.”³⁷ However, the opinion cautioned that this confidentiality exception excludes “general criticisms” of an attorney and cautioned that “disclosures should be no greater than the lawyer reasonably believes necessary.”³⁸

Attorneys who disclose confidential information run the risk of being sanctioned by their disciplinary authority. Attorneys who have disclosed information relating to the representation of a client in responding to negative online postings have been disciplined for doing so in a number of jurisdictions.³⁹ Appellate Courts have consistently declined to find any applicable exception to confidentiality in their jurisdiction’s rules to warrant disclosure of client information.⁴⁰

The Disclosure of Information Regarding Former Clients Also Prohibited

The ABA Committee as well as state jurisdictions analyzing the propriety of attorneys responding to negative reviews have generally not drawn a distinction between disclosure for purposes of current and former clients, concluding that disclosure is improper regardless of whether the representation has concluded. However, Tennessee’s Rule of Professional Conduct 1.9(c),

³² State Bar of Tex. Professional Ethics Comm. Op. No. 662.

³³ Colo. Ethics Op. 136 (2019).

³⁴ Id.

³⁵ See ABA Formal Ethics Op. 496, supra.

³⁶ D.C. Bar Formal Ethics Op. 370.

³⁷ Id.

³⁸ Id.

³⁹ See, e.g., People v. Underhill, 2015 WL 4944102 (Colo. O.P.D.J. Aug. 12, 2015) (lawyer given 18-month suspension for responding to client online criticism through posting sensitive confidential information); In re Tsamis, Commission No. 2013PR00095 (Ill. 2014) (lawyer publicly reprimanded for disclosure of confidential information beyond what was reasonably necessary in response to negative client reviews); In re Quillinan, 20 DB Rptr. 288 (2006) (disciplinary board approved 90-day stipulation to disciplinary suspension for disclosure of confidential information to worker’s compensation listserv after client terminated lawyer); In re Skinner, 740 S.E.2d 171 (Ga. 2013) (upholding rejection of attorneys’ petition for reprimand by disciplinary board for posting client personal and confidential information in response to negative reviews); C.f. In re David J. Steele, No. 49800-1509-DI-527 (Ind. 2015) (lawyer disbarred for manipulation of online reviews and publishing sensitive client information to punish clients for disparaging reviews).

⁴⁰ Id.

which governs the scope of confidentiality with regard to former clients, differs from ABA Model Rule 1.9(c), which has been adopted in most jurisdictions.⁴¹ A separate discussion of whether attorneys are permitted to respond to negative online postings within the context of Tennessee’s confidentiality rule regarding former clients is thereby warranted.

Tennessee’s RPC 1.9(c) states as follows:

A lawyer who has formerly represented a client in a matter or shall not thereafter *reveal information* relating to the representation or *use such information* to the disadvantage of the former client unless the former client gives informed consent, confirmed in writing, the disclosure would be required or permissible with regard to a current client, *or the information has become generally known*.⁴² [Emphasis added].

The ABA Model Rule 1.9(c), in contrast, states as follows:

A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter: (1) *use information* relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, *or when the information has become generally known*; or (2) *reveal information* relating to the representation except as these Rules would permit or require with respect to a client.⁴³ [Emphasis added].

Tennessee’s rule provides for a broader exception to confidentiality for former clients than the Model Rule. Tennessee’s rule permits an attorney to both use or reveal information relating to the representation of a former client, even where such information is disadvantageous, if the former client provides informed consent, if the disclosure would be authorized with regard to a present client under RPC 1.6, or where the information has become “generally known.”⁴⁴ Unlike Tennessee’s rule, the Model Rule distinguishes between the information that may be “used” or “revealed” with regard to the former client. Information may be used to the disadvantage of the former client when the information is “generally known,” but the Model Rule does not permit the attorney from “revealing” the information when generally known.

When an attorney posts a response to a negative review where information relating to the representation is disclosed, the attorney is revealing the information at issue, not merely using the information. Consequently, under the ABA Model Rule, the “generally known” exception is inapplicable and as a result, there was no need for the ABA Committee or those of other jurisdictions adopting the Model Rule to separately discuss the implications of the generally known standard.

The term “generally known” is not defined in the Tennessee Rules of Professional Conduct or in the Model Rules. However, the Comments to the Tennessee Rules of Professional Conduct and that of other jurisdictions would suggest that the term is very narrowly construed.⁴⁵ The fact that

⁴¹ Model Rule 1.9(c) is the majority rule in most jurisdictions. Research revealed forty-five jurisdictions that have either adopted the model rule or do not permit revealing information under the “generally known” exception in their RPC 1.9(c).

⁴² RPC 1.9(c)(1)-(3).

⁴³ Model Rule 1.9(c).

⁴⁴ See RPC 1.9 Comment [8].

⁴⁵ RPC 1.9, Comment [8a]. Research did not reveal any substantive distinction between how “generally known” is construed for purposes of former clients in Tennessee and in other jurisdictions.

information is public record, standing alone, does not bring the information within the scope of “generally known.”⁴⁶

ABA Formal Opinion 479, “The Generally Known Exception to Former-Client Confidentiality,” provides guidance on the intended scope of this confidentiality exception. The ABA Committee states that information is generally known if the information is “widely recognized by members of the public in the relevant geographic area; or is widely recognized in the former client’s industry, profession, or trade.” The ABA Committee stated that information can become widely recognized, for example, when promulgated through traditional or online media sources, including social media. “Information that is publicly available is not necessarily generally known.”⁴⁷

The ABA Committee cited favorably the following definition from Roy Simon in New York Rules of Professional Conduct Annotated (2017):

[T]he phrase “generally known” means much more than publicly available or accessible. It means that the information has already received widespread publicity. For example, a lawyer worker on a merger with the Fortune 500 company could not whisper a word about it during the pre-offer stages, but once the offer is made—for example, once AOL and Time Warner have announced their merger, and the Wall Street Journal has reported it on the front page, and the client has become a former client—then the lawyer may tell the world. After all, most of the world already knows.⁴⁸

The ABA Committee’s narrow reading of “generally known” is mirrored by other jurisdictions in their formal ethics opinions and in other authorities.⁴⁹

While the “generally known” exception applies to the revelation of information regarding former clients, it will rarely, if ever, be applicable in the context of responding to negative online postings, particularly considering its narrowly construed meaning. The specific information that would be disclosed for an attorney to counter the information in a client’s negative posting would most likely involve conduct or communications by the attorney, the client, or third parties not part of the public record, let alone public knowledge to the degree contemplated by the reading of the “generally known” exception to the confidentiality rule.

To any extent that the information at issue would fall within the exception, the posting of information is nonetheless only permissible to the extent reasonably necessary and tailored to effect the purpose of disclosure. Attorneys should thereby exercise extreme caution in the reliance on this exception to disclosure for the purpose of responding to online reviews.

What Response Is Permitted?

⁴⁶ See *id.* See also The Generally Known Exception to Former-Client Confidentiality, ABA Formal Ethics Op. 479 (Dec. 15, 2017). See also RPC 1.9, Comment [8a]. N.Y. State Bar Association Comm. on Prof. Ethics Op. 1057 (June 5, 2015) (“information is not generally known simply because it is in the public domain or available in a public file”).

⁴⁷ ABA Formal Ethics Op. 479.

⁴⁸ *Id.*

⁴⁹ See, e.g., N.Y. State Bar Op. 991 (2013) (“information is generally known only if it is known to a sizeable percentage of people in the local community or in the trade, field, or profession to which the information relates); Ill. State Bar Op. 05-01 (2006) (“information is generally known if it is common knowledge in the community”).

While the disclosure of any information relating to the representation of a client for purposes of responding to an online review is prohibited, the ABA Committee and other legal authorities have provided suggestions for alternative ways of addressing negative client reviews. It is permissible for the lawyer to provide the reader with notice that due to their professional constraints under the applicable rules of confidentiality, the lawyer is prohibited from responding with specificity.⁵⁰ Such a disclaimer avoids disclosure of any information relating to the representation while also providing confirmation to online readers that the attorney is prohibited from providing their side of the story.

While being very careful to avoid disclosing any information relating to the representation, a number of authorities have also argued that it is permissible for the lawyer, without disclosing confidential information, to make a generalized response that the post is inaccurate.⁵¹ The Texas Bar recommended the following sample response in its formal ethics opinion:

A lawyer's duty to keep client confidences has few exceptions and out of an abundance of caution I do not feel at liberty to respond in a point by point fashion in this forum. Suffice it to say that I do not believe that the post presents a fair and accurate picture of the events.⁵²

Commentators on the subject of attorney responses to negative online reviews consistently suggest that it is a better course of action to approach the issue from a business and practical standpoint rather than an adversarial one.⁵³ The ABA Committee and other commentators have specifically recommended that many times, no response is the best response.⁵⁴ Commentators have argued that as any response will engender further responses in the review thread, particularly from the already angry reviewer, an attorney's response will frequently cause the posting to be higher in the search results for a particular attorney when a prospective client searches for representation through a general online inquiry.⁵⁵ On this basis, it may be the best course of action for an attorney to simply refrain from responding directly to the post.

Attorneys may also contact the client privately and request that the posting be removed or at least amended.⁵⁶ As internet postings are often made while in a state of heightened emotion, there is a possibility that a client may have changed their position, particularly if provided with the attorney's side of the story.⁵⁷ Clients may be particularly receptive to removal or amendment of the post if the attorney apologizes for any errors in the handling of the matter that may have led to the negative review and offers to take appropriate remedial action.

⁵⁰ ABA Formal Op. 21-496. The same suggestion was made in a number of the Formal Ethics Opinions cited above.

⁵¹ See, e.g., Fla. Bar Ethics Op. 20-01 (Oct. 9, 2020) (a lawyer may respond with a general statement that the lawyer is not permitted to respond as the lawyer would wish but that the online review is neither fair nor accurate).

⁵² Tex. Professional Ethics Comm. Op. No. 662 (Aug. 2016).

⁵³ ABA Formal Eth. Op. 21-496.

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ Doug Bradley, "How Should Lawyers Respond to Negative Online Reviews," supra.

⁵⁷ Id.



Board of Professional Responsibility New Disciplinary Counsel

Douglas R. Bergeron joined the Tennessee Board of Professional Responsibility as Disciplinary Counsel in the Investigations Division in August of 2020. Prior to joining the Board, Doug focused his twenty-six-year career handling insurance and business defense litigation. Doug received his B.S. degree in Finance from the University of Central Florida and his law degree from University of Memphis Cecil C. Humphreys School of Law.

Joe Byrd joined the Board of Professional Responsibility in May 2020. Joe was raised in suburban Detroit, Michigan and entered the practice of law as a second career after serving as a pastor and seminary professor. In 2002, he graduated from University of Toledo College of Law and was admitted to practice in Michigan in 2002 and Tennessee in 2003. Early in his practice he focused in local government with the Michigan firm of Braunlich, Russow and Braunlich. His family later relocated to Cleveland, Tennessee where he was staff attorney for the Church of God Department of Stewardship. He then was an Associate Attorney with Logan Thompson PC where his primary client was Bradley County serving as County Attorney and Delinquent Tax Attorney. Joe has been a solo practitioner serving as general counsel for various non-profit organizations while maintaining a limited probate and estate and elder law practice. He was admitted to practice in Florida in 2013 and prior to coming to the Board of Professional Responsibility in 2020, he was the City Attorney for the City of Apopka in Florida.

Jim Milam joined the Office of Disciplinary Counsel in March 2021 and works in the litigation division where he represents the Board of Professional Responsibility of the Supreme Court of Tennessee in cases on appeal. Previously, he served for 30 years an Assistant District Attorney General in the 19th and 20th Judicial Districts, including 15 years as lead prosecutor for the Fraud and White Collar Crime Unit in the Davidson County District Attorney's Office. He has tried dozens of criminal jury trials in his career as a prosecutor. He also has worked as an Assistant Attorney General handling criminal appeals for the Attorney General's Office and began his legal career in private practice in the Chattanooga area. Jim is a native of Nashville and graduated from the University of North Carolina at Chapel Hill, where he earned both his undergraduate and law degrees. He is licensed to practice law in Tennessee and Georgia.



Tennessee Lawyers' Fund for Client Protection New Board Members

Pamela Z. Clary has served as a senior project manager and lead advisor to ComCap Partners' municipal finance and economic and community development clients since 2003. Prior to joining ComCap Partners, Ms. Clary served as Deputy Director of Finance and Deputy Director of Housing and Community Development for the City of Memphis. Prior to her position with the City, Ms. Clary was employed by a national municipal financial advisory firm.

Ms. Clary is a graduate of Drexel University (PA) where she received a BS in Design/Textiles and LaSalle University (PA) where she received a MBA in Finance.

Ms. Clary currently serves on various boards which include the Memphis Shelby County Airport Authority and the Pension Board and Investment Committee for Memphis Light Gas and Water. She is certified as an independent registered municipal advisor with the Securities and Exchange Commission and the Municipal Securities Rulemaking Board, a member of the National Association of Municipal Advisors and the Urban Land Institute.

Michael G. Curcio, first elected to the Tennessee House of Representatives in 2016, represents Hickman and parts of Dickson and Maury Counties. As state representative, Michael is committed to serving the needs of his constituents while bringing common sense conservative Tennessee values to the legislature.

Michael was the first freshman member in modern history to be appointed chairman of a committee. In 2018, Michael was appointed Chair of the House Judiciary Committee, at that time the largest committee in the House of Representatives, overseeing a vast subject matter spanning law enforcement, the judiciary, an oversight committee designed to protect children and families, constitutional matters, and our system of civil justice. He currently serves as Chair of the Criminal Justice Committee.

Amanda Lynn Morse graduated with highest honors from the University of Tennessee College of Law in 2013. During law school, Ms. Morse interned with the United States Attorney's Office of the Eastern District of Tennessee and the Federal Defenders of East Tennessee. Prior to attending law school, Ms. Morse was a severe child abuse investigator for the Department of Children Services. Ms. Morse joined the Knox County Law Director's Office in 2013 and represents Knox County in a variety of civil legal matters including GTLA cases as well as special education law.

Quinton E. Thompson is currently a Personal Injury Litigation Associate at Morgan & Morgan's Memphis office, where he primarily deals with automobile collisions, slip and falls, and wrongful deaths cases. He earned his B.S. degree from the University of Tennessee Knoxville where he graduated magna cum laude with degrees in both Business Administration Management and

Psychology. Mr. Thompson went on to earn his J.D. from Vanderbilt University Law School in 2015.

In addition to practicing law, Mr. Thompson believes in giving back to his community. He is the current President of both the Ben F. Jones Chapter of the National Bar Association and the Young Lawyers Division of the Memphis Bar Association. He is also the former chair and current member of the Minority Summer Law Internship Committee with the Memphis Bar Association. A program that places minority high school students with paid legal internships across the city of Memphis.



Board of Professional Responsibility New Board Members

Sherriff Floyd Bonner Jr. was sworn into office as the 47th sheriff of Shelby County in 2018.

Sheriff Bonner is a second-generation law enforcement officer and a lifelong resident of Shelby County. Throughout his 41-year career, he has proven to have extensive experience in leadership and development within law enforcement and jail operations.

After graduating from Hillcrest High School, Floyd Bonner, Jr. earned an Associate degree in Psychology from Jackson State Community College in Tennessee. Later, His academic studies were completed at the University of Memphis earning a Bachelor of Arts degree in Criminal Justice. While handling the job as the Chief Deputy, he attended the Police Leadership Graduate Program (Southern Police Institute) at the University of Louisville where he was recognized as a Dean's Scholar.

Sheriff Bonner and his wife, Audrey, have been married 39 years. They have two sons and three grandchildren.

Charles K. Grant is a veteran litigator who has tried more than 50 jury trials to verdict in both federal and state courts, and represented numerous clients in mediation and arbitration proceedings across more than a dozen states.

Mr. Grant represents clients in complex employment litigation, including collective actions under the Fair Labor Standards Act, as well as business litigation matters. He is a shareholder in the Baker, Donelson, Bearman, Caldwell & Berkowitz, PC's Nashville office and a former member of the Firm's Board of Directors. Mr. Grant's clients also include licensed professionals, such as lawyers, physicians and dentists, whom he has represented before licensing boards.

Mr. Grant graduated from The Citadel in 1988 and from the Washington and Lee University School of Law, J.D. in 1991. Mr. Grant was admitted to the practice of law in Tennessee in 1995.

Disciplinary Actions

- (October 2020 – March 2021)
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PERMANENT DISBARMENTS

JAMES AUSTIN DUKES, BPR #026731 TENNESSEE ATTORNEY

Effective October 9, 2020, James Austin Dukes, of Tangipahoa Parrish, Louisiana, was permanently disbarred from the practice of law in Tennessee. Mr. Dukes was found guilty of theft of \$25,000.00 or more; theft of assets of aged; and exploitation of the infirmed in Docket 1-703267 in the State of Louisiana, Parish of Tangipahoa. Mr. Dukes requested to permanently resign from the practice of law in Louisiana in lieu of discipline. As a result, on July 2, 2020, the Supreme Court of the State of Louisiana entered an order stating that “James A. Dukes shall be permanently prohibited from practicing law in Louisiana” and “shall be permanently prohibited from seeking readmission to the practice of law in this state.”

On August 28, 2020, the Supreme Court of Tennessee entered a Notice of Reciprocal Discipline directing Mr. Dukes to inform the Court within thirty (30) days of receipt of the Notice as to why the discipline imposed by the Supreme Court of Louisiana should not be imposed by this Court. Mr. Dukes provided no response to the Supreme Court.

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

MATTHEW DAVID DUNN, BPR #030759 WILLIAMSON COUNTY

Effective January 29, 2021, the Supreme Court of Tennessee permanently disbarred Matthew David Dunn from the practice of law and ordered him to pay restitution in the amount of \$5,995.00 and costs of the disciplinary proceeding. A Petition for Discipline involving one complaint was filed against Mr. Dunn and tried before a Hearing Panel.

The Panel found Mr. Dunn accepted a referral from an intermediary organization not properly registered with the Board, received a fee for services from a client but did not perform any legal services, failed

to respond to the client's requests for information about the representation or communicate in any manner, and abandoned the client.

The Panel found Mr. Dunn's conduct violated Tennessee Rules of Professional Conduct 1.3 (diligence), 1.4 (communication), 1.5 (fees), 7.6 (intermediary organizations), and 8.1 (bar admissions and disciplinary matters).

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

***JAMES LESTER KENNEDY, BPR #005453
KNOX COUNTY***

Effective January 7, 2021, the Supreme Court of Tennessee permanently disbarred James Lester Kennedy from the practice of law and ordered the costs of the disciplinary proceeding be paid.

A Hearing Panel found Mr. Kennedy distributed attorneys' fees and personal expenses in a probate matter to himself and others which were not authorized by the court. The Panel determined Mr. Kennedy failed to demonstrate good faith, diligence, prudence and caution and also failed to demonstrate loyalty and fidelity to the estate as required.

Mr. Kennedy violated Tennessee Rules of Professional Conduct 1.3 (Diligence), 3.4 (c) (Fairness to Opposing Party and Counsel), and 8.4 (c) and (d) (Misconduct).

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

***WILLIAM BRANCH LAWSON, BPR #010796
UNICOI COUNTY***

Effective October 27, 2020, the Supreme Court of Tennessee permanently disbarred William Branch Lawson from the practice of law and ordered restitution in the amount of \$67,850.00, and costs of the disciplinary proceeding be paid.

The Board filed a Petition for Discipline against Mr. Lawson consisting of five (5) separate disciplinary complaints. The Hearing Panel found Mr. Lawson failed to appear in court or provide any legal services for

which he was paid fees by clients, failed to refund unearned fees to his clients, misappropriated the fees paid to him, misappropriated funds held in his trust account for a third party to settle other obligations and cases, failed to act with diligence in the representation of his clients, abandoned his practice, failed to respond to the Board's lawful request for information and engaged in conduct involving dishonesty, fraud, deceit and misrepresentations in violation of Tennessee Rules of Professional Conduct 1.3 (diligence), 1.5 (fees), 1.15 (safekeeping property and funds), 1.16 (declining or terminating representation) 8.1 (bar admissions and disciplinary matters), and 8.4(a) and (c) (misconduct).

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

JUDSON WHEELER PHILLIPS, BPR #013029
DAVIDSON COUNTY

On February 4, 2021, the Supreme Court of Tennessee permanently disbarred Judson Wheeler Phillips from the practice of law. Mr. Phillips must pay the court costs within ninety days of the entry of the Order of Enforcement.

Mr. Phillips consented to permanent disbarment because he could not successfully defend himself on charges alleged in pending disciplinary complaints. Pursuant to Tennessee Supreme Court Rule 9, Mr. Phillips is not eligible for reinstatement to the practice of law in this state. Tennessee Supreme Court Rule 9, Section 23, requires Mr. Phillips' consent to disbarment be maintained under seal.

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

SUSPENSIONS

CARLA L. AREVALO, BPR #0031003
DAVIDSON COUNTY

On October 30, 2020, the Supreme Court of Tennessee entered an order suspending Carla L. Arevalo from the practice of law for a period of four (4) years with three (3) years active retroactive to her temporary

suspension of January 11, 2018, pursuant to Tennessee Supreme Court Rule 9 Section 12.2. As a condition of reinstatement, Ms. Arevalo must pay restitution to her client, contact Tennessee Lawyers Assistance Program for evaluation and reimburse the Board of Professional Responsibility for all costs in the disciplinary proceeding.

Ms. Arevalo, while suspended for non-payment of the annual registration fee and non-compliance with IOLTA reporting requirements, engaged in the unauthorized practice of law and accepted fees in two matters. After Ms. Arevalo was terminated, she failed to promptly return the files to her client as requested and refund any fees. Ms. Arevalo also failed to respond to the Board concerning the disciplinary complaint.

Ms. Arevalo admitted her conduct violated Rules of Professional Conduct 1.16(d) (declining or terminating representation); 5.5(a) (unauthorized practice of law); 8.1(b) (bar admission and disciplinary matters) and 8.4(a) (misconduct).

Ms. Arevalo 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.

***DOUGLAS RALPH BEIER, BPR #005777
HAMBLÉN COUNTY***

On October 2, 2020, the Supreme Court of Tennessee entered an order suspending Douglas Ralph Beier from the practice of law in Tennessee for a period of two (2) years.

The Supreme Court found that Mr. Beier violated Tennessee Rules of Professional Conduct in two separate client matters. In the first matter, the Court held that Mr. Beier falsely signed a party's name to an affidavit, falsely notarized that same signature, and filed the affidavit in both juvenile and chancery court without alerting either court that he was the one who applied the signature. The Court found Mr. Beier violated RPC 3.3(a)(1) (candor toward the tribunal) and 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation) in that matter.

In the second matter, the Court held that Mr. Beier, in the representation of a client in probate court, improperly charged a one-third contingency fee, utilized a fee agreement which was insufficiently clear, included real property in the estate which passed by operation of law, falsely stated in the petition that his client was the only heir when he knew of four other half-siblings, failed to inform the court of the other descendants, and took advantage of his client's disability in order to charge an unreasonable fee. The Court found that Mr. Beier violated RPC 1.5(a) (fees), 3.3(a)(1), 3.3(a)(3), and 8.4(a) and (c).

Pursuant to Tennessee Supreme Court Rule 9, Section 28.1, the suspension is effective upon entry of the order by the Court. Mr. Beier 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.

***BRADLEY MICHAEL CARTER BPR #024093
WILLIAMSON COUNTY***

On October 9, 2020, the Supreme Court of Tennessee entered an order suspending Bradley Michael Carter from the practice of law for a period of two (2) years with four (4) 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.

Mr. Carter admitted to receiving client fees and failing to properly account to the partners in the firm for those fees, thereby under-reporting revenue owed to the firm pursuant to the terms of his employment. Mr. Carter admitted his conduct violated the Rules of Professional Conduct 8.4 (a) and (c) (Misconduct).

Mr. Carter 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.

***MARK STEVEN GRAHAM, BPR #011505
KNOX COUNTY***

On February 11, 2021, the Tennessee Supreme Court suspended Mark Steven Graham from the practice of law for three (3) years, retroactive to March 11, 2020, the date of his temporary suspension from the practice of law. One (1) year shall be served as an active suspension and the remainder on probation. Mr. Graham must obtain an evaluation with the Tennessee Lawyers Assistance Program, engage a Practice Monitor, pay restitution, and pay the Board of Professional Responsibility's costs and expenses and court costs.

On May 8, 2020, a Petition for Discipline was filed against Mr. Graham that included one complaint of misconduct. Mr. Graham represented a foreign company involved in intellectual property litigation in the United States. The company retained an expert witness, and the client sent funds to Mr. Graham for payment of the expert witness fees. Mr. Graham failed to pay the expert as agreed and used a portion of the funds to pay his outstanding attorney fees.

Mr. Graham executed a Conditional Guilty Plea admitting his conduct violated Tennessee Rules of Professional Conduct 1.15(a), (b) and (d) (safekeeping property and funds) and 8.4(a), and (c) (misconduct).

Mr. Graham 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.

***BOBBY GENE GRAY, JR, BPR #011507
MCNAIRY COUNTY***

On January 7, 2021, the Supreme Court of Tennessee entered an order suspending Bobby Gene Gray from the practice of law for a period of three (3) years with eight (8) months active suspension and the remainder on probation, pursuant to Tennessee Supreme Court Rule 9 Section 12.2, retroactive to May 1, 2020. Mr. Gray must pay the Board of Professional Responsibility's costs and expenses and court costs within ninety days.

Mr. Gray admitted to taking controlled substances from an evidence room while he served as an assistant district attorney. He entered a plea to official misconduct, theft of less than \$1,000.00, and simple possession of a controlled substance and received judicial diversion.

Mr. Gray executed a conditional guilty plea acknowledging his conduct violated Rules of Professional Conduct 8.4 (b) and (c) (Misconduct).

Mr. Gray 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.

***MATTHEW LEDVINA, BPR #022889
TENNESSEE ATTORNEY***

On January 29, 2021, the Tennessee Supreme Court suspended Matthew Ledvina from the practice of law for six (6) years with four (4) years active suspension and the remainder on probation retroactive to March 11, 2020. In addition to his suspension, Mr. Ledvina must file a petition to surrender his law license pursuant to Tennessee Supreme Court Rule 7, Section 15.01.

The Board filed a Petition for Final Discipline against Mr. Ledvina based upon his felony conviction in the United States District Court for the District of Massachusetts for conspiracy to commit securities fraud.

Mr. Ledvina submitted a conditional guilty plea admitting his conduct violated Tennessee Rules of Professional Conduct 8.4(a), (b) and (c) and agreeing to petition the Supreme Court to surrender his license to practice law in Tennessee.

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

***JENNIFER LYNN MAYHAM, BPR #034346
LAUDERDALE COUNTY***

January 29, 2021, the Supreme Court of Tennessee entered an order suspending Jennifer Lynn Mayham from the practice of law for a period of five (5) years, with one (1) year active suspension, and the remainder on probation pursuant to Tennessee Supreme Court Rule 9, Section 12.2. Ms. Mayham was further ordered to obtain an evaluation with the Tennessee Lawyer's Assistance Program, engage the services of a Practice Monitor, pay restitution in the amount of \$4,700.00 and reimburse the Board for all costs in the disciplinary proceeding.

Ms. Mayham was convicted of misdemeanor drug possession and pled guilty to misdemeanor perjury. Ms. Mayham failed to reasonably communicate with seven clients regarding the status of their case and accepted retainers, after which she failed to perform the professional services for which she was retained. Ms. Mayham also failed to respond to the Board's request for information during the investigation and comply with the Order of Temporary Suspension entered June 21, 2018.

Ms. Mayham executed a conditional guilty plea admitting her conduct violated Rules of Professional Conduct (RPC) 1.3 (diligence); 1.4 (communication); 1.16 (declining or terminating representation); 3.3 (candor toward the tribunal); 8.1 (maintaining the integrity of the profession); and 8.4 (a), (b), (c), (d) and (g) (misconduct).

Ms. Mayham 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.

***TESHAUN DAVID MOORE, BPR #027816
SHELBY COUNTY***

On December 11, 2020, the Supreme Court of Tennessee entered an order suspending TeShaun David Moore from the practice of law for a period of six (6) years with four (4) years active suspension and the remainder on probation, pursuant to Tennessee Supreme Court Rule 9 Section 12.2, retroactive to March 7, 2018. Mr. Moore was further ordered to obtain an evaluation with the Tennessee Lawyers Assistance Program, engage the services of a Practice Monitor, and pay restitution. Mr. Moore must pay the Board of Professional Responsibility's costs and expenses and court costs within ninety days.

Mr. Moore admitted he failed to distribute funds to multiple clients following settlements, failed to distribute funds related to liens by insurance companies concerning money held in trust, missed scheduled court dates, failed to communicate with clients and failed to notify clients he had been suspended from the practice of law.

Mr. Moore executed a conditional guilty plea acknowledging 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), 3.2 (Expediting Litigation), 3.3 (Candor Toward the Tribunal), 4.1 (Truthfulness in Statements to Others), 8.1 (Disciplinary Matters), and 8.4 (Misconduct).

Mr. Moore 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.

***ALBERT FITZPATRICK OFFICER, BPR #011629
OVERTON COUNTY***

On March 11, 2021, the Supreme Court of Tennessee entered an order suspending Albert Fitzpatrick Officer, III from the practice of law for a period of six (6) years, with six (6) months active suspension, and the remainder on probation pursuant to Tennessee Supreme Court Rule 9, Section 12.2. Mr. Officer was further ordered to continue his monitoring agreement with the Tennessee Lawyers Assistance Program, engage the services of a Practice Monitor, pay restitution in the amount of \$1,250.00, and reimburse the Board for all costs in the disciplinary proceeding.

Mr. Officer entered a guilty plea to the amended criminal charge of misdemeanor DUI; failed to take action to prosecute or advance a client's case; failed to advise his client in a matter that had been appealed,

failed to file appellate responses resulting in the court removing him as the attorney of record; failed to deposit client funds into his trust account and appeared in court representing his clients while administratively suspended.

Mr. Officer executed a conditional guilty plea admitting his conduct violated Rules of Professional Conduct (RPC) 1.3 (diligence); 1.4 (communication); 1.15 (safekeeping property – failing to deposit clients funds in his trust account); 1.16 (declining or terminating representation); 3.2 (expediting litigation); 5.5 (unauthorized practice of law); 8.1 (maintaining the integrity of the profession); and 8.4 (a), (b), (c), and (g) (misconduct).

Mr. Officer 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 SCOTT PARSLEY, BPR #013606
DAVIDSON COUNTY***

Effective October 12, 2020, the Supreme Court of Tennessee entered an order suspending David Scott Parsley from the practice of law for one (1) year with three (3) months active suspension and the remainder on probation. During the period of probation, Mr. Parsley shall meet with a practice monitor monthly. The Practice Monitor shall assess Mr. Parsley's case load, case management, trust account, compliance with trust account rules, accounting procedures, and office management procedures, in accordance with Tennessee Supreme Court Rule 9, Section 12.9(b). Mr. Parsley must pay to the Board all costs in the disciplinary proceeding.

Mr. Parsley engaged in a business transaction with a client and friend without properly informing them of the conflict of interest in violation of RPC 1.3 (diligence) and 1.8 (conflict of interest).

Mr. Parsley 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. Parsley 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. Parsley 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.

STEPHEN KENNETH PERRY, BPR #022540
TENNESSEE ATTORNEY

On October 2, 2020, the Tennessee Supreme Court suspended Stephen Kenneth Perry of Alexandria, Virginia from the practice of law for two (2) years, retroactive to the date of his January 2, 2019 temporary suspension pursuant to Tennessee Supreme Court Rule 9, Section 12.2(b). As a condition of reinstatement, Mr. Perry must pay restitution to his client and undergo a Tennessee Lawyers Assistance Program evaluation. Mr. Perry must pay the Board of Professional Responsibility's costs and expenses and court costs within ninety days of the entry of the Order of Enforcement.

On July 30, 2019, the Board filed a Petition for Discipline against Mr. Perry. The Petition included one complaint of misconduct. The Hearing Panel found Mr. Perry essentially abandoned his client's case and failed to respond to the Board in violation of Rules of Professional Conduct 1.3 (diligence), 1.4 (communication), 1.5 (fees), 1.16 (terminating representation), 3.2 (expediting litigation), 8.1(b) (bar admission and disciplinary matters) and 8.4(d) (conduct prejudicial to the administration of justice).

Mr. Perry 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.

RICHARD LOUIS REYNOLDS, BPR #023174
TENNESSEE ATTORNEY

On March 1, 2021, the Tennessee Supreme Court suspended Richard Louis Reynolds from the practice of law until further orders of the Court pursuant to Tennessee Supreme Court Rule 9, Section 22.3. Mr. Reynolds pled guilty and was convicted of Misprision of a Felony in the matter of *United States of America v. Richard Reynolds*, Case No. 3:20-CR-00227-M(1), in the United States District Court for the Northern District of Texas Dallas Division. The Supreme Court's Order is effective immediately.

Pursuant to the Order of the Supreme Court, the matter has been referred to the Board to institute formal proceedings to determine the extent of the final discipline to be imposed upon Mr. Reynolds as a result of his convictions of misdemeanors and a serious crime.

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

WINSTON BRADSHAW SITTON, BPR #018440
DAVIDSON COUNTY

On January 22, 2021, Winston Bradshaw Sitton, an attorney licensed to practice law in Tennessee, was suspended from the practice of law for four (4) years with one (1) year to be served as an active suspension and the remainder on probation by Order of the Tennessee Supreme Court. The Court further ordered Mr. Sitton to pay costs and expenses associated with the case.

On August 23, 2018, a Petition for Discipline was filed against Ms. Sitton concerning one complaint of misconduct. Mr. Sitton posted a series of public Facebook posts in response to a friend's inquiry about the legality of carrying a weapon in her car. Mr. Sitton was aware that the friend had a very contentious and allegedly abusive relationship with the father of her child. In a series of Facebook posts responding to the question, Mr. Sitton told her that it was better to get a "taser" or "tear gas." If she were to get a shotgun, he said, she should first fill it with rock salt, then bird shot, and then "load for bear."

Mr. Sitton next posted: If you want to kill him, then lure him into your house and claim he broke in with intent to do you bodily harm and that you feared for your life. Even with the new stand your ground law, the castle doctrine is a far safer basis for use of deadly force.

Replying to Mr. Sitton's post, his Facebook friend commented, "I wish he would try." Mr. Sitton then posted: As a lawyer, I advise you to keep mum about this if you are remotely serious. Delete this thread and keep quiet. Your defense is that you are afraid for your life — revenge or premeditation of any sort will be used against you at trial.

A hearing panel found that Mr. Sitton violated Tennessee Rules of Professional Conduct 8.4(a) and (d), misconduct, and recommended that he be suspended from the practice of law for sixty (60) days.

The Tennessee Supreme Court exercised its discretion to review the discipline. Following a review of the record, the Court observed that practicing law is a privilege and lawyers in any setting — including on social media — are bound by the ethics rules. The Court held that had Mr. Sitton's advice been followed, it could have led to a disastrous outcome and encouraging the Facebook friend to make premeditated use of force appear as self-defense was "grave misconduct." Finally, the Court held that posting his bad advice publicly fostered a cynical perception that the judicial process is corrupt, and lawyers are co-conspirators who help clients manufacture fake defenses against criminal charges. Based on the Court's review, the hearing panel's proposed sanction of a sixty (60) day suspension was increased to a suspension of four (4) years with one (1) year to be served as an active suspension and the remainder on probation. Mr. Sitton must comply with

Tennessee Supreme Court Rule 9, Section 28 regarding the obligations and responsibilities of suspended attorneys and may not return to the active practice of law until an order of reinstatement has been entered by the Supreme Court.

Justice Holly Kirby authored the majority opinion for the Court and Justice Sharon Lee filed a separate opinion concurring in the increase in the sanction.

TEMPORARY SUSPENSIONS

CHARLES DAVID DEAS, BPR #002049 BLOUNT COUNTY

On October 8, 2020, the Supreme Court of Tennessee temporarily suspended Charles David Deas from the practice of law and ordered him to contact Tennessee Lawyers Assistance Program within ten (10) days of the entry of the order for evaluation. Based upon the information provided by the Circuit and General Sessions Courts of Blount County, Tennessee, the Court found Mr. Deas posed a threat of substantial harm to the public, and a substantial concern had been raised regarding his ability to currently practice law. 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 an attorney poses a threat of substantial harm to the public.

Mr. Deas is immediately precluded from accepting any new cases, and he must cease representing existing clients by November 8, 2020. After November 8, 2020, Mr. Deas shall not use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence where the practice of law is conducted. Mr. Deas 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.

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

URURA W. MAYERS, BPR #023319
SHELBY COUNTY

On November 30, 2020, the Supreme Court of Tennessee temporarily suspended Urura W. Mayers from the practice of law upon finding that Ms. Mayers misappropriated funds of a client and poses a threat 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 of an attorney's misappropriation of a client's funds.

Ms. Mayers is immediately precluded from accepting any new cases, and she must cease representing existing clients by December 30, 2020. After December 30, 2020, Ms. Mayers shall not use any indicia of lawyer, legal assistant, or law clerk nor maintain a presence where the practice of law is conducted.

Ms. Mayers 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. Mayers is required to deliver to all clients any papers or property to which they are entitled.

Ms. Mayers 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. Ms. Mayers may for good cause request dissolution or modification of the suspension by petition to the Supreme Court

PUBLIC CENSURES

NICHOLAS D. BUNSTINE BPR #009751
KNOX COUNTY

On January 14, 2021, Nicholas D. Bunstine, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Bunstine represented a client in defense of a civil proceeding brought by the client's mother for rescission of a quit claim deed. At all relevant times during the representation, Mr. Bunstine was aware that his client's mother was represented by counsel.

While the suit remained pending, Mr. Bunstine received word from his client that her mother no longer wished to have the quit claim deed rescinded. Mr. Bunstine prepared an affidavit for the mother's signature confirming the mother's changed position and provided the affidavit to his client. Mr. Bunstine's client presented the affidavit to her mother, who proceeded to execute the affidavit. Mr. Bunstine filed a motion to dismiss the suit based upon the content of the affidavit, which was granted by the Court.

By these acts, Nicholas D. Bunstine, has violated Rules of Professional Conduct 4.2 (communication with a person represented by counsel), and 8.4(d) (misconduct) 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.

***ADDIE MARIE BURKS, BPR #011805
SHELBY COUNTY***

On January 15, 2021, 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.

Ms. Burks received funds on a client's case in November 2019, and she delayed distributing the funds until August 2020. Also, Ms. Burks distributed all the funds directly to the client instead of first resolving existing medical liens. Ms. Burks did not have a written fee agreement for a contingency fee agreement, and she commingled a small portion of her fee with client funds when she failed to timely remove her entire fee from trust. In another matter for the same client, Ms. Burks failed to timely distribute a small amount to a medical provider for over two years.

By these acts, Addie Marie Burks has violated Rules of Professional Conduct 1.1 (competence), 1.3 (diligence), 1.15 (safekeeping funds), 1.5 (fees) and 8.4(d) (prejudice to the administration of justice) and is hereby Publicly Censured, with the requirement that she attend the Board of Professional Responsibility's Trust Account Workshop scheduled for March 2021.

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

JAMAAL L. BOYKIN, #031037
DAVIDSON COUNTY

On October 23, 2020, Jamaal L. Boykin, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Boykin was fully retained to represent a client in a bankruptcy proceeding. Mr. Boykin never filed a bankruptcy petition for his client but led his client to believe that a petition was filed. Mr. Boykin then ceased communicating with his client and effectively abandoned the representation. In mitigation, Mr. Boykin corrected the issues which led to his misconduct and provided a full refund to the client.

By these acts, Jamaal L. Boykin has violated Rule of Professional Conduct 1.3 (diligence), 1.4 (communication), 1.5 (fees), 1.16 (terminating representation), and 8.4(a)(c)(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.

KATHLEEN LAIRD CALDWELL, BPR #009916
SHELBY COUNTY

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.

***MICHAEL EDWARD CASAS, BPR #019806
KNOXVILLE CORPORATE COUNSEL***

On October 23, 2020, Michael Edward Casas, an attorney serving as corporate counsel in Knoxville, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Casas is licensed to practice law in the states of Florida and New York. Mr. Casas accepted a corporate counsel position in the state of Tennessee without timely registering with the Board of Law Examiners and the Board of Professional Responsibility. Mr. Casas provided legal services to his employer for a period of eight (8) months before he completed the proper registration requirements.

By these acts, Michael Edward Casas has violated Rule of Professional Conduct 5.5(a) (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.

***WILFRED SHAWN CLELLAND, BPR#014272
HAMILTON COUNTY***

On January 20, 2021, Wilfred Shawn Clelland, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Clelland settled a client's personal injury claim and received settlement funds in August of 2017. The settlement proceeds were subject to outstanding medical bills and/or liens. Mr. Clelland performed little, if any, work in negotiating the liens for over three years. He also failed to provide updates to the client, held settlement funds in his IOLTA account for three years, and provided false or misleading statements to the client.

By these acts, Wilfred Shawn Clelland, has violated the following Rules of Professional Conduct: 1.3 (diligence), 1.4 (a)(3) (communication), 1.15 (safekeeping property and funds) and 8.4 (misconduct) 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.

***CHARLES DAVID DEAS, BPR #002049
DAVIDSON COUNTY***

On January 26, 2021, Charles David Deas of Maryville, TN, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Deas deposited his own funds into his trust account in order to issue a cashier's check from the account which is a violation of Rule 1.15 (safekeeping funds) and resulted in potential harm to his clients. Mr. Deas also failed to adequately protect the bank checks for his trust account, and he failed to have proper procedures in place to make sure his assistant was in compliance with the Rules of Professional Conduct, in violation of Rule 5.3 (nonlawyer assistance).

By these acts, Charles Deas has violated Rules of Professional Conduct 1.15 (safekeeping funds) and 5.3 (nonlawyer assistance) and is hereby Publicly Censured.

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

***ELBERT EVERETT EDWARDS, BPR #004364
SHELBY COUNTY***

On March 17, 2021, Elbert Everett Edwards, an attorney licensed to practice law in Tennessee, received a Public Censure from Supreme Court of Tennessee conditioned upon his attending the next Board of Professional Responsibility Ethics Workshop.

While in private practice, Mr. Edwards worked as a contract attorney for a debt collection company. Mr. Edwards was retained by the company to collect a debt but never contacted or communicated with the

client who was unaware of the representation. The client, not having retained Mr. Edwards or executed a written retainer agreement, objected to the contingency fee charged by Mr. Edwards after successfully collecting the debt. Mr. Edwards executed a conditional guilty plea admitting his conduct violated RPC 1.2 (Scope of Representation), 1.4 (Communication) 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.

***SHANNON DAVID ELSEA, BPR #017346
SHELBY COUNTY***

On October 23, 2020, Shannon David Elsea, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

In the representation of a client, Mr. Elsea failed to diligently represent the client's interests and failed to adequately communicate with the client. Mr. Elsea also provided deceptive information to both his client and the Board.

In the representation of a separate client, Mr. Elsea failed to diligently represent the client's interests, adequately communicate with the client, or expedite the litigation. Mr. Elsea also deceived his client into believing a settlement had occurred and deceived the court clerk and opposing counsel as to the true status of the case which interfered with the timely administration of justice. In mitigation, Mr. Elsea was experiencing personal issues that caused him undue stress and anxiety which Mr. Elsea is currently addressing.

By these acts, Shannon David Elsea has violated Rule of Professional Conduct 1.3 (diligence), 1.4 (communication), 1.5 (fees), 3.2 (expediting litigation), 4.1 (truthfulness in statements to others), 8.1(b) (disciplinary matters), and 8.4(a)(c)(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.

SAMANTHA FLENER, BPR #038282
DAVIDSON COUNTY

On January 13, 2021, Samantha Flener, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Ms. Flener was licensed to practice law only in New York when she relocated to Tennessee and began work at a Tennessee law firm. Ms. Flener applied for permission to be admitted by UBE Score Transfer with the Board of Law Examiners and her application referenced the need to apply for practice pending admission if she was currently working in Tennessee as a lawyer or other law-related position. Ms. Flener also certified on the application that she had read Tennessee Supreme Court Rule 7 and the Board policies and procedures posted on its website. Ms. Flener did not apply for practice pending admission and was not authorized to practice law in Tennessee until after she had been employed as a firm lawyer for a period of eight months.

By these acts, Ms. Flener 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.

JASON RALPH HINES, BPR #028139
ROANE COUNTY

On March 29, 2021, Jason Ralph Hines, an attorney licensed to practice law in Tennessee, received a Public Censure from Supreme Court of Tennessee and was ordered to pay the costs of the disciplinary action to the Board of Professional Responsibility.

Mr. Hines, retained in a post-divorce action, engaged in inappropriate text communications with his client which potentially impaired his professional judgment and that of his client; failed to deposit client funds into his client trust account; provided inappropriate financial assistance to his client; and failed to promptly refund advance payment of unearned fees.

Mr. Hines executed a conditional guilty plea admitting his conduct violated Rules of Professional Conduct 1.7(a) (conflict of interest); 1.15 (a) (safekeeping property); 1.8(3) (conflict of interest: prohibited transactions); and 1.16(d) (declining or terminating representation).

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

***PHILLIP GORDON HOLLIS, BPR #007461
BENTON COUNTY***

On February 9, 2021, Phillip Gordon Hollis, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Hollis failed to provide notice to his clients, opposing counsel, and the courts that he had been administratively suspended on March 11, 2020, and his clients were unable to get in touch with him. Mr. Hollis failed to appear for a scheduled court hearing and subsequently informed the court that he had provided written notice to his clients of his suspension. On June 23, 2020, Mr. Hollis was ordered by the court to provide copies of the notices he had provided to his clients but was unable to do so. Mr. Hollis later acknowledged he had not sent such letters to his clients and was removed as counsel by the court.

By these acts, Mr. Hollis has violated Rule of Professional Conduct 1.3 (diligence), 1.4 (communication), 1.16(d) (terminating representation), 3.2 (expediting litigation), 3.3 (candor toward tribunal), 3.4(c) (disobeying obligation under rules of tribunal), and 8.4(a)(c)(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.

***GEORGE TURNER HOWARD, III, BPR #007111
KNOXVILLE COUNTY***

On October 16, 2020, George Turner Howard, III, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Howard shared fees with outside counsel without first obtaining the informed consent of his clients in writing. Mr. Howard also provided financial assistance to clients, held out certain non-lawyer staff as persons holding corporate officer positions in his firm, and made deceptive statements through his advertising. Mr. Howard has corrected these issues and has agreed to discontinue such conduct.

By these acts, George Turner Howard, III has violated Rule of Professional Conduct 1.5(e) (fees), 1.8(e) (conflict of interest), 5.4(d) (professional independence of a lawyer), 7.1 (communications concerning a lawyer's services), 7.4 (communication of fields of practice and specialization) 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.

***JAMES RANDALL KRENIS, #021563
MADISON COUNTY***

On October 23, 2020, James Randall Krenis, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Krenis was paid a portion of a non-refundable fee to assist a client but failed to provide legal services until the full amount of the non-refundable fee was paid. Mr. Krenis also charged other fees which were unreasonable. Mr. Krenis later changed the scope of his representation and increased his fees without obtaining the informed consent of his client in writing or giving his client the opportunity to meet with independent counsel. Mr. Krenis failed to file any pleadings or make any court appearances on behalf of his client and failed to adequately communicate with his client about the status of the representation.

By these acts, James Randall Krenis has violated Rule of Professional Conduct 1.2 (scope of representation), 1.3 (diligence), 1.4 (communication), 1.5 (fees), 1.8(a) (conflict of interest), and 8.4(a)(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.

***SCOTT DAVID JOHANNESSEN, BPR #026767
DAVIDSON COUNTY***

On October 12, 2020, Scott David Johannessen, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Johannessen is the sole member of a limited liability company, and that company is a member of another company called FYI. On March 2, 2018, Mr. Johannessen was appointed by resolution as the attorney

for FYI for particular issues. On October 15, 2018, Mr. Johannessen hired an attorney and filed an involuntary bankruptcy petition against FYI in his role as the sole member of the other limited liability company. On October 16, 2018, Mr. Johannessen then filed a notice of appearance in the bankruptcy proceeding, as a *pro se* creditor of FYI, alleging that there was a debt FYI owed him personally. The bankruptcy of FYI was later dismissed.

Mr. Johannessen's filing of an involuntary bankruptcy petition against FYI, in his role as the sole member of a limited liability company, after a resolution had been passed naming him as FYI's attorney created a significant risk that the representation of his client would be materially limited by his interest as sole member of the other company. Mr. Johannessen's subsequent notice to also appear on his own behalf in the bankruptcy, against FYI, created a significant risk that his representation of FYI and his personal interest concerning the other company would be materially limited by his personal interest as a creditor against FYI.

By these acts, Scott David Johannessen has violated Rules of Professional Conduct 1.7 (conflict of interest), 8.4(d) (prejudice to the administration of justice) and 1.1 (competence) and is hereby Publicly Censured.

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

***LAWRENCE BUFORD HAMMETT, II, BPR #013816
DAVIDSON COUNTY***

On January 20, 2021, Lawrence Buford Hammet, II, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Hammet withdrew disputed funds from his client trust account and paid himself a fee which exceeded the amount that his client alleged was agreed upon at the commencement of the representation. The client filed a civil suit against Mr. Hammet which was appealed after trial. The Court of Appeals found that Mr. Hammet failed to keep the disputed funds in his client trust account until the dispute was resolved and that Mr. Hammet improperly calculated his fees which were unreasonable. The Court of Appeals awarded judgment to the client in the amount of \$67,335.69 and remanded the case to the trial court for a determination of pre-judgment interest. The trial court subsequently awarded pre-judgment interest to the client in an additional amount of \$22,092.10.

By these acts, Lawrence Buford Hammet, II has violated Rule of Professional Conduct 1.5 (fees) and 1.15(e) (safekeeping property) and is hereby Publicly Censured for these violations. As a condition of the Public Censure, Mr. Hammet shall satisfy the judgments against him on or before January 19, 2021.

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

***IVAN OMAR LOPEZ, #026441
DAVIDSON COUNTY***

On November 12, 2020, Ivan Omar Lopez, an attorney licensed to practice law in Tennessee, received a Public Censure from the Tennessee Supreme Court pursuant to Tennessee Supreme Court Rule 9, Section 12.4.

The Board of Professional Responsibility filed a Petition for Discipline against Mr. Lopez based upon his failure to ensure the timely entry of a final decree of divorce in 2015, and his failure to take timely action in 2019 upon being advised the final decree was not in the court file and had not been entered.

Mr. Lopez executed a conditional guilty plea acknowledging his misconduct violated Tennessee Rules of Professional Conduct 1.3 (diligence) and 8.4 (d) (misconduct).

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

***ERIC JOHN MONTIERTH, BPR #031679
SHELBY COUNTY***

On January 12, 2021, Eric John Montierth, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Montierth failed to timely file an appellate brief in two criminal cases. In both cases, the court then entered an order directing him to file the brief within ten days. In both cases, Mr. Montierth failed to file the brief or ask for an extension of time. Almost four months later, the court ordered Mr. Montierth to appear and explain his conduct in both cases, which he did. The court later accepted the late-filed brief in each case. Mr. Montierth's conduct resulted in potential harm to his clients.

By these acts, Eric John Montierth has violated Rules of Professional Conduct Rule 1.3 (diligence), 3.2 (expediting litigation), 3.4(c) (fairness to opposing party and counsel) and 8.4(d) (prejudice to the administration of justice) 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.

***KEISHA MOSES RICHARDSON, BPR #026492
SHELBY***

COUNTY

On October 23, 2020, Keisha Moses Richardson, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Ms. Richardson was convicted by a jury of Violation of an Order of Protection which was affirmed on appeal. Ms. Richardson's conduct reflected adversely upon her fitness as a lawyer and she failed to respond to the disciplinary complaint against her.

By these acts, Keisha Moses Richardson has violated Rule of Professional Conduct 8.1(b) (disciplinary matters) and 8.4(a)(b)(d)(g) (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.

***C. LEANN SMITH, BPR #018899
DAVIDSON COUNTY***

On October 21, 2020, C. LeAnn Smith, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

In a custody matter in which she was a party, Ms. Smith lied under oath in a deposition in response to six questions about her use of alcohol in the presence of the child. The subject matter of Ms. Smith's testimony was relevant to the pending custody matter. In mitigation, Ms. Smith's conduct was not done in the representation of a client, and Ms. Smith admitted her conduct under oath in her trial testimony in the same proceeding.

By these acts, C. LeAnn Smith has violated Rule of Professional Conduct 8.4(c) (conduct involving dishonesty) and 8.4(d) (prejudice to the administration of justice) and is hereby Publicly Censured with the condition that within sixty days, she schedule and complete an assessment with the Tennessee Lawyers Assistance Program and follow any recommendation made by TLAP.

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

***CANDACE LENETTE WILLIAMSON, #028933
TENNESSEE ATTORNEY***

On October 23, 2020, Candace Lenette Williamson of Grenada, Mississippi, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Ms. Williamson was paid a fee to represent a client but neglected to take any substantive legal action on behalf of the client. Ms. Williamson deceived the client into believing that she had filed petitions in both Mississippi and Tennessee, but no petitions were ever filed. Ms. Williamson thereafter abandoned the representation and failed to respond to the disciplinary complaint against her.

By these acts, Candace Lenette Williamson has violated Rule of Professional Conduct 1.3 (diligence), 1.4 (communication), 1.5 (fees), 1.16 (terminating representation), 8.1(b) (disciplinary matters) and 8.4(a)(c)(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.

***CHARLES GAMMONS WRIGHT, BPR #000915
HAMILTON COUNTY***

On November 24, 2020, Charles Gammons Wright, an attorney licensed to practice law in Tennessee, received a Public Censure from the Supreme Court of Tennessee.

The Board of Professional Responsibility filed a Petition for Discipline against Mr. Wright pursuant to Rule 9 of the Rules of the Supreme Court of Tennessee. A Hearing Panel found Mr. Wright negligently

disclosed client confidential information in an affidavit filed with his Motion to Withdraw from representation. Mr. Wright was ordered to pay the costs of the disciplinary proceeding.

Charles Gammons Wright's conduct violated Rules of Professional Conduct 1.6 (Confidentiality).

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

REINSTATEMENTS

BRADLEY MICHAEL CARTER, BPR #024093 WILLIAMSON COUNTY

By Order of the Tennessee Supreme Court entered February 10, 2021, Bradley Michael Carter was reinstated to the active practice of law.

On October 9, 2020, Mr. Carter was suspended by the Supreme Court of Tennessee for two (2) years with four (4) months active suspension. Mr. Carter filed a Petition for Reinstatement to the practice of law pursuant to Tennessee Supreme Court Rule 9, Section 30.4(c) on January 5, 2021. The Board found the Petition was satisfactory and submitted an Order of Reinstatement to the Court.

A.SAIS PHILLIPS FINNEY, BPR #028845 SHELBY COUNTY

By Order of the Tennessee Supreme Court entered November 6, 2020, the Tennessee law license of A. Sais Phillips Finney of Memphis, Tennessee, was reinstated.

Ms. Finney was temporarily suspended from the practice of law by Order of the Supreme Court on October 29, 2020, for failing to respond to the Board regarding complaints of misconduct. On October 30, 2020, Ms. Finney provided a response to the Board and filed a Petition for Dissolution of Temporary Suspension. The Board filed an answer acknowledging responses from Ms. Finney were received by the Board which the Court deemed sufficient for dissolution of the temporary suspension.

***BOBBY GENE GRAY, BPR #011507
MCNAIRY COUNTY***

By Order of the Tennessee Supreme Court entered March 23, 2021, Bobby Gene Gray was reinstated to the active practice of law.

On January 7, 2021, Mr. Gray was suspended by the Supreme Court of Tennessee for three (3) years with eight (8) months served as an active suspension, and the remainder on probation. Mr. Gray filed a Petition for Reinstatement to the practice of law pursuant to Tennessee Supreme Court Rule 9, Section 30.4(c) on January 28, 2021. The Board found the Petition was satisfactory and submitted an Order of Reinstatement to the Court.

***DAVID SCOTT PARSLEY, BPR #013606
DAVIDSON COUNTY***

By Order of the Tennessee Supreme Court entered February 3, 2021, David Scott Parsley was reinstated to the active practice of law.

On October 12, 2020, Mr. Parsley was suspended by the Supreme Court of Tennessee for one (1) year with three (3) months active suspension. Mr. Parsley filed a Petition for Reinstatement to the practice of law pursuant to Tennessee Supreme Court Rule 9, Section 30.4(c) on January 11, 2021. The Board found the Petition was satisfactory and submitted an Order of Reinstatement to the Court.

The Board filed a Response on July 13, 2020, acknowledging the sufficiency of Mr. Holiday's response and no objection to his motion.