

## **RULE 33: TENNESSEE LAWYER ASSISTANCE PROGRAM.**

### **33.01 Establishment of Tennessee Lawyer Assistance Program (TLAP)**

**A. Establishment.** There is hereby established a state-wide lawyer assistance program to be known as Tennessee Lawyer Assistance Program (or "TLAP") which shall provide immediate and continuing help to lawyers, judges, bar applicants and law students (hereinafter "members of the legal profession") who suffer from physical or mental disabilities that result from disease, disorder, trauma or age and that impair their ability to practice or serve.

**B. Purpose.** TLAP has three purposes:

- (1) to protect the interests of clients, litigants and the general public from harm caused by impaired lawyers or judges;
- (2) to assist impaired members of the legal profession to begin and continue recovery; and
- (3) to educate the bench and bar to the causes of and remedies for impairments affecting members of the legal profession.

**C. Funding and Administration.**

- (1) For the purpose of funding the program established under this rule, the Board of Professional Responsibility shall collect annually and deposit with the State Treasurer an annual fee from every attorney, in an amount set by the Court in Rule 9, Section 10.2(c).
- (2) All funds received by TLAP from gifts or bequests from any source shall be deposited with the State Treasurer.
- (3) All funds deposited with the State Treasurer pursuant to subparagraphs (C)(1) and (C)(2), and all earnings on investments and all interest and proceeds from said funds, if any, are deemed to be, and shall be designated as, funds belonging solely to TLAP. Withdrawals from those funds shall only be made by TLAP for the purpose of funding the program established under this rule, and for such other purposes as this Court may from time to time authorize or direct.

[Amended June 28, 2002, effective July 1, 2001; amended December 2, 2003, effective January 1, 2004; and amended by order filed August 30, 2013, effective January 1, 2014.]

### **33.02 TLAP Commission**

**A. Members.** The Tennessee Supreme Court shall appoint commission members to administer the TLAP. Officers of the commission shall consist of a chair, vice chair and secretary treasurer. The chair shall be appointed by the Supreme Court. Each of the other officers shall be elected by the members of the commission annually.

**B. Composition.** The commission shall consist of fifteen (15) members, chosen on the basis of geography and diversity and shall include three (3) citizens who are not members of the legal profession. The members shall have diverse experience, knowledge and demonstrated competence in the problems of addiction and other common difficulties that impair members of the legal profession.

**C. Terms.** Members shall be appointed for a three-year term. Appointments shall be staggered so that the number of terms expiring shall be the same each year. No member shall be appointed for more than two consecutive, full three (3) year terms.

**D. Duties of the Commission.** The commission shall have the following powers and duties:

(1) To establish TLAP policy and procedures consistent with this rule. Such policies and procedures shall be established after reasonable notice to the Tennessee bench and bar and opportunity for comment.

(2) To operate the program to achieve its purposes.

(3) To assure the duties listed under Rule 33.03 are carried out in the absence of a director of the program.

(4) To establish and administer a revolving loan fund as provided under Rule 33.09.

(5) To make reports to the Tennessee Supreme Court annually or as otherwise required.

**E. Meetings.** The commission shall meet quarterly, upon call of the chair or upon the request of five (5) or more members. The Commission may invite non-Commission members, including representatives from other branches of government, lawyers, and members of the public, to attend meetings and to participate as members of advisory committees to help further the work of the Commission.

**F. Advisory Committees.** The Commission may create advisory committees to study specific issues identified by the Commission and to make such recommendations to the Commission as the members of the advisory committees deem appropriate.

### **33.03 Director of the Program**

**A. Appointment/Hire.** The Court shall appoint the TLAP director, who shall serve at the pleasure of the Court. Following his or her appointment by the Court, the director shall report to the commission, which shall conduct regular performance evaluations of the director and report such evaluations to the Court.

**B. Qualifications.** The director shall have sufficient experience and training to enable the director to identify and assist impaired members of the legal profession and to work well with the volunteers.

**C. Duties and Responsibility.** The director shall:

- (1) Provide initial response to help line calls.
- (2) Help lawyers, judges, law firms, courts and others to identify and intervene with impaired members of the legal profession.
- (3) Help members of the legal profession and their families to secure expert counseling and treatment for chemical dependency and other illnesses, maintaining current information on available treatment services, both those that are available without charge as well as paid services.
- (4) Establish and maintain regular contact with other bar associations, agencies and committees that serve either as sources of referral or resources in providing help.
- (5) Establish and oversee monitoring services with respect to recovery of members of the legal profession for whom monitoring is appropriate under Rules 33.05(E) or 33.07.
- (6) Plan and deliver educational programs for the legal community with respect to all sources of potential impairment as well as treatment and preventative measures.
- (7) Provide information about TLAP services to members of the legal profession and their families.
- (8) Recruit, select, train and coordinate the activities of volunteer counselors.

**33.04 Volunteer Counselors**

The program shall enlist volunteer counselors whose responsibility may include:

- A.** Assisting in interventions planned by TLAP;
- B.** Acting as twelve-step program sponsors;
- C.** Acting as a contact between TLAP and law schools, courts, bar organizations and local committees;
- D.** Providing compliance monitoring when appropriate; or
- E.** Performing any other function deemed appropriate and necessary by the commission to fulfill its purposes.

**33.05 Services**

TLAP shall provide the following services:

**A.** Immediate and continuing assistance to members of the legal profession who suffer from physical or mental disabilities that result from disease, disorder, trauma or age and that impair their ability to practice;

**B.** Planning and presentation of educational programs to increase the awareness and understanding of members of the legal profession to recognize problems in themselves and in their colleagues; to identify the problems correctly; to reduce stigma; and, to convey an understanding of appropriate ways of interacting with affected individuals;

**C.** Investigation, planning and participation in interventions with members of the legal profession in need of assistance;

**D.** Aftercare services upon request, by order, or under contract that may include the following: assistance in structuring aftercare and discharge planning; assistance for entry into appropriate aftercare and professional peer support meetings; and assistance in obtaining a primary care physician or local peer counselor; and

**E.** Monitoring services under Rule 33.07 or under contract that may include the following: alcohol and/or drug screening programs; tracking aftercare, peer support and twelve step meeting attendance; providing documentation of compliance; and providing such reports concerning compliance by those participating in a monitoring program as may be required by the terms of that program. There are three types of monitoring agreements.

(1) Voluntary Monitoring Agreement with no reporting party listed in the agreement.

The contract participant may request from TLAP letters of compliance addressed to the contract participant for the participant to provide to outside sources as he or she deems appropriate. TLAP or the contract participant may terminate the monitoring agreement at any time.

(2) Voluntary Monitoring Agreement with reporting to a non-disciplinary authority.

A contract participant may request monitoring with reporting to a non-disciplinary authority as the reporting designee. The reporting designee will receive a copy of the monitoring agreement and may request a status report at any time. The reporting designee will be notified if the client becomes substantially noncompliant. The contract participant, reporting designee, or TLAP may terminate the agreement at anytime. If TLAP or the contract participant terminates the agreement, the reporting designee will be notified immediately.

(3) Monitoring Agreement requiring mandatory reporting to disciplinary or licensing authority.

A disciplinary or licensing authority, such as the Board of Law Examiners, Board of Professional Responsibility, or Board of Judicial Conduct, may request TLAP to conduct an evaluation of a law student, attorney or judge. The request shall be in writing from the disciplinary authority or licensing authority to both TLAP and the referred attorney, and may be by court order. Following the evaluation, TLAP will provide the disciplinary or licensing authority with a written summary of TLAP's recommendations. If monitoring is recommended by TLAP, the

disciplinary or licensing authority will be listed as the reporting designee. The disciplinary or licensing authority shall be notified if the referred law student, attorney or judge becomes substantially noncompliant with the terms of the agreement. The disciplinary or licensing authority may request a status update concerning substantial noncompliance at any time. TLAP shall provide an affidavit upon request of any party to the proceedings. Upon conclusion of a proceeding of any licensing or disciplinary authority, the monitoring agreement shall end, unless continued monitoring is specifically required in writing for a specified period of time following the conclusion of a proceeding.

### **33.06 Referrals**

**A. Self-referral.** Any member of the legal profession may seek assistance from TLAP.

**B. Other Referrals.** TLAP shall receive referrals concerning any member of the legal profession from family members, colleagues, friends, law firms or any other source.

### **33.07 Referrals From Board of Professional Responsibility, Board of Judicial Conduct, Board of Law Examiners or Other Disciplinary Agencies**

**A. Referrals.** TLAP may accept referral of lawyers, judges or bar applicants under investigational, provisional or probational status with the Tennessee Board of Professional Responsibility, Tennessee Board of Judicial Conduct, Tennessee Board of Law Examiners or any disciplinary agency with disciplinary authority.

**B. Progress Reports.** When TLAP accepts a referral under Rule 33.07(A), which results in a recommendation for a monitoring agreement, with a disciplinary agency as a reporting party, TLAP shall provide progress reports or reports of substantial non-compliance. Notwithstanding Rule 33.10, these reports may be used as evidence in any proceeding or appeal relating to such referral from the Tennessee Board of Professional Responsibility, the Tennessee Board of Judicial Conduct, the Tennessee Board of Law Examiners or a disciplinary agency with disciplinary authority.

### **33.08 Local Impaired Lawyer Assistance Programs**

Subject to this rule and approval by TLAP, any bar association or other approved entity may establish an impaired lawyer program for the purpose of assisting lawyers with substance abuse problems, mental illness, or other impairments that may affect the lawyer's professional conduct. These programs are not agents of TLAP and have no authority to bind TLAP by their actions. Such approved programs shall operate as follows:

**A.** The program shall be governed by a committee which consists of not less than five (5) members, one of whom shall be designated as chair and one as vice-chair.

**B.** No member of the impaired lawyer program shall be a member of a district committee of the Board of Professional Responsibility of the Tennessee Supreme Court.

C. The program may investigate and evaluate allegations of substance abuse or mental impairment brought to its attention. Should the investigation or evaluation indicate that the lawyer does in fact suffer from substance abuse or mental impairment, the program may confer with the lawyer who is the subject of such allegation and make a recommendation to such lawyer. Such recommendation may include the sources of help for such problems.

D. The program may create and facilitate lawyer support groups and meetings.

E. The program shall provide peer assistance only and shall not accept referrals for monitoring as a probationary or provisional condition imposed upon a lawyer by any court or disciplinary authority. The program shall refer lawyers in need of monitoring to TLAP. However, any monitoring contract executed by a local impaired lawyer program prior to the effective date of this amendment may continue until the end of the term of the contract.

F. The program shall maintain statistics of the number of referrals it receives. These statistics shall be reported in writing to the Director of the Tennessee Lawyers Assistance Program not later than July 31 of each calendar year.

### **33.09 Revolving Loan Fund**

From the funds received under Rule 33.01(c)(2), TLAP may establish a revolving loan fund. Such fund shall be made available to impaired lawyers and judges under rules and regulations established by the commission, as a low interest loan either for the purpose of maintaining client obligations or for defraying the cost of treatment.

### **33.10 Confidentiality.**

A. Information and actions taken by TLAP or by local impaired lawyer assistance programs approved under Rule 33.08 shall be privileged and held in strictest confidence and shall not be disclosed or required to be disclosed to any person or entity outside of TLAP or the local impaired lawyer assistance program approved under Rule 33.08, unless such disclosure is authorized by the member of the legal profession to whom it relates or as provided in Rule 33.07(B). Except as provided in Rule 33.07(B), such information and actions shall be excluded as evidence in any complaint, investigation or proceeding before the Tennessee Board of Professional Responsibility, Tennessee Board of Judicial Conduct, Tennessee Board of Law Examiners or other disciplinary agency with jurisdiction.

B. Commission members, employees, and agents, including volunteers recruited under Rule 33.04, and committee members, employees, and agents, including volunteers of local impaired lawyer assistance programs approved under Section 33.08, shall be deemed to be participating in "a lawyers assistance program approved by the Tennessee Supreme Court" as provided in Tenn. Code Ann. § 23-4-103(1), and all information furnished to the program shall be governed by Tenn. Code Ann. §§ 23-4-104 and 23-4-105.

### **33.11 Immunity.**

**A.** Any person reporting information to commission members, employees or agents, including volunteers recruited under Rule 33.04, or to committee members, employees, or agents, including volunteers of local impaired lawyer assistance programs approved under Rule 33.08, shall be entitled to the immunities and presumptions under Tenn. Code Ann. §§ 23-4-101, 23-4-102 and 23-4-103 and the immunity provided under Rule 9, Section 17.

**B.** Commission members, employees and agents, including volunteers recruited under Rule 33.04, as well as committee members, employees, and agents, including volunteers of local impaired lawyer assistance programs approved under Rule 33.08, shall be entitled to the immunities and presumptions under Tenn. Code Ann. §§ 23-4-101, 23-4-102 and 23-4-103 and the immunity provided under Rule 9, Section 17.

**C.** Commission members, employees and agents, including volunteers recruited under Rule 33.04, and committee members, employees, and agents, including volunteers of local impaired lawyer assistance programs approved under Rule 33.08, are relieved of any duty of disclosure of information to authorities imposed by Tennessee Supreme Court Rule 8, RPC 8.3(a).

[Amended by order filed September 17, 2002.]

### **33.12 Facility**

The TLAP office shall be so located as to be consistent with the privacy and confidentiality requirements of this rule.

### **33.13 Program Review**

TLAP shall be reviewed annually by the Tennessee Supreme Court and shall remain in full force and effect until otherwise ordered by the Tennessee Supreme Court.

[Added by order filed January 7, 1999, and amended by order filed April 25, 2006, effective July 1, 2006, by order filed December 7, 2006, by order filed February 26, 2013, effective March 1, 2013; and by order filed August 30, 2013, effective January 1, 2014; and amended by order filed August 18, 2014.]