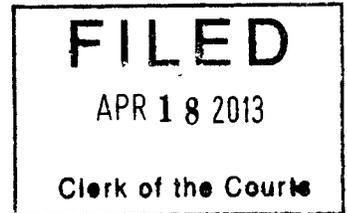


IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: THE ADOPTION OF AMENDED TENNESSEE SUPREME COURT
RULE 9

No. M2012-01648-SC-RL2-RL



ORDER

Tenn. Sup. Ct. R. 9 sets out the rules governing disciplinary enforcement with respect to attorneys. The Court has determined that this rule requires substantial restructuring and revision. By Order filed August 8, 2012, the Court solicited written comments regarding proposed revision of Tenn. Sup. Ct. R. 9. The Court has carefully considered the comments received and proposes additional revision of Tenn. Sup. Ct. R. 9. Accordingly, a compare version comparing the current proposed revision of Tenn. Sup. Ct. R. 9 to the version previously put out for public comment is contained in an appendix attached to this Order.

Adopting the proposed amendments to Tenn. Sup. Ct. R. 9 will result in a comprehensive revision of the current rules governing disciplinary enforcement with respect to attorneys. In light of the important public policy issues raised by the proposed revisions, the Court hereby solicits written comments regarding the proposed additional revisions from judges, lawyers, bar associations, members of the public, and any other interested parties. The deadline for submitting written comments is Friday, June 14, 2013. Written comments should be addressed to:

Mike Catalano, Clerk
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

and should reference the docket number set out above. It is anticipated that amended Tenn. Sup. Ct. R. 9 would be effective January 1, 2014.

The Clerk shall provide a copy of this Order, including the appendix, to LexisNexis and to Thomson Reuters. In addition, this Order, including the appendix, shall be posted on the Tennessee Supreme Court's website.

IT IS SO ORDERED.

PER CURIAM

APPENDIX

The appendix is comprised of the following document, which is attached:

1. Compare Version of Current Proposed Revisions To Rule 9, Disciplinary Enforcement.

1 **[Proposed Revisions To] Rule 9. Disciplinary Enforcement.**

2 **Section 1. Preamble**

3 The license to practice law in this State is a continuing proclamation by the Supreme
4 Court of the State of Tennessee (hereinafter the “Court”) that the holder is fit to be entrusted
5 with professional and judicial matters, and to aid in the administration of justice as an
6 attorney and as an officer of the Court. It is the duty of every recipient of that privilege to
7 act at all times, both professionally and personally, in conformity with the standards imposed
8 upon members of the bar as conditions for the privilege to practice law.

9 **Section 2. Definitions**

10 **Board:** The Board of Professional Responsibility of the Supreme Court of Tennessee.

11 **Complainant:** A person who alleges misconduct by an attorney, including misconduct
12 by Disciplinary Counsel and attorney members of the Board and members of the district
13 committees.

14 **Court:** The Supreme Court of Tennessee.

15 **Declaration under Penalty of Perjury:** A declaration under penalty of perjury
16 meeting the requirements of Tenn. R. Civ. P. 72.

17 **Disciplinary Counsel:** The Chief Disciplinary Counsel selected by the Court and staff
18 Disciplinary Counsel employed by the Chief Disciplinary Counsel, with the approval of the
19 Board, pursuant to the provisions of this Rule.

20 **District committees:** Committees of attorneys appointed by the Court pursuant to
21 provisions of this Rule.

22 **Hearing panels:** Panels of three district committee members selected by the Chair of
23 the Board, or in the absence of the Chair selected by the Vice-Chair of the Board, to hear
24 matters pursuant to provisions of this Rule.

25 **Panel:** A panel of three members selected by the Chair of the Board, or, in the
26 Chair's absence, the Vice-Chair. At least two of the members of the Panel shall be members
27 of the Board, only one of whom may be a non-lawyer; and, one of the members of the Panel
28 may be a district committee member from the same disciplinary district as the respondent or
29 petitioning attorney.

30 **Practice monitor:** An attorney licensed to practice law in the State of Tennessee
31 designated by the Board to supervise an attorney as a condition of public discipline,
32 probation or reinstatement pursuant to the provisions of this Rule.

33 **Protocol memorandum:** A memorandum prepared by ~~the Board~~ Disciplinary Counsel
34 and provided to the Court pursuant to the provisions of this Rule which addresses the
35 following: 1) The basis for the Petition for Discipline; 2) The proposed disposition; 3) The
36 procedural history; 4) The prior history of discipline; and, 5) The reasons for the proposed
37 discipline, including: a) application of the ABA Standards for Imposing Lawyer Sanctions;
38 b) comparative Tennessee discipline in similar cases; and, c) aggravating and mitigating
39 circumstances of the kind and character set forth in the ABA Standards for Imposing Lawyer
40 Sanctions.

41 **RPC:** The Rules of Professional Conduct as adopted by Rule 8 of the Rules of the
42 Tennessee Supreme Court.

43 **Rule:** Rule 9 of the Rules of the Tennessee Supreme Court.

44 **Section:** A section of Rule 9 of the Rules of the Tennessee Supreme Court.

60 District III -- the counties of Polk, Hamilton, Sequatchie, Bledsoe, Meigs, Monroe,
61 Bradley, Marion, Grundy, Rhea and McMinn.

62 District IV -- the counties of White, Van Buren, Pickett, Putnam, Overton, Clay,
63 Franklin, Moore, Bedford, Rutherford, Wilson, Trousdale, Warren, Fentress, Cumberland,
64 Smith, Jackson, Coffee, Lincoln, Marshall, Cannon, DeKalb and Macon.

65 District V -- the county of Davidson.

66 District VI -- the counties of Giles, Wayne, Lewis, Maury, Humphreys, Cheatham,
67 Montgomery, Robertson, Lawrence, Perry, Hickman, Dickson, Houston, Stewart, Sumner
68 and Williamson.

69 District VII -- the counties of Henry, Carroll, Henderson, Hardeman, Hardin, Benton,
70 Decatur, Chester, Fayette, McNairy and Madison.

71 District VIII -- the counties of Weakley, Lake, Gibson, Haywood, Tipton, Obion,
72 Dyer, Crockett and Lauderdale.

73 District IX -- the county of Shelby.

74 **Section 4. The Board of Professional Responsibility**
75 **of the Supreme Court of Tennessee**

76 **4.1.** The Court shall appoint a twelve member Board to be known as “The Board of
77 Professional Responsibility of the Supreme Court of Tennessee” (hereinafter the “Board”)
78 which shall consist of:

79 (a) Three resident attorneys admitted to practice in this state and one public
80 (non-attorney) member appointed for an initial term of three years; and

81 (b) Three resident attorneys admitted to practice in this state and one public member
82 appointed for an initial term of two years; and

83 (c) Three resident attorneys admitted to practice in this state and one public member
84 appointed for an initial term of one year.

85 Subsequent terms of all members shall be for three years. A member may serve a
86 maximum of any remaining portion of a three-year term created by a vacancy filled by such
87 member, plus two consecutive three-year terms. A member who has served the maximum
88 term shall be eligible for re-appointment after the expiration of three years. Vacancies shall
89 be filled by the Court. There shall be one attorney member from each disciplinary district.
90 There shall be one public member from each of the three grand divisions of the state.

91 **4.2.** The Court shall designate one member as Chair of the Board and another member
92 as Vice-Chair.

93 4.3. ~~The Board shall act only with the concurrence of seven or more members.~~ Seven
94 members of the Board shall constitute a quorum. Unless otherwise permitted by this Rule,
95 an affirmative vote of seven members of the Board shall be necessary to authorize any action.
96 If time restraints are such that a regular or special meeting of the Board is impractical,
97 Disciplinary Counsel shall circulate to the members of the Board in writing the reasons for
98 the recommendation supported by a factual report. Board members may communicate their
99 vote for or against the recommendation by telephone, facsimile, regular mail, or electronic
100 means. Any member of the Board may request that Disciplinary Counsel convene a
101 telephone conference of the Board, whereupon such conference must be convened with at
102 least a quorum so conferring. ~~An affirmative vote of seven members of the Board shall be~~
103 ~~necessary to authorize an action. Decisions of the Board whether or not to appeal from the~~
104 ~~judgment of a hearing panel or of a trial judge, as provided in Section 33.1, shall be made~~
105 ~~in accord with the foregoing procedure. If an appeal has been authorized by the foregoing~~
106 ~~procedure, any member of the Board may demand that the question of whether or not the~~
107 ~~appeal should be dismissed be placed upon the agenda for consideration at any regular~~
108 ~~meeting of the Board or special meeting convened for other business.~~

109 4.4. Members shall receive no compensation for their services but may be reimbursed
110 for their travel and other expenses incidental to the performance of their duties in accordance

111 with the schedule for judicial reimbursement promulgated by the Administrative Office of
112 the Courts.

113 **4.5.** The Board shall exercise the powers ~~and perform the duties~~ conferred ~~and~~
114 ~~imposed~~ upon it by this Rule, including the power ~~and duty~~:

115 (a) To consider and investigate any alleged ground for discipline or alleged incapacity
116 of any attorney called to its attention, or upon its own motion, and to take such action with
117 respect thereto as shall be appropriate to effectuate the purposes of this Rule. The Board is
118 authorized to investigate information from a source other than a signed written complaint if
119 the Board deems the information sufficiently credible or verifiable through objective means.

120 (b) To adopt written internal operating procedures to ensure the efficient and timely
121 resolution of complaints, investigations, and formal proceedings, which operating procedures
122 shall be approved by the Court, and to monitor Disciplinary Counsel's and the hearing
123 panels' continuing compliance with those operating procedures. The Board shall quarterly
124 ~~file a report with the Court~~ send to each Member of the Court and shall post on the Board's
125 website a report demonstrating substantial compliance with the operating procedures.

126 (c) ~~To assign members of the district committees appointed within each disciplinary~~
127 ~~district to conduct disciplinary hearings and to review and approve or modify~~
128 ~~recommendations by Disciplinary Counsel for dismissals or private informal admonitions.~~

129 The powers and duties set forth in this Section are not duties owed to or enforceable by a
130 respondent or petitioning attorney by means of claim, or defense, or otherwise.

131 (d) To review, upon application by Disciplinary Counsel, a determination by the
132 reviewing member of a district committee that a matter should be concluded by dismissal or
133 by private informal admonition without the institution of formal charges.

134 (e) To privately reprimand, publicly censure or authorize the filing of formal charges
135 against attorneys for misconduct.

136 (f) ~~The Board may~~To delegate to a committee ~~or panel~~ of its members, or to the Chief
137 Disciplinary Counsel, any administrative ~~duty conferred or imposed,~~ non-adjudicatory
138 function authorized by this Rule.-

139 4.6. A Board members shall not take part in any matter in which a judge, similarly
140 situated, would have to recuse himself or herself in accordance with Tenn. Sup. Ct. R. 10.
141 However, the procedures set out in Tenn. Sup. Ct. R. 10B are not applicable to motions to
142 disqualify or for recusal in matters under this Rule.

143 **Section 5. Ethics Opinions**

144 **5.1.** The Board shall be responsible for issuing ethics opinions from time to time. The
145 Board may, in its discretion, accomplish this by dividing itself into three geographic ethics
146 committees.

147 **5.2.** In performing its responsibility under Section 5.1, the Board shall act under rules
148 which the Board may from time to time promulgate.

149 **5.3.** In performing its responsibility under Section 5.1, the members of the Board shall
150 receive no compensation for their services but may be reimbursed for their travel and other
151 expenses incidental to the performance of their duties in accordance with the schedule for
152 judicial reimbursement promulgated by the Administrative Office of the Courts.

153 **5.4.** In performing its responsibilities under Section 5.1, the Board shall exercise the
154 powers and perform the ordinary and necessary duties usually carried out by ethics advisory
155 bodies. The Board shall:

156 (a) By the concurrence of a majority of its members, or of the members of any
157 committees established by the Board pursuant to Section 5.1, issue and distribute Formal
158 Ethics Opinions on proper professional conduct, either on the Board's own initiative or when
159 requested to do so by a member of the bar or by an officer or a committee or any other state

160 or local bar association, except that an opinion may not be issued in a matter that is known
161 to the Board to be pending before a court or in a pending disciplinary proceeding;-

162 (b) Periodically distribute its issued Formal Ethics Opinions to the legal profession
163 in summary or complete form;

164 (c) On request, advise or otherwise help any state or local bar associations in their
165 activities relating to the interpretation of the Rules of Professional Conduct;

166 (d) Recommend appropriate amendments to or clarification of the Rules of
167 Professional Conduct, if it considers them advisable;

168 (e) Adopt such rules as it considers appropriate relating to the procedures to be used
169 in considering inquiries and expressing opinions, including procedures for classifying
170 opinions or declining requests for opinions.

171 **5.5.** (a) A Formal Ethics Opinion issued and distributed by the Board shall bind the
172 Board and the person requesting the opinion and shall constitute a body of principles and
173 objectives upon which members of the bar may rely for guidance in many specific situations.

174 (b) Requests for Formal Ethics Opinions shall be addressed to the Board in writing,
175 shall state the factual situation in detail, shall be accompanied by a short brief or
176 memorandum citing the Rules of Court or Professional Conduct involved and any other
177 pertinent authorities, and shall contain a certificate with the opinion that the matters are not
178 pending in any court or disciplinary proceeding.

179 (c) An advisory ethics opinion may be issued by Disciplinary Counsel orally when
180 there is readily available precedent. The advisory opinion shall not be binding on the Board
181 or the Court and shall offer no security to the person requesting it.

182 **Section 6. District Committees**

183 **6.1.** The Court shall appoint one district committee within each disciplinary district.
184 Each district committee shall consist of not ~~less~~fewer than five members of the bar of this
185 state who maintain an office for the practice of law within that district or, if not actively
186 engaged in the practice of law, reside within that district. Members of district committees
187 may be recommended by the Board, or by the president or board of directors of the local bar
188 associations in each district.

189 **6.2.** Terms of members of each district committee shall be for three years, and such
190 terms shall be staggered so that one third of the members rotate off the committee each year;
191 provided that shorter terms may be designated where necessary to observe the above rotation
192 practice. A member may serve a maximum of two consecutive three-year terms. Members
193 whose terms have expired shall continue to serve with respect to any formal hearing
194 commenced prior to the expiration of their terms until the conclusion of such hearing,

195 regardless of whether their successors have been appointed. A member who has served the
196 maximum term may be reappointed after the expiration of one year.

197 **6.3.** A member of the district committee acting as the reviewing member shall
198 approve or modify recommendations by Disciplinary Counsel for dismissals and private
199 informal admonitions. In no event may a member of the district committee acting as the
200 reviewing member impose a sanction greater than private informal admonition. Nor may a
201 district committee member acting as the reviewing member offer diversion except as
202 provided in Section 13.4.

203 **6.4.** Formal hearings upon charges of misconduct shall be conducted by a hearing
204 panel consisting of three district committee members ~~designated~~selected by the Chair of the
205 Board, or in the absence of the Chair by the Vice-Chair of the Board, pursuant to Section
206 15.2. The hearing panel shall submit its findings and judgment to the Board. Each hearing
207 panel shall elect its own Chair. The hearing panel shall act only with the concurrence of a
208 majority of its members.

209 **6.5.** ~~DA~~ district committee ~~members, whether acting as the reviewing committee~~
210 ~~member or as a hearing panel member,~~member shall not take part in any matter in which a
211 judge, similarly situated, would have to recuse himself or herself in accordance with Tenn.

212 Sup. Ct. R. 10. However, the procedures set out in Tenn. Sup. Ct. R. 10B are not applicable
213 to motions to disqualify or for recusal in matters under this Rule.

214 **Section 7. Disciplinary Counsel**

215 7.1. The Court shall appoint an attorney admitted to practice in the State to serve as
216 Chief Disciplinary Counsel, who shall serve at the pleasure of the Court. Following his or
217 her appointment by the Court, the Chief Disciplinary Counsel shall report to the Board,
218 which shall conduct annual performance evaluations of the Chief Disciplinary Counsel and
219 report such evaluations to the Court. Neither the Chief Disciplinary Counsel nor full-time
220 staff Disciplinary Counsel shall engage in the private practice of law; however, the Board
221 and the Court may agree to a reasonable period of transition after appointment.

222 7.2. Chief Disciplinary Counsel shall have the power ~~and duty,~~ with the approval of
223 the Board:-

224 (a) To employ and supervise staff needed for the performance of ~~c~~Disciplinary
225 Counsel's ~~duties~~functions.

226 (b) To perform any administrative ~~tasks,~~ non-adjudicatory function authorized by this
227 Rule and delegated by the Board.

228 ~~—(c) To perform any duty or task set forth in Section 7.3.~~

229 7.3. Disciplinary Counsel shall have the power ~~and duty~~:

230 (a) To investigate all matters involving possible misconduct.

231 (b) To dispose of all matters involving alleged misconduct by recommendation to the
232 reviewing district committee member of either dismissal or private informal admonition; by
233 recommendation to the Board of either private reprimand, public censure or the prosecution
234 of formal charges before a hearing panel; or, by diversion in accordance with Section 13.
235 Except in matters requiring dismissal because the complaint is frivolous and clearly
236 unfounded on its face or falls outside the Board's jurisdiction, no disposition shall be
237 recommended or undertaken by Disciplinary Counsel until the accused attorney shall have
238 been afforded the opportunity to state a position with respect to the allegations against the
239 attorney.

240 (c) To present in a timely manner all disciplinary proceedings before hearing panels,
241 the Board, trial courts, and the Court and all proceedings to determine incapacity of attorneys
242 before hearing panels, ~~the Board~~, trial courts, and the Court.

243 (d) To investigate and to present in a timely manner all proceedings with respect to
244 petitions for reinstatement of suspended or disbarred attorneys or attorneys transferred to
245 inactive status because of disability, or with respect to petitions for voluntary surrenders of
246 law licenses before hearing panels, the Board, trial courts, and the Court.

247 (e) To file with the Court adequate proof of conviction of attorneys for crimes
248 pursuant to Section 22.

249 (f) To maintain permanent records of all matters processed and the disposition thereof.

250 (g) To give advisory ethics opinions to members of the bar pursuant to Section 5.

251 (h) To implement the written internal operating procedures adopted by the Board and
252 approved by the Court pursuant to Section 4.5(b), and to file reports with the Board on a
253 quarterly basis demonstrating Disciplinary Counsel's substantial compliance with the
254 operating procedures.

255 **Section 8. Jurisdiction**

256 **8.1.** Any attorney admitted to practice law in this State, including any formerly
257 admitted attorney with respect to acts committed prior to ~~resignation~~surrender of a law
258 license, suspension, disbarment, or transfer to inactive status, or with respect to acts
259 subsequent thereto which amount to the practice of law or constitute a violation of this Rule
260 or of the Rules of Professional Conduct, and any attorney specially admitted by a court of this
261 State for a particular proceeding, is subject to the disciplinary jurisdiction of the Court, the
262 Board, Panels, the district committees and hearing panels herein established, and the circuit
263 and chancery courts of this State. Any attorney not admitted ~~to practice law in this State~~ or
264 specially admitted to practice law in this State but who engages in the practice of law in this

265 State shall be subject to the imposition of civil remedies and criminal prosecution pursuant
266 to Tenn. Code Ann. § 23-3-103, and Disciplinary Counsel shall refer such attorney to the
267 appropriate authority(ies) for investigation and pursuit of civil remedies and/or criminal
268 prosecution.

269 **8.2.** Nothing herein contained shall be construed to deny to any court such powers as
270 are necessary for that court to maintain control over proceedings conducted before it, such
271 as the power of contempt, nor to prohibit any bar association from censuring, suspending or
272 expelling its members from membership.

273 **Section 9. Multijurisdictional Practice.**

274 **9.1.** Any attorney practicing in this State under the authority of RPC 5.5(c) or (d) or
275 otherwise subject to the Court's disciplinary jurisdiction under RPC 8.5 is subject to the
276 disciplinary jurisdiction prescribed in Section 8.1 of this Rule and the procedures for exercise
277 of such jurisdiction prescribed in this Rule .

278 **9.2.** The authorization for practice granted in RPC 5.5(c) or (d) may be terminated
279 or suspended. The grounds and processes for such termination shall be those provided in this

280 Rule for disbarment; and the grounds and processes for such suspension shall be those
281 provided in this Rule for suspension.

282 **9.3.** If an attorney is practicing in this State under authority of RPC 5.5(c), or if an
283 attorney is practicing in this State under authority of RPC 5.5(d) and does not maintain an
284 office in this State:

285 (a) Hearing panel proceedings ~~shall~~may occur in ~~the~~any disciplinary district in which
286 the conduct that forms the basis of the complaint against the attorney occurred;

287 (b) Circuit or chancery court proceedings for appeal pursuant to Section 33 of this
288 Rule shall occur as specified in Section 33.1(a) of this Rule; and,

289 (c) ~~⊕~~The trial court shall file in the Nashville office of the Clerk of the Supreme Court
290 a Notice of Submission with an attached copy of an unappealed final trial court judgments
291 disbarring or suspending the attorney for any period of time ~~in excess of three months, or for~~
292 ~~a period of time of three months or less with conditions, shall be forwarded to the Nashville~~
293 ~~office of the Clerk of the Supreme Court~~ as specified in Section 15.4(d) of this Rule.

294 **9.4.** The procedures and remedies for reciprocal discipline prescribed in Section 25
295 of this Rule shall apply to attorneys practicing in this State under authority of RPC 5.5(d)(1).

296 Upon receipt of a certified copy of an order demonstrating that such an attorney has been

297 disciplined in another jurisdiction, the Court shall employ the procedures prescribed in
298 Sections 25.2 through 25.5.

299 **9.5.** The information filing, fee payment and other requirements and regulations
300 prescribed in Section 10 of this Rule shall apply to attorneys practicing in this State under
301 authority of RPC 5.5(d)(1).

302 **Section 10. Periodic Assessment of Attorneys**

303 **10.1.** (a) Every attorney admitted to practice before the Court, except those exempt
304 under Section 10.2, shall pay to the Board on or before the ~~last~~first day of the attorney's birth
305 month an annual fee for each year beginning January 1, 2012.

306 (b) All funds collected hereunder shall be deposited by the Board with the State
307 Treasurer; all such funds, including earnings on investments and all interest and proceeds
308 from said funds, if any, are deemed to be, and shall be designated as, funds belonging solely
309 to the Board. Withdrawals from those funds shall be made by the Board only for the purpose
310 of defraying the costs of disciplinary administration and enforcement of ~~those~~this Rules,
311 and for such other related purposes as ~~this~~the Court may from time to time authorize or direct.

312 (c) The annual registration fee for each attorney shall be ~~\$140~~\$170, inclusive of
313 amounts due under Tenn. Sup. Ct. R. 25, Section 2.01(a) (Tennessee Lawyer's Fund for

314 Client Protection) and Tenn. Sup. Ct. R. 33.01 C (Tennessee Lawyer Assistance Program),
315 and shall be payable on or before the lastfirst day of the attorney’s birth month, and a like
316 sum each year thereafter until otherwise ordered by the Court.

317 **10.2.** There shall be exempted from the application of this rule:

318 (a) Attorneys who serve as a justice, judge, or magistrate judge of a court of the
319 United States of America or who serve in any federal office in which the attorney is
320 prohibited by federal law from engaging in the practice of law.

321 (b) Retired attorneys.

322 (c) Attorneys on temporary duty with the armed forces.

323 (d) Faculty members of Tennessee law schools who do not practice law.

324 (e) Attorneys not engaged in the practice of law in Tennessee. The term “the practice
325 of law” shall be defined as any service rendered involving legal knowledge or legal advice,
326 whether of representation, counsel, or advocacy, in or out of court, rendered in respect to the
327 rights, duties, regulations, liabilities, or business relations of one requiring the services. It
328 shall encompass all public and private positions in which the attorney may be called upon to
329 examine the law or pass upon the legal effect of any act, document, or law.

330 **10.3.** To facilitate the collection of the annual fee provided for in Section 10.1, all
331 persons required by this Rule to pay an annual fee shall, on or before the lastfirst day of their

332 birth month, file with the Board at its central office a registration statement, on a form
333 prescribed by the Court, setting forth the attorney’s current residence, office, and email
334 addresses, and such other information as the Court may from time to time direct. In addition
335 to such statement, every attorney shall file with the Board a supplemental statement of any
336 change in the information previously submitted within ~~30~~thirty days of such change.

337 **10.4.** Within thirty days of the receipt of a statement or supplement thereto filed by
338 an attorney in accordance with the provisions of Section 10.3, the Board, acting through
339 Disciplinary Counsel, shall acknowledge receipt thereof, on a form prescribed by the Court
340 in order to enable the attorney on request to demonstrate compliance with the requirements
341 of Sections 10.1 and 10.3.

342 **10.5.** The Board periodically shall compile lists of attorneys who have failed to timely
343 pay the annual registration fee required by Section 10.1 or have failed to timely file the
344 annual registration statement required by Section 10.3. The Board shall send to each attorney
345 listed thereon an Annual Registration Fee/Statement Delinquency Notice (the “Notice”). The
346 Notice shall state that the attorney has failed to timely pay the annual registration fee
347 required by Tenn. Sup. Ct. R. 9, Section 10.1, or has failed to timely file the annual
348 registration statement required by Tenn. Sup. Ct. R. 9, Section 10.3, and that the attorney’s
349 license therefore is subject to suspension pursuant to Tenn. Sup. Ct. R. 9, Section 10.6. The

350 Notice shall be sent to the attorney by a form of United States mail providing delivery
351 confirmation, at the primary address shown in the attorney's most recent registration
352 statement filed pursuant to Section 10.3 or at the attorney's last known address, and at the
353 email address shown in the attorney's most recent registration statement filed pursuant to
354 Section 10.3 or at the attorney's last known email address.

355 **10.6.** (a) Each attorney to whom a Notice is sent pursuant to Section 10.5 shall file
356 with the Board within thirty days of the date of delivery of the Notice an affidavit or
357 declaration under penalty of perjury with supporting documentation demonstrating that the
358 attorney has paid the annual registration fee or has filed the annual registration statement, and
359 has paid a delinquent compliance fee of One Hundred Dollars(\$100.00) to defray the Board's
360 costs in issuing the Notice; or, alternatively, demonstrating that the Notice was sent to the
361 attorney in error, the attorney having timely paid the annual registration fee or having timely
362 filed the annual registration statement.-

363 (b) Within thirty days of the expiration of the time for an attorney to respond to the
364 Notice pursuant to Subsection (a) hereof, the Chief Disciplinary Counsel shall ~~prepare and~~
365 ~~furnish to the Court~~file in the Nashville office of the Clerk of the Supreme Court a Notice
366 of Submission with an attached copy of a proposed Suspension Order. The proposed
367 Suspension Order shall list all attorneys who were sent the Notice and who failed to respond;
368 failed to demonstrate to the satisfaction of the Board that they had paid the delinquent annual

369 registration fee or had filed the delinquent annual registration statement, and had paid the
370 One Hundred Dollar (\$100.00) delinquent compliance fee; or, failed to demonstrate to the
371 satisfaction of the Board that the Notice had been sent in error. The proposed Suspension
372 Order shall provide that the license to practice law of each attorney listed therein shall be
373 suspended upon the Court's filing of the Order and that the license of each attorney listed
374 therein shall remain suspended until the attorney pays the delinquent annual registration fee
375 or files the delinquent annual registration statement, and pays the One Hundred Dollar
376 (\$100.00) delinquent compliance fee, and is reinstated pursuant to Subsection (d).

377 (c) Upon the Court's review and approval of the proposed Suspension Order, the
378 Court will file the Order summarily suspending the license to practice law of each attorney
379 listed in the Order. The suspension shall remain in effect until the attorney pays the
380 delinquent registration fees or files the delinquent registration statement, and pays the One
381 Hundred Dollar (\$100.00) delinquent compliance fee, and until the attorney is reinstated
382 pursuant to Subsection (d). An attorney who fails to resolve the suspension within thirty days
383 of the Court's filing of the Suspension Order shall comply with the requirements of Section
384 28.

385 (d) An attorney suspended by the Court pursuant to Subsection (c) may who wishes
386 to be reinstated and whose suspension has continued for less than one year shall file with the
387 Board an application for reinstatement of the attorney's license to practice law demonstrating
388 that the attorney has paid all delinquent annual registration fees or has filed the delinquent

389 registration statement, and has paid the One Hundred Dollar (\$100.00) delinquent
390 compliance fee; or, alternatively, demonstrating that the Suspension Order was entered in
391 error as to the attorney. If the application is satisfactory to the Board and if the attorney
392 otherwise is eligible for reinstatement, the Board, or the Chief Disciplinary Counsel acting
393 on its behalf, shall promptly ~~prepare and send to the~~ file in the Nashville office of the Clerk
394 of the Supreme Court a Notice of Submission with an attached copy of a proposed
395 Reinstatement Order. The proposed Reinstatement Order shall provide that the attorney's
396 reinstatement is effective as of the date of the attorney's payment of all delinquent
397 registration fees or the date of the attorney's filing of the delinquent registration statement,
398 and the attorney's payment of the One Hundred Dollar (\$100.00) delinquent compliance fee;
399 or, alternatively, as of the date of entry of the Suspension Order if that Order was entered in
400 error. An attorney resolves a suspension within thirty days for purposes of Section 10.6(c)
401 if a proposed Reinstatement Order has been submitted to the Court within thirty days of the
402 Court's filing of the Suspension Order.

403 (e) An attorney suspended by the Court pursuant to Subsection (c) and whose
404 suspension continues for one year or more must seek reinstatement under Section 30.

405 **10.7. (a)** An attorney who claims an exemption under Section 10.2 (a), (b), (d), or (e)
406 shall file with the Board an application to assume inactive status and discontinue the practice
407 of law in this state. In support of the application, the attorney shall file an affidavit or

408 declaration under penalty of perjury stating that the attorney is not delinquent in paying the
409 privilege tax imposed on attorneys by Tenn. Code Ann. § 67-4-1702, is not delinquent in
410 meeting any of the reporting requirements imposed by Rules 9, 21, and 43, is not delinquent
411 in the payment of any fees imposed by those rules, and is not delinquent in meeting the
412 continuing legal education requirements imposed by Rule 21. The Board shall approve the
413 application if the attorney qualifies to assume inactive status under Section 10.2 and is not
414 delinquent in meeting any of the obligations set out in the preceding sentence. If it appears
415 to the Board that the applicant is delinquent in meeting any of those obligations, the Board
416 shall notify the applicant of the delinquency and shall deny the application unless, within
417 ninety days after the date of the Board’s notice, the applicant demonstrates to the Board’s
418 satisfaction that the delinquency has been resolved. Upon the date of the Board’s written
419 approval of the application, the attorney shall no longer be eligible to practice law in
420 Tennessee. The Board shall act promptly on applications to assume inactive status and shall
421 notify the applicant in writing of the Board’s action. If the Board denies an application to
422 assume inactive status, the applicant may request the Court’s administrative review by
423 ~~submitting a petition to the Chief Justice~~ filing in the Nashville office of the Clerk of the
424 Supreme Court a Petition for Review within thirty days of the Board’s denial. The Court’s
425 review, if any, shall be conducted on the application, the supporting affidavit or declaration
426 under penalty of perjury, and any other materials relied upon by the Board in reaching its
427 decision.

428 **(b)** An attorney who assumes inactive status under an exemption granted by Section
429 10.2(a), (d), or (e) shall pay to the Board, on or before the ~~last~~first day of the attorney's birth
430 month, an annual inactive-status fee set at one-half of the annual registration fee assessed
431 under Section 10.1 for each year the attorney remains inactive. Such attorney shall file
432 annually with the Board at its central office a registration statement, on a form prescribed by
433 the Board, setting forth the attorney's current residence, office, and email addresses, and such
434 other information as the Board may direct. Inactive attorneys who fail to timely pay the
435 annual inactive fee and submit the registration form prescribed by the Board will be mailed
436 a Delinquency Notice and will be subject to delinquent compliance fees and suspension as
437 provided in Sections 10.5 and 10.6. In addition to such statement, such attorney shall file
438 with the Board a supplemental statement of any change in the information previously
439 submitted within ~~30~~thirty days of such change.

440 **(c)** An attorney who assumes inactive status under the exemption granted by Section
441 10.2 (e) and who is licensed to practice law in another jurisdiction shall not be eligible to
442 provide any legal services in Tennessee pursuant to Tenn. Sup. Ct. R. 8, RPC 5.5(c) or (d).

443 **10.8.** Upon the Board's written approval of an application to assume inactive status,
444 the attorney shall be removed from the roll of those classified as active until and unless the
445 attorney requests and is granted reinstatement to the active rolls. Reinstatement following
446 inactive status which continues for a period of less than one year shall not require a

447 reinstatement proceeding pursuant to Section 30 or an order of the Court. Reinstatement
448 following inactive status which continues for a period of one year or more shall require a
449 reinstatement proceeding pursuant to Section 30 and an order of the Court. Reinstatement
450 shall be granted unless the attorney is subject to an outstanding order of suspension or
451 disbarment ~~or has been on inactive status for five years or more~~, upon the payment of any
452 assessment in effect for the year the request is made and any arrears accumulated prior to
453 transfer to inactive status. ~~Attorneys who have been suspended or on inactive status for over~~
454 ~~five years before filing a petition for reinstatement to active status may be required, in the~~
455 ~~discretion of the Court, to establish proof of competency and learning in law which proof~~
456 ~~may include certification by the Board of Law Examiners of the successful completion of an~~
457 ~~examination for admission to practice subsequent to the date of suspension or transfer to~~
458 ~~inactive status.~~

459 **10.9.** The courts of this State are charged with the responsibility of insuring that no
460 disbarred, suspended, or inactive attorney be permitted to file any document, paper or
461 pleading or otherwise practice therein.

462 **10.10. (a)** Every ~~lawyer~~attorney who is required by Section 10.3 to file an annual
463 registration statement with the Board is requested to also ~~voluntarily~~ file a pro bono reporting
464 statement, reporting the extent of the ~~lawyer's~~attorney's pro bono legal services and activities

465 during the previous calendar year. The pro bono reporting statement shall be in substantially
466 the format provided in the Appendix A hereto, and shall be provided to the lawyerattorney
467 by the Board with the lawyer'sattorney's annual registration statement.

468 (b) The lawyerattorney is requested to complete the pro bono reporting statement and
469 file it with his or her annual registration statement. In reporting the extent of the
470 lawyer'sattorney's pro bono legal services and activities, the lawyerattorney is requested to
471 state whether or not the lawyerattorney made any voluntary financial contributions pursuant
472 to RPC 6.1(c), but the lawyerattorney shall not disclose the amount of any such
473 contributions.

474 (c) The Board may promulgate such forms, policies and procedures as may be
475 necessary to implement this rule.

476 (d) The individual information voluntarily provided by lawyersattorneys in the pro
477 bono reporting statements filed pursuant to this Section shall be confidential and shall not
478 be a public record, unless the attorney waives confidentiality on the reporting statement
479 solely to be considered for recognition by the Tennessee Supreme Court for pro bono work
480 the attorney completed in the previous calendar year. The Board shall not release any
481 individual information contained in such statements, except as directed in writing by the
482 Court or as required by law. The Board, however, may compile statistical data derived from

483 the statements, which data shall not identify any individual ~~lawyer~~attorney, and may release
484 any such compilations to the public.

485 **Section 11. Grounds for Discipline**

486 **11.1.** Acts or omissions by an attorney, individually or in concert with any other
487 person or persons, which violate the ~~Attorney's Oath of Office or the~~ Rules of Professional
488 Conduct of the State of Tennessee, including acts prior to ~~resignation~~surrender of a law
489 license, suspension, disbarment, or transfer to inactive status on other grounds, and acts
490 subsequent to resignation, suspension, disbarment, or transfer to inactive status which acts
491 amount to the practice of law, shall constitute misconduct and shall be grounds for
492 discipline, whether or not the act or omission occurred in the course of an attorney-client
493 relationship.

494 **11.2.** Conviction of a serious crime as defined in Section 2 also shall be grounds for
495 discipline pursuant to the procedures set forth in Section 22.

496 **11.3.** Adjudication that a lawyer has willfully refused to comply with a court order
497 also shall be grounds for discipline.

498

Section 12. Types of Discipline

499

The following are the types of discipline which may be imposed, with or without

500

conditions, on the basis of the grounds for discipline set forth in Section 11.

501

12.1. Disbarment. Disbarment terminates the individual's status as an attorney.

502

12.2. (a) Suspension. Suspension generally is the removal of an attorney from the

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practice of law for a specified minimum period of time. Suspension may be for an

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appropriate fixed period of time, ~~or~~ for an appropriate fixed period of time and an indefinite

505

period to be determined by the conditions proposed by the judgment.

506

~~(1) A suspension, or for an indefinite period to be determined by the conditions~~

507

~~required for reinstatement under the Rule.~~

508

(1) No attorney suspended under any Section of this Rule shall resume practice until

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reinstated by order of the Court. A suspension imposed under any Section of this Rule and

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which continues for a period of less than one year shall not require proof of rehabilitation or

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a reinstatement proceeding pursuant to Section 30; a suspension imposed under any Section

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of this Rule and which continues for a period of one year or more shall require proof of

513

rehabilitation to be demonstrated in a reinstatement proceeding pursuant to Section 30.

514 (2) No suspension shall be ordered for a specific period less than thirty days or in
515 excess of five years.

516 (3) All suspensions regardless of duration shall be public and shall be subject to the
517 provisions of Section 28, unless otherwise expressly provided in this Rule.

518 (4) The imposition of a portion but not all of a suspension for a fixed period of time
519 may be deferred in conjunction with a period of probation ordered pursuant to Section 14.
520 A suspension order must result in some cessation of the practice of law.

521 (b) No suspension shall be made retroactive, except that a suspension may be made
522 retroactive to a date on which an attorney was temporarily suspended pursuant to Section
523 12.3 or Section 22 if the attorney was not subsequently reinstated from such temporary
524 suspension.

525 **12.3. ~~(a)~~ Temporary Suspension. =**

526 (a) On petition of Disciplinary Counsel and supported by an affidavit or declaration
527 under penalty of perjury demonstrating facts personally known to affiant showing that an
528 attorney has misappropriated funds to the attorney's own use, has failed to respond to the
529 Board or Disciplinary Counsel concerning a complaint of misconduct, has failed to
530 substantially comply with a ~~contract entered into with the~~ Tennessee Lawyer Assistance
531 Program monitoring agreement requiring mandatory reporting to Disciplinary Counsel
532 pursuant to Section 36.1, or otherwise poses a threat of substantial harm to the public, the

533 Court may issue an order with such notice as the Court may prescribe imposing temporary
534 conditions of probation on said attorney or temporarily suspending said attorney, or both.-

535 (b) Any order of temporary suspension which restricts the attorney maintaining a trust
536 account shall, when served on any bank maintaining an account against which said attorney
537 may make withdrawals, serve as an injunction to prevent said bank from making further
538 payment from such account or accounts on any obligation except in accordance with
539 restrictions imposed by the Court.

540 (c) Any order of temporary suspension issued under this Rule shall preclude the
541 attorney from accepting any new cases , unless otherwise provided in the order. An order of
542 temporary suspension shall not preclude the attorney from continuing to represent existing
543 clients during the first thirty days after the effective date of the order of temporary
544 suspension, unless otherwise provided in the order; however, any fees tendered to such
545 attorney during such thirty day period shall be deposited in a trust fund from which
546 withdrawals may be made only in accordance with restrictions imposed by the Court.

547 (d) The attorney may for good cause request dissolution or amendment of any such
548 order of temporary suspension by ~~petition filed with~~ filing in the Nashville office of the Clerk
549 of the Supreme Court, ~~a copy of which shall will be served~~ and serving on Disciplinary
550 Counsel a Petition for Dissolution or Amendment. Such petition for dissolution shall be set
551 for immediate hearing before the Board or a ~~panel of three members, at least two of whom~~
552 ~~shall be members of the Board and one of whom may be a district committee member from~~

553 ~~the same disciplinary district as the respondent, designated by the Chair of the Board, or, in~~
554 ~~the Chair's absence, the Vice-Chair. No more than one non-attorney Board member may~~
555 ~~serve on the p~~Panel. The Board or ~~its designated p~~Panel shall hear such petition forthwith
556 and ~~submit~~file its report and recommendation to the Supreme Court with the utmost speed
557 consistent with due process. There shall be no petition for rehearing. Upon receipt of the
558 foregoing report, the Court shall modify its order if appropriate and continue such provision
559 of the order as may be appropriate until final disposition of all pending disciplinary charges
560 against said attorney;-

561 **12.4. Public Censure.** Public censure is a form of public discipline which declares
562 the conduct of the attorney improper, but does not limit the attorney's privilege to practice
563 law.

564 **12.5. Private Reprimand.** Private reprimand is a form of non-public discipline which
565 declares the conduct of the attorney improper, but does not limit the attorney's privilege to
566 practice law. A private reprimand may be imposed when there is harm or risk of harm to the
567 client and the respondent attorney has previously received a private informal admonition for
568 the same misconduct and repeats the misconduct; or, when there are several similar acts of
569 minor misconduct within the same time frame, but relating to different clients.

570 **12.6. Private Informal Admonition.** Private informal admonition is a form of non-
571 public discipline which declares the conduct of the attorney improper, but does not limit the
572 attorney's privilege to practice law. Private informal admonition may be imposed when there
573 is harm or risk of harm to the client, but the misconduct appears to be an isolated incident or
574 is minor.

575 **12.7. Restitution.** Upon order of a hearing panel or court, or upon stipulation of the
576 parties, and in addition to any other type of discipline imposed, the respondent attorney may
577 be required to make restitution to persons or entities financially injured as a result of the
578 respondent attorney's misconduct. In the event that a person or entity financially injured as
579 a result of the respondent attorney's misconduct has received any payment from the
580 Tennessee Lawyers' Fund for Client Protection, the order or stipulation shall provide that
581 the Fund shall be reimbursed to the extent of such payment by the Fund.

582 **12.8.** Upon order of a hearing panel or court, or upon stipulation of the
583 parties respondent attorney and Disciplinary Counsel in matters which are or are not in formal
584 proceedings, conditions consistent with the purpose of this Rule and with the Rules of
585 Professional Conduct, including but not limited to the requirement of a practice monitor
586 pursuant to the procedures set forth in Section 12.9, may be placed upon the imposition of
587 any form of public discipline.

588 **12.9. Practice Monitors.**

589 (a) If a practice monitor is required as a condition of public discipline pursuant to
590 Section 12.8, or as a condition of probation pursuant to Section 14, or as a condition of
591 reinstatement pursuant to Section 30, the judgment or order of the hearing panel and the
592 Order of Enforcement, ~~or~~ Order of Reinstatement, or other judgment or order of the
593 reviewing court shall specify the duties and responsibilities of the practice monitor.

594 (b) The duties and responsibilities of a practice monitor may include, but shall not be
595 limited to, supervision of the respondent or petitioning attorney's compliance with any
596 conditions of discipline, probation, or reinstatement; and, the respondent or petitioning
597 attorney's compliance with trust account rules, accounting procedures, office management
598 procedures, and any other matters involving the respondent or petitioning attorney's practice
599 of law which the parties, by stipulation or agreement, or the hearing panel or reviewing court
600 determines to be appropriate and consistent with the violation(s) for which the respondent
601 or petitioning attorney was disciplined. The practice monitor shall make periodic reports to
602 Disciplinary Counsel at such times or intervals as may be prescribed by disciplinary counsel
603 and as also as deemed necessary or desirable by the practice monitor.

604 (c) The respondent or petitioning attorney shall, within fifteen days of the entry of the
605 stipulation, judgment or order imposing the requirement of a practice monitor, provide to
606 the Board a list of three proposed practice monitors, all of whom shall be attorneys licensed
607 to practice law in this State and whose licenses are in good standing with the Board, and none

608 of whom shall be engaged in the practice of law with the respondent or petitioning attorney,
609 whether in a law firm of any form or structure or in an association of attorneys of any kind
610 or form. The Board, in its sole discretion, shall designate a practice monitor from the list so
611 provided, and the Board's designation shall be final and not subject to appeal. In the event
612 that the Board, in its sole discretion, determines that none of the respondent or petitioning
613 attorney's proposed practice monitors is acceptable, or the respondent or petitioning attorney
614 fails to provide the required list, the Board shall designate a practice monitor, and the
615 Board's designation shall be final and not subject to appeal.-

616 (d) The respondent or petitioning attorney shall be responsible for and shall pay a
617 reasonable fee to the practice monitor, and the payment of such fee shall be a condition of
618 reinstatement pursuant to Section 30. The practice monitor shall make application to the
619 Board for an award of fees and shall file with the application an affidavit or a declaration
620 under penalty of perjury and such other documentary evidence as the practice monitor deems
621 appropriate documenting the hours expended and the fees incurred, and shall serve a copy
622 of the same on the respondent or petitioning attorney. Such proof shall create a rebuttable
623 presumption as to the necessity and reasonableness of the hours expended and the fees
624 incurred. The respondent or petitioning attorney may within fifteen days after the practice
625 monitor's application submit to the Board and serve on the practice monitor any response in
626 opposition to the application for an award of fees. The burden shall be upon respondent or
627 petitioning attorney to prove by a preponderance of the evidence that the hours expended or

628 fees incurred by the practice monitor were unnecessary or unreasonable. The practice
629 monitor or the respondent or petitioning attorney may request a hearing before a hearing
630 pPanel; in which event, the hearing pPanel shall promptly schedule the same. The hearing
631 pPanel shall within fifteen days from the conclusion of such hearing submit to the Board its
632 findings and judgment with respect to the practice monitor's application for the award of
633 fees. There shall be no petition for rehearing. The Board shall review the Panel's findings
634 and judgment and shall either enter the Panel's judgment or modify the same and enter
635 judgment as modified. In the event no hearing is requested, the Board shall within fifteen
636 days from the date on which the respondent or petitioning attorney's response is due or is
637 submitted, whichever is earlier, enter a judgment with respect to the practice monitor's
638 application for the award of fees. There shall be no other or further relief with respect to an
639 application for the award of practice monitor fees. Nothing herein shall prohibit the practice
640 monitor from providing these services pro bono.

641 **Section 13. Diversion of Disciplinary Cases**

642 **13.1. Authority of Board.** The Board is hereby authorized to establish practice and
643 professionalism enhancement programs to which eligible disciplinary cases may be diverted
644 as an alternative to disciplinary sanction. Subject to Section 36.1(d), the Board is also
645 authorized to require a respondent attorney to enter into a Tennessee Lawyer Assistance

646 Program monitoring agreement requiring mandatory reporting to Disciplinary Counsel as a
647 condition of diversion under this Section. Such monitoring agreement may, in the Board's
648 discretion, qualify as a practice and professionalism enhancement program or a part thereof.

649 **13.2. Types of Disciplinary Cases Eligible for Diversion.** Disciplinary cases that
650 otherwise would be disposed of by a private informal admonition or a private reprimand are
651 eligible for diversion to practice and professionalism enhancement programs.

652 **13.3. Limitation on Diversion.** A respondent attorney who has been the subject of
653 a prior diversion within five years shall not be eligible for diversion.

654 **13.4. Approval of Diversion.** The Board shall not offer a respondent attorney the
655 opportunity to divert a disciplinary case to a practice and professionalism enhancement
656 program unless the Board or a combination of Disciplinary Counsel and a district committee
657 member concur.

658 **13.5. Contents of Diversion Recommendation.** If a diversion recommendation is
659 approved as provided in Section 13.4, the recommendation shall state the practice and
660 professionalism enhancement program(s) to which the respondent attorney shall be diverted,

661 shall state the general purpose for the diversion, and that the costs thereof shall be paid by
662 the respondent attorney.

663 **13.6. Service of Recommendation on and Review by Respondent.** If a diversion
664 recommendation is approved as provided in Section 13.4, the recommendation shall be
665 served on the respondent attorney who may accept or reject a diversion recommendation in
666 the same manner as provided for in Section 15. The respondent attorney shall not have the
667 right to reject any specific requirement of a practice and professionalism enhancement
668 program.

669 **13.7. Effect of Rejection of Recommendation by Respondent Attorney.** In the
670 event that a respondent attorney rejects a diversion recommendation the matter shall be
671 returned for further proceedings under this Rule.

672 **13.8. Authority of Hearing Panel to Refer a Matter to a Practice and**
673 **Professionalism Enhancement Program.** Nothing in this rule shall preclude a hearing
674 panel from referring a disciplinary matter to a practice and professionalism enhancement
675 program as a part of a disciplinary sanction.

676 **13.9. Effect of Diversion.**

677 (a) When the recommendation of diversion becomes final, the respondent attorney
678 shall enter the practice and professionalism enhancement program(s) and complete the
679 requirements thereof. ~~¶~~Disciplinary Counsel shall provide the complainant ~~shall be provided~~
680 notice that the complaint has been resolved ~~in a manner~~by diversion and that the matter is
681 confidential under Section 32.- The complainant has no right to appeal a disposition by
682 diversion under this Section.

683 (b) Upon the respondent attorney's successful completion of the practice and
684 professionalism enhancement program(s), the Board shall terminate its investigation into the
685 matter and its disciplinary files shall be closed indicating the diversion unless the diversion
686 is ordered in addition to other discipline. Diversion into the practice and professionalism
687 enhancement program shall not constitute a disciplinary sanction and shall remain
688 confidential.

689 **13.10. Effect of Failure to Complete the Practice and Professionalism**
690 **Enhancement Program.** If a respondent attorney fails to fully complete all requirements
691 of the practice and professionalism enhancement program(s) to which the respondent
692 attorney was diverted, including the payment of costs thereof, the Board may reopen its
693 disciplinary file and conduct further proceedings under ~~these~~this Rules. Failure to complete
694 the practice and professionalism enhancement program shall be considered as a matter of
695 aggravation when imposing a disciplinary sanction.

696

Section 14. Probation

697 **(a)14.1 Probation.** In the discretion of the hearing panel or a reviewing court, the
698 imposition of a suspension for a fixed period (Section 12.2) may be deferred in conjunction
699 with a fixed period of probation. The conditions of probation shall be stated in writing in the
700 judgment of the hearing panel or court. Probation shall be used only in cases where there is
701 little likelihood that the respondent attorney will harm the public during the period of
702 rehabilitation and where the conditions of probation can be adequately supervised. Subject
703 to Section 36.1(d), the hearing panel or reviewing court may require the respondent attorney
704 to enter into a monitoring agreement with the Tennessee Lawyer Assistance Program
705 requiring mandatory reporting to Disciplinary Counsel. The hearing panel or reviewing court
706 may require as a condition of probation the assignment of a practice monitor for the purposes
707 and pursuant to the procedures set forth in Section 12.9. The respondent attorney shall pay
708 the costs associated with probation, including but not limited to a reasonable fee to the
709 practice monitor.

710 **(b)14.2** In the event the respondent attorney violates or otherwise fails to meet any
711 condition of probation, Disciplinary Counsel is authorized to file a petition to revoke
712 probation. Upon the filing of such a petition, the respondent attorney shall have the
713 opportunity to appear and be heard before a duly constituted pPanel of the Board. A record

714 of such hearing shall be made in the same manner as for a disciplinary hearing under Section
715 15.2. The only issue in such a proceeding is whether probation is to be revoked; the original
716 judgment imposing the fixed period of probation may not be reconsidered. Upon finding that
717 revocation of probation is warranted, the Panel shall order that the respondent attorney serve
718 the previously deferred period of suspension. As an alternative to revocation, the Panel may
719 impose additional conditions on probation, including the requirement of a practice monitor
720 to be appointed in accordance with the procedures set forth in Section 12.9. Having
721 conducted such a hearing, the pPanel shall file an order within thirty days; this order must
722 include the basis for the pPanel's decision. There shall be no petition for rehearing. An order
723 reflecting the decision shall be treated as a decree of the circuit or chancery court and, as
724 such, is appealable to the Court under Section 33.

725 ~~(c)~~14.3 Probation shall terminate upon the expiration of the fixed period of probation.
726 Probation may be terminated earlier by the tribunal (hearing panel or court) which imposed
727 the period of probation upon the filing of a motion and an affidavit or declaration under
728 penalty of perjury by the respondent attorney showing compliance with all the conditions of
729 probation and an affidavit or declaration under penalty of perjury by the practice monitor, if
730 one is designated, stating that probation is no longer necessary and summarizing the basis for
731 that statement. Disciplinary Counsel shall file a response to any such motion to terminate
732 probation. The tribunal may conduct whatever hearings are necessary to decide the motion

733 to terminate probation. There shall be no petition for rehearing. The tribunal's ruling on the
734 motion may be appealed pursuant to Section 33.

735 **Section 15. Initiation, Investigation, and Hearing**

736 **15.1.** (a) All complaints must be submitted in writing, must contain the identity of
737 the complainant, and must be signed by the complainant. The Board shall provide the
738 respondent attorney with a complete copy of the original complaint and of any additional or
739 supplemental written submissions provided by the complainant. In the event that the Board's
740 investigation is the result of information from a source other than a written complaint
741 pursuant to Section 4.5(a), the Board shall notify the respondent attorney and provide a copy
742 of such information.

743 (b) All investigations, whether upon complaint or otherwise, shall be initiated and
744 conducted by Disciplinary Counsel. Upon the conclusion of an investigation, Disciplinary
745 Counsel may recommend dismissal, private informal admonition, private reprimand, public
746 censure or prosecution of formal charges before a hearing panel.-

747 (c) If Disciplinary Counsel recommends disposition by dismissal or private informal
748 admonition, the reviewing member of the district committee in the appropriate disciplinary
749 district shall review the recommendation and may approve or modify it. In reviewing the
750 recommended disposition, the reviewing member of the district committee shall consider the

751 applicable provisions of the ABA Standards for Imposing Lawyer Sanctions. In no event
752 may the reviewing member of the district committee impose a sanction greater than private
753 informal admonition. Nor may the reviewing member of the district committee offer
754 diversion except as provided in Section 13.4. Disciplinary Counsel may appeal to the Board
755 the action of the reviewing member of the district committee.-

756 (d) If ~~the~~Disciplinary Counsel recommendeds disposition ~~is~~by private reprimand; ~~or~~
757 public censure, or recommends the prosecution of formal charges before a hearing panel, the
758 Board shall review the recommendation and approve or modify it. In reviewing the
759 recommended disposition, the Board shall consider the applicable provisions of the ABA
760 Standards for Imposing Lawyer Sanctions. The Board may determine whether a matter
761 should be concluded by dismissal or private informal admonition; may recommend a private
762 reprimand or public censure; or, may direct that a formal proceeding be instituted ~~before a~~
763 ~~hearing panel in the appropriate disciplinary district and assign it to a hearing panel for that~~
764 ~~purpose.~~-

765 (e) A respondent attorney shall not be entitled to appeal a private informal admonition
766 approved by the reviewing member of the district committee or imposed by the Board;
767 similarly, a respondent attorney may not appeal a recommended private reprimand or public
768 censure by the Board. In either case, however, the respondent attorney may, within twenty
769 days of notice thereof, demand as of right that a formal proceeding be instituted before a
770 hearing panel in the appropriate disciplinary district. In the event of such demand, the private

771 informal admonition shall be vacated or the recommended private reprimand or public
772 censure shall be withdrawn, and the matter shall be disposed of in the same manner as any
773 other formal hearing instituted before a hearing panel.

774 (f) If Disciplinary Counsel recommends disposition by dismissal, and if that
775 recommended disposition is approved by the reviewing member of the district committee in
776 the appropriate disciplinary district, Disciplinary Counsel shall provide the complainant
777 notice of the disposition ~~shall be provided by Disciplinary Counsel to the~~
778 complainant dismissal. A complainant who is not satisfied with the disposition by dismissal
779 of the matter may appeal in writing to the Board within thirty days of receipt of notice of the
780 reviewing member's approval of the recommended disposition. The Board, or a committee
781 of no fewer than three of its members, may approve, modify or disapprove the disposition,
782 or direct that the matter be investigated further. The complainant has no other or further right
783 of appeal or review under this Rule or otherwise.

784 (g) If Disciplinary Counsel recommends disposition by private informal admonition,
785 and if that recommended disposition is approved by the reviewing member of the district
786 committee in the appropriate disciplinary district, Disciplinary Counsel shall provide the
787 complainant ~~shall be provided~~ notice that the complaint has been resolved in a manner by
788 private informal admonition and that the matter is confidential under Section 32. The
789 complainant has no right to appeal a disposition by private informal admonition under this
790 Section.

791 (h) If Disciplinary Counsel recommends disposition by private reprimand, and if that
792 recommended disposition is approved by the Board, Disciplinary Counsel shall provide the
793 complainant notice that the complaint has been resolved by private reprimand and that the
794 matter is confidential under Section 32. The complainant has no right to appeal a disposition
795 by private reprimand under this Section.

796 **15.2.** (a) Formal disciplinary proceedings before a hearing panel shall be
797 ~~instituted~~commenced by Disciplinary Counsel by filing with the Board a Petition for
798 Discipline (hereinafter “Petition”) which shall be sufficiently clear and specific to inform the
799 respondent attorney of the alleged misconduct. Disciplinary Counsel, as needed, may file
800 Amended Petitions which arise out of the same facts and circumstances but which change,
801 delete or augment the existing allegations. Disciplinary Counsel, as needed and with the
802 approval of the Board, may file Supplemental Petitions which make new allegations and
803 which bring new charges arising from a different complaint(s) not previously included in
804 a Petition. ~~Neither a~~No Petition ~~to initiate a formal disciplinary proceeding, an~~ Amended
805 Petition, ~~nor a~~or Supplemental Petition ~~shall include allegations of any private discipline~~
806 previously imposed against the respondent attorney.

807 (b) A copy of the Petition shall be served upon the respondent attorney pursuant to
808 Section 18.1. The respondent attorney shall serve an answer upon Disciplinary Counsel
809 pursuant to Section 18.2 and file the original with the Board within thirty days after the

810 service of the Petition, unless such time is extended by the agreement of Disciplinary
811 Counsel or by leave of the ~~hearing panel assigned to hear~~ Chair of the ~~matter~~ Board. In the
812 event the respondent attorney fails to answer, the charges shall be deemed admitted and
813 Disciplinary Counsel may move the hearing panel assigned to hear the matter for entry of a
814 Judgment of Default. Disciplinary Counsel shall serve a copy of any such motion on the
815 respondent attorney pursuant to Section 18.2. Relief from a Judgment of Default for failure
816 to serve an answer to the Petition within thirty days shall be determined by the hearing panel
817 in the same manner such motions are determined by Rule 55.02 of the Tennessee Rules of
818 Civil Procedure ~~55.02~~.

819 (c) A copy of any Amended Petition or Supplemental Petition shall be served on the
820 respondent attorney pursuant to Section 18.2. The respondent attorney shall serve an answer
821 on Disciplinary Counsel pursuant to Section 18.2 and file the original with the Board within
822 fifteen days after service of the Amended Petition or Supplemental Petition, unless such time
823 is extended by the agreement of Disciplinary Counsel or by leave of the hearing panel
824 assigned to hear the matter.

825 (d) Following the service of the answer to the Petition, or upon failure to answer, the
826 matter shall be assigned by the Chair of the Board to a hearing panel. ~~In assigning the~~
827 ~~members of~~ The Chair of the Board, or in the absence of the Chair the Vice-Chair of the
828 Board, shall select the hearing panel, ~~the Chair shall select them on a random basis~~ from the
829 members of the district committee in the district in which the respondent practices law; i. The

830 hearing panel shall be selected pursuant to written procedures approved by the Board. If there
831 is an insufficient number of committee members in that district who are able to serve on the
832 hearing panel, the Chair ,or its designee, may appoint one or more members from the district
833 committee of an adjoining district to serve on the panel.

834 (e) Ex parte communications between the Chair or the Vice-Chair of the Board,
835 district committee members, and the Executive Secretary of the Board concerning the
836 selection of hearing panels and for scheduling or other administrative purposes are permitted.
837 A district committee member may advise the Executive Secretary of the Board if he or she
838 is unable to serve on a hearing panel for any reason.

839 (e) A pre-hearing conference shall be held within sixty days of the filing date of any
840 Petition commencing a formal proceeding, or within thirty days of the filing of the answer
841 if an extension has been granted. The pre-hearing conference shall be conducted by the chair
842 of the assigned hearing panel and at least one other member of the hearing panel. The pre-
843 hearing conference may be conducted in person, by telephone, or by video conference. In
844 the pre-hearing conference, the hearing panel shall schedule deadlines for discovery, the
845 filing of motions, and the exchange of witness and exhibit lists, and it also shall set the
846 hearing date. The hearing panel may discuss with and accept from the parties stipulations
847 of fact and/or stipulations regarding the authenticity of documents and exhibits, may narrow
848 the issues presented by the pleadings, and may address any other matter the hearing panel
849 deems appropriate in the management of the proceeding, including but not limited to the

850 resolution of any discovery disputes except as otherwise provided by Section 19. Subsequent
851 pre-hearing conferences may be held in the discretion of the hearing panel, acting on its own
852 initiative or upon motion of a party. Within five days of each pre-hearing conference, the
853 chair of the hearing panel shall file an order reciting the actions taken by the hearing panel
854 during the conference, including any deadlines imposed and the date set for the hearing. The
855 order shall advise the respondent attorney that he/she is entitled to be represented by counsel,
856 to cross-examine witnesses, and to present evidence in his/her own behalf.

857 (fg) In a hearing panel's hearing on the Petition, Disciplinary Counsel may submit
858 evidence of prior discipline against the respondent attorney, including prior private
859 discipline, as an aggravating circumstance. Such evidence may be introduced to the extent
860 it is otherwise admissible under the Tennessee Rules of Evidence. Pursuant to Section 32.4,
861 the respondent attorney may apply to the hearing panel for a protective order concerning the
862 admission of evidence of prior private discipline.

863 (gh) In hearings on formal charges of misconduct, Disciplinary Counsel must prove
864 the case by a preponderance of the evidence.

865 **15.3.** (a) In every case, the hearing panel shall submit its findings and judgment, in
866 the form of a final decree of a trial court, to the Board within thirty days after the conclusion
867 of the hearing. The hearing panel's findings and judgment shall contain a notice that the
868 findings and judgment may be appealed pursuant to Section 33. A copy of the hearing

869 panel's findings and judgment shall be served upon Disciplinary Counsel, the respondent
870 attorney and the respondent attorney's counsel of record pursuant to Section 18.2. The
871 hearing panel may make a written request to the Chair for an extension of time within which
872 to file its findings and judgment. In the event that the hearing panel does not submit its
873 findings and judgment within thirty days or such other time as extended by the Chair,
874 Disciplinary Counsel shall report the same to the Court. The failure of the hearing panel to
875 meet this deadline, however, shall not be grounds for dismissal of the Petition.

876 (b) ~~The Board shall immediately serve a copy of the hearing panel's findings and~~
877 ~~judgment upon the respondent attorney and the respondent attorney's counsel of record~~
878 ~~pursuant to Section 18.2.~~ There shall be no petition for rehearing. Any appeal pursuant to
879 Section 33 must be filed within sixty days of the entry of the hearing panel's judgment.

880 ~~—(c) However, if the Board makes application to the hearing panel for the assessment~~
881 ~~of costs pursuant to Section 31, any appeal pursuant to Section 33 must be filed within sixty~~
882 ~~days of the entry of the hearing panel's judgment on the application~~ the making of such
883 application shall extend the time for taking steps in the regular appellate process under
884 Section 33.1(a).

885 **15.4.** (a) If the hearing panel finds one or more grounds for discipline of the
886 respondent attorney, the hearing panel's judgment shall specify the type of discipline
887 imposed: disbarment (Section 12.1), suspension (Section 12.2), or public censure (Section

888 12.4). In the discretion of the hearing panel, the imposition of a portion but not all of a
889 suspension for a fixed period of time (Section 12.2) may be deferred in conjunction with a
890 period of probation ordered pursuant to Section 14. In addition to imposing one of the
891 foregoing types of discipline, the hearing panel may order restitution (Section 12.7).
892 Temporary suspension (Section 12.3), private reprimand (Section 12.5), and private informal
893 admonition (Section 12.6) are not types of discipline available to the hearing panel following
894 the filing of a Petition for Discipline. In determining the appropriate type of discipline, the
895 hearing panel shall consider the applicable provisions of the ABA Standards for Imposing
896 Lawyer Sanctions.

897 (b) If the judgment of the hearing panel is that the respondent attorney shall be
898 disbarred or suspended for any period of time ~~in excess of three months, or for a period of~~
899 ~~time of three months or less with conditions for reinstatement~~, and no appeal is perfected
900 within the time allowed , or if there is a settlement providing for a disbarment or suspension
901 for any period of time ~~in excess of three months, or for a period of time of three months or~~
902 ~~less with conditions for reinstatement~~, at any stage of disciplinary proceedings, the Board
903 shall file ~~with the Court~~ in the Nashville office of the Clerk of the Supreme Court a Notice
904 of Submission with attached copies of the Petition, the judgment or settlement, the proposed
905 Order of Enforcement, and a Protocol Memorandum as defined in Section 2. ~~The Board~~
906 ~~shall serve a~~ A copy of the proposed Order of Enforcement and the Protocol Memorandum
907 shall be served upon the respondent attorney and the respondent attorney's counsel of record

908 pursuant to Section 18.2. In all cases except those in which the sanction imposed is by
909 agreement, the respondent attorney shall have ten days from service of the foregoing within
910 which to file with the Court and serve upon Disciplinary Counsel pursuant to Section 18.2
911 a response to the Protocol Memorandum. Such response shall be limited to contesting any
912 alleged factual errors in the Protocol Memorandum. The Court shall review the
913 recommended punishment provided in such judgment or settlement with a view to attaining
914 uniformity of punishment throughout the State and appropriateness of punishment under the
915 circumstances of each particular case. The Court may direct that the transcript or record of
916 any proceeding be prepared and filed with the Court for its consideration.-

917 (c) If the Court finds that the punishment appears to be inadequate or excessive, it
918 shall issue an order advising the Board and the respondent attorney that it proposes to
919 increase or to decrease the punishment. If the Court proposes to increase the punishment,
920 the respondent attorney shall have twenty days from the date of the order to file a brief and
921 request oral argument; if the Court proposes to decrease the punishment, the Board shall have
922 twenty days from the date of the order within which to file a brief and request oral argument.
923 Reply briefs shall be due within twenty days of the filing of the preceding brief. If a party
924 requests oral argument, the Court may grant it. Upon termination of such proceedings as are
925 requested, the Court may modify the judgment of the hearing panel or the settlement in such
926 manner as it deems appropriate. There shall be no petition for rehearing.

927 (d) If the judgment of a hearing panel is appealed to the circuit or chancery court
928 pursuant to Section 33 and the trial court enters a judgment disbaring or suspending the
929 respondent attorney for any period of time ~~in excess of three months, or for a period of time~~
930 ~~of three months or less with conditions for reinstatement~~, and no appeal is perfected within
931 the time allowed , the trial court shall ~~forward for filing a copy of its judgment to~~file in the
932 Nashville office of the Clerk of the Supreme Court a Notice of Submission with an attached
933 copy of its judgment, and the Court shall enter an Order of Enforcement of said decree.

934 ~~—(e) All other final decrees of hearing panels or trial courts shall be forwarded for~~
935 ~~filing to the Nashville office of the Clerk of the Supreme Court for entry by the Court of an~~
936 ~~Order of Enforcement.~~

937 **Section 16. Complaints Against Board Members, District Committee Members, or**
938 **Disciplinary Counsel**

939 **16.1.** (a) Complaints against Disciplinary Counsel or a district committee member
940 alleging violations of the ~~Attorney's Oath of Office or the~~ Rules of Professional Conduct
941 shall be submitted directly to the Board.-

942 (b) Disagreement with the official decision of Disciplinary Counsel, a hearing panel,
943 or a district committee member, taken in the course and scope of his or her responsibilities,
944 shall not be grounds for the filing of a disciplinary complaint.

945 (c) The investigation of complaints against Disciplinary Counsel submitted under
946 Section 16.1 shall proceed in accordance with the procedures contained in Section 15, except
947 that an attorney member of the Board appointed by the Chair shall conduct the investigation
948 and the findings of such investigation shall be reviewed by a committee of no fewer than
949 three members of the Board appointed by the Chair and Vice Chair. Provided, however, that
950 the Board may request the Court to appoint a Special Disciplinary Counsel to conduct the
951 investigation. Upon application to the Court, the Court may authorize the payment of
952 reasonable fees to Special Disciplinary Counsel.

953 (d) The investigation of complaints against district committee members shall be
954 conducted by Disciplinary Counsel in accordance with the procedures contained in Section
955 15. The findings of such investigation shall be reviewed by a committee of no fewer than
956 three members of the Board appointed by the Chair and Vice Chair. Provided, however, that
957 the Board may request the Court to appoint a Special Disciplinary Counsel to conduct the
958 investigation. Upon application to the Court, the Court may authorize the payment of
959 reasonable fees to Special Disciplinary Counsel.

960 **16.2.** (a) Complaints against attorney members of the Board alleging violations of the
961 ~~Attorney's Oath of Office or the~~ Rules of Professional Conduct shall be submitted directly
962 to the Chief Justice of the Court.

963 (b) Disagreement with the official decision of the Board or a member, taken in the
964 course and scope of his or her responsibilities, shall not be grounds for the filing of a
965 disciplinary complaint.

966 **16.3.** The investigation of complaints submitted under Section 16.2 against attorney
967 members of the Board shall proceed in accordance with the procedures contained in Section
968 15, with the following modifications:

969 (a) A Special Disciplinary Counsel, whom the Chief Justice shall appoint by order
970 entered under seal, shall take the place and perform all of the functions of Disciplinary
971 Counsel set forth in Section 15.1, including all investigations, whether upon complaint or
972 otherwise. Upon conclusion of an investigation, Special Disciplinary Counsel may
973 recommend dismissal, private informal admonition of the attorney concerned, or a private
974 reprimand, public censure, or prosecution of formal charges before a special hearing panel.

975 (b) One member of the Court, whom the Chief Justice shall designate, shall take the
976 place and perform all of the functions of the Board in all investigations and proceedings
977 governed by this Section, including the review of recommendations of dismissal or private
978 informal admonition ~~of the attorney concerned~~, or a private reprimand, public censure or
979 prosecution of formal charges, pursuant to Section 15.1. The member so designated shall not
980 participate with the Court in any subsequent proceedings in the same case.

981 (1) If Special Disciplinary Counsel’s recommendation is dismissal, it shall be
982 reviewed by the designated member of the Court (“Reviewing Justice”), who may approve
983 or modify it. If the recommendation is approved by the Reviewing Justice, notice of the
984 disposition by dismissal shall be provided by Special Disciplinary Counsel to the
985 complainant. A complainant who is not satisfied with the disposition by dismissal of the
986 matter may appeal in writing to the Chief Justice within thirty days of receipt of notice of the
987 Reviewing Justice’s approval of the recommended disposition. The Court may approve,
988 modify, or disapprove the disposition, or direct that the matter be investigated further. If the
989 Court approves the recommended disposition of dismissal, the Court shall enter an
990 appropriate order under seal.

991 (2) If Special Disciplinary Counsel’s recommendation is private informal admonition,
992 it shall be reviewed by the Reviewing Justice, who may approve or modify it. If the
993 recommendation is approved by the Reviewing Justice, notice shall be provided by Special
994 Disciplinary Counsel to the complainant that the complaint has been resolved in a manner by
995 private informal admonition and that the matter is confidential under Section 32. The
996 complainant has no right to appeal a disposition of a by private informal admonition under
997 this Section.

998 (3) If the recommended disposition is private reprimand, public censure, or
999 prosecution of formal charges before a special hearing panel, the Reviewing Justice shall
1000 review the recommendation and shall approve, disapprove, or modify it. The Reviewing

1001 Justice may determine whether a matter should be concluded by dismissal or private informal
1002 admonition; may approve or impose a private reprimand or public censure; or may direct that
1003 a formal proceeding be instituted before a special hearing panel.

1004 (4) If Special Disciplinary Counsel’s recommendation is private reprimand, and if the
1005 recommendation is approved by the Reviewing Justice, notice shall be provided by Special
1006 Disciplinary Counsel to the complainant that the complaint has been resolved by private
1007 reprimand and that the matter is confidential under Section 32. The complainant has no right
1008 to appeal a disposition by private reprimand under this Section.

1009 (45) The respondent attorney shall not be entitled to appeal a private informal
1010 admonition approved by the Reviewing Justice; similarly, the respondent attorney may not
1011 appeal a private reprimand or public censure approved or imposed by the Reviewing Justice.
1012 In either case, however, the respondent attorney may, within twenty days of notice thereof,
1013 demand as of right that a formal proceeding be instituted before a special hearing panel. In
1014 the event of such demand, the private informal admonition shall be vacated or the
1015 recommended private reprimand or public censure shall be withdrawn, and the matter shall
1016 be disposed of in the same manner as any other formal hearing instituted before a hearing
1017 panel.

1018 (c) If the recommendation, as approved or modified by the Reviewing Justice,
1019 includes the institution of formal proceedings before a hearing panel, or if the respondent
1020 attorney demands in writing to the Chief Justice such formal proceedings as of right, then the

1021 Chief Justice shall at that time appoint three persons to act as a special hearing panel. The
1022 special hearing panel shall take the place and perform all of the functions of the hearing
1023 panel as provided in Sections 6 and 15. The Special Disciplinary Counsel shall continue to
1024 perform the functions of Disciplinary Counsel and shall proceed in accordance with the
1025 provisions of this Rule governing formal proceedings.

1026 (d) There shall be no petition for rehearing. The respondent attorney or Special
1027 Disciplinary Counsel may appeal the judgment of the special hearing panel as provided in
1028 Section 33.

1029 **Section 17. Immunity**

1030 Members of the Board, district committee members, Disciplinary Counsel ~~and~~ staff and
1031 and practice monitors shall be immune from civil suit for any conduct in the course of their
1032 official duties. Complainants and witnesses shall be immune from civil suit with respect to
1033 any communications to the Board, district committee members, Disciplinary Counsel or staff
1034 relating to attorney misconduct or disability or any testimony in the proceedings regarding
1035 the same, unless the information which the complainant or witness provides in such
1036 communication or such testimony is false and the complainant or witness had actual

1037 knowledge of the falsity. The immunity granted in this Section shall not be construed to limit
1038 any other form of immunity available to any covered person.

1039 **Section 18. Service**

1040 **18.1.** The Petition in any disciplinary proceeding shall be served on the respondent
1041 attorney by personal service by any person authorized by to do so pursuant to the
1042 Chair Tennessee Rules of ~~the Board~~ Civil Procedure, or by any form of United States mail
1043 providing delivery confirmation, at the primary address shown in the most recent registration
1044 statement filed by the respondent attorney pursuant to Section 10.3 or at the respondent
1045 attorney's other last known address. If such service is not successfully completed, the Board
1046 shall undertake additional reasonable steps to obtain service, including but not limited to,
1047 personal service or service by mail at such alternative addresses as the Board may identify,
1048 or service by email at the email address shown in the most recent registration statement filed
1049 by the respondent attorney pursuant to Section 10.3 or such other email address as the Board
1050 may identify.

1051 **18.2.** Service of any other papers or notices required by this Rule shall, unless
1052 otherwise provided by this Rule, be made in accordance with Rule 5.02 of the Tennessee
1053 Rules of Civil Procedure ~~5.02~~.

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Section 19. Subpoena Power, Witnesses and Pre-trial Proceedings

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19.1. Any member of a hearing panel in matters before it, and Disciplinary Counsel

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in matters under investigation or in formal proceedings, may administer oaths and

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affirmations and may obtain from the circuit or chancery court having jurisdiction subpoenas

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to compel the attendance of witnesses and the production of pertinent books, papers and

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documents. A respondent attorney may, similarly, obtain subpoenas to compel the attendance

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of witnesses and the production of pertinent books, papers and documents before a hearing

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panel after formal disciplinary proceedings are instituted.

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19.2. Subpoenas shall clearly indicate on their face that the subpoenas are issued in

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connection with a confidential investigation under this Rule and that it may be regarded as

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contempt of the Court or grounds for discipline under this Rule for a person subpoenaed to

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in any way breach the confidentiality of the investigation. The scope of the confidentiality

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of the investigation shall be governed by Section 32. It shall not be regarded as a breach of

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confidentiality for a person subpoenaed to consult with an attorney.

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19.3. The circuit or chancery court in which the attendance or production is required

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may, upon proper application, enforce the attendance and testimony of any witness and the

1070 production of any documents so subpoenaed. Subpoena and witness fees and mileage shall
1071 be the same as in the courts of this State.

1072 **19.4.** Any attack on the validity or scope of a subpoena so issued, and any application
1073 for a protective order with respect to a subpoena so issued, shall be filed in and heard and
1074 determined by the court in which enforcement of the subpoena is being sought.

1075 **19.5.** Discovery proceedings by the respondent attorney, prior to institution of
1076 proceedings for a formal hearing, may be had upon the order of the Chair of the Board for
1077 good cause shown.

1078 **19.6.** With the approval of the hearing panel, testimony may be taken by deposition
1079 or by interrogatories if the witness is not subject to service or subpoena or is unable to attend
1080 or testify at the hearing because of age, illness, infirmity, or incarceration. A complete record
1081 of the testimony so taken shall be made and preserved, but need not be transcribed unless
1082 needed for appeal pursuant to Section 33.

1083 **19.7.** The subpoena and deposition procedures shall be subject to the protective
1084 requirements of confidentiality provided in Section 32.

1100 conviction provide a certified copy of the judgment or guilty plea involved to Disciplinary
1101 Counsel.

1102 (b) Upon receiving notice from an attorney pursuant to Section 22.1(a), or upon
1103 otherwise being advised that an attorney subject to the disciplinary jurisdiction of the Court
1104 has been convicted of a crime, Disciplinary Counsel shall ~~obtain a an affidavit with~~ a
1105 certified copy of the judgment, guilty plea or other adequate proof of the conviction and
1106 ~~forward it to~~ file in the Nashville office of the Clerk of the Supreme Court a Notice of
1107 Submission with an attached certified copy of the judgment or guilty plea, or an affidavit or
1108 declaration under penalty of perjury with other adequate proof of the conviction.

1109 **22.2.** (a) Upon the filing with the Court of ~~an affidavit~~ the Notice of Submission with
1110 ~~an attached~~ certified copy of the judgment, ~~guilty plea or~~ or guilty plea, or an affidavit or
1111 declaration under penalty of perjury with other adequate proof ~~demonstrating that an~~
1112 attorney who is a defendant in a criminal case involving a serious crime, as defined in
1113 Section 2 , has entered a plea of nolo contendere or a plea of guilty or has been found guilty
1114 by verdict of the jury, or the trial court sitting without a jury, the Court shall enter an order
1115 immediately suspending the attorney. Such suspension shall take place regardless of the
1116 pendency of a motion for new trial or other action in the trial court and regardless of the
1117 pendency of an appeal. Such suspension shall remain in effect pending final disposition of
1118 a disciplinary proceeding to be commenced upon such finding of guilt.

1119 (b) An attorney suspended under the provisions of Subsection (a) will be reinstated
1120 immediately upon the filing of ~~a certificate~~ an affidavit or declaration under penalty of perjury
1121 with supporting documentation demonstrating that the underlying conviction of a serious
1122 crime has been reversed, but the reinstatement will not terminate any formal proceeding then
1123 pending against the attorney, the disposition of which shall be determined by the hearing
1124 panel and the Board on the basis of the available evidence.

1125 **22.3.** ~~An affidavit with adequate proof~~ A certified copy of the judgement or guilty
1126 plea, or an affidavit or declaration under penalty of perjury with other adequate proof of a
1127 conviction of an attorney for any crime, shall be conclusive evidence of the commission of
1128 that crime in any disciplinary proceeding instituted against the attorney based upon the
1129 conviction.

1130 **22.4.** Upon the receipt of ~~an affidavit with adequate proof~~ a certified copy of a
1131 judgment or guilty plea, or an affidavit or declaration under penalty of perjury with other
1132 adequate proof of conviction of an attorney for a serious crime, the Court shall, in addition
1133 to suspending the attorney in accordance with the provisions of Section 22.1, also refer the
1134 matter to the Board for the institution of a formal proceeding before a hearing panel in which
1135 the sole issue to be determined shall be the extent of the final discipline to be imposed,

1136 provided that a disciplinary proceeding so instituted will not be brought to hearing until all
1137 appeals from the conviction are concluded.

1138 **22.5.** Upon receipt of a certified copy of the judgment or guilty plea, or an affidavit
1139 or declaration under penalty of perjury with other adequate proof of a conviction of an
1140 attorney for a crime not constituting a serious crime, the Court shall refer the matter to the
1141 Board for whatever action the Board may deem warranted, including the institution of an
1142 investigation by Disciplinary Counsel, or a formal proceeding before a hearing panel,
1143 provided, however, that the Court may in its discretion make no reference with respect to
1144 convictions for minor offenses.-

1145 **22.6.** An order summarily suspending an attorney from the practice of law pursuant
1146 to Section 22.2 shall constitute a suspension of the attorney for the purpose of Section 28.

1147 **22.7.** An attorney suspended pursuant to Section 22.2 shall receive credit for any
1148 period of suspension served pursuant to Section 22.2 that preceded the commencement of the
1149 term of incarceration. Notwithstanding the provisions of Section 12.2, any suspension or
1150 disbarment ordered pursuant to Section 22.2 shall be served consecutive to any period of
1151 incarceration imposed upon the attorney as a result of the attorney's conviction in the
1152 underlying criminal case.

1171 Supreme Court a Notice of Submission with an attached copy of the declaration and the
1172 Court shall enter an order disbaring the attorney on consent.

1173 **23.3.** The order disbaring the attorney on consent shall be a matter of public record.
1174 However, the affidavit or declaration under penalty of perjury required under Section ~~of~~ 23.1
1175 shall not be publicly disclosed or made available for use in any other proceeding except upon
1176 order of the Court.

1177 **Section 24. Discipline by Consent**

1178 **24.1.** An attorney against whom formal charges have been served may at any stage
1179 of the proceedings before the Board, hearing panel or trial court, thereafter tender a
1180 conditional guilty plea to the petition or to a particular count thereof in exchange for a stated
1181 form of punishment. Such a tendered plea shall be submitted to Disciplinary Counsel and
1182 approved or rejected by the Board upon recommendation of the hearing panel if the matter
1183 has been assigned for hearing, or shall be approved or rejected by the trial court if an appeal
1184 has been filed pursuant to Section 33; subject, however, in either event, to final approval or
1185 rejection by the Court if the stated form of punishment includes disbarment, suspension or
1186 public censure. In conjunction with the Court's review as set forth herein, the Board shall
1187 ~~submit to the Court and provide to~~ file in the Nashville office of the Clerk of the Supreme

1188 Court and shall serve on the respondent attorney and his/her counsel of record pursuant to
1189 Section 18.2 a Notice of Submission with an attached copy of a Protocol Memorandum as
1190 defined in Section 2. The respondent attorney shall not be permitted to file a response to the
1191 Protocol Memorandum required under this Section.

1192 **24.2.** A continuance in a hearing panel proceeding, or before a trial court, on the basis
1193 of such a tender shall be granted only with the concurrence of Disciplinary Counsel.
1194 Approval of such a tendered plea by the Board or trial court and, if required, by the Court
1195 shall divest the hearing panel or trial court of further jurisdiction. The final order of
1196 discipline shall be predicated upon the petition and an approved tendered conditional guilty
1197 plea.

1198 **Section 25. Reciprocal Discipline**

1199 **25.1.** ~~All attorneys subject to disciplinary jurisdiction pursuant to Section 8.1 shall,~~
1200 ~~Upon~~ being subjected to professional disciplinary action in another jurisdiction while
1201 subject to the disciplinary jurisdiction of this Court pursuant to Section 8.1, an attorney shall
1202 promptly inform Disciplinary Counsel of such action. Upon being informed that an attorney
1203 subject to disciplinary jurisdiction pursuant to Section 8.1 has been subjected to discipline
1204 in another jurisdiction while subject to disciplinary jurisdiction pursuant to Section 8.1,

1205 Disciplinary Counsel shall obtain a certified copy of such disciplinary order and file the same
1206 with the Board and ~~with the Court~~shall file in the Nashville office of the Clerk of the
1207 Supreme Court a Notice of Submission with an attached copy of such disciplinary order.

1208 **25.2.** Upon receipt of a certified copy of an order ~~demonstrating that an attorney~~
1209 ~~subject to disciplinary jurisdiction~~ pursuant to Section ~~8.1~~ has been disciplined in another
1210 ~~jurisdiction while subject to disciplinary jurisdiction pursuant to Section 8~~25.1, the Court
1211 shall forthwith serve upon the attorney in accordance with Section 18.1 a notice containing:

1212 (a) A copy of the order from the other jurisdiction; and

1213 (b) An order directing that the attorney inform the Court, within thirty days from
1214 service of the notice, of any claim by the attorney predicated upon the grounds set forth in
1215 Section 25.4 that the imposition of the identical discipline in this State would be
1216 unwarranted and the reasons therefor.

1217 **25.3.** In the event the discipline imposed in the other jurisdiction has been stayed
1218 there, any reciprocal discipline imposed in this State shall be deferred until such stay expires.
1219 However, Disciplinary Counsel, in his or her discretion, may initiate and conduct an
1220 independent investigation of the attorney pursuant to Section 15.

1221 **25.4.** Upon the expiration of thirty days from service of the notice issued pursuant to
1222 Section of 25.2, the Court shall impose the identical discipline unless Disciplinary Counsel
1223 or the attorney demonstrates, or the Court finds, that upon the face of the record upon which
1224 the discipline is predicated it clearly appears:

1225 (a) That the procedure was so lacking in notice or opportunity to be heard as to
1226 constitute a deprivation of due process; or

1227 (b) That there was such an infirmity of proof establishing the misconduct as to give
1228 rise to the clear conviction that the Court could not, consistent with its duty, accept as final
1229 the conclusion on that subject; or

1230 (c) That the misconduct established warrants substantially different discipline in this
1231 State.

1232 Where the Court determines that any of said elements exist, the Court shall enter such
1233 other order as it deems appropriate.

1234 **25.5.** In all other respects, a final adjudication in another jurisdiction that an attorney
1235 subject to disciplinary jurisdiction pursuant to Section 8.1 has been guilty of misconduct
1236 while subject to disciplinary jurisdiction pursuant to Section 8.1 shall establish conclusively
1237 the misconduct for purposes of a disciplinary proceeding in this State.

1238 **Section 26. Attorneys Failing to Comply with Tenn. Code Ann.**

1239 **§§ 67-4-1701 - 1710 (Privilege Tax Applicable to Persons**

1240 **Licensed to Practice Law)**

1241 26.1. Tenn. Code Ann. § 67-4-1702 levies a tax on the privilege of engaging in certain
1242 vocations, professions, businesses and occupations, including “persons licensed as attorneys
1243 by the supreme court of Tennessee.” Tenn. Code Ann. § 67-4-1704 provides that failure to
1244 pay the privilege tax can result in suspension or revocation of “any license or registration by
1245 the appropriate licensing board” and goes on to state that “the supreme court of Tennessee
1246 is encouraged to establish guidelines to suspend the license of an attorney who fails to
1247 comply with the requirements of this part.” The Court hereby establishes the following
1248 procedures to promote compliance with Tenn. Code Ann. §§ 67-4-1701 - 1710, as those
1249 Sections apply to attorneys licensed by the Court.

1250 26.12. The Court designates the Chief Disciplinary Counsel of the Board as the
1251 official to whom the Department of Revenue shall annually send a list of attorneys licensed
1252 by the Court who have failed, for two or more consecutive years, to pay the privilege tax
1253 imposed by Tenn. Code Ann. § 67-4-1702.

1254 26.23. Upon receipt of the list of attorneys transmitted by the Department of Revenue,
1255 the Chief Disciplinary Counsel shall send each attorney listed thereon a Privilege Tax

1256 Delinquency Notice (the “Notice”), stating that the Department of Revenue has informed the
1257 ~~Board~~Chief Disciplinary Counsel that the attorney has failed, for two or more consecutive
1258 years, to pay the privilege tax imposed by Tenn. Code Ann. § 67-4-1702 and that the
1259 attorney’s license is therefore subject to suspension. The Notice shall be sent to the attorney
1260 by a form of United States mail providing delivery confirmation, at the primary address
1261 shown in the attorney’s most recent registration statement filed pursuant to Section 10.3 or
1262 at the attorney’s last known address, and at the email address shown in the attorney’s most
1263 recent registration statement filed pursuant to Section 10.3 or at the attorney’s last known
1264 email address.

1265 **26.34.** (a) Each attorney to whom a Notice is sent pursuant to Section ~~276.23~~ shall file
1266 with the Board within thirty days of the date of delivery of the Notice an affidavit or
1267 declaration under penalty of perjury supported by documentary evidence showing that the
1268 attorney has paid the delinquent privilege taxes and any interest and penalties assessed by the
1269 Department of Revenue, and has paid to the Board a delinquent compliance fee of One
1270 Hundred Dollars(\$100.00) to defray the Board’s costs in issuing the Notice; or, alternatively,
1271 demonstrating that the Notice was sent to the attorney in error, the attorney having timely
1272 paid the privilege taxes.

1273 (b) Within thirty days of the expiration of the time for an attorney to respond to the
1274 Notice pursuant to Subsection (a) hereof, the Chief Disciplinary Counsel shall ~~prepare and~~

1275 ~~furnish to the~~ file in the Nashville office of the Clerk of the Supreme Court a Notice of
1276 Submission with an attached copy of a proposed Suspension Order. The proposed Suspension
1277 Order shall list all attorneys who were sent the Notice and who failed to respond; failed to
1278 demonstrate to the satisfaction of the ~~Board~~ Chief Disciplinary Counsel that they had paid the
1279 delinquent privilege taxes and any interest and penalties, and had paid to the Board a
1280 delinquent compliance fee of One Hundred Dollars(\$100.00) to defray the Board's costs in
1281 issuing the Notice; or, failed to demonstrate to the satisfaction of the ~~Board~~ Chief Disciplinary
1282 Counsel that the Notice had been sent in error. The proposed Suspension Order shall provide
1283 that the license to practice law of each attorney listed therein shall be suspended upon the
1284 Court's filing of the Order and that the license of each attorney listed therein shall remain
1285 suspended until the attorney pays the delinquent privilege taxes and any interest and
1286 penalties, and pays to the Board the One Hundred Dollar (\$100.00) delinquent compliance
1287 fee ~~and a separate reinstatement fee in the amount of Two Hundred Dollars (\$200.00)~~, and
1288 is reinstated pursuant to Subsection (d).

1289 (c) Upon the Court's review and approval of the proposed Suspension Order, the
1290 Court will file the Order summarily suspending the license to practice law of each attorney
1291 listed in the Order. The suspension shall remain in effect until the attorney pays the
1292 delinquent privilege taxes and any interest and penalties, and pays to the Board the One
1293 Hundred Dollar (\$100.00) delinquent compliance fee ~~and the Two Hundred Dollar (\$200.00)~~
1294 ~~reinstatement fee~~, and until the attorney is reinstated pursuant to Subsection (d). An attorney

1295 who fails to resolve the suspension within thirty days of the Court's filing of the Suspension
1296 Order shall comply with the requirements of Section 28.

1297 (d) An attorney suspended by the Court pursuant to Subsection (c) may~~who wishes~~
1298 to be reinstated and whose suspension has continued for less than one year shall file with the
1299 Board an application for reinstatement of the attorney's license to practice law demonstrating
1300 that the attorney has paid all delinquent privilege taxes and any interest and penalties, and
1301 has paid to the Board the One Hundred Dollar (\$100.00) delinquent compliance fee ~~and the~~
1302 ~~Two Hundred Dollar (\$200.00) reinstatement fee~~; or, alternatively, demonstrating that the
1303 Suspension Order was entered in error as to the attorney. If the application is satisfactory to
1304 the ~~Board~~Chief Disciplinary Counsel and if the attorney otherwise is eligible for
1305 reinstatement, the ~~Board, or the~~ Chief Disciplinary Counsel ~~acting on its behalf, shall~~
1306 ~~promptly prepare and send to the Court~~shall promptly file in the Nashville office of the Clerk
1307 of the Supreme Court a Notice of Submission with an attached copy of a proposed
1308 Reinstatement Order. The proposed Reinstatement Order shall provide that the attorney's
1309 reinstatement is effective as of the date of the attorney's payment of all delinquent privilege
1310 taxes and any interest and penalties, and the attorney's payment to the Board of the One
1311 Hundred Dollar (\$100.00) delinquent compliance fee ~~and the Two Hundred Dollar (\$200.00)~~
1312 ~~reinstatement fee~~; or, alternatively, as of the date of entry of the Suspension Order if that
1313 Order was entered in error. An attorney resolves a suspension within thirty days for
1314 purposes of Section 26.3 if a Notice of Submission with an attached copy of a proposed

1315 Reinstatement Order has been filed in the Nashville office of the Clerk of the Supreme Court
1316 within thirty days of the Court's filing of the Suspension Order.

1317 (e) If the application for reinstatement is denied by the Chief Disciplinary Counsel,
1318 the attorney seeking reinstatement may appeal to the Board, or a committee of no fewer than
1319 three of its members, within fifteen days of notice of the denial. The Board, or a committee
1320 of its members, shall review the documentation provided by the attorney and approve or
1321 reverse the determination of the Chief Disciplinary Counsel. There shall be no petition for
1322 rehearing.

1323 (f) An attorney suspended by the Court pursuant to Subsection (c) and whose
1324 suspension continues for one year or more must seek reinstatement under Section 30.

1325 **Section 27. Proceedings Where an Attorney Is Declared to Be Incompetent or Is**
1326 **Alleged to Be Incapacitated**

1327 **27.1.** Where an attorney has been judicially declared incompetent or involuntarily
1328 committed on the grounds of incompetency or disability or detained or placed in the custody
1329 of a center for the treatment of mental illness after a probable cause hearing pursuant to the
1330 procedures set forth in Tenn. Code Ann. § 33-6-103, the Court, upon proper proof of the fact,
1331 shall enter an order transferring such attorney to disability inactive status effective
1332 immediately for an indefinite period until further order of the Court. A copy of such order

1333 shall be served upon the attorney, the attorney's guardian, and/or the director of the
1334 institution to which the attorney had been committed in such manner as the Court may direct.

1335 **27.2.** Whenever during the course of an investigation pursuant to Section 15.1 or
1336 formal proceedings pursuant to Section 15.2, Disciplinary Counsel obtains information
1337 calling into question the mental or physical health of the respondent attorney that raises a
1338 substantial concern regarding the respondent attorney's capacity to continue the practice of
1339 law or to respond to or defend against a complaint, Disciplinary Counsel should request the
1340 respondent attorney to voluntarily agree to submit to an evaluation by the Tennessee Lawyers
1341 Assistance Program or an examination by a qualified medical or mental health expert to
1342 determine respondent attorney's capacity and report the results of the examination to ~~the~~
1343 Board Disciplinary Counsel and to the respondent attorney and the respondent attorney's
1344 counsel. In the event the respondent attorney declines to submit to such evaluation or
1345 examination and reporting, Disciplinary Counsel should file a petition with the Court for an
1346 order requiring the respondent attorney to submit to an evaluation by the Tennessee Lawyers
1347 Assistance Program or an examination by a qualified medical or mental health expert as the
1348 Court shall designate, the results of either of which shall be reported to ~~the Board~~ Disciplinary
1349 Counsel, the Court, and the respondent attorney and the respondent attorney's counsel.
1350 Failure to comply with an order issued under this Subsection may serve as the basis for
1351 temporary suspension pursuant to Section 12.3.

1352 **27.3.** ~~If~~The Board may petitions the Court to determine whether an attorney is
1353 incapacitated from continuing the practice of law by reason of mental infirmity or illness or
1354 because of addiction to drugs or intoxicants, ~~or if~~and an attorney, with no disciplinary
1355 proceeding or complaint pending, may petitions to be transferred to disability inactive status.
1356 If such a petition is filed, the Court may take or direct such action as it deems necessary or
1357 proper to determine whether the attorney is so incapacitated, including the examination of
1358 the attorney by such qualified medical or mental health experts as the Court shall designate
1359 or assignment to a hearing panel for a formal hearing to determine the issue of capacity. If
1360 the Board petitions the Court, the burden of proof shall be upon the Board and shall be by
1361 a preponderance of the evidence. If, upon due consideration of the matter, the Court
1362 concludes that the attorney is incapacitated from continuing to practice law, it shall enter an
1363 order transferring the attorney to disability inactive status on the ground of such disability for
1364 an indefinite period and until the further order of the Court. If the Board files a petition
1365 pursuant to this Section while a disciplinary proceeding is pending against the respondent
1366 attorney, the disciplinary proceeding shall be suspended pending the determination as to the
1367 attorney's alleged incapacity.-

1368 **27.4.** (a) If, during the course of a disciplinary investigation or proceeding, the
1369 respondent attorney contends that ~~the~~he/she is suffering from a disability by reason of mental
1370 or physical infirmity or illness, or because of addiction to drugs or intoxicants, which

1371 disability makes it impossible for the respondent attorney to respond to or defend against the
1372 complaint, such contention shall place at issue the respondent attorney's capacity to continue
1373 to practice law. Disciplinary Counsel, the respondent attorney or the attorney for the
1374 respondent attorney shall file in the Nashville office of the Clerk of the Supreme Court a
1375 Notice advising the Court of such contention within ten days of learning of the contention,
1376 if the Court has not been otherwise notified. The Court thereupon shall enter an order
1377 immediately transferring the respondent attorney to disability inactive status for an indefinite
1378 period and until the further order of the Court. The Court may take or direct such action as
1379 it deems necessary or proper to make a determination as to the respondent attorney's capacity
1380 to continue to practice law and to respond to or defend against the complaint, including the
1381 examination of the respondent attorney by such qualified medical or mental health experts
1382 as the Court shall designate or the referral of the matter to a hearing panel for a formal
1383 hearing to determine the respondent attorney's capacity to continue to practice law and to
1384 respond to or defend against the complaint. In any such proceeding, the burden of proof shall
1385 rest upon the respondent attorney and shall be by a preponderance of the evidence.

1386 (b) If the Court or hearing panel determines that the respondent attorney is
1387 incapacitated from responding to or defending against the complaint, the Court or hearing
1388 panel shall take such action as it deems proper and advisable, including a direction for the
1389 suspension of the disciplinary proceeding against the respondent attorney.

1390 (c) If the investigation of complaints or disciplinary proceedings has been suspended
1391 pursuant to this Section, the Board may petition the Court to require the disabled attorney to
1392 provide competent evidence from qualified medical or mental health experts that his or her
1393 condition continues to be such that the disabled attorney is not capable of responding to
1394 pending disciplinary complaints, or to submit to an examination by such independent
1395 qualified medical or mental health experts as the Court shall designate in order to determine
1396 whether the condition continues to be such that the disabled attorney is not capable of
1397 responding to pending complaints or defending against disciplinary proceedings. The results
1398 of such examination shall be reported to the Board Disciplinary Counsel, the Court and the
1399 attorney and the attorney's counsel. In the event such experts determine that the attorney has
1400 recovered from the disability to the point that the attorney is capable of defending against
1401 allegations of misconduct, the Board may petition the Court for an order permitting the
1402 disciplinary proceedings to be reactivated. If the Board files such a petition, the burden of
1403 proof shall rest upon the Board and shall be by a preponderance of the evidence. Should the
1404 Court permit the disciplinary proceedings to proceed, the cost of the independent medical or
1405 mental health examinations shall be charged to the respondent attorney.

1406 **27.5.** The Board shall cause a notice of transfer to disability inactive status to be
1407 published pursuant to Section 28.101.

1408 **27.6.** Whenever an attorney has been transferred to disability inactive status pursuant
1409 to either Section 27.1 or Section 27.3; or, whenever the Board, pursuant to Section 27.2,
1410 petitions the Court to determine that an attorney is disabled or incapacitated from continuing
1411 the practice of law, the Board shall request such action under the provisions of Section 29
1412 as may be indicated in order to protect the interests of the disabled or allegedly disabled
1413 attorney and the attorney's clients.

1414 **27.7.** (a) No attorney transferred to disability inactive status pursuant to Section 27
1415 may resume active status until reinstated by order of the Court. Any attorney transferred to
1416 disability inactive status pursuant to Section 27 shall be entitled to petition for reinstatement
1417 to active status ~~once a year or at such shorter intervals as the Court may direct in the order~~
1418 ~~transferring the respondent to disability inactive status, or any modification thereof.~~ after the
1419 disability is removed. The petition for reinstatement shall be filed with the Court in the form
1420 adopted by the Board. The petitioner shall serve a copy of the petition upon Disciplinary
1421 Counsel, who shall investigate the matter and file an answer to the petition within thirty days.
1422 The answer shall include a recommendation as to whether the petition should be granted
1423 without a hearing or referred to a hearing panel for a hearing.

1424 (b) Upon the filing of a petition for reinstatement pursuant to Section 27, the Court
1425 may take or direct such action as it deems necessary or proper to a determination of whether
1426 the attorney's disability has been removed, including a direction for an examination of the

1427 attorney by such qualified medical or mental health experts as the Court shall designate and
1428 the furnishing of such expert's report to the Board, the Court, and the attorney and the
1429 attorney's counsel. In its discretion, the Court may direct that the expense of such an
1430 examination shall be paid by the attorney, and that the attorney establish proof of competence
1431 and learning in law, which proof may include certification by the Board of Law Examiners
1432 of the successful completion of an examination for admission to practice. The Court also
1433 may refer the petition to a hearing panel for a hearing in which the petitioner shall have the
1434 burden of proof. The hearing shall be governed by Sections 30.3-30.6. The petition shall be
1435 granted upon a showing by clear and convincing evidence that the attorney's disability has
1436 been removed and the attorney is fit to resume the practice of law.-

1437 (c) Pending disciplinary complaints against the attorney, whether filed before or after
1438 the attorney's transfer to disability inactive status, must be resolved before the effective date
1439 of any reinstatement. Provided, however, that the Court may order reinstatement pending the
1440 completion of any conditional disciplinary action (e.g., probation or restitution) imposed
1441 upon the attorney or the final completion of the terms of any agreement executed by the
1442 attorney and the Tennessee Lawyers Assistance Program.

1443 **27.8.** Where an attorney has been transferred to disability inactive status by an order
1444 in accordance with Section 27.1 and, thereafter, in proceedings duly taken, the attorney has
1445 been judicially declared to be competent, this Court may dispense with further evidence that

1446 the attorney's disability has been removed and may direct the attorney's reinstatement to
1447 active status upon such terms as the Court deems proper and advisable.

1448 **27.9.** The filing of a petition for reinstatement to active status by an attorney
1449 transferred to disability inactive status because of disability shall be deemed to constitute a
1450 waiver of any doctor-patient privilege with respect to any treatment of the attorney during
1451 the period of disability. The attorney shall be required to disclose the name of every
1452 psychiatrist, psychologist, physician and hospital or other institution by whom or in which
1453 the attorney has been examined or treated since the transfer to disability inactive status, and
1454 shall furnish to the Court written consent to each to divulge such information and records as
1455 requested by court appointed medical experts.

1456 **Section 28. Notice to Clients, Adverse Parties, and Other Counsel**

1457 **28.1. Effective Date of Order.** Orders imposing disbarment, suspension, transfers
1458 to disability inactive status, or temporary suspension are effective on a date ten days after the
1459 date of the order, except where the Court finds that immediate disbarment, suspension, or
1460 temporary suspension is necessary to protect the public.

1461 **28.2. Recipients of Notice; Contents.** By no later than the effective date of the
1462 order, the respondent attorney shall notify or cause to be notified by registered or certified
1463 mail, return receipt requested:

1464 (a) all clients being represented in pending matters;

1465 (b) all co-counsel in pending matters; and

1466 (c) all opposing counsel in pending matters, or in the absence of opposing counsel, the
1467 adverse parties,

1468 of the order of the Court and that the attorney is therefore disqualified to act as attorney after
1469 the effective date of the order except as permitted by Section 12.3(c). The notice to be given
1470 to the attorney(s) for an adverse party, or, in the absence of opposing counsel, the adverse
1471 parties, shall state the last known address of the client of the respondent attorney. The notice
1472 shall inform the recipient of the effective date of the suspension and the effect it will have
1473 on the attorney's representation of the client in the applicable matter.

1474 **28.3. Special Notice.** The Court may direct the issuance of notice to such financial
1475 institutions or others as may be necessary to protect the interests of clients or other members
1476 of the public.

1477

1478 **28.4. Duty to Maintain Records.** The respondent attorney shall keep and maintain
1479 records of the steps taken to accomplish the requirements of Sections 28.1 and 28.2 and shall
1480 make those records available to Disciplinary Counsel on request.

1481 **28.5. Return of Client Property.** The respondent attorney shall deliver to all clients
1482 any papers or other property to which they are entitled and shall notify them and any counsel
1483 representing them of a suitable time and place where the papers and other property may be
1484 obtained, calling attention to any urgency for obtaining the papers or other property.

1485 **28.6. Refund of Fees.** By no later than the effective date of the order, the respondent
1486 attorney shall refund any part of any fees, expenses, or costs paid in advance that has not
1487 been earned or expended, unless the order directs otherwise.

1488 **28.7. Withdrawal from Representation.** ~~In the event another attorney does not~~
1489 ~~become attorney of record on behalf of the client before the effective date of the order, t~~The
1490 respondent attorney shall within ten days after the effective date of the order ~~move~~file in the
1491 court, agency or tribunal in which the proceeding is pending a motion for leave to withdraw.~~·~~
1492 ~~The respondent attorney shall in that event file with the court, agency, or tribunal before~~
1493 ~~which the proceeding is pending a copy of the notice to~~ or a motion or agreed order to
1494 substitute and shall serve a copy of the motion or agreed order on opposing counsel or the

1495 adverse ~~parties, including the place of residence and all mailing addresses of the client of the~~
1496 ~~respondent attorney.~~

1497 ~~28.8. party, if unrepresented, in the proceeding.~~

1498 **28.8. New Representation Prohibited.** Prior to the effective date of the order, if not
1499 immediately, the respondent attorney shall not undertake any new legal matters. By no later
1500 than the effective date of the order, the respondent attorney shall cease to maintain a presence
1501 or occupy an office where the practice of law is conducted, except as provided in Section
1502 12.3(c). Within thirty days after the effective date of the order, the respondent attorney shall
1503 take such action as is necessary to cause the removal of any indicia of attorney, lawyer,
1504 counselor at law, legal assistant, law clerk, or similar title.

1505 **28.9. Affidavit Filed with Board.** Within ten days after the effective date of the
1506 order, the respondent attorney shall file with the Board an affidavit or declaration under
1507 penalty of perjury showing:-

1508 (a) Compliance with the provisions of the order and with Section 28;

1509 (b) All other state, federal, and administrative jurisdictions to which the attorney is
1510 admitted to practice;

1511 (c) Place of residence and all addresses where communications may thereafter be
1512 directed; and

1513 (d) Service of a copy of the affidavit or declaration under penalty of perjury upon
1514 Disciplinary Counsel, which shall include proof of compliance with Section 28.2.

1515 **28.10. Reinstatement.** Proof of compliance with Section 28 shall be a condition
1516 precedent to any petition for reinstatement.

1517 **28.11. Publication of Notice.** The Board shall provide a notice of the disbarment,
1518 suspension, disability inactive status, temporary suspension or reinstatement to all State
1519 judges and to the Tennessee Bar Association , and shall cause the same to be published in a
1520 newspaper of general circulation in each county in which the respondent attorney maintained
1521 an office for the practice of law, and to be published in such other publications as the Board
1522 may determine to be appropriate.

1523 ~~**Section 29. Appointment of Counsel to Protect Clients' Interests When Their**~~
1524 ~~**Attorney Has Been Transferred to Disability Inactive Status, Placed on**~~
1525 ~~**Temporary Suspension, Suspended or Disbarred, or Has Disappeared,**~~
1526 ~~**Abandoned a Law Practice, or Died, or is Alleged to be Disabled or**~~
1527 ~~**Incapacitated Pursuant to Section 27.3**~~

1528 ~~—————~~ **29.1. Appointment and Duties of Receiver Attorney.** If an attorney has been
1529 transferred to disability inactive status, placed on temporary suspension, suspended,
1530 or disbarred, and there is evidence that he or she has not complied with Section 28;
1531 or if an attorney has disappeared, abandoned a law practice, or died, or is alleged to
1532 be disabled or incapacitated from continuing the practice of law pursuant to Section
1533 27.3; and no partner, executor, or other responsible party capable of conducting the
1534 attorney's affairs is known to exist, a person or persons with personal knowledge
1535 shall file with the Presiding Judge in the judicial district in which the attorney
1536 maintained a practice an affidavit(s) setting forth the pertinent facts. The Presiding
1537 Judge thereafter, upon proper proof of the fact, shall appoint an attorney or attorneys
1538 ("Receiver Attorneys") to take custody of the files of the lawyer and inventory the
1539 same, advise clients of the death and/or disability of the attorney, and the need for the
1540 clients to retain substitute counsel, return the file to the client upon request, or any
1541 other actions as directed by the Presiding Judge. The Receiver Attorney shall take
1542 appropriate steps, subject to the discretion of the Presiding Judge and upon
1543 appropriate order of the court, to sequester client funds of the attorney pursuant to
1544 Section 29.4. The appointment of the Receiver Attorney by the Presiding Judge shall

1545 not be deemed in any manner to create the relationship of attorney and client between
1546 the Receiver Attorney and any person whatsoever.

1547 ~~——— **29.2. Duty of Presiding Judge.** Upon notification pursuant to Section 29.1~~
1548 ~~of the transfer of an attorney to disability inactive status, temporary suspension of the~~
1549 ~~attorney, suspension of the attorney, or disbarment of the attorney, where there is~~
1550 ~~evidence that the attorney has not complied with Section 28, or of the disappearance,~~
1551 ~~abandonment of law practice, death, disability, or incapacitation from continued~~
1552 ~~practice of law pursuant to Section 27.3, the Presiding Judge shall, in addition to~~
1553 ~~appointing Receiver Attorneys to carry out the duties imposed by this Section, notify~~
1554 ~~clerks of courts in the judicial district and any appropriate local Bar Associations of~~
1555 ~~the appointment of the Receiver Attorneys to conduct the duties and responsibilities~~
1556 ~~imposed by this Section.~~

1557 ~~——— **29.3. Protection for Records Subject to Inventory.** Any Receiver Attorney~~
1558 ~~so appointed shall not be permitted to disclose any information contained in any files~~
1559 ~~inventoried without the consent of the client to whom the file relates or orders of the~~
1560 ~~Presiding Judge, except as necessary to carry out the orders of the court which~~

1561 appointed the Receiver Attorney to make the inventory. The inventory should include
1562 both open and closed files.

1563 ~~——— **29.4. Custody of Funds.** Any Receiver Attorney appointed pursuant to the~~
1564 ~~provisions of this Section shall, with the express approval of the Presiding Judge~~
1565 ~~upon proper application by said Receiver Attorney, be permitted to take custody and~~
1566 ~~control over the funds contained in bank accounts and other depositories maintained~~
1567 ~~for the purpose of operating accounts as well as all trust accounts of the attorney for~~
1568 ~~whom the appointment has been made. The funds thus transferred to the control of~~
1569 ~~the Receiver Attorney shall be retained by the Receiver Attorney and disbursed,~~
1570 ~~utilized or expended pursuant to orders of the Presiding Judge.~~

1571 ~~——— **29.5. Disposition of Files.** All files subject to the control, supervision and~~
1572 ~~custody of Receiver Attorneys, pursuant to appointment under the provisions of this~~
1573 ~~Section, shall be maintained by Receiver Attorneys until the Presiding Judge shall,~~
1574 ~~upon proper petition, direct an alternative place of preservation or repository as, in~~
1575 ~~the sole discretion of the Presiding Judge, is appropriate under all known~~
1576 ~~circumstances.~~

1577 ~~29.6. Limitation of Liability.~~ Any person or entity making a notification to
1578 the Presiding Judge pursuant to the provisions of Section 29, or any attorney
1579 appointed as a Receiver Attorney pursuant to Section 29 by the Presiding Judge of
1580 the judicial district in which the attorney maintained a practice and who is charged
1581 with the responsibility of inventorying files and taking such action as further required
1582 by said appointment by the Presiding Judge, shall be entitled to and receive the full
1583 extent of all immunities and protections given to judges of the circuit and chancery
1584 courts of the State of Tennessee, without exception or limitation, for all acts taken
1585 pursuant to, arising out of, or connected with the appointment and any subsequent
1586 orders of the Presiding Judge.

1587 Section 29 Appointment of a Receiver when an Attorney Becomes Unable to Continue
1588 the Practice of Law

1589 29.1. The purpose of this Section is to protect clients and, to the extent possible and
1590 not inconsistent with the protection of clients, to protect the interests of the attorney to whom
1591 this rule applies.

1592 29.2. Appointment of a Receiver Attorney

1593 (a) For purposes of this Section, an “affected attorney” is an attorney who is licensed
1594 and engaged in the practice of law in this state and who has no partner, associate, executor,
1595 or other appropriate successor or representative capable and available to continue or wind-
1596 down the attorney’s law practice.

1597 (b) If an affected attorney has: (1) resigned or been suspended or disbarred from the
1598 practice of law; (2) disappeared or abandoned the practice of law; (3) become disabled or
1599 incapacitated or otherwise become unable to continue the practice of law or has been
1600 transferred to disability inactive status pursuant to section 27 of this Rule; or (4) died, the
1601 Board of Professional Responsibility, the Tennessee Bar Association or any local bar
1602 association, any attorney licensed to practice law in this state, or any other interested person
1603 may commence a proceeding in the chancery, circuit, or probate court for the county in which
1604 the affected attorney maintained an office for the practice of law for the appointment of an
1605 attorney who is licensed to practice law in this state and in good standing with the Board of
1606 Professional Responsibility to serve as a receiver attorney to wind-down the law practice of
1607 the affected attorney.

1608 (c) The proceeding shall be commenced by the filing of a complaint setting forth the
1609 pertinent facts, which shall be verified or accompanied by the affidavit or declaration under
1610 penalty of perjury of a person having personal knowledge of the facts. To the extent
1611 practicable, the complaint and any accompanying affidavit or declaration under penalty of

1612 perjury shall be served upon the affected attorney or the guardian, conservator, or personal
1613 representative of the affected attorney if one has been appointed and qualified.

1614 (d) If the trial court determines upon a showing by a preponderance of the evidence
1615 that the appointment of a receiver attorney is necessary to protect the interests of the affected
1616 attorney's clients or the interests of the affected attorney, the trial court shall appoint one or
1617 more receiver attorneys. The order of the trial court may be appealed to the Court by the
1618 affected attorney or by the guardian or personal representative of the affected attorney, or by
1619 the complainant.

1620 29.3. Duties and Authority of a Receiver Attorney

1621 (a) The receiver attorney shall: (1) take custody of the files, records, bank accounts,
1622 and other property of the affected attorney's law practice; (2) review the files and other
1623 papers to identify any pending matters; (3) notify all clients represented by the affected
1624 attorney in pending matters of the appointment of the receiver attorney and suggest that it
1625 may be in their best interest to obtain replacement counsel; (4) notify all courts and counsel
1626 involved in any pending matters, to the extent they can be reasonably identified, of the
1627 appointment of a receiver attorney for the affected attorney; (5) deliver the files, money, and
1628 other property belonging to the clients of the affected attorney pursuant to the client's
1629 directions, subject to the right to retain copies of such files or assert a retaining or charging
1630 lien against such files, money, or other property if fees or disbursements for past services

1631 rendered are owed to the affected attorney by the client; and (6) take such steps as seem
1632 indicated to protect the interests of the clients, the public, and, to the extent possible and not
1633 inconsistent with the protection of the affected attorney's clients, to protect the interests of
1634 the affected attorney. If the receiver attorney determines that conflicts of interest exist
1635 between the receiver attorney and a client of the affected attorney, the receiver attorney shall
1636 notify the court of the existence of the conflict of interest with regard to the particular matters
1637 and the receiver attorney shall take no action with regard to those cases or files.

1638 (b) The order appointing the receiver attorney shall specifically authorize the receiver
1639 attorney to take custody of and act as signatory on any bank or investment accounts, safe
1640 deposit boxes, and other depositories maintained by the affected attorney in connection with
1641 the affected attorney's law practice, including trust accounts, escrow accounts, payroll
1642 accounts, IOLTA accounts, operating accounts, and special accounts, and to disburse funds
1643 to clients of the affected attorney or others entitled thereto, and take all appropriate actions
1644 with respect to such accounts.

1645 (c) The receiver attorney shall take reasonable efforts to safeguard all property in the
1646 offices of the affected attorney and to collect any outstanding attorney's fees, costs, and
1647 expenses to which the affected attorney is entitled and shall make appropriate arrangements
1648 for the prompt resolution of any disputes concerning outstanding attorney's fees, costs, and
1649 expenses.

1650 (d) To the extent possible, the receiver attorney shall assist and cooperate with the
1651 affected attorney and the guardian or personal representative of the affected attorney in the
1652 transition, sale, or winding-down of the affected attorney's law practice. The receiver
1653 attorney may purchase the law practice of the affected attorney only upon the trial court's
1654 approval of such sale.

1655 (e) The trial court may order the receiver attorney to submit interim and final
1656 accountings, as it deems appropriate. The trial court may allow or direct portions of any
1657 accounting relating to the funds and confidential information of the clients of the affected
1658 attorney to be filed under seal.

1659 29.4. Protection of Client Information and Privilege. The appointment of the receiver
1660 attorney shall not be deemed in any manner to create the relationship of attorney and client
1661 between the receiver attorney and any client of the affected attorney. However, the attorney-
1662 client privilege shall apply to all communications by or between the receiver attorney and the
1663 clients of the affected attorney to the same extent as it would have applied to any
1664 communications by or to the affected attorney, and the receiver attorney shall be governed
1665 by Rule 1.6 of the Tennessee Rules of Professional Conduct with respect to all information
1666 contained in the files of the affected attorney's clients and any information relating to the
1667 matters in which the clients were being represented by the affected attorney.

1668 29.5. Protection of Client Files and Property. The trial court shall have jurisdiction
1669 over all of the files, records, and property of clients of the affected attorney and may make
1670 any orders necessary or appropriate to protect the interests of the clients of the affected
1671 attorney and, to the extent possible and not inconsistent with the protection of clients, the
1672 interests of the affected attorney, including, but not limited to, orders relating to the delivery,
1673 storage, or destruction of the client files of the affected attorney.

1674 29.6. Fees and Expenses of the Receiver Attorney.

1675 (a) The receiver attorney shall be entitled to reasonable fees in compensation for
1676 performance of the receiver attorney's duties and reimbursement for actual and reasonable
1677 costs incurred by the receiver attorney in connection with the performance of the receiver
1678 attorney's duties. Reimbursable expenses shall include, but not be limited to, the actual and
1679 reasonable costs incurred in connection with maintaining the staff, offices, and operation of
1680 the affected attorney's law practice and the employment of attorneys, accountants, and others
1681 retained by the receiver attorney in connection with carrying out the receiver attorney's
1682 duties.

1683 (b) The receiver attorney shall file an application for fees and expenses with the trial
1684 court, which shall determine the amount of such fees and reimbursement. The application
1685 shall be accompanied by an accounting in a form and substance acceptable to the trial court
1686 of all funds and property coming into the custody of the receiver attorney.

1687 (c) Any fees and expenses awarded by the trial court to the receiver attorney shall be
1688 paid by the affected attorney or the estate of the affected attorney or from such other
1689 available sources as the court may direct. The order of the trial court awarding the fees and
1690 expenses shall be a judgment against the affected attorney or the estate of the affected
1691 attorney. The judgment shall be a lien upon all property of the affected attorney or the estate
1692 of the affected attorney retroactive to the date of filing of the complaint for the appointment
1693 of a receiver attorney under this Rule. The judgment lien is subordinate to possessory liens
1694 and to non-possessory liens and security interests created prior to its taking effect and may
1695 be foreclosed upon in the manner prescribed by law.

1696 29.7. Limitation of Liability. Any person serving as a receiver attorney under this
1697 Rule shall be immune from suit for any conduct undertaken in good faith in the course of the
1698 official duties of the receiver attorney.

1699 29.8. Employment of the Receiver as Attorney for a Client. A receiver attorney shall
1700 not, without the informed written consent of the client and the permission of the trial court,
1701 represent a client in a pending matter in which the client was represented by the affected
1702 attorney, other than to temporarily protect the interests of the client, or unless and until the
1703 receiver attorney has concluded the purchase of the law practice of the affected attorney. Any

1704 written consent by the client shall include an acknowledgment that the client is not obligated
1705 to use the receiver attorney.

1706 29.9. Advanced Designation of a Receiver or Successor Attorney. An attorney may
1707 designate in advance another attorney by contract, appointment, or other arrangement to
1708 handle or assist in the continued operation, sale, or closing of the attorney's law practice in
1709 the event of such attorney's death, incapacity or unavailability. In the event an attorney to
1710 whom this rule applies has made adequate provision for the protection of his or her clients,
1711 such provision shall govern to the extent consistent with this Rule unless the trial court or the
1712 Court determines, upon a showing of good cause, that the provisions for the appointment of
1713 a receiver attorney under this Rule should be invoked. After a complaint for the appointment
1714 of a receiver attorney has been filed, the affected attorney or the guardian, conservator, or
1715 personal representative of the affected attorney may designate a successor attorney and the
1716 trial court shall respect such designation unless the trial court determines, upon a showing
1717 of good cause, that such designation should be set aside.

1718 29.10. Effect on Pending Cases. Upon entry of the order appointing a receiver
1719 attorney, any applicable statute of limitations, deadline, time limit, or return date for a filing
1720 as it relates to the clients of the affected attorney shall be tolled during the period from the
1721 date of the filing of the complaint for the appointment of a receiver attorney until the first

1722 regular business day that is not less than sixty (60) days after the date of the entry of the order
1723 appointing the receiver attorney, if it would otherwise expire before the extended date.

1724 **Section 30. Reinstatement**

1725 **30.1.** No attorney ~~suspended~~ disbarred, suspended under any section of this Rule, or
1726 who has assumed inactive status which has continued for one year or more ~~or disbarred,~~ may
1727 resume practice until reinstated by order of the Court, ~~except as provided in Section 10.6.~~
1728 ~~Any attorney suspended for less than one year or for an indefinite period to be determined~~
1729 ~~by the conditions imposed by the judgment may resume practice without reinstatement after~~
1730 ~~filing an affidavit with the Board showing that the attorney has fully complied with the~~
1731 ~~conditions imposed by the judgment, including the payment of costs incurred by the Board~~
1732 ~~in the prosecution of the preceding disciplinary proceeding and any court costs assessed~~
1733 ~~against the attorney in any appeal from such proceeding.~~

1734 **30.2.** An attorney who has been disbarred ~~after hearing or by consent~~ may not apply
1735 for reinstatement until the expiration of at least five years from the effective date of the
1736 disbarment. An attorney who has previously been disbarred and reinstated is not eligible for
1737 reinstatement following a second disbarment.

1738 **30.3.** Except for reinstatement from suspensions which continue for less than one
1739 year, from inactive status assumed under Section 10.7 which continues for less than one year,
1740 from disability inactive status under Section 27, and from suspensions under Section 7 of
1741 Rule 21 of the Rules of the Supreme Court, all petitions for reinstatement ~~by a disbarred or~~
1742 ~~suspended attorney~~ shall be filed under this Section, regardless of when or under what
1743 procedure the suspension or disbarment occurred. ~~The qualifications and requirements for~~
1744 ~~reinstatement existing when the suspension was entered shall apply to any subsequent~~
1745 ~~reinstatement proceeding.~~ No application for reinstatement shall be filed more than ninety
1746 days prior to the time the ~~disbarred or suspended~~ attorney shall first be eligible for
1747 reinstatement. The petition for reinstatement shall be filed with the Board and served upon
1748 Disciplinary Counsel promptly. Upon receipt of the petition, Disciplinary Counsel shall
1749 investigate the matter and file and serve upon the petitioning attorney a responsive pleading
1750 to the petition. The Board shall promptly refer the petition to a hearing panel in the
1751 disciplinary district in which the petitioning attorney maintained an office at the time of the
1752 disbarment or suspension. The hearing panel shall schedule a hearing at which the
1753 petitioning attorney shall have the burden of demonstrating by clear and convincing evidence
1754 that the petitioning attorney has the moral qualifications, competency and learning in law
1755 required for admission to practice law in this state and that the resumption of the practice of
1756 law within the state will not be detrimental to the integrity and standing of the bar or the
1757 administration of justice, or subversive to the public interest. However, reinstatement from

1758 inactive status shall be granted unless the attorney is subject to an outstanding order of
1759 suspension or disbarment or has been on inactive status for over five years, upon the payment
1760 of any assessment in effect for the year the request is made and any arrears accumulated prior
1761 to transfer to inactive status. The hearing panel shall within thirty days file a report
1762 containing its findings and decision and transmit its report, together with the record, to the
1763 Board. There shall be no petition for rehearing. Either party dissatisfied with the hearing
1764 panel's decision may appeal as provided in Section 33.

1765 **30.4.** If it is the decision of the hearing panel that petitioning attorney be reinstated,
1766 the Board shall review the record and within sixty days either appeal as provided in Section
1767 33 or ~~transmit to the Court~~ file in the Nashville office of the Clerk of the Supreme Court a
1768 Notice of Submission with an attached copy of the record of the proceedings before the
1769 hearing panel together with its report approving same. The Court will take such action upon
1770 the record so transmitted as it deems appropriate. ~~No attorney will be reinstated except by~~
1771 ~~order of the Court.~~

1772 **30.5.** ~~F(a)~~ With respect to suspended or disbarred attorneys, the hearing panel or
1773 reviewing court may impose conditions on the petitioning attorney's reinstatement, including
1774 , without limitation, certification by the Board of Law Examiners of the successful
1775 completion of an examination for admission to practice; ~~and,~~ the assignment of a practice

1776 monitor for the purposes and pursuant to the procedures set forth in Section 12.9: and, the
1777 making of restitution required pursuant to Section 12.7. =

1778 (b) With respect to attorneys who have been on inactive status under Section 10.7 for
1779 over five years before filing a petition for reinstatement to active status, the hearing panel or
1780 the reviewing court may require the attorney to establish proof of competency and learning
1781 in law which proof may include certification by the Board of Law Examiners of the
1782 successful completion of an examination for admission to practice subsequent to the date of
1783 suspension or transfer to inactive status.

1784 (c) The petitioning attorney shall pay the costs associated with the conditions of
1785 reinstatement, including without limitation a reasonable fee to the practice monitor pursuant
1786 to the procedures in Section 12.9(d).

1787 **30.6.** In all proceedings upon a petition for reinstatement, cross-examination of the
1788 petitioning attorney's witnesses and the submission of evidence, if any, in opposition to the
1789 petition shall be conducted by Disciplinary Counsel.

1790 **30.7.** Petitions for reinstatement under this Section shall be accompanied by an
1791 advance cost deposit in an amount to be set from time-to-time by the Board to cover
1792 anticipated costs of the reinstatement proceeding. All advance cost deposits collected
1793 hereunder shall be deposited by the Board with the State Treasurer; all such funds including

1794 earnings on investments and all interest and proceeds from said funds, if any, are deemed to
1795 be, and shall be designated as, funds belonging solely to the Board. Withdrawals from those
1796 funds shall only be made by the Board to cover costs of reinstatement proceedings, and
1797 reimbursement of advance cost deposits not expended. Such advance cost deposit funds shall
1798 be maintained, managed, and administered solely and exclusively by the Board.

1799 **30.8.** If the petitioning attorney is found unfit to resume the practice of law, the
1800 petition shall be dismissed. If the petitioning attorney is found fit to resume the practice of
1801 law, the judgment shall reinstate the petitioning attorney; provided, however, that the
1802 judgment may make such reinstatement conditional upon the payment of all or part of the
1803 costs of the proceeding, ~~and upon the making of partial or complete restitution to parties~~
1804 ~~harmed by the petitioning attorney's misconduct which led to the suspension or disbarment;~~
1805 ~~and the reinstatement may be conditioned upon the furnishing of such proof of competency~~
1806 ~~as may be required by the judgment, in the discretion of the Court, which proof may include~~
1807 ~~certification by the Board of Law Examiners of the successful completion of examination for~~
1808 ~~admission to practice. The reinstatement further may be conditioned upon the assignment of~~
1809 ~~a practice monitor for the purposes and pursuant to the procedures set forth in Section 12.9.~~
1810 ~~The petitioning attorney shall pay a reasonable fee to the practice monitor pursuant to the~~
1811 ~~procedures in Section 12.9(d).~~

1812 **30.9. Successive Petitions.** No petition for reinstatement under this Rule, except for
1813 petitions for reinstatement under Section 27, shall be filed within two years following an
1814 adverse judgment upon a petition for reinstatement filed by or on behalf of the same person,
1815 unless otherwise ordered by the Court in denying the petition for reinstatement. -

1816 **Section 31. Expenses, Audit, Reimbursement of Costs**

1817 **31.1. Expenses.** The salaries of Disciplinary Counsel and staff, their expenses,
1818 administrative costs, and the expenses of the members of the Board and of members of the
1819 district committees shall be paid by the Board out of the funds collected under the provisions
1820 of this Rule.

1821 **31.2. Accounting.** The Administrative Office of the Courts performs accounting
1822 functions for the Board, either directly or through its oversight and final approval of
1823 transactions performed by Board personnel.

1824 **31.3. Reimbursement of Costs.**

1825 (a) In the event that a judgment of disbarment, suspension, public censure, private
1826 reprimand, temporary suspension, disability inactive status, reinstatement, or denial of
1827 reinstatement results from formal proceedings, Disciplinary Counsel shall within fifteen days

1828 from the hearing panel's submission of such judgment pursuant to Section 15.3 make
1829 application to the hearing panel for the assessment against the respondent or petitioning
1830 attorney of the necessary and reasonable costs of the proceedings, including court reporter's
1831 expenses for appearances and transcription of all hearings and depositions, the expenses of
1832 the hearing panel in the hearing of the cause, and the hourly charge of Disciplinary Counsel
1833 in investigating and prosecuting, and shall serve a copy of such application on respondent
1834 or petitioning attorney and the petitioning attorney's counsel of record pursuant to Section
1835 18.2. The application shall be accompanied by an affidavit or declaration under penalty of
1836 perjury and such other documentary evidence as Disciplinary Counsel deems appropriate
1837 documenting the hours expended and the costs incurred by Disciplinary Counsel in
1838 investigating and prosecuting the complaint or responding to the petition for reinstatement.
1839 Such proof shall create a rebuttable presumption as to the necessity and reasonableness of
1840 the hours expended and the costs incurred. The respondent or petitioning attorney may
1841 within fifteen days after Disciplinary Counsel's application submit to the hearing panel and
1842 serve on Disciplinary Counsel pursuant to Section 18.2 any response in opposition to the
1843 application for an assessment of costs. The burden shall be upon respondent or petitioning
1844 attorney to prove by a preponderance of the evidence that the hours expended or costs
1845 incurred by Disciplinary Counsel were unnecessary or unreasonable. Disciplinary Counsel
1846 or the respondent or petitioning attorney may request a hearing before the hearing panel, in
1847 which event, the hearing panel shall promptly schedule the same. The hearing panel shall

1848 within fifteen days from the conclusion of such hearing, or in the event no hearing is
1849 requested, within fifteen days from the date on which the respondent or petitioning attorney's
1850 response is due or is submitted, whichever is earlier, submit to the Board its findings and
1851 judgment with respect to Disciplinary Counsel's application for the assessment of costs.

1852 There shall be no petition for rehearing. The making of an application under this Section
1853 shall extend the time for taking steps in the regular appellate process under Section 33.1(a).

1854 (b) In the event that a judgment as set forth in Subsection (a) is appealed to the
1855 circuit or chancery court pursuant to Section 33 and the Board is the prevailing party in such
1856 appeal, Disciplinary Counsel may make application to the circuit or chancery court for the
1857 assessment against the respondent or petitioning attorney of the necessary and reasonable
1858 costs of the trial court proceedings, including court reporter's expenses for appearances and
1859 transcription of all hearings and depositions and the hourly charge of Disciplinary Counsel
1860 for the trial court proceedings. Disciplinary Counsel shall file any such application within
1861 fifteen days from the circuit or chancery court's decree and shall serve a copy of such
1862 application on respondent or petitioning attorney and the attorney's counsel of record. The
1863 application shall be accompanied by an affidavit or declaration under penalty of perjury and
1864 such other documentary evidence as Disciplinary Counsel deems appropriate documenting
1865 the hours expended and the costs incurred by Disciplinary Counsel for the trial court
1866 proceedings. Such proof shall create a rebuttable presumption as to the necessity and
1867 reasonableness of the hours expended and the costs incurred. The respondent or petitioning

1868 attorney may within fifteen days after Disciplinary counsel's application file and serve on
1869 Disciplinary Counsel any response in opposition to the application for an assessment of costs.
1870 The burden shall be upon the respondent or petitioning attorney to prove by a preponderance
1871 of the evidence that the hours expended or costs incurred by Disciplinary Counsel were
1872 unnecessary or unreasonable. The circuit or chancery court may consider the application on
1873 the written submissions alone or may, in the court's discretion, conduct a hearing on the
1874 application. In the event the circuit or chancery court considers the application on the written
1875 submissions alone, the court shall within fifteen days from the date on which the respondent
1876 or petitioning attorney's response is due or submitted, whichever is earlier, enter and serve
1877 on the parties its findings and judgment with respect to the application for the assessment of
1878 costs. In the event the circuit or chancery court conducts a hearing on the application for
1879 costs, the court shall within fifteen days from the date of the hearing enter and serve on the
1880 parties its findings and judgment with respect to the application for the assessment of costs.
1881 The filing of an application under this Section shall extend the time for appeal to the Court
1882 under Section 33.1(d) and Tenn. R. App. P. 4.

1883 (c) In the event that the decree of the circuit or chancery court is appealed to the Court
1884 pursuant to Section 33 and the Board is the prevailing party in such appeal, Disciplinary
1885 Counsel may make application to the Court for the assessment against the respondent or
1886 petitioning attorney of the necessary and reasonable costs of the proceedings before the
1887 Court, including court reporter's expenses for appearances and transcription of all hearings

1888 and depositions and the hourly charge of Disciplinary Counsel for the proceedings before the
1889 Court. Disciplinary Counsel shall file any such application within fifteen days from the
1890 Court's judgment and shall serve a copy of such application on respondent or petitioning
1891 attorney and the attorney's counsel of record. The application shall be accompanied by an
1892 affidavit or declaration under penalty of perjury and such other documentary evidence as
1893 Disciplinary Counsel deems appropriate documenting the hours expended and the costs
1894 incurred by Disciplinary Counsel for the proceedings in the Court. Such proof shall create
1895 a rebuttable presumption as to the necessity and reasonableness of the hours expended and
1896 the costs incurred. The respondent or petitioning attorney may within fifteen days after
1897 Disciplinary counsel's application file and serve on Disciplinary Counsel any response in
1898 opposition to the application for an assessment of costs. The burden shall be upon the
1899 respondent or petitioning attorney to prove by a preponderance of the evidence that the hours
1900 expended or costs incurred by Disciplinary Counsel were unnecessary or unreasonable. The
1901 Court shall consider the application on the written submissions.

1902 (d) The provisions of subsections (a) - (c) shall not apply to costs assessed pursuant
1903 to a guilty plea in which the respondent or petitioning attorney has agreed to the payment of
1904 costs and the amount thereof.

1922 (a) a recommendation is made for the imposition of public discipline, without the
1923 initiation of a formal disciplinary proceeding pursuant to Section 15.2, ~~is filed with the Court~~
1924 ~~by the Board~~; or

1925 (b) a petition to initiate a formal disciplinary proceeding is filed pursuant to Section
1926 15.2; or

1927 (c) the respondent attorney requests in writing submitted to Disciplinary Counsel or
1928 the Board that the matter be public; or-

1929 (d) the investigation is predicated upon conviction of the respondent attorney for a
1930 crime; or

1931 (e) in matters involving alleged disability, the Court enters an order transferring the
1932 respondent attorney to disability inactive status pursuant to Section 27.

1933 **32.2.** In disability proceedings referred to in Sections 27 and 32.1(e), the order
1934 transferring the respondent attorney to disability inactive status shall become a public record
1935 upon filing; however, all other documents relating to the respondent attorney's disability
1936 proceeding, including any subsequent petition for reinstatement after transfer to disability
1937 inactive status, shall not be public records and shall be kept confidential. An order granting
1938 a petition for reinstatement after transfer to disability inactive status shall become a public
1939 record upon filing.

1940 **32.3.** All work product and work files (including internal memoranda,
1941 correspondence, notes and similar documents and files) of the Board, district committee
1942 members, and Disciplinary Counsel shall be confidential and privileged ~~and~~ shall not be
1943 public records, and shall not be subject to the provisions of Section 32.1.

1944 **32.4.** In order to protect the interests of a complainant, respondent or petitioning
1945 attorney, witness, or third party, the Board may, at any stage of the proceedings, upon
1946 application of any person and for good cause shown, issue a protective order prohibiting the
1947 disclosure of specific information or documents, or the closure of any hearing, and direct that
1948 the proceedings be conducted so as to implement the order, including requiring that the
1949 hearing be conducted in such a way as to preserve the confidentiality of the information that
1950 is the subject of the application. After the initiation of a formal proceeding, any such
1951 application shall be filed with and decided by the assigned hearing panel.

1952 **32.5.** All participants in any matter, investigation, or proceeding shall conduct
1953 themselves so as to maintain confidentiality. However, unless a protective order has been
1954 entered, nothing in this Section or this Rule shall prohibit the complainant, respondent or
1955 petitioning attorney, or any witness from disclosing the existence or substance of a
1956 complaint, matter, investigation, or proceeding under this Rule or from disclosing any
1957 documents or correspondence filed by, served on, or provided to that person.

1958 The Board, district committee members, hearing panel members, Disciplinary
1959 Counsel, their assistants, staff and employees shall maintain confidentiality with respect to
1960 all pending matters, investigations and proceedings arising under this Rule, except that in the
1961 event of any of the circumstances set forth in Section 32.1 (a)-(e), Disciplinary Counsel may
1962 disclose the pendency, general subject matter, and status of the matter. -

1963 **32.6.** In those disciplinary proceedings in which an appeal is taken pursuant to
1964 Section 33, the records and hearing in the circuit or chancery court and in the Court shall be
1965 public to the same extent as in all other cases.

1966 **32.7.** The provisions of this -Rule shall not be construed to deny access to relevant
1967 information to authorized agencies investigating the qualifications of judicial candidates; or
1968 to other jurisdictions investigating qualifications for admission to practice; or to law
1969 enforcement agencies investigating qualifications for government employment; or to prevent
1970 the Board from reporting evidence of a crime by an attorney or other person to courts or law
1971 enforcement agencies; or to prevent the Board from reporting to the Tennessee Lawyer
1972 Assistance Program evidence of a disability that impairs the ability of an attorney to practice
1973 or serve; or to prevent the Board or Disciplinary Counsel from making available to the
1974 Tennessee Lawyers' Fund for Client Protection relevant information; or to prevent the Board
1975 or Disciplinary Counsel from defending any action or proceeding now pending or hereafter

1976 brought against either of them. In addition, ~~the Board~~Chief Disciplinary Counsel shall
1977 transmit notice of all public discipline imposed by the Court on an attorney or the transfer to
1978 inactive status due to disability of an attorney to the National Discipline Data Bank
1979 maintained by the American Bar Association.

1980 **32.8.** Nothing in this Section is intended to limit or repeal any confidentiality or
1981 privilege afforded by other law.

1982 **Section 33. Appeal**

1983 **33.1.** (a) The respondent or petitioning attorney or the Board may appeal the
1984 judgment of a hearing panel by filing within sixty days of the date of the hearing panel's
1985 judgment a Petition for Review in the circuit or chancery court of the county in which the
1986 office of the respondent or petitioning attorney was located at the time the charges were filed
1987 with the Board. If the respondent or petitioning attorney was located outside this State, the
1988 Petition for Review shall be filed in the circuit court or chancery court of Davidson County,
1989 Tennessee. If a timely application for the assessment of costs is made under Section 31.3(a),
1990 the time for appeal for all parties shall run from the hearing panel's submission of its findings

1991 and judgment with respect to the application for the assessment of costs. A Petition for
1992 Review filed prior to the hearing panel's submission of its findings and judgment with
1993 respect to the application for the assessment of costs shall be deemed to be premature and
1994 shall be treated as filed after the submission of the hearing panel's findings and judgment
1995 with respect to the assessment of costs and on the day thereof.

1996 (b) The review shall be on the transcript of the evidence before the hearing panel and
1997 its findings and judgment. If allegations of irregularities in the procedure before the hearing
1998 panel are made, the trial court is authorized to take such additional proof as may be necessary
1999 to resolve such allegations. The court may affirm the decision of the hearing panel or remand
2000 the case for further proceedings. The court may reverse or modify the decision if the rights
2001 of the party filing the Petition for Review have been prejudiced because the hearing panel's
2002 findings, inferences, conclusions or decisions are: (1) in violation of constitutional or
2003 statutory provisions; (2) in excess of the hearing panel's jurisdiction; (3) made upon unlawful
2004 procedure; (4) arbitrary or capricious or characterized by abuse of discretion or clearly
2005 unwarranted exercise of discretion; or (5) unsupported by evidence which is both substantial
2006 and material in the light of the entire record. In determining the substantiality of evidence,
2007 the court shall take into account whatever in the record fairly detracts from its weight, but
2008 the court shall not substitute its judgment for that of the hearing panel as to the weight of the
2009 evidence on questions of fact.

2010 (c) There shall be no petitions for rehearing in the trial court.

2011 (d) Either party dissatisfied with the decree of the circuit or chancery court may
2012 prosecute an appeal directly to the Court where the cause shall be heard upon the transcript
2013 of the record from the circuit or chancery court, which shall include the transcript of evidence
2014 before the hearing panel. If a timely application for the assessment of costs is made under
2015 Section 31.3(b), the time for appeal for all parties shall run from the trial court's entry of its
2016 findings and judgment with respect to the application for the assessment of costs. A Notice
2017 of Appeal filed prior to the trial court's entry of its findings and judgment with respect to the
2018 application for the assessment of costs shall be deemed to be premature and shall be treated
2019 as filed after the entry of the trial court's findings and judgment with respect to the
2020 assessment of costs and on the day thereof. Prior decisions of the Court holding that appeal
2021 of disciplinary proceedings must be taken to the Court of Appeals because Tenn. Code Ann.
2022 § 16-4-108 so requires are expressly overruled. Except as otherwise provided in this Rule,
2023 Tenn. R. App. P. 24, 25, 26, 27, 28, 29 and 30 shall apply to such appeals to this Court.

2024 **33.2.** The Chief Justice shall designate a trial judge or chancellor, regular or retired,
2025 who shall not reside within the geographic boundaries of the chancery division or circuit
2026 court wherein the office of the respondent or petitioning attorney was located at the time the
2027 charges were filed with the Board. Alternatively, the Chief Justice may designate a Senior
2028 Judge who shall not be subject to this geographic limitation. It shall be this judge's ~~or,~~
2029 chancellor's, or Senior Judge's duty to review the case in the manner set forth in Section 33.1

2030 and to enter judgment upon the minutes of the circuit or chancery court of the county where
2031 the case is heard, and the judgment shall be effective as if the special judge were the regular
2032 presiding judge of said court. The duty is imposed upon the clerks and the regular trial judge
2033 to promptly notify the Chief Justice of the filing of an appeal in disciplinary cases.

2034 **33.3.** (a) The judgment of the hearing panel may be stayed in the discretion of the
2035 hearing panel, pending any appeal pursuant to Section 33. Upon the filing of a Petition for
2036 Review pursuant to Section 33, and in the event the judgment is not stayed by the hearing
2037 panel, the trial court in its discretion may stay the hearing panel's judgment upon motion of
2038 a party.

2039 (b) The final judgment of the trial court may be stayed in the discretion of the trial
2040 court, pending an appeal to the Court pursuant to Section 33. In the event the trial court does
2041 not issue a stay pending appeal, the Court may issue a stay upon the motion of a party.

2042 **Section 34. Additional Rules of Procedure**

2043 **34.1.** (a) The Board Chair may authorize the preparation of all or any portion of the
2044 transcript of a hearing upon a written request from the hearing panel stating the need
2045 therefore. If request is made by the hearing panel for only a portion of the transcript, either
2046 Disciplinary Counsel or the respondent or petitioning attorney may request in writing from

2047 the Chair authorization for transcription of any other portion of the hearing for completeness.

2048 Each party shall pay for that portion of the transcript which the respective party requests.

2049 (b) It is the responsibility of the party seeking review of the hearing panel's decision
2050 to procure and file the transcript of the hearing. However, if there is no appeal from the
2051 judgment of the hearing panel, the hearing shall not be transcribed unless requested by one
2052 of the parties, which party shall pay the expense of transcription. The court reporter shall
2053 preserve the record of the proceedings until the time for appeal has expired.

2054 **34.2.** Except as is otherwise provided in this Rule, time is directory and not
2055 jurisdictional. Time limitations are administrative, not jurisdictional. Failure to observe such
2056 directory time intervals may result in contempt of the agency having jurisdiction but will not
2057 justify abatement of any disciplinary investigation or proceeding.

2058 **34.3.** (a) Except as otherwise provided in this Rule, the Tennessee Rules of Civil
2059 Procedure and the Tennessee Rules of Evidence apply in disciplinary case proceedings before
2060 ~~the~~ hearing panel, the Board, or a Panel.—

2061 (b) Regardless of the forum in which the proceeding is pending, Disciplinary
2062 Counsel's work product shall not be required to be produced, nor shall a member of the
2063 hearing panel or the Board, the Chief Disciplinary Counsel, or the staff be subject to
2064 deposition, including Tenn. R. Civ. P. 30.02(6) depositions, or compelled to give testimony,

2065 unless ordered by the trial court upon a showing by the requesting party of substantial need
2066 and an inability to obtain substantially equivalent materials by other means without undue
2067 hardship during an appeal pursuant to Section 33.

2068 **Section 35. Detection and Prevention of Trust Account Violations**

2069 **35.1. Maintenance of Trust Funds in Approved Financial Institutions; Overdraft**
2070 Notification.

2071 (a) Clearly Identified Trust Accounts in Approved Financial Institutions Required.

2072 (1) Attorneys who practice law in Tennessee shall deposit all funds held in trust in this
2073 jurisdiction in accounts clearly identified as “trust” or “escrow” accounts, referred to herein
2074 as “trust accounts,” and shall take all steps necessary to inform the depository institution of
2075 the purpose and identity of the accounts. Funds held in trust include funds held in any
2076 fiduciary capacity in connection with a representation, whether as trustee, agent, guardian,
2077 executor or otherwise. Attorney trust accounts shall be maintained only in financial
2078 institutions approved by the Board, provided however nothing herein shall be construed as
2079 limiting any statutory provisions dealing with the investment of trust and/or estate assets, or
2080 the investment authority granted in any instrument creating a fiduciary relationship.

2081 (2) Every attorney engaged in the practice of law in Tennessee shall maintain and
2082 preserve for a period of at least five years, after final disposition of the underlying matter, the

2083 records of the accounts, including checkbooks, canceled checks, check stubs, vouchers,
2084 ledgers, journals, closing statements, accounting or other statements of disbursements
2085 rendered to clients or other parties with regard to trust funds or similar equivalent records
2086 clearly and expressly reflecting the date, amount, source and explanation for all receipts,
2087 withdrawals, deliveries and disbursements of the funds or other property of a client. The five
2088 year period for preserving records created herein is only intended for the application of this
2089 rule and does not alter, change or amend any other requirements for record-keeping as may
2090 be required by other laws, statutes or regulations.

2091 (b) Overdraft Notification Agreement and Acknowledgment of Authorization
2092 Required. A financial institution shall be approved as a depository for attorney trust
2093 accounts if it files with the Board an acknowledgment of the attorney's constructive consent
2094 of disclosure of their trust account financial records as a condition of their admission to
2095 practice law, and the financial institution's agreement, in a form provided by the Board to
2096 report to the Board whenever any properly payable instrument is presented against an
2097 attorney trust account containing insufficient funds, irrespective of whether or not the
2098 instrument is honored. The Board shall establish rules governing approval and termination
2099 of approved status for financial institutions, and shall annually publish a list of approved
2100 financial institutions. No trust account shall be maintained in any financial institution that
2101 does not acknowledge constructive authorization by the attorney and agree to so report. Any

2102 such acknowledgment and agreement shall apply to all branches of the financial institution
2103 and shall not be canceled except upon thirty days notice in writing to the Board.

2104 (c) Overdraft Reports. The overdraft notification agreement shall provide that all
2105 reports made by the financial institution shall be in the following format:

2106 (1) In the case of a dishonored instrument, the report shall be identical to the overdraft
2107 notice customarily forwarded to the depositor, and should include a copy of the dishonored
2108 instrument, if such a copy is normally provided to depositors;

2109 (2) In the case of instruments that are presented against insufficient funds but which
2110 instruments are honored, the report shall identify the financial institution, the attorney or law
2111 firm, the account number, the date of presentation for payment, and the date paid, as well as
2112 the amount of overdraft created thereby.

2113 (d) Timing of Reports. Reports under Subpart (c) shall be made simultaneously with,
2114 and within the time provided by law for notice of dishonor, if any. If an instrument presented
2115 against insufficient funds is honored, then the report shall be made within five banking days
2116 of the date of presentation for payment against insufficient funds.

2117 (e) Consent by Attorneys. Every attorney practicing or admitted to practice in this
2118 jurisdiction shall, as a condition thereof, be conclusively deemed, under the financial records
2119 privacy laws, other similar laws, or otherwise, to have designated the Board as their agent
2120 for the purpose of disclosure of financial records by financial institutions relating to their
2121 trust accounts; conclusively deemed to have authorized disclosure of financial records

2122 relating to their trust accounts to the Board; and, conclusively deemed to have consented to
2123 the reporting and production of financial records requirements contemplated or mandated by
2124 Sections 35.1 or 35.2 of this Rule.

2125 (f) No Liability Created. Nothing herein shall create or operate as a liability of any
2126 kind or nature against any financial institution for any of its actions or omissions in reporting
2127 overdrafts or insufficient funds to the Board.

2128 (g) Costs. Nothing herein shall preclude a financial institution from charging a
2129 particular attorney or law firm for the reasonable cost of producing the reports and records
2130 required by this rule.

2131 (h) Definitions. For the purpose of this Rule:

2132 (1) "Financial institution" includes a bank, savings and loan association, credit union,
2133 savings bank, and any other business or person that accepts for deposit funds held in trust by
2134 attorneys.

2135 (2) "Properly payable" refers to an instrument which, if presented in the normal course
2136 of business, is in a form requiring payment under the laws of this jurisdiction.

2137 (3) "Notice of dishonor" refers to the notice that a financial institution is required to
2138 give, under the laws of this jurisdiction, upon presentation of an instrument that the
2139 institution dishonors.

2140 **35.2. Verification of Bank Accounts.**

2141 (a) Generally. Whenever Disciplinary Counsel has probable cause to believe that bank
2142 accounts of an attorney that contain, should contain or have contained funds belonging to
2143 clients have not been properly maintained or that the funds have not been properly handled,
2144 Disciplinary Counsel shall request the approval of the Chair or Vice-Chair of the Board to
2145 initiate an investigation for the purpose of verifying the accuracy and integrity of all bank
2146 accounts maintained by the attorney. If the Chair or Vice-Chair approves, Disciplinary
2147 Counsel shall proceed to verify the accuracy of the bank accounts.

2148 (b) Confidentiality. Investigations, examinations, and verifications shall be conducted
2149 so as to preserve the private and confidential nature of the attorney's records insofar as is
2150 consistent with these rules and the attorney-client privilege; however, no assertion of
2151 attorney-client privilege or confidentiality will prevent an inspection or audit of a trust
2152 account as provided in this Rule.

2153 **Section 36. Tennessee Lawyer Assistance Program-**

2154 The Tennessee Lawyers Assistance Program (TLAP) was established by the Court to
2155 provide immediate and continuing help to attorneys, judges, bar applicants, and law students
2156 who suffer from physical or mental disabilities that result from disease, disorder, trauma, or
2157 age and that impair their ability to practice or serve.

2158 **36.1. Referrals to TLAP.**

2159 (a) Pursuant to Rule 33.07(A) of the Rules of the Tennessee Supreme Court, the
2160 Board, or it's hearing panels or Disciplinary Counsel, may provide a written referral to TLAP
2161 of any attorney who the Board, or a hearing panel, or Disciplinary Counsel (~~collectively, "the~~
2162 ~~BPR"~~) determines:

- 2163 (1) has failed to respond to a disciplinary complaint;
- 2164 (2) has received three or more complaints within a period of twelve months;
- 2165 (3) has received a complaint that includes multiple failures to appear or to respond or
2166 to take any other action in compliance with established rules or time guidelines;
- 2167 (4) has pleaded impairment or disability as a defense to a complaint;
- 2168 (5) has exhibited behavior or has engaged in behavior that, in the BPR's
2169 determination, warrants consultation and, if recommended by TLAP, further assessment,
2170 evaluation, treatment, assistance, or monitoring. ~~;~~
- 2171 (6) is seeking readmission or reinstatement where there is a question of either prior
2172 or present impairment or disability; or
- 2173 (7) is requesting TLAP's involvement. ~~-~~

2174 (b) The Executive Director of TLAP shall review any referral ~~by the BPR~~ made
2175 pursuant to subsection (a). If the Executive Director of TLAP deems that assistance and
2176 monitoring of an attorney is appropriate, the Executive Director will make reasonable efforts

2177 to enter into a ~~Monitoring/Advocacy~~Monitoring Agreement (“Agreement”) with the attorney
2178 pursuant to Rule 33.05(E) of the Rules of the Tennessee Supreme Court. If the Executive
2179 Director of TLAP determines that TLAP assistance is not appropriate, for whatever reason,
2180 the Executive Director shall report that determination in writing to the ~~BPR~~referring party
2181 under subsection (a), without further elaboration and without disclosure of information
2182 otherwise confidential under Rule 33.10.

2183 (c) The ~~BPR~~Board will provide written notification to the Executive Director of TLAP
2184 that TLAP’s assistance will be or has been recommended in any matter pending before the
2185 ~~BPR~~Board or when the Board, or a hearing panel or Disciplinary Counsel, knows that TLAP
2186 has an ongoing relationship with an attorney who has a matter pending before the ~~BPR~~Board.
2187 The ~~BPR~~Board will provide such notification prior to the date of any hearing and will further
2188 provide notice of any hearing date. The Executive Director of TLAP or his or her
2189 representative may attend any such hearing.

2190 (d) The ~~BPR~~Board will provide written notification to the Executive Director of
2191 TLAP of any provision concerning the participation of TLAP included in any proposed order
2192 submitted by the ~~BPR to the Court~~Board, or by a hearing panel or Disciplinary Counsel, to
2193 the Court or any other agreement between the respondent or petitioning attorney and the BPR
2194 Board or and Disciplinary Counsel, informal or otherwise, in which TLAP is required. The
2195 Executive Director of TLAP will notify the ~~BPR~~Board of any requested modification of the
2196 order and may decline involvement. Both the Board and TLAP will timely provide this

2197 information to the other to prevent unnecessary delay of the disciplinary process. If the
2198 Executive Director of TLAP declines involvement of TLAP, neither the BPR Board, nor a
2199 hearing panel nor Disciplinary Counsel, shall ~~not~~ include TLAP's participation in any
2200 proposed order submitted to the Court. Neither the Board, nor a hearing panel nor
2201 Disciplinary Counsel, shall include TLAP in any proposed order submitted to the Court
2202 unless TLAP has given notice to the Board or the respondent or petitioning attorney or his
2203 or her counsel that TLAP will accept involvement in the matter. In any proposed order
2204 submitted by the Board, or by a hearing panel or Disciplinary Counsel, to the Court that
2205 includes TLAP involvement, the proposed order shall specifically state that TLAP has been
2206 consulted and that TLAP has accepted involvement in the matter, and the proposed order
2207 shall contain a certificate of service stating the date and manner in which the proposed order
2208 was served upon the Executive Director of TLAP.

2209 (e) Pursuant to Rule 33.07-(B) of the Rules of the Tennessee Supreme Court, TLAP
2210 will provide the BPR Board with the following information:-

2211 (1) TLAP will notify ~~the BPR~~ Disciplinary Counsel of a referred attorney's failure to
2212 establish contact with TLAP or enter into a recommended Agreement.

2213 (2) If the attorney enters into an Agreement with TLAP which requires mandatory
2214 reporting to Disciplinary Counsel, TLAP will provide a copy of the Agreement to ~~the~~
2215 BPR Disciplinary Counsel. Such Agreement will provide for notification by TLAP to ~~the~~
2216 BPR Disciplinary Counsel of substantial non-compliance with any of the terms or conditions

2217 of the Agreement. Contemporaneously with any such notification, the Executive Director
2218 of TLAP may make such recommendation to ~~the BPR~~Disciplinary Counsel as TLAP deems
2219 appropriate.-

2220 (3) Upon request of ~~the BPR~~Disciplinary Counsel, TLAP will provide ~~the~~
2221 BPR Disciplinary Counsel with a status report of monitoring and compliance pursuant to the
2222 Agreement. When appropriate, ~~the BPR~~Disciplinary Counsel will obtain from TLAP's
2223 Executive Director a recommendation concerning the attorney's compliance with any
2224 Agreement.

2225 **36.2. Autonomy.-**

2226 The ~~BPR~~Board and TLAP shall remain completely independent, and the activities of
2227 one shall in no way be construed to limit or impede the activities of the other.

2228

APPENDIX A

2229 ~~_____ Many attorneys freely give their time and talents to improve our profession, our~~
2230 ~~system of justice and our communities. Gathering information about this volunteer work by~~
2231 ~~lawyers is essential to efforts to obtain and to maintain funding for civil and criminal legal~~
2232 ~~services for the indigent and for promoting and maintaining the image of the legal profession.~~
2233 ~~For that reason, the Court requests that you voluntarily report the extent of your pro bono~~
2234 ~~activities in the preceding calendar year.~~

2235 ~~_____ (1) I hereby report that in [year], I worked approximately:~~

2236 ~~_____ hours in providing legal services without fee or expectation of fee to persons~~
2237 ~~of limited means, see Tenn. Sup. Ct. R. 8, RPC 6.1(a)(1);~~

2238 ~~_____ hours in providing legal services without fee or expectation of fee to charitable,~~
2239 ~~religious, civic, community, governmental, and educational organizations in matters that are~~
2240 ~~designed primarily to address the needs of persons of limited means, see Tenn. Sup. Ct. R.~~
2241 ~~8, RPC 6.1(a)(2);~~

2242 ~~_____ hours in the delivery of legal services at no fee or at a substantially reduced fee~~
2243 ~~to individuals, groups, or organizations seeking to secure or protect civil rights, civil liberties,~~
2244 ~~or public rights, or charitable, religious, civic, community, governmental, and educational~~
2245 ~~organizations in matters in furtherance of their organizational purposes, where the payment~~

2246 ~~of standard legal fees would significantly deplete the organization's economic resources or~~
2247 ~~would be otherwise inappropriate, see Tenn. Sup. Ct. R. 8, RPC 6.1(b)(1);~~
2248 ~~_____ hours in the delivery of legal services at a substantially reduced fee to persons~~
2249 ~~of limited means, see Tenn. Sup. Ct. R. 8, RPC 6.1(b)(2);~~
2250 ~~_____ hours participating in activities for improving the law, the legal system, or the~~
2251 ~~legal profession, see Tenn. Sup. Ct. R. 8, RPC 6.1(b)(3).~~
2252 ~~_____ (2) I voluntarily contributed financial support to organizations that provide legal~~
2253 ~~services to persons of limited means, see Tenn. Sup. Ct. R. 8, RPC 6.1(c). _____ Yes; _____~~
2254 ~~No. (Please do not disclose the amount of any such contributions.)~~

2255 _____ **APPENDIX A**

2256 **(Pro Bono Reporting Statement Pursuant to Section 10.10)**

2257 Many attorneys freely give their time and talents to improve our profession, our
2258 system of justice, and our communities. Gathering information about volunteer work done
2259 by attorneys is essential to efforts to obtain and to maintain funding for civil and criminal
2260 legal services for the indigent and for promoting the image of the legal profession. The
2261 Supreme Court of Tennessee requests that you estimate and report the extent of your pro
2262 bono activities in the preceding calendar year. For further description of the categories
2263 described below, see Tenn. Sup. Ct. R. 8, RPC 6.1.

2264 (1) I estimate that I worked the following hours in [year]

2265 Hours Providing Legal Services to Persons of Limited Means Without a Fee or at a
2266 Substantially Reduced Fee;

2267 Hours Providing Legal Services to Non-Profit Organizations Serving Persons of
2268 Limited Means Without a Fee;

2269 Hours Providing Legal Services to Groups or Organizations at a Reduced Fee when
2270 Payment of Standard Fees would create a Financial Hardship; and

2271 Hours Providing Legal Services to Improve the Law, the Legal System, or the Legal
2272 Profession.

2273 (2) I voluntarily contributed financial support to organizations that provide legal
2274 services to persons of limited means:

2275 Yes; (Please do not disclose the amount.)

2276 No.

2277 (3) Pursuant to Tenn. Sup. Ct. R.9, Section 10.10, this reported information remains
2278 confidential unless you waive it solely for purposes of public pro bono recognition by the
2279 Supreme Court.

2280 I would like to have my reported pro bono hours submitted to the Supreme Court solely
2281 for the purpose of pro bono award recognition.

2282
2283
2284

**APPENDIX B
CHART A: RECONCILIATION OF RULE 9
(NEW TO FORMER)**

2285	NEW SECTION #	TOPIC	FORMER SECTION #
2286	1	Preamble	3.1
2287	2	Definitions	New
2288	3	Disciplinary Districts	2
2289	4	Board	5
2290	5	Ethics Opinions	26
2291	6	District Committees	6
2292	7	Disciplinary Counsel	7
2293	8	Jurisdiction	1
2294	9	Multijurisdictional Practice	33
2295	10	Periodic Assessment of Attorneys	20
2296	11	Grounds for Discipline	3
2297	12	Types of Discipline	4
2298	13	Diversion of Disciplinary Cases	30
2299	14	Probation	8.5
2300	15	Procedure: Investigation and Hearing	8
2301	16	Complaints Against Board, District Committee, or Disciplinary Counsel	9
2302	17	Immunity	27
2303	18	Service	12
2304	19	Subpoenas	13
2305	20	Refusal of Complainant to Proceed	10

	NEW SECTION #	TOPIC	FORMER SECTION #
2306	21	Matters Involving Related Litigation	11
2307	22	Attorneys Convicted of Crimes/Summary Suspension	14
2308	Deleted	Attorneys Adjudged to Have Refused to Comply with Orders/Summary Suspension	31
2309	23	Disbarment by Consent	15
2310	24	Discipline by Consent	16
2311	25	Reciprocal Discipline	17
2312	26	Failure to Comply with Privilege Tax	32
2313	27	Disability	21
2314	28	Notice to Clients, Adverse Parties, Counsel	18
2315	29	Appointment of Counsel to Represent Clients' Interests	22
2316	30	Reinstatement	19
2317	31	Expenses/Reimbursement of Costs	24
2318	32	Confidentiality	25
2319	33	Review/Appeal	1.3-1.6
2320	34	Other Procedures	23
2321	35	Trust Funds	29
2322	36	TLAP	28

2323
2324

**CHART B: RECONCILIATION OF RULE 9
(FORMER TO NEW)**

2325

FORMER SECTION #	TOPIC	NEW SECTION #	
2326	1	Jurisdiction	8
2327	1.3-1.6	Review/Appeal	33
2328	2	Disciplinary Districts	3
2329	3	Grounds for Discipline	11
2330	3.1	Preamble	1
2331	4	Types of Discipline	12
2332	5	Board	4
2333	6	District Committees	6
2334	7	Disciplinary Counsel	7
2335	8	Procedure: Investigation and Hearing	15
2336	8.5	Probation	14
2337	9	Complaints Against Board, District Committee, or Disciplinary Counsel	16
2338	10	Refusal of Complainant to Proceed	20
2339	11	Matters Involving Related Litigation	21
2340	12	Service	18
2341	13	Subpoenas	19
2342	14	Attorneys Convicted of Crimes/Summary Suspension	22
2343	15	Disbarment by Consent	23
2344	16	Discipline by Consent	24
2345	17	Reciprocal Discipline	25
2346	18	Notice to Clients, Adverse Parties, Counsel	28

FORMER SECTION #	TOPIC	NEW SECTION #
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2347	19	Reinstatement	30
2348	20	Periodic Assessment of Attorneys	10
2349	21	Disability	27
2350	22	Appointment of Counsel to Represent Clients' Interest	29
2351	23	Other Procedures	34
2352	24	Expenses/Reimbursement of Costs	31
2353	25	Confidentiality	32
2354	26	Ethics Opinions	5
2355	27	Immunity	17
2356	28	TLAP	36
2357	29	Trust Funds	35
2358	30	Diversion of Disciplinary Cases	13
2359	31	Attorneys Adjudged to Have Refused to Comply with Orders/Summary Suspension	Deleted
2360	32	Failure to Comply with Privilege Tax	26
2361	33	Multijurisdictional Practice	9
2362	New	Definitions	2