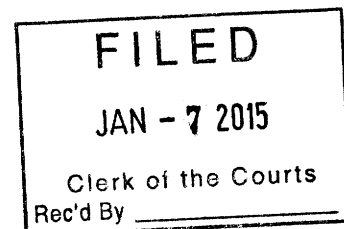


IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE



IN RE: RULE 9, SECTION 10.10 AND SECTION 10.2

No. ADM 2014-02187

**COMMENT OF THE BOARD OF PROFESSIONAL RESPONSIBILITY
TO PETITION TO AMEND TENN. SUP. CT. RULE 9, SECTION 10.10
AND SECTION 10.2**

Comes now the Board of Professional Responsibility (the Board), pursuant to Order filed December 2, 2014, and submits the following comment to Petition to amend Tenn. Sup. Ct. R. 9, Sections 10.10 and 10.2.

1. The Board supports the Commission's efforts to raise funds for access to justice programs as provided for in proposed Tenn. Sup. Ct. R. 9 § 10.2(d), however, any initiative must include an analysis of the costs and resources needed to implement it, while recognizing that Board staff and resources will be used to process these contributions.
2. Proposed Tenn. Sup. Ct. R. 9 § 10.10(a) mandates pro bono reporting for every attorney. If every attorney is required to file a pro bono reporting statement, then proposed Section 10.10 should provide for a sanction for an attorney's failure to report. While the Commission's Petition recommends the Court treat noncompliance similar to the way IOLTA noncompliance is handled, the proposed rule does not reflect any administrative sanction for noncompliance with pro bono reporting. If pro bono reporting is mandatory, then the proposed rule should include an administrative sanction such as those provided in Tenn. Sup. Ct. R. 9 § 10.5 and 10.6 or Tenn. Sup. Ct. R. 43 § 15.

3. Regarding Exhibit C, the Commission's proposed registration statement is four pages in length as compared to the Board's current three-page registration statement. This added page to the Board's registration statement would add costs of more than \$5,000 for postage.

4. The Commission's proposed registration statement reflects "20XX fee: \$220." Tenn. Sup. Ct. R. 9 § 10.2(c) provides the annual fee for each attorney is \$170.

5. The Board's existing software can only accommodate predetermined fees in specific rounded dollar amounts rather than "free-form" dollar amounts. The estimated cost to accept and process the proposed open-ended donations is significant. The Board's information technology consultants advise that an analysis and design would have to first be created before providing an estimated cost of the project. Additionally, the consultants believe it is likely to be more economical to replace the entire system instead of revising the current software should the Court approve the open-ended donations.

6. Alternatively, without substantially modifying the Board's software, the Board could accept or process access to justice contributions in predetermined specific amounts such as \$50, \$75, \$100, \$25 or \$0. The estimated cost for revising the Board's software to accommodate these restricted contribution amounts totals \$9,500 +/- 25%.

Accordingly, the Board respectfully proposes the registration statement be modified as discussed and as reflected in Attachment A.

RESPECTFULLY SUBMITTED,

Michael King By SG w/ permission
MICHAEL U. KING (#020830)
Chairman of the Board of Professional
Responsibility of the Supreme Court of
Tennessee

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12880 Paris Street
P.O. Box 667
Huntingdon, TN 38344-0667
Tel: 731-986-2266

Sandy Garrett
SANDY GARRETT (#013863)
Chief Disciplinary Counsel of the Board of
Professional Responsibility of the Supreme
Court of Tennessee

10 Cadillac Drive, Suite 220
Brentwood, TN 37027
Tel: 615-361-7500

Certificate of Service

I certify that the foregoing has been mailed to Allan F. Ramsaur, Esq., Executive Director, Tennessee Bar Association, 221 4th Avenue North, Suite 400, Nashville, Tennessee by U.S. mail, on this the 7 day of January, 2015.

By: Michael King By SG with permission
MICHAEL U. KING (#020830)
Chairman of the Board

By: Sandy Garrett
SANDY L. GARRETT (#013863)
Chief Disciplinary Counsel



2015 ANNUAL REGISTRATION STATEMENT

This Annual Statement has been issued pursuant to Supreme Court Rules 9, 25 and 43.

To complete your Annual Registration online, go to www.tbpr.org to log into the Attorney Portal; complete the online forms and pay the annual fee using a MasterCard or Visa. If not registering online, please complete ALL pages of this statement and return it with your payment to the address above.

BPR cards are issued every two weeks. Your BPR card will be mailed to you after receipt of your 2015 completed Annual Registration Statement and payment (either hard copy or online version).

Name: _____ BPR No.: _____

Annual Fee: \$170.00

Due Date: January 1, 2015

Access to Justice Donation: \$50.00 \$75.00 \$100.00 \$25.00 \$0

Total amount enclosed: _____ (Make checks payable to: "Board of Professional Responsibility")

Please update your contact information pursuant to Tenn. Sup. Ct. R. 9, Sec. 10.1:
(Office address information will be displayed on the Board's website.)

New Office address: _____

Telephone: _(_____)_____ Fax #: _(_____)_____

Business email address: _____

New Home address: _____

Telephone: _(_____)_____ Mobile #: _(_____)_____

Home email address: _____

Preferred Mailing Address: Office Home

I certify that the information provided in this Registration Statement is accurate and complete.

(Signature)

(Date)

{Attorney Name}
{Organization Name}
{Address}
{City, State, Zip}

Attachment A

To avoid penalties and possible suspension, ALL lawyers with a Tennessee license MUST complete and submit this information either using this paper form OR on the Attorney Portal.

2015 ANNUAL REGISTRATION

NAME:

BPR No.:

FIRM/ORGANIZATION NAME: _____

MANDATORY STATEMENT IOLTA Compliance Reporting (TENN. SUP. CT. RULE 43, SECTION 14; and RPC 1.15)

1. I/my firm hold(s) in an IOLTA account(s) pooled client or third party funds nominal in amount or expected to be held a short period of time, that cannot be made productive for the client or third party. **(If your office is not in Tennessee, do not report out-of-state accounts; see 2D.)**

List all IOLTA Accounts: (Enclose a separate sheet for more accounts.)

Financial Institution	Account Name	Account Number
_____	_____	_____
_____	_____	_____
_____	_____	_____

2. **If you are claiming an exemption, check ONE box only (mark the box that best fits).**

- A. I/my firm hold(s) no funds that are required to be deposited in an IOLTA account.
- B. I am not engaged in the private practice of law in any jurisdiction.
- C. Occupation: I am not engaged in the private practice of law. I serve in the following capacity:
- _____ Judge _____ Attorney General _____ Public Defender
- _____ U.S. Attorney _____ District Attorney _____ In-house counsel _____ Teacher of Law
- _____ On full-time active duty in the armed forces
- _____ Employed by state, local, or federal government in a capacity not listed above
- D. I do not have an office in Tennessee (**Note: For the purposes of this Rule, a lawyer who practices as a principal, employee, of counsel, or in any other capacity with a firm that has an office in TN, shall be deemed to have an office in TN if the lawyer utilizes one or more offices of the firm located in TN more than the lawyer utilizes one or more offices of the firm located in any other single state.**)
- E. Non-Earning Account(s) - Bank records must demonstrate that the account(s) did not accrue interest or dividends in excess of reasonable bank fees. (Enclose an explanation on a separate sheet.)
- F. Location Proximity - I am exempt because no eligible financial institution is located within reasonable proximity of my office. (Enclose an explanation on a separate sheet.)

For additional information regarding mandatory IOLTA compliance, see www.tnbarfoundation.org

2015 ANNUAL REGISTRATION

NAME:

BPR No.:

Pro Bono Reporting (Tenn. Sup. Ct. Rule 9, Section 10.10):

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

(1) I estimate that I worked the following hours in 2014:

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

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

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

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

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

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

_____ No.

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

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

Optional Access To Justice Donation:*

There exists a growing legal needs gap in Tennessee. Indigent and working-poor families face more legal problems caused by unemployment, predatory loans, uninsured medical bills, domestic violence, evictions and foreclosures. In response to this growing need, the Tennessee Supreme Court has declared access to justice for all Tennesseans its number one strategic priority. As a part of the Court's Access To Justice Initiative, all Tennessee attorneys are asked to give a voluntary contribution which will be used to fund direct legal service providers across the state. This donation will help to provide access to justice for the over 1 million low-income Tennesseans who have civil legal problems.

A suggested voluntary donation of \$50.00 is requested. If you wish to give a larger donation, mark the \$75 and/or \$100 donated amounts on Page One of this statement. If you wish to give a smaller donation, mark the \$25 amount. If you prefer not to donate, please indicate accordingly.

*This donation may be tax-deductible. Consult a tax expert.

IN THE SUPREME COURT OF TENNESSEE,
AT NASHVILLE

FILED
2014 DEC 11 PM 2:08

IN RE: RESPONSE IN OPPOSITION TO)
PETITION TO AMEND SUPREME)
COURT RULE 9, SECTIONS 10.10)
AND 10.2)

NO. ADM2014-02187
APPELLATE COURT CLERK
NASHVILLE

**RESPONSE IN OPPOSITION TO PETITION TO AMEND SUPREME
COURT RULE 9, SECTIONS 10.10 AND 10.2**

Respondent, a member of the Tennessee Bar, files this response in opposition to the forty-three (43) page Petition of the Tennessee Supreme Court Access to Justice Commission (“the Commission”) filed on November 10, 2014 requesting an amendment to Supreme Court Rule 9, Sections 10.10 and 10.2 to now require Tennessee Practitioners to describe in detail all pro bono service(s) provided by members of the Tennessee Bar.

SUMMARY OF RESPONSE

There is no good reason -- certainly no compelling reason -- to change Supreme Court Rule 9, Sections 10.10 and 10.2 -- which currently allows Tennessee Practitioners to voluntarily report or estimate the number(s) of pro bono hours devoted by a practitioner in a given calendar year -- to now require those practitioners to report their number(s) of pro bono hours. While the Petition indicates the rule change being sought will not lead to or result in a mandatory pro bono requirement of Tennessee Practitioners, one does not need a looking glass to surmise this may well be the goal or object of the Commission.

Tradition and Public Policy to be Effected by Such Proposed Rule Change.

No one, including your Respondent, questions that pro bono work -- or voluntarism in general -- is a noble and admiral quality or goal for human beings, not just attorneys. This does not mean that Tennessee Practitioners should be required to either perform pro bono services or

be required to report the extent of those pro bono services to the Board or to this Court. Pro bono work, like other charitable work, should be a private matter for the person providing such services. For this Court to rule otherwise would completely eviscerate the meaning and purpose of voluntarism or charity -- to humbly give of one's self or to assist others with no compulsion or obligation to do so.

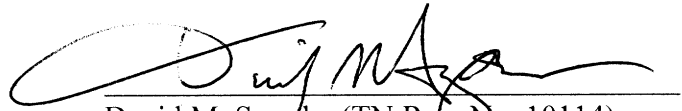
As a trial attorney in this state, both in Nashville, and earlier in my career in Knoxville, I have learned that the people of the great state of Tennessee, including its attorneys and judges, are by in large good and decent people and that they are emblematic of the state's nickname -- Volunteers. Of this, I am proud. During this same time, though, I have also watched in dismay, and sometimes in disgust, as the Tennessee Code Annotated has more than doubled in size. This is the result of well-intentioned people (and special interests) who share a misguided belief that life in this state (and elsewhere) will somehow be made better by more laws and regulations -- instead of leaving well enough alone. By way of illustration, Tennessee now has a law mandating what pets barbers can permissibly have in their barber shops and we now have a local regulation in Davidson County requiring permits before people can feed the homeless.

To require all Tennessee lawyers to volunteer specific time to the service of others (or as the Petition requests that practitioners be required to report the extent of such activities) is yet another effort by a well-intentioned group seeking to further regulate and control private matters involving a group of persons, this time the members of the Bar. If this Court were to grant the Petition and amend the Rule, what next? Would the next Petition request that the Court require mandatory production of detailed time records of each Tennessee Practitioner for all pro bono work now required to be reported? In any event, one can safely envision that the instant Petition will not be the last before the Court on this topic.

CONCLUSION

Instead of more rules or changes in existing rules, as proposed by the Petition, this Court should instead let common sense prevail and let voluntarism and charity be personal matters of the heart -- as they always have been. Respondent respectfully submits the Petition should be denied as there is no compelling reason set out in the Petition why there is a bona fide need for "better information" or "better data" which the proposed rule amendment might provide. Instead, the information sought should remain personal to the volunteer who provided the charitable services.

Respectfully submitted,



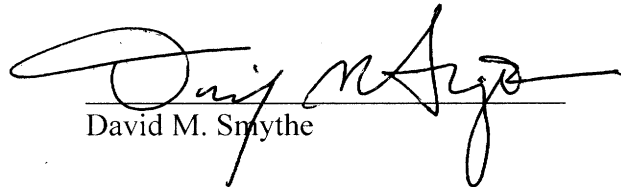
David M. Smythe (TN Reg. No. 10114)
SMYTHE & HUFF
Suite 333 – Pilcher Building
144 Second Avenue, North
Nashville, Tennessee 37201
(615) 255-4849 – Phone
(615) 255-4855 – Fax

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been placed in the United States Mail, postage pre-paid and properly addressed to:

Tennessee Supreme Court Access to Justice Commission
c/o Dean Douglas A. Blaze
University of Tennessee College of Law
1505 W. Cumberland Avenue
Knoxville, Tennessee 37996-0001

on this 11th day of December, 2014.



David M. Smythe