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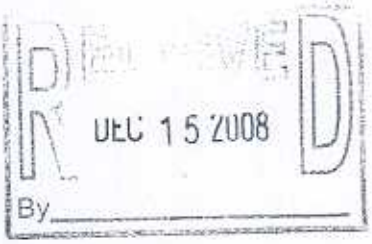
M2008-01408-SCRL1-RL

December 10, 2008



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

Re: TBA Access to Justice Initiative

Dear Mr. Catalano:

I recently read, with interest, the order and proposed rule changes regarding the Access to Justice initiative. I am part of a small firm of two attorneys and have only been practicing for approximately one and a half years. During that time, I am proud to have had many opportunities to serve on a pro bono basis not only for Legal Aid, but on numerous clients that have presented themselves to my office that were not eligible under the Legal Aid program. I have also been proud to assist the numerous criminal appointments given to me by my local judiciary. I think that several of the initiatives proposed are good for the general public. However, my experiences cause me some concerns.

First, I completely disagree with the reporting requirement suggested under the new rules. I chose this profession to help individuals during some of the most difficult times in their lives. I have never considered that to be extraordinary, but part of my calling. I have never asked for recognition of my service to the indigent because to do so would mean it was not provided in the spirit of giving, but from a spirit of obligation. While I think that we should all strive to give back to the communities that have blessed us, to report that to anyone is distasteful and is contrary to the entire spirit of giving. When people feel obligates or are forced to give, the spirit of giving changes. I can think of no other purpose for reporting such hours than to make such a statistic open to the public for publication and newspaper purposes. A statistic is not going to change the heart of the giver but is going to change the nature of the service. To publish such statistics will more than likely cause those that would not normally qualify for services to embellish their financial circumstances based upon their knowledge that we are to do at least 50 hours of pro bono services. We already fall victim to such embellishments with court appointed cases.

Secondly, I believe the reporting qualifications are less fair to small firms. In small firms, we do not have the advantages of a paralegal or data processing services to do much of our everyday work. It is solely up to us to run the day to day business of the office while zealously representing our clients. Our staff is meager and our time is limited. To require us to report, would be far more cumbersome with those of us that have a limited staff and such a requirement could generate a sense of resentment. No other profession is required to report such gracious giving. It is my understanding that only 3 of the 50 states have adopted such regulations and I believe there is a reason for such a low figure.

Thirdly, on numerous occasions I have been appointed by the Court to represent indigent individuals on a criminal matter. It is not until I meet with my client that I learn that they posted a $5,000.00 bond after the appointment. Further, they show up at my office dressed in designer clothes and driving a designer car that looks recently purchased. Meanwhile, I am being paid at a reduced cost and at the taxpayer's expense for an individual that could have obviously afforded my services from the start. There are absolutely no checks and balances on the indigency system, but we continue to extend credit to those that do not qualify, while others are turned away that are more qualified for the service. In the event that we are required to report our hours of pro bono service, I would like the Court to consider allowing us to use those hours whereupon we are working for a reduced cost as pro bono hours as well. I would also like to see more checks and balances put into place assuring us that the individual is truly indigent.

Lastly, I am concerned over some of the alleged proposals to excuse pro se litigants from certain rules of procedure. While I did not see them exactly outlined in the latest proposal, I did hear some of those suggestions at my recent Bar Association meeting where the Access to Justice system was introduced. I understand the Court's need to assist the community, but to hold those that do retain an attorney to a different standard is counter-productive to the system. It ultimately penalizes those individuals for hiring an attorney and rewards those that cannot. That certainly does not bode well for our scales and removes the blindfold off of Lady Justice.

I appreciate your willingness to listen to my concerns. Again, I think the system as a whole is a good idea. I would like to see changes made to ensure that the system is successful and fair for everyone involved.

With Kindest Regards,

Michelle Blaylock-Howser

M2008-1403-SC-RLI-RL

December 11, 2008

Michael W. Catalano, Clerk
Tennessee Appellate Court
100 Supreme Court Bldg.
401 7th Avenue North
Nashville, TN 37219-1407

Dear Mr. Catalano:

With reference to the proposed amendments to Rule 8 of the Rules of the Supreme Court, I am in disagreement with the provisions related to the reporting of pro bono service.

Many years ago the Criminal courts in Chattanooga required non-criminal attorneys take criminal appointments. As the youngest associate, I handled all of the criminal appointment cases for our firm and can attest to the fact that the criminals knew more about the system than I did. That was a valuable lesson to me that one should not engage in the practice of law outside of his or her area of expertise.

I believe the Supreme Court recommendations fail to take into account that working mothers and fathers have all on their plate that they can possibly handle with a full time practice and the billing requirements of firms along with raising children.

I empathize with the plight of the unrepresented poor, but I personally did not go into law to represent indigents. That was not my calling. While I do engage in volunteer activity, it is never related to law except as a seminar speaker because the last thing in the world I want to do after working in law all day is to handle pro bono legal matters.

My family sacrifices as it is for my practice as I have children who beg me to stay home, and my spare time is for them.

I do not care if the Court publishes the name of every attorney who declines to do pro bono service. No one is going to embarrass me into doing something that I do not want to do.

I am also aware that a large number of the pro bono cases involve landlord/ tenant cases. When I sit in sessions court and see some tenants who have not paid their rent and destroyed rental property, I am appalled.

I think there is probably a great number of attorneys who feel as I do and very few that will actually express their viewpoint because of fear of professional embarrassment.

I certainly have no problem with individual attorneys who choose to volunteer pro bono services, and I have no problem with giving additional CLE credit for attorneys who choose to engage in pro bono work.

I am sure there are some attorneys who are willing to donate 50 hours a year in pro bono service and who have the time and inclination to do so. I am not one of them; and I am not going to be shamed into volunteering by being forced to report pro bono hours.

Sincerely,

Melody Bock

MB/dhh

I:\MBOCK\MISCELLANEOUS\Tenn. Appellate Ct. ltr.wpd

M2008-01403

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FOSTER D. ARNETT
1920-2008

December 17, 2008

Michael W. Catalano, Clerk
Tennessee Appellate Court
Appellate Court Officers
401 7th Avenue, North
Supreme Court Building
Nashville, TN 37219-1407

Dear Mr. Catalano:

It has come to my attention that the Tennessee Bar Association has petitioned the Supreme Court to adopt certain proposed amendments to Rule 8 of the Rules of the Supreme Court of Tennessee which amendments would require all attorneys in Tennessee to "aspire" to donate 50 hours a year of pro bono service, and that the number of pro bono hours would be required to be reported on the attorneys' CLE forms each year.

I have further been advised that the comment period during which the Court will receive and consider input and comments from the bar regarding these changes expires on January 15, 2009. For that reason, I am writing you this letter to let you know my position on this proposed amendment to Rule 8.

I write this letter realizing full well that my intent in doing so can easily be, and perhaps will be, misconstrued and misunderstood. Nevertheless, as a third generation lawyer who is proud of my profession, and who was raised to think for himself and to not "follow the herd", even if it is the safe and "smart" thing to do, I am compelled to write this letter expressing my opposition to the proposed amendments.

I have read the amendments proposed by the TBA, and while I respect the good intentions voiced by the TBA in its proposal, I respectfully disagree with it. In doing so, I am reminded of the old adage . . . "The road to hell is paved with good intentions".

The following are some of the reasons why I oppose the proposed amendments to Rule 8:

1. While the purpose and goal of the amendment, as expressed by the TBA in its petition, is certainly worthy of respect, I would realistically observe that one cannot compel philanthropy, which is, in fact, what pro bono service really is. It comes from the heart and one either has it or he/she does not. The profession is not really improved, nor is society actually well served, by compelling pro bono service either overtly, or latently, or through subterfuge.

2. Although the proposed amendment professes to only advance "aspirational" goals, I suspect that this is only the first step down the road toward mandating such requirements later on. If I am correct, that would, in my opinion, overstep the boundary with regard to the Supreme Court's role in policing the judiciary and bar of this state. Obviously, there have to be rules regarding the conduct of the practice of law and what is required to be a licensed and qualified attorney. The current rules of professional conduct, as embodied in Rule 8 of the Supreme Court of this state, adequately fulfill that function. I believe that it is overreaching for any Court to assume that it has the authority to dictate to attorneys (1) whether or not they should perform free (pro bono) services, or (2) the number of hours of such services they should provide.

3. In my opinion, it demeans the profession to mandate that lawyers either provide pro bono services, in fact, or simply "aspire" to do so, because it gives the impression that the profession would not do so voluntarily on its own, and therefore must be forced to do so by Big Brother. As I have observed above, philanthropy and pro bono work comes from the heart. Nothing is gained by trying to embarrass people into performing pro bono services and reporting pro bono time.

4. The fact of the matter is that the majority of practicing attorneys in this state already provide "de facto" pro bono services, of one form or another, to clients on a regular basis, even though such services may not be traditionally recognized as pro bono services "per se".

   I know many lawyers who have spent innumerable numbers of hours representing clients in matters where they did not get paid. Although

they may not have taken the case with the intention of not being paid, that was the final result. I also know a lot of attorneys who undertake to represent clients every year knowing full well that they will either not be paid, or will not be paid commensurate with the services which they have rendered.

I, myself, have recently handled a couple of "mold" cases for clients, which have been "de facto" pro bono cases. When I took the most recent case, I realized it would be a difficult one, but I took it anyway because I felt that my clients had been wronged and that they needed representation in order to try to right that wrong. I filed a lawsuit on their behalf, hired experts, took depositions, and worked on the case for five years, which finally resulted in the case being settled at mediation. I had approximately $85,000.00 of time in the case, and $15,000.00 of expenses which my firm had advanced on my clients' behalf, pursuant to my written Employment Contract with them. The case was a burden to me and to my partners. It took a lot of my time which I could have been devoting to more lucrative matters. Nevertheless, I felt an obligation to my clients. In the end I was successful in relieving my clients of a wrong and a burden that had unfairly been imposed upon them and after expending $85,000.00 of time and $15,000.00 in expenses, I was able to recoup my expenses and receive a fee of $10,000.00. Although that does not "technically" qualify as a "per se" pro bono case, I can assure you that it was.

In addition to the foregoing case, two or three years ago I had a similar case in which I undertook to represent clients who had been taken advantage of by a builder regarding the construction of their home. That case lasted several years and ended in a trial which took three or four days to try, resulting in a judgment in favor of my clients, which judgment was totally uncollectible because of the lack of insurance or assets on the part of the defendant.

In addition to the two foregoing cases, I have also provided services to numerous people in the past, without charge, because I felt they needed help. However, I did so on my own volition, and I would resent mightily, being told by anyone, including the Supreme Court of this state, that I had to perform such services.

I give you these personal examples only to illustrate that there are numerous attorneys who do the same thing every year, voluntarily. In my opinion, the bar does not need for the Supreme Court to mandate this as a requirement for the practice of law in this state and doing so will not enhance the public's opinion of the profession, and may well harm it.

5. The adoption of a requirement for reporting pro bono hours in order to practice law in this state will require reporting and oversight which will translate into additional expense regarding the administration of the Courts and the practice of law in this state. In my opinion, such additional expense is unwarranted.

6. Not all law practices in this state are the same. There are large firms and solo practitioners. There are firms that practice in metropolitan areas and in small rural areas. Some lawyers make a lot of money and some struggle to get by from year to year and to pay their employees, taxes and expenses. The suggestion or imposition of an arbitrary requirement of a certain number of hours of "pro bono" service a year will impose an unwarranted and unnecessary hardship upon some attorneys, although I will concede that such number is probably few, rather than many.

7. The establishment of a requirement to "aspire" to render 50 hours of pro bono service a year will require strict and clear guidelines and definitions as to what constitutes acceptable pro bono practice for the purpose of such a rule and what does not. That, again, is going to require reporting and oversight, and added expense to implement.

8. A written amendment to Rule 8 requiring lawyers to "aspire" to perform pro bono service is not necessary. The same "aspirational" "goals" can be encouraged by and through any number of already existing publications, forums, seminars and the like.

There are other reasons why I feel that this proposed rule change is unnecessary, unwarranted and overly intrusive. I will not impinge upon your time by continuing to recite such reasons. Suffice it to say that, in my opinion, the proposed rule change mandating pro bono service is a bad idea, which is totally unnecessary and unwarranted, and is fraught with a potential for future mandatory and intrusive oversight and unnecessary expenses.

Accordingly, I most respectfully urge the Court, and any committee or committees, whose responsibility it is to consider the adoption of this proposed rule change, to observe the wisdom of the old saying . . . "If it ain't broke don't fix it" . . . and to decline the adoption of this proposed change.

Sincerely yours,

William Arthur Simms

WAS:llh

M2008-01403

JAN - 7 2009

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ALAN R. STRAIN [3]
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[1] Certified Medical Malpractice Specialist - Tennessee Commission on Continuing Legal Education and Specialization and American Board of Professional Liability Attorneys

[2] Certified Civil Trial Specialist - Tennessee Commission on Continuing Legal Education and Specialization and National Board of Trial Advocacy

[3] Tennessee Supreme Court Rule 31 Listed Mediator

[4] Licensed also in Arkansas
[5] Licensed also in Mississippi
[6] Also Registered Nurse

January 5, 2009

Mr. Michael Catalano
Supreme Court Building
Clerk of the Appellate Court
401 7th Avenue North
Nashville, TN 37219

RE: Comments Regarding Proposed Changes to Rule 31 and the Proposed *Pro Bono* Rules

Dear Mike:

have the following comments to offer regarding the proposed Supreme Court Rules changes referenced above:

1. As regards Rule 31, I offer the following:

   A. I agree that a law degree from an accredited institution should be deemed as a graduate degree;

   B. I agree with this proposal, particularly since I have been a Supreme Court listed Alternate Dispute Resolution Specialist since June 6, 1997, and it will not affect me;

   C. I disagree with proposed Rule 3. I do not believe the court clerks and part-time judicial officers should be allowed to be listed as or act as Rule 31 mediators, unless they are trained and meet all of the requirements I had to meet. Further, Supreme Court approved

neutrals need all the referrals they can get to meet the three *pro bono* mediations per year requirement of Rule 31. I have had some unfortunate experiences with *pro bono* mediations which I will address in more detail below.

D. I also suggest that all the state's trial and appellate judges be required to report their referrals of *pro bono* mediations. There is, essentially, no other source for approved mediators for these mediations, and despite the best efforts of the Memphis Bar Association to plead for referrals from the bench, very few are forthcoming. Approved mediators are required to perform three *pro bono* mediations per year, as set out above, but it is impossible to meet the requirement without referrals. We could dispose of countless cases for the judiciary, given the chance.

2. As regards the proposed changes to the *pro bono* rules, I offer the following:

A. I believe that the goal of each lawyer performing fifty hours of *pro bono* work per year should not be aspirational, but mandatory, particularly if not exclusively in the state's urban counties. There may be insufficient numbers of potential *pro bono* clients in rural areas. We have a number of worthy *pro bono* initiatives in Memphis, regarding all of which Chief Justice Holder is well aware. Imagine how much good we could do for the public if all of Shelby County's 3,000 lawyers were required to meet a goal of fifty *pro bono* hours per year- for one example, we could make our monthly Saturday *pro bono* clinics weekly, if not daily, but only the Justices can accomplish this;

B. I agree with the requirement that lawyers report *pro bono* work done each year;

C. I agree with the revision of the rule to permit limited scope representation;

D. I agree with the provision which will allow corporate counsel to provide *pro bono* legal services.

As regards my unfortunate experience with my own *pro bono* mediations, I had three cases which involved very vexatious and malicious litigation involving two *pro se* parties who were, by definition, paupers. I conducted a *pro bono* mediation at my office and secured their agreement to dismiss all litigation, pending, respectively, in the Tennessee

Court of Appeals for the Western Section, the Chancery Court of Shelby County, and the Circuit Court of Shelby County, in exchange for my personal payment to them of the sum of $250.00 each. The Chancellor and the Circuit Court Judge referred the matters to me at the request of one of the litigants, whom I had met at our Saturday Free Legal Clinic- I resolved the Court of Appeals litigation on my own, since Tennessee has no corollary to the Federal Appellate Rule requiring mediation on appeal. Tennessee should have such a Rule. I told the litigants, but did not, of course, promise them, that I expected the judges would be so happy to see this specious and time-wasting *pro se* litigation between the two of them resolved that the court costs would be waived. The Chancellor did in fact waive the court costs; the Circuit Court Judge refused to do so upon advice from a Clerk, not the County Attorney nor the state Attorney General, despite the fact that both litigants were paupers and thus qualified for court cost waivers, and I personally paid in excess of $400.00 in Circuit Court costs because it occurred to me that perhaps the litigants had misunderstood me, although I had made it as clear as I possibly could in the English language (my mother tongue) that I could not control nor make any guarantees of any kind whatsoever regarding what the judges would do, and because, of course, it would have been highly unethical and improper for me to suggest that I could. My reputation is the most important thing I own. I have recently been advised by counsel for the Western Section Court of Appeals that that entity likewise refuses to waive its court costs, and I have requested that the cost bill be sent to me. I understand it to be in excess of $1,000.00. Hence, this particular good deed on my part will have cost me over $2,000.00 when all is said and done. I have paid all of this personally, because I could not in good conscience request that my law firm pay it. This is my reward, I suppose, for trying to meet my professional and approved ADR neutral obligations, and to just plain do the right thing.

I believe that the court rules need to be changed, or the legislature needs to take appropriate action, so that it is made crystal clear to all the judges that court costs can in fact be waived in circumstances such as these.

Thank you and the Tennessee Supreme Court for considering my comments.

Yours very truly,

THE HARDISON LAW FIRM, P.C.

DAVID M. COOK

DMC:dd

cc: The Honorable Van Sturdivant, Circuit Clerk
Ms. Kristi R. Rezabek
Ms. Linda W. Seely
Mr. George T. (Buck) Lewis, III

Wesley Thomas Bray
Attorney at Law & Associates
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January 12, 2009

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

Re: Amendments to Sections 5.5 and 6.1 and Addition of Section 6.5 to Rule 8 of the Rules of the Supreme Court of Tennessee, No. M2008-01403-SC-RL1-RL

Dear Clerk:

Please be advised that there was an order published requesting comments from lawyers and other members and interested parties as to the above referenced amendment. Please be advised that I am a small, solo practitioner in the small, rural town of Cookeville, Tennessee. Please be advised that my practice consists mainly of criminal defense work but my firm which includes myself, another attorney and three secretaries handles a wide variety of civil matters as well.

In my day to day work here at the office and within the court system of the Upper Cumberland region, I come into contact with many people who have come before the Court for various reasons. On a daily basis, I see what I perceive what I believe to be our court system being taken advantage of by clients who apply for and are granted the public defendant and/or appointed counsel when they clearly have never made an effort to retain an attorney nor have they made any efforts to allocate any funds to pay for legal services.

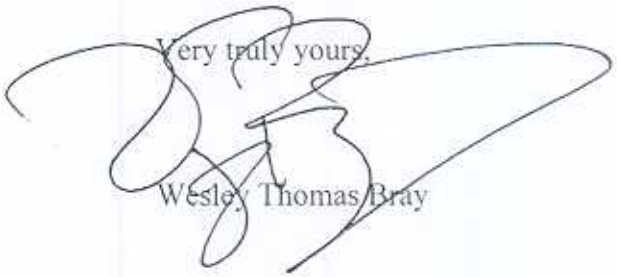
This letter is a strong recommendation against the Court requiring mandatory pro bono hours. I understand there is a significant amount of attorneys in this state and in this nation who pursue only matters of monetary gain and think nothing of anyone else. I believe, however, that it is unfair to require that pro bono hours be recorded and sent into the State. I cannot tell you how many hours of pro bono service that I have completed, both intentional and unintentional; however, I can assure you that most lawyers who practice law and follow the rules and ethical guidelines will find themselves performing pro bono work on a fairly regular basis. I believe that ordering someone to perform pro bono work is an equivalent to slavery and forced labor. I further believe that most of

these people who are pursuing this pro bono action on their own do not consider the fact that there are many hard-working attorneys who are out helping the public, who are in the trenches everyday and who practice in the local court systems, at the local level, who do a lot of pro bono work and do not require anyone to monitor us to do so.

I appreciate the Court allowing the opportunity to comment and hope that this resolution will not pass nor be approved by the Court. I believe that most attorneys have a good heart and will help those who need to be helped and I, for one, do not need to be required or supervised to make sure I handle the needs of the local community as well as the needs of those who cannot take care of themselves.

Should anyone wish to discuss this matter further with me, I will be happy to talk with them about it. I hope today finds you well.

Very truly yours,



Wesley Thomas Bray

WTB/da

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M2008-1403

January 12, 2009

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

Re: Comments on Proposed Rule on Pro Bono Service

Dear Mr. Catalano:

I am a member of the Tennessee bar, practicing primarily in Bradley County, Tennessee. In response to the Petition filed by the Tennessee Bar Association concerning pro bono representation, hours, and reporting, I am writing to inform the Court that I support the concept of encouraging and allowing more lawyers to perform pro bono service. However, I do not support the proposals to set an aspirational standard of 50 hours per year and to require lawyers to report pro bono hours annually. I think the current rule is sufficient and there is no need for change.

I believe each lawyer must be guided by her or his conscience and circumstances in determining how much pro bono service to deliver. Our situations are different depending on such factors as size of law firm, geographical location, type of practice, hours devoted to other community and charitable services, family needs, etc. Given all of our different circumstances, I do not think there is a one size fits all number for pro bono hours. For some attorneys it may be appropriate to aspire to 20 hours a year, for others 50, and for others 70. Even though the proposal is said to be an aspirational standard, when the number of hours is quantified attorneys are pressured to comply with that number. Each attorney should be professional and adult enough to decide for herself or himself the level of pro bono service to deliver–whether it is more or less than 50 hours per year.

I believe law firms should encourage their attorneys to perform pro bono service. However, I think the firms, not the Court, should decide how to address this matter, e.g. whether to indicate a number of hours deemed appropriate or to leave that decision to the individual attorneys in the firm. I do not think the Court needs to enact a rule addressed to law firms on this matter.

I also do not think the Court should require annual reporting of pro bono hours. Many attorneys perform numerous hours of pro bono service each year but do not keep records of the amount of time. To report hours accurately would require more record keeping and impose an additional unnecessary burden on attorneys. I realize the proposal gives attorneys the option to state they choose not to respond. However, I think a better solution is to give attorneys the option to report the hours, if they want to do so. Then those who prefer not to respond do not have to do anything. This approach places more emphasis on attorneys deciding whether to report the hours.

While the petition states that the proposal is not on the road to mandatory pro bono hours, I think this could be the first step. Once an aspirational standard for a certain number of hours is incorporated in a rule, it becomes easier to mandate a required number of hours in the future.

I respectfully submit my comments to the Court, and appreciate the Court's consideration.

With best regards, I am

Sincerely yours,

Marcia M. McMurray

Marcia M. McMurray