IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN 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

ORDER

The Tennessee Bar Association has petitioned this Court for the adoption of a new Section 6.5 and amendments to Sections 5.5 and 6.1 of Rule 8 of the Rules of the Supreme Court of Tennessee. The petition of the Tennessee Bar Association and the Exhibits thereto are attached to this Order.

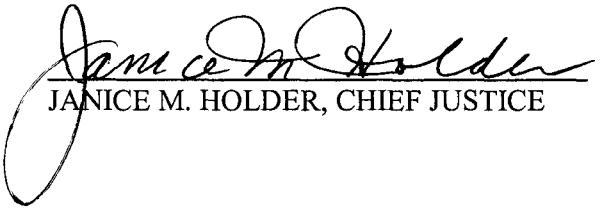
In the interest of providing prompt and fair consideration of the important public policy issues raised by the petition, the Court hereby solicits written comments from judges, lawyers, bar associations, members of the public, and any other interested parties. The deadline for submitting written comments is January 16, 2009. Written comments should be addressed to:

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

The Clerk shall provide a copy of this order, including the attached Petition and Exhibits thereto, to LexisNexis and to Thomson-West. In addition, this order, including the attached Petition and Exhibits thereto, shall be posted on the Tennessee Supreme Court's website.

IT IS SO ORDERED.

FOR THE COURT:



JANICE M. HOLDER, CHIEF JUSTICE

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: PRO BONO SERVICE RULES AMENDMENTS	)	M2008-

PETITION OF THE TENNESSEE BAR ASSOCIATION

The Tennessee Bar Association ("TBA") by and through its President, George T. Lewis; General Counsel, William L. Harbison; Chair, Access to Justice Committee, Debra L. House; Chair, Standing Committee on Ethics & Professional Responsibility, Lucian T. Pera; and, Executive Director, Allan F. Ramsaur, petitions this Court to encourage, facilitate, and enable greater participation in pro bono service by Tennessee lawyers through amendments to the Rules of Professional Conduct and the Court's inherent power to regulate the practice of law.

BACKGROUND

One (1) in six (6) Tennessee residents live at or below the minimum financial eligibility standards to receive free legal assistance. Based upon

the University of Tennessee study, conducted for the Tennessee Alliance for Legal Services and funded, in part, by the TBA, nearly seven (7) in ten (10) poor Tennesseans face legal problems annually. Despite the best efforts of the federally-funded legal services programs and the dedicated pro bono service of more than 3,000 Tennessee lawyers, there still remains a considerable, un-met legal need in Tennessee.

As part of a year-long emphasis on pro bono service, the TBA hereby submits four (4) recommendations for this Honorable Court to encourage, enable, facilitate, and measure pro bono service. From the outset, it is important to say that the TBA does not favor any effort to mandate pro bono service. The essence of the attorney-client relationship is a voluntary one of mutual respect. Mandated representation would be contrary to the fundamentals of the relationship and ultimately serves neither the client, society, nor the lawyer well.

The proposals are as follows:

1. FACILITATE SHORT-TERM, LIMITED SERVICE PRO BONO ACTIVITIES BY ADOPTION OF NEW TENNESSEE SUPREME COURT RULE 8, RPC 6.5.

One method developed by legal services providers to the poor to address the overwhelming demand for legal services is limited scope programs like legal advice hotlines, limited service clinics, and pro se counseling programs. One barrier to volunteer lawyer participation in such programs is the application of rules which require a lawyer to undertake an extensive conflicts check even though the client may receive brief advice and no ongoing representation.

ABA Model Rule 6.5, which the TBA proposes be adopted in total, permits a lawyer, with informed client consent, to undertake representation without extensive conflicts checks. Exhibit "A" is a clean version of the rule as proposed. As explained in the comment, the limited nature of the services significantly reduces the risk of conflicts with other matters being handled by the lawyer or law firm. The lawyer remains under an obligation to advise the client of any need for further assistance of counsel beyond that provided.

Another barrier may be that the lawyer may fear that undertaking pro bono service may preclude the lawyer from future representation. The Rule provides that the brief advice and the limited service do not disqualify the lawyer or the lawyer's firm from future adverse representation.

2. ENABLE REGISTERED CORPORATE COUNSEL TO PROVIDE PRO BONO SERVICE THROUGH ADOPTION OF TENNESSEE SUPREME COURT RULE 8, RPC 5.5(e).

In a petition filed contemporaneously with this petition, the TBA is recommending adoption of several measures governing the multi-jurisdictional practice of law. Under the MJP regime which the TBA proposes, Tennessee would join some thirty-five (35) other jurisdictions which permit in-house counsel practicing solely for their employer to register and provide services to their employer. ABA Model Rule 5.5(e), which *this* petition proposes to be adopted, authorizes registered corporate counsel to provide legal services through organized legal aid, state or bar association legal programs so long as the service does not require representation required by the *pro hac vice* rule.

As evidenced by the joint Tennessee Bar Association and Association of Corporate Counsel "Corporate Counsel Pro Bono Initiative," lawyers practicing in-house are as committed to pro bono service, if not more so, than those in private practice. The TBA believes that in-house counsel should be allowed to provide pro bono service. Under this proposal, the lawyers would provide pro bono services to clients in the controlled environment of authorized and duly-organized legal aid and bar association pro bono programs. The lawyers undertaking these services would have available training and support from the legal aid program, feedback on their service, and are otherwise required to meet all of the other standards of the Rules of Professional Conduct. Exhibit "B" is a redline of the R.P.C. 5.5 as it would be amended when both the MJP and this petition are granted.

3. IN R.P.C. 6.1, ENCOURAGE PRO BONO SERVICE THROUGH SETTING AN ASPIRATIONAL STANDARD, CLARIFYING THE MEANING OF PRO BONO SERVICE, AND URGING LAW FIRMS TO ENABLE AND ENCOURAGE LAWYERS IN THE FIRM TO PROVIDE PRO BONO SERVICE.

With the adoption in 2003 of the Rules of Professional Conduct and RPC 6.1 in particular, this Court annunciated its policy that lawyers should render pro bono legal services. As a way to further enhance the aspirational value of Rule 6.1, the TBA proposes adoption of an aspirational standard of fifty (50) hours per year of pro bono service by lawyers in Tennessee; adoption of language which acknowledges the contribution which appointed counsel make when their service exceeds the cap on the number of hours undertaken for compensation; and, a comment urging law firms to enable and encourage lawyers in their firm to provide pro bono legal services. Exhibit "C" is a redline of R.P.C. 6.1 as it is proposed to be amended.

This proposal, which follows closely the ABA Model Rule on this subject, encourages pro bono service by giving lawyers some guidance on what the best practices are in fulfilling their ethical responsibility. The proposal is not an effort to head down the path to mandatory pro bono service. The voluntary character of the attorney –client relationship obviates mandatory pro bono service. Respect for client autonomy militates against mandatory pro bono service. Even the most zealous legal aid advocates indicate that clients might not be well-served by a lawyer whose service is compulsory.

Comment [4] now acknowledges that limits on fees paid to appointed lawyers as counsel in a criminal matter limit the number of hours for which a lawyer is paid. If a lawyer spends significant additional uncompensated time working on a case, these pro bono services should be acknowledged.

Finally, the new Comment [11] sets forth, for the first time, the responsibility for law firms to act reasonably to encourage lawyers in the firm to provide pro bono service. This encouragement might take the form of adoption of a pro bono service policy by the firm. It could take the form of permitting associates who perform pro bono service to count pro bono time against minimum hourly requirements. The important principle is that the firm, no less than the individual lawyer, must be responsible for pro bono service.

4. LAWYERS SHOULD BE ASKED TO REPORT THEIR PRO BONO SERVICE AS PART OF THE ANNUAL REGISTRATION PROCESS.

The TBA proposes that each lawyer be required to respond to a request for a report of the number of hours spent per year on pro bono legal services.

This response would take the form of an indication of a number of hours of service by an appropriate breakdown like that in Tennessee Supreme Court Rule 8, TRPC 6.1, or a response which indicates that the lawyer chooses not to respond.

According to the ABA Center for Pro Bono, one policy which has proven to be most successful in encouraging pro bono participation is a reporting requirement like that employed in three (3) other states. This requirement encourages a lawyer to think about the amount of pro bono service they are providing and allows the bench and bar to measure the enormous contribution which lawyers make in pro bono service. By measuring such service, lawyers learn about the contributions that their colleagues are making. By measuring such contributions, the respect for the legal system and the reputation of those who administer it is enhanced.

Various states have undertaken various regimes to accomplish these goals. The TBA proposes a simple requirement, from which a lawyer may opt out, that lawyers report anonymously as part of their annual registration process with the Board of Professional Responsibility. the number of hours of service. Since 2004, the TBA has administered a voluntary legal services

report as part of its dues renewal process. The number of lawyers reporting has grown steadily from 4% to 20%. The average number of hours reported is 72 hours per year per lawyer. The total contribution of lawyer time in 2006, the last year for which a full compilation is available, was $7,848,950, based upon a conservative $150 hourly rate.

As impressive as these numbers are, the request for information does not reach approximately 5,000 lawyers who have chosen not to be a member of the TBA. In addition, because members are not required to even indicate that they choose not to report, the rate of reporting remains relatively low. The TBA submits that the great respect for the Court and the registration process would mean that most lawyers would want to report to the court with pride the amount of service they have undertaken. Of course, no individual lawyer would be identified, but the statistical compilation of the results of the report would be available.

Since there is no model rule on reporting and since this proposal intrudes upon the administrative process of the Board of Professional Responsibility in administering the annual lawyer registration process, the TBA proposes that the Court signal that it wishes to adopt a reporting provision and that the

Board of Professional Responsibility be asked to assemble a working group, including TBA representatives, to establish a reporting provision for the next annual registration process for the Board of Professional Responsibility.

5. CONCLUSION

This Honorable Court has acknowledged that the needs of the citizens of Tennessee to have access to their justice system demand that the Supreme Court of Tennessee encourage, enable, and enhance pro bono service. The Court should expeditiously adopt all four (4) of these proposals in order to continue its leadership in this area which is vital to the justice system.

Respectfully submitted,

By: /s/ by permission

GEORGE T. LEWIS (007018)
President,
Tennessee Bar Association
Baker, Donelson, Bearman, Caldwell
& Berkowitz, PC
165 Madison Avenue, Suite 2000
Memphis, TN 38103
(901) 526-2000

By: /s/ by permission

WILLIAM L. HARBISON (007012)
General Counsel,
Tennessee Bar Association
Sherrard & Roe, PLC
424 Church Street, Suite 2000
Nashville, Tennessee 37219
(615) 742-4200

By: /s/ by permission

DEBRA L. HOUSE (013278)
Chair,
Access to Justice Committee
Legal Aid of East Tennessee
502 S. Gay Street, Suite 404
Knoxville, TN 37902
(865) 637-0484

By: /s/ by permission

LUCIAN T. PERA (011641)
Chair, Standing Committee on Ethics
& Professional Responsibility
Adams and Reese LLP
Brinkley Plaza
80 Monroe Avenue, Suite 700
Memphis, Tennessee 38103-2467
(901) 524-5278

By: _____

ALLAN F. RAMSAUR (005764)
Executive Director,
Tennessee Bar Association
Tennessee Bar Center
221 Fourth Avenue North, Suite 400
Nashville, Tennessee 37219-2198
(615) 383-7421

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing has been served upon the individuals and organizations identified in Exhibit "D" by regular U.S. Mail, postage prepaid on June 27, 2008.

_____
Allan F. Ramsaur

Exhibit "A"

RULE 6.5: NONPROFIT AND COURT-ANNEXED LIMITED LEGAL SERVICES PROGRAMS

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to RPCs 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to RPC 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by RPC 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), RPC 1.10 is inapplicable to a representation governed by this Rule.

Comment

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services – such as advice or the completion of legal forms – that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., RPCs 1.7, 1.9, and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See RPC 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including RPCs 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with RPCs 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with RPC 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by RPCs 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that RPC 1.10 is inapplicable to a representation governed by this Rule except as provided by

paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with RPC 1.10 when the lawyer knows that the lawyer's firm is disqualified by RPCs 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, RPCs 1.7, 1.9(a), and 1.10 become applicable.

DEFINITIONAL CROSS-REFERENCE

"Knows" See RPC 1.0(f)

Exhibit "B"

**(TBA proposal for amendment,
redlined to current Tennessee Rule of Professional Conduct 5.5)**

RULE 5.5: UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

(a) A lawyer shall not~~: (a)~~ practice law in a jurisdiction ~~where doing so violates~~ in violation of the regulation of the legal profession in that jurisdiction~~;~~, or ~~(b)~~ assist ~~a person who is not a member of the bar~~ another in ~~the performance of activity that constitutes the unauthorized practice of law~~ doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

(e) A lawyer authorized to provide legal services in this jurisdiction pursuant to paragraph (d)(1) of this Rule may also provide pro bono legal services in this jurisdiction, provided that these services are offered under the auspices of an organized legal aid society or state or local bar association and provided that these are services for which the forum does not require pro hac vice admission.

Exhibit "B"

Comment

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person.

~~[1]~~ [2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. ~~Paragraph (b)~~ This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3.

[3] ~~Likewise, it does not prohibit lawyers from providing~~ A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[4] Other than as authorized by law or this Rule, a lawyer who is not admitted to practice generally in this jurisdiction violates paragraph (b) if the lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1(a) and 7.5(b).

[5] There are occasions in which a lawyer admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

[6] There is no single test to determine whether a lawyer's services are provided on a "temporary basis" in this jurisdiction, and may therefore be permissible under paragraph (c). Services may be "temporary" even though the lawyer provides services in this jurisdiction on a recurring basis, or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.

[7] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia and any state, territory or commonwealth of the United States. The word "admitted" in paragraph (c) contemplates that the lawyer is authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a lawyer who while technically admitted is not authorized to practice, because, for example, the lawyer is on inactive status.

[8] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer licensed to practice in this jurisdiction. For this paragraph to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.

[9] Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under paragraph (c)(2), a lawyer does not violate this Rule when the lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a lawyer who is not admitted to practice in this jurisdiction to obtain admission pro hac vice before appearing before a tribunal or administrative agency, this Rule requires the lawyer to obtain that authority.

[10] Paragraph (c)(2) also provides that a lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is authorized to practice law or in which the lawyer reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a lawyer admitted only in another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.

[11] When a lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate lawyers may conduct research, review documents, and attend meetings with witnesses in support of the lawyer responsible for the litigation.

[12] Paragraph (c)(3) permits a lawyer admitted to practice law in another jurisdiction to perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. The lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.

[13] Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted but are not within paragraphs (c)(2) or (c)(3). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.

[14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted. A variety of factors evidence such a relationship. The lawyer's client may have been previously represented by the lawyer, or may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a

multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each. In addition, the services may draw on the lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law.

[15] Paragraph (d) identifies two circumstances in which a lawyer who is admitted to practice in another United States jurisdiction, and is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a lawyer who is admitted to practice law in another jurisdiction and who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.

[16] Paragraph (d)(1) applies to a lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The lawyer's ability to represent the employer outside the jurisdiction in which the lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the lawyer's qualifications and the quality of the lawyer's work.

[17] If an employed lawyer establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the lawyer may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education.

[18] Paragraph (d)(2) recognizes that a lawyer may provide legal services in a jurisdiction in which the lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent.

[19] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5(a).

[20] In some circumstances, a lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) may have to inform the client that the lawyer is not licensed to practice law in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. See Rule 1.4(b).

[21] Paragraphs (c) and (d) do not authorize communications advertising legal services to prospective clients in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services to prospective clients in this jurisdiction is governed by Rules 7.1 to 7.5.

Definitional Cross-References
None.

Exhibit "C"

RULEule 6.1 : PRO BONO PUBLICO ~~REPRESENTATION~~ SERVICE

A lawyer should aspire to render at least 50 hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial portion of such services without fee or expectation of fee to:

(1) persons of limited means; or

(2) charitable, religious, civic, community, governmental, and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and

(b) provide any additional services through:

(1) delivery of legal services at no fee or at a substantially reduced fee to individuals, groups, or organizations seeking to secure or protect civil rights, civil liberties, or public rights, or charitable religious, civic, community, governmental, and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system, or the legal profession.

(c) In addition to providing pro bono publico legal services, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

Comment

~~COMMENTS~~

[1] Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. ~~The actual amount of pro bono legal service a lawyer provides is left to the sound professional judgment of each lawyer, but every lawyer should render a reasonable amount of pro bono legal service each year.~~ This Rule urges all lawyers to provide a minimum of 50 hours of pro bono service annually. It is recognized that in some years a lawyer may render greater or fewer hours than the annual standard specified. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as post-conviction death penalty appeals.

[2] Paragraphs (a)(1) and (a)(2) recognize the critical need for legal services that exists among persons of limited means by providing that a substantial majority of the legal services rendered annually to the disadvantaged be furnished without fee or expectation of fee. Legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making, and the provision of free training or mentoring to those who represent persons of limited means. The variety of these activities should facilitate participation by government lawyers, even when restrictions exist on their engaging in the outside practice of law.

[3] Persons eligible for legal services under paragraphs (a)(1) and (a)(2) ~~are~~ include those who qualify financially for participation in programs funded by the Legal Services Corporation and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but, nevertheless, cannot afford counsel. Legal services can be rendered to individuals or to organizations such as homeless shelters, abused women's centers, and food pantries that serve those of limited means. The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.

[4] Because service must be provided without fee or expectation of fee, the intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of paragraphs (a)(1) and (a)(2). Accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected, but the award of statutory attorneys' fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this section. Lawyers who do receive fees in such cases are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means. In some cases, a fee paid by the government to an appointed lawyer will be so low relative to what would have been a reasonable fee for the amount and quality of work performed – as in post-conviction death penalty cases – that the lawyer should be credited for the purpose of this Rule as having rendered the services without fee. This would also be the case when a lawyer is appointed as counsel in a criminal matter, the fee paid the lawyer is capped at a certain amount, and the lawyer expends significant time working on the case after the capped amount has been exceeded.

[5] While it is possible for a lawyer to fulfill the annual responsibility to perform pro bono services exclusively through activities described in paragraph (a), the commitment can also be met in a variety of ways as set forth in paragraph (b). Constitutional, statutory, or regulatory restrictions may prohibit or impede government and public sector lawyers and judges from performing the pro bono services outlined in paragraphs (a), (b)(1), and (b)(2). Accordingly, where those restrictions apply, government and public sector lawyers and judges may fulfill their pro bono responsibility by performing services outlined in paragraphs (b)(3) and (c).

[6] Paragraph (b)(1) includes the provision of certain types of legal services to those whose incomes and financial resources place them above limited means. It also permits the pro bono lawyer to accept a substantially reduced fee for services. Examples of the types of issues that may be addressed under this paragraph include First Amendment claims, Title VII claims,

and environmental protection claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural, and religious groups.

[7] Paragraph (b)(2) covers instances in which lawyers agree to and receive a modest fee for furnishing legal services to persons of limited means. Participation in judicare programs and acceptance of court appointments in which the fee is substantially below a lawyer's usual rate are encouraged under this section.

[8] Paragraph (b)(3) recognizes the value of lawyers engaging in activities that improve the law, the legal system, or the legal profession. A few examples of the many activities that fall within this paragraph are serving on bar association committees; serving on boards of pro bono or legal services programs; taking part in Law Day activities; acting as a continuing legal education instructor; serving as a mediator or an arbitrator; and engaging in legislative lobbying to improve the law, the legal system, or the profession.

[9] Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. Nevertheless, there may be times when it is not feasible for a lawyer to engage in pro bono services. At such times a lawyer may discharge the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a firm's aggregate pro bono activities.

[10] Because the efforts of individual lawyers are not enough to meet the need for free legal services that exists among persons of limited means, the government and the profession have instituted additional programs to provide those services. Every lawyer should financially support such programs, in addition to either providing direct pro bono services or making financial contributions when pro bono service is not feasible.

[11] Law firms should act reasonably to enable and encourage all lawyers in the firm to provide the pro bono legal services called for by this Rule.

[12] Because this Rule states an aspiration rather than a mandatory ethical duty, it is not intended to be enforced through disciplinary process.

DEFINITIONAL CROSS-REFERENCES

"Substantial" and "Substantially" See RPC 1.0(*l*)

Exhibit "D"

Marcy Adcock
Warren County Bar Assn
PO Box 349
Mc Minnville TN 37111

Peter Alliman
Monroe County Bar Assn
135 College St
Madisonville TN 37354

Melanie Bean
Fifteenth Judical District Bar Assn
137 Public Sq
Lebanon TN 37087

Mike Billingsley
Kingsport Bar Assn
225 W Center St
Kingsport TN 37660

Mark Blakley
Scott County Bar Assn
P O Box 240
Huntsville TN 37756

Ben Boston
Lawrence County Bar Assn
235 Waterloo St
P O Box 357
Lawrenceburg TN 38464

Randy Chism
Obion County Bar Assn
127 S First St
PO Box 250
Union City TN 38281

William Cockett
Johnson County Bar Assn
PO Box 108
Mountain City TN 37683

Leslie Collum
Rutherford-Cannon County Bar Assn
320 West Main Street Suite 100
Murfreesboro TN 37130

Daryl Colson
Overton County Bar Assn
211 N Church St
Livingston TN 38570

Lewis Combs
Bristol Bar Assn
140 Blountville Bypass
PO Box 526
Blountville TN 37617

Bratten Cook
Dekalb County Bar Assn
104 N 3rd St
Smithville TN 37166

Cristy Cooper
Dyer County Bar Assn
117 East Court Street
Dyersburg TN 38025

Allen Coup
Hawkins County Bar Assn
130 W Main St
PO Box 1804
Mount Carmel TN 37645

Jerred Creasy
Dickson County Bar Assn
230 N Main St
Dickson TN 37055

Terri Crider
Gibson County Bar Assn
1302 Main Street
P.O. Box 160
Humboldt TN 38343

Stephen Crump
Bradley County Bar Assn
650 25th St. Ste. 400
Cleveland TN 37311

Creed Daniel
Grainger County Bar Assn
P O Box 6
Courthouse Sq 115 Marshall Ave
Rutledge TN 37861

Brad Davidson
Cocke County Bar Assn
317 East Main Street
NEWPORT TN 37821

Thomas Davidson
Marshall County Bar Assn
107 W Commerce St Suite C
Lewisburg TN 37091

Michael Davis
Morgan County Bar Assn
PO Box 756
Wartburg TN 37887

Kyle Dodd
Giles County Bar Assn
PO Box 409
211 W Madison St
Pulaski TN 38478

William Douglas
Lauderdale County Bar Assn
P O Box 489
109 N Main St
Ripley TN 38063

Joseph Ford
Franklin County Bar Assn
17 S College St
Winchester TN 37398

Andrew Frazier
Benton County Bar Assn
116 E Main
P O Box 208
Camden TN 38320

Randy Hardison
Maury County Bar Assn
506 North High Street
PO Box 1967
Columbia TN 38402

David Harvey
Washington County Bar Assn
PO Box 3038
Johnson City TN 37602

Kevin Heffelman
Cheatham County Bar Assn
112 S Main St
Ashland City TN 37015

Jason Holly
Carter County Bar Assn
420 Railroad Street
Elizabethton TN 37643

Carmon Hooper
Haywood County Bar Assn
P O Box 55
10 S Court Square
Brownsville TN 38012

Exhibit "D"

Jim Hopper
Hardin County Bar Assn
465 Main Street
Savannah TN 38372

Susan Hyder
Cumberland County Bar Assn
300 Thurman Ave
Crossville TN 38555

Britt Jared
Putnam County Bar Assn
145 S. Jefferson Ave. Suite A-1
Cookeville TN 38501

Mike Kelley
Anderson County Bar Assn
1107 Charles Selvers Blvd
Clinton TN 37716

Rick Kendall
Jackson-Madison County Bar Assn
106 S Liberty
Jackson TN 38301

Bill Kroeger
Robertson County Bar Assn
121 5th Ave W
Springfield TN 37172

Lawren Lassiter
Sumner County Bar Assn
119 Public Sq
Gallatin TN 37066

Martha Lionberger
Hamblen County Bar Assn
1001 W 2nd North St
Morristown TN 37814

Matt Maddox
Carroll County Bar Assn
19695 E Main St
P O Box 827
Huntingdon TN 38344

Hansel McCadams
Paris-Henry County Bar Assn
PO Box 627
Huntingdon TN 38344

John McFarland
Roane County Bar Assn
1021 Waterford Place
Kingston TN 37763

William Mitchell
White County Bar Assn
112 South Main Street
Sparta TN 38583

David Myers
Union County Bar Assn
P O Box 13
105 Monroe St
Maynardville TN 37807

Timothy Naifeh
Lake County Bar Assn
227 Church St
Tiptonville TN 38079

Edward North
Coffee County Bar Assn
100 N SPRING ST
MANCHESTER TN 37355

Steve Ogle
Blount County Bar Assn
P.O. Box 7264
Maryville TN 37802

David Pollard
Campbell County Bar Assn
PO Box 436
Jacksboro TN 37757

Mark Puryear
Williamson County Bar Assn
130 Fourth Ave S
PO Box 40
Franklin TN 37065

Jason Randolph
Jefferson County Bar Assn
P O Box 828
Dandridge TN 37725

Ray Runyon
Montgomery County Bar Assn
301 Main St
Clarksville TN 37040

William Russell
Loudon County Bar Assn
12680 HWY 11 STE 10
LENOIR CITY TN 37771

Randall Self
Lincoln County Bar Assn
131A E Market St
P O Box 501
Fayetteville TN 37334

Charles Sexton
Sevier County Bar Assn
111 Commerce St
Sevierville TN 37862

Todd Shelton
Greene County Bar Assn
100 S Main St
Greeneville TN 37743

Lois Shults-Davis
Unicoi County Bar Assn
PO Box 129
111 Gay Street
Erwin TN 37650

David Stanifer
Claiborne County Bar Assn
1735 Main St
PO Box 217
Tazewell TN 37879

Jeff Stewart
Twelfth Judicial District Bar Assn
PO Box 428
12th Judicial Dist
Winchester TN 37398

James Taylor
Rhea County Bar Assn
1374 Railroad St Ste 400
Dayton TN 37321

Harriet Thompson
Hardeman County Bar Assn
106 E Market St
P O Box 600
Bolivar TN 38008

Billy Townsend
Decatur,Lewis,
Perry,Wayne Counties Bar Assn
26 West Linden Ave
Hohenwald TN 38462

Exhibit "D"

Jeffery Washburn
Weakley County Bar Assn
P.O. Box 199
Dresden TN 38225

John White
Bedford County Bar Assn
P O Box 169
Shelbyville TN 37162

John Lee Williams
Humphreys County Bar Assn
102 S Court Square
Waverly TN 37185

Tish Wilsdorf
Hickman County Bar Assn
820 Hwy 100
Centerville TN 37033

Donald Winder
McMinn-Meigs County Bar Assn
PO Box 628
10 W Madison Ave
Athens TN 37371

James Witherington
Tipton County Bar Assn
205 S Main Street
P O Box 922
Covington TN 38019

Exhibit "D"

Caryll Alpert
TN Assn of Criminal Defense Lawyers
810 Broadway, Ste 200
Nashville TN 37203

Amy Amundsen
Memphis Bar Association
275 Jefferson Ave
Memphis TN 38103

Adrienne Anderson
Knoxville Bar Association
800 South Gay St Suite 2500
PO Box 629
Knoxville TN 37901

Adele Anderson
Tennessee Board of Law Examiners
401 Church Street, Suite 2200
Nashville TN 37243

Sadler Bailey
Tennessee Association for Justice
6256 Poplar
Memphis TN 38119

Barri Bernstein
Tennessee Bar Foundation
618 Church St Suite 120
Nashville TN 37219

Doug Blaze
University of Tennessee College of Law
1505 W. Cumberland Ave
Knoxville TN 37923

Beth Brooks
East Shelby County Bar Assn
P. O. Box 11894
Memphis TN 38111

Randy Chism
Tennessee Commission CLE
127 S First St
PO Box 250
Union City TN 38281

Erik Cole
Tennessee Alliance for Legal Services
50 Vantage Way Suite 250
Nashville TN 37228

Walter Crouch
Federal Bar Assn-Nashville Chapter
511 Union St Suite 2700
P O Box 198966
Nashville TN 37219

Melanie Gober
Lawyers Association for Women
P O Box 190583
Nashville TN 37219

Cindy Hall
Chattanooga Bar Association
837 Fort Wood Street
Chattanooga TN 37403

Lynda Hood
Chattanooga Bar Association
801 Broad St Suite 420
Pioneer Bldg
Chattanooga TN 37402

Nancy Jones
Board of Professional Responsibility
1101 Kermit Drive Suite 730
Nashville TN 37217

Suzanne Keith
Tennessee Association for Justice
1903 Division St
Nashville TN 37203

Kaz Kikkawa
Tennessee Asian Pacific American Bar Assoc
c/o Branstetter, Stranch & Jennings, PLLC
One Park Plaza 1-4-E
Nashville TN 37203

Joe Loser
Nashville School of Law
4013 Armory Oaks Drive
Nashville TN 37204

Heather Magnuson
SETLAW
801 Broad Street 3rd Floor Pioneer Building
Chattanooga TN 37402

Shari Myers
Association for Women Attorneys
5341 Estate Office Drive
Memphis TN 38119

Robert Norred
Tennessee Defense Lawyers Assn
30 2nd Street
Cleveland TN 37311

Mario Ramos
TN Assn of Spanish Speaking Attnys
611 Commerce St Suite 3119
Nashville TN 37203

Allan Ramsaur
Tennessee Bar Association
221 4th Ave N Suite 400
Nashville TN 37219

Jonathan Richardson
Napier-Looby Bar Assn
3250 Dickerson Pike Ste 121
Nashville TN 37207

Ed Rubin
Vanderbilt University School of Law
131 21st Ave S Room 290A
Nashville TN 37203

Dave Shearon
Tennessee Commission CLE
6041 Frontier Ln
6041 Frontier Ln
Nashville TN 37211

Barbara Short
TN Assn of Criminal Defense Lawyers
810 Broadway Suite 501
Nashville TN 37203

Exhibit "D"

Scott Sims
Nashville Bar Association
150 4th Ave N Ste 2300
Nashville TN 37219

Gigi Woodruff
Nashville Bar Association
315 Union Street Suite 800
Nashville TN 37201

Lisa Smith
Tennessee Lawyers Assn for Women
P. O. Box 331214
Nashville TN 37203

Barbara Zoccola
Tennessee Lawyers Assn for Women
200 Jefferson Ave Suite 811
Memphis TN 38103

James Smoot
Cecil C Humphreys School of Law
3715 Central Ave
Memphis TN 38152

Libby Sykes
Administrative Offices of the Courts
511 Union St Suite 600
Nashville TN 37219

Van Turner
Ben Jones Chapter - National Bar Association
2597 Avery Avenue, Rm 115
Memphis TN 38112

Jack Vaughn
Lawyers Fund for Client Protection
215 E Sullivan St
Kingsport TN 37660

Bernadette Welch
Lawyers Assn for Women
Marion Griffin Rep
Andrew Jackson Bldg., 500 Deaderick St., Roo
Nashville TN 37242

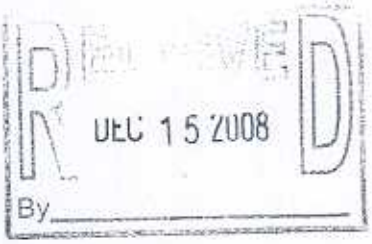
Ricky Wilkins
Tennessee Board of Law Examiners
66 Monroe Avenue Suite 103
The Shrine Building
Memphis TN 38103

Marsha Wilson
Knoxville Bar Association
505 Main St Suite 50
P O Box 2027
Knoxville TN 37901

MICHELLE BLAYLOCK-HOWSER
ATTORNEY AT LAW
121 EAST MAIN STREET
MURFREESBORO, TENNESSEE 37130
howseratty@comcast.net
Telephone: (615) 890-9040
Facsimile: (615) 890-9848

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

LAW OFFICES

ARNETT, DRAPER AND HAGOOD

SUITE 2300
FIRST TENNESSEE PLAZA
KNOXVILLE, TENNESSEE 37929-2300

TELEPHONE 865/546-7000
FAX: 865/546-0423
WWW.ADHKNOX.COM

P.O. BOX 300
KNOXVILLE, TENNESSEE 37901-0300

LEWIS R. HAGOOD
WILLIAM A. SIMMS
F. MICHAEL FITZPATRICK
RICK L. POWERS
DAN D. RHEA
STEVEN L. HURDLE
ROBERT N. TOWNSEND
R. KIM BURNETTE
SAMUEL C. DOAK

OF COUNSEL
JACK B. DRAPER

THOMAS M. COLE
BRODERICK L. YOUNG
JAY W. MADER
PATRICK DOYLE DODSON
MELODY J. BOCK*
L. KEITH ALDRIDGE**
ROBERT B. FROST, JR.

*ALSO LICENSED IN GEORGIA AND TEXAS
**ALSO LICENSED IN FLORIDA

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

M2008-1403

MBA
MEMPHIS BAR ASSOCIATION
80 North Main, Suite 220
Memphis, TN 38103
(901) 527-3581 Fax (901) 527-3582
www.memphisbar.org

January 16, 2009

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

Re: Pro Bono Service Rules Amendments

Dear Mr. Catalano,

After extensive review and discussion, the Memphis Bar Association Board of Directors submits the following comments regarding the Tennessee Bar Association's petition to amend the pro bono service rules. The MBA Board took these proposed amendments very seriously, first asking our House of Delegates to review them and make recommendations, and then calling a special board meeting specifically to address those recommendations.

The MBA Board supports the TBA's petition with the following reservations and requests for clarification from the Supreme Court:

1) A great deal of the board's discussion involved what constitutes pro bono service; whether it should be limited to the provision of legal services only or whether it should be broader, to encompass service on boards of directors of charitable or other institutions. The board endorsed the view that only pro bono services involving legal representation should count toward the 50-hour aspirational goal. Legal representation could include direct representation of a client, provision of advice at a legal clinic or hotline, or handling legal matters for a charitable organization that provides assistance to low-income persons. Therefore, the MBA recommends that Rule 6.1 and its accompanying comments be amended to clarify that only the provision of legal services qualifies as pro bono services.

2) Concern was expressed about the ability of government lawyers to provide pro bono services since many of them are prohibited by statute from providing legal services outside the scope of their employment. The MBA requests that the Supreme Court clarify whether government lawyers can provide bono services and if so, under what parameters. If government lawyers cannot provide pro bono services, then the MBA recommends an exemption be included in the rule for them.

3) Since many states have adopted or are adopting annual standards for pro bono service, the MBA recommends that the rule be clarified to allow an attorney licensed in multiple jurisdictions, to receive credit in Tennessee for pro bono services provided in those other jurisdictions. This is especially important in Memphis, where a number of attorneys are licensed in both

Tennessee and Mississippi, which requires 20 hours of mandatory pro bono a year. Another point of clarification is needed when an attorney elects to pay an annual fee to satisfy Mississippi's pro bono requirement. Does that count toward his/hers aspirational goal in Tennessee?

4) The MBA recommends that any rule concerning reporting of pro bono hours, include a provision that such reporting is confidential and privileged and will not be reported to another governmental entity.

5) The TBA's petition proposes that a working group composed of members of the Board of Professional Responsibility and TBA representatives, be formed to establish a reporting provision for pro bono hours. The MBA respectfully requests that this working group include an MBA representative as well.

Thank you for the opportunity to comment on these important rules changes. If you have any questions or would like additional input from the Memphis Bar Association, please contact us.

Sincerely,

Arthur E. Quinn,
President