



JUN 24 2009

June 24, 2009

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Nashville, TN 37219

IN RE: AMENDMENT TO RULE 9, SECTION _____
RULES OF THE TENNESSEE SUPREME COURT

Dear Mike:

Attached please find an original and six copies of the Comment of the Tennessee Bar Association in reference to the above matter.

As always, thank you for your cooperation. I remain,

Very truly yours,

Allan F. Ramsaur
Executive Director

cc: Gail Vaughn Ashworth, President, Tennessee Bar Association
William L. Harbison, General Counsel
Brian Faughnan, Chair, TBA Standing Committee on
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IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: AMENDMENT TO RULE 9, SECTION ____
RULES OF THE TENNESSEE SUPREME COURT

FILED

2009 JUN 24 AM 10:09

APPELLATE COURT CLERK
NASHVILLE

COMMENT OF THE TENNESSEE BAR ASSOCIATION

The Tennessee Bar Association submits this Comment in response to the invitation of this Court to the public, the bar, the judiciary and any other interested parties to submit comments concerning the proposed amendment to Tenn. Sup. Ct. R. 9, adopting new Section ____, which would establish new procedures to promote compliance with Tenn. Code Ann. §§ 67-4-1701 – 1710, as those sections apply to attorneys licensed by the Court.

INTRODUCTION

Tenn. Code. Ann. § 67-4-1702 levies a tax on the privilege of engaging in certain vocations, professions, businesses and occupations, including “persons licensed as attorneys by the supreme court of Tennessee.” Tenn. Code Ann. § 67-4-1704 provides that the failure to pay the privilege tax can result in suspension or revocation of “any license or registration by the appropriate licensing board” and goes on to state that “[t]he supreme court of Tennessee is encouraged to establish guidelines to suspend the license of an attorney who fails to comply with the requirements of this part.” Accordingly, this Court is considering the adoption of a proposed amendment of Tenn. Sup. Ct. R. 9, adopting a new Section ____. The text of the proposed amendment is attached as Appendix A to the Order of this Court filed May 18, 2009, soliciting comments concerning the possible change.

TBA COMMENT

The Tennessee Bar Association does not take issue with the notion that the Chief Disciplinary Counsel of the Board of Professional Responsibility should be the official designated by the Court as the official to whom the Department of Revenue shall annually send a list of attorneys who have failed, for two or more (consecutive) years, to pay the privilege tax imposed by Tenn. Code Ann. § 67-4-1702. The Comments of the TBA relate to the time periods and specifics of the requirements for attorneys to comply once they receive a notice of delinquency. For convenience, a black-lined text of the Proposed Rule is attached as Exhibit A to these Comments, showing the changes suggested by the TBA.

First, in Section ____.01 of the Proposed Rule, the Department of Revenue is instructed to send to the Chief Disciplinary Counsel a list of attorneys licensed by this Court who have failed, "for two or more years," to pay the privilege tax. The TBA suggests that the phrase "for two or more years" should be replaced with "for two or more *consecutive* years." This change would clarify that the list is intended to target severe offenders. The word "consecutive" should also be added to the same phrase in Section ____.02.

Second, in Section ____.03, the Proposed Rule provides a time period of thirty (30) days for attorneys to respond to a Privilege Tax Delinquency Notice. The TBA submits that thirty days is too short a time period. The TBA suggests that this time period be increased to sixty (60) days.

Third, also in Section ____.03, the Proposed Rule permits an attorney to respond to a Privilege Tax Delinquency Notice by filing an affidavit "showing that the attorney has paid the delinquent privilege taxes and any interest and penalties assessed by the Department of

Revenue.” The wording of this section implies that if an attorney is included by some mistake on the list of non-complying attorneys, and even if penalties and interest have been assessed by mistake, the attorney would still have to pay the taxes, interest and penalties in order to comply with the Rule. The TBA suggests that two additional sentences be added after the first sentence, and the last sentence reworded, as follows: “Alternatively, an attorney may file with the Board, within the same time period, an affidavit showing that the attorney has not failed to comply or is otherwise entitled to relief, such as evidence disputing the initial finding of non-payment. If the Board finds such evidence to be satisfactory, then the Privilege Tax Delinquency Notice shall be deemed dissolved and no further action shall be taken. In the event the Board does not find such evidence to be satisfactory, Disciplinary Counsel shall notify the attorney of that fact and shall proceed according to the following provisions.” This proposed revision and addition further would not create any inconsistency with Section ____ .04 which at least already serves to imply that one might respond to the Notice by some means other than simply making payment to the extent it indicates that the proposed Suspension Order to be prepared by Chief Disciplinary Counsel is to include those who “either failed to satisfactorily demonstrate to the Board that they had paid their delinquent taxes (and any interest and penalties) or failed to respond to the Notice.”

Fourth, and in the same vein, Section ____ .06 should be amended to provide that attorneys who have complied with Section ____ .03, resulting in dismissal of the Privilege Tax Delinquency Notice, should not be required to pay fees for noncompliance.

Fifth, the operation of Section ____ .07 is not clear. This Section provides that if the attorney has satisfied the Board and has paid all fees due under the Proposed Rule, “the attorney shall be reinstated without further order.” The TBA suggests that the Board be required to make

this determination within thirty (30) days after the attorney has demonstrated compliance. And the TBA also suggests that the Court issue an order periodically removing attorneys who have complied with the Proposed Rule from the list of summarily suspended lawyers. The TBA is concerned that, without this periodic order, the last thing on file with the Court would be a notice of suspension, and even if that notice provides for automatic reinstatement upon payment it would be in the best interest of the profession and the public for a list of complying attorneys to be published so that the record is clear.

CONCLUSION

The TBA respectfully submits that the above Comments concerning the Proposed Rule be adopted by this Court.

Respectfully Submitted,

/s/ by permission

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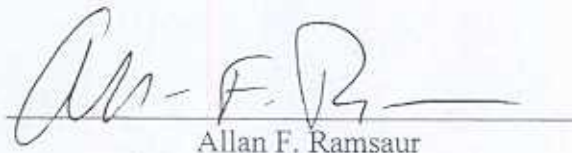
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Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing will be served, within 7 days of the filing of this document, upon the individuals and organizations identified in EXHIBIT B by regular U.S. Mail, postage prepaid.



Allan F. Ramsaur

EXHIBIT A

TENN. SUP. CT. R. 9, PROPOSED NEW SECTION ____

**Section ____ . Attorneys Failing to Comply with Tenn. Code Ann. § 67-4-1701
– 1710 (Privilege Tax Applicable to Persons Licensed to Practice Law)**

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

____.01. The Court designates the Chief Disciplinary Counsel of the Board of Professional Responsibility (“Board”) as the official to whom the Department of Revenue shall annually send a list of attorneys licensed by this Court who have after due notice and without good cause failed, for two or more consecutive years, to pay the privilege tax imposed by Tenn. Code Ann. § 67-4-1702.

____.02. Upon receipt of the list of attorneys transmitted by the Department of Revenue, the Chief Disciplinary Counsel shall serve each attorney listed thereon with a Privilege Tax Delinquency Notice, stating that the Department of Revenue has informed the Board that the attorney has after due notice and without good cause failed, for two or more consecutive years, to pay the privilege tax imposed by section 67-4-1702 and that the attorney’s license is therefore subject to suspension. The Notice shall be served upon the attorney by registered or certified mail, return receipt requested, at the address shown in the most recent registration statement filed by the attorney pursuant to Supreme Court Rule 9, Section 20.5 or other last know address.

____.03. Each attorney to whom a Privilege Tax Delinquency Notice is issued shall file with the Board, within ~~thirtysixty~~ (30/60) days of the date of issuance of the Notice, an affidavit supported by documentary evidence showing that the attorney has paid the delinquent privilege taxes and any interest and penalties assessed by the Department of Revenue. ~~In the event the attorney fails to submit such evidence to the Board, Disciplinary Counsel~~ Alternatively, an attorney may file with the Board, within the same time period, an affidavit showing that the attorney has not failed after due notice and without good cause to comply or is otherwise entitled to relief, such as evidence disputing the initial finding of non-payment. If the Board finds such evidence to be satisfactory, then the Privilege Tax Delinquency Notice shall be deemed dissolved and no further action shall be taken. In the event the Board does not find such evidence to be satisfactory, Disciplinary Counsel shall notify the attorney of that fact and shall proceed according to the following provisions.

____.04. Within thirty (30) days of the expiration of the period for attorneys to respond, as required in section ____03, to the Privilege Tax Delinquency Notices mailed to the attorneys listed by the Department of Revenue, the Chief Disciplinary Counsel shall prepare a proposed Suspension Order listing all attorneys who were issued undissolved Privilege Tax Delinquency Notices and who either failed to satisfactorily demonstrate ~~to~~ to the Board that they had paid their delinquent taxes (and any interest and penalties) or failed to respond to the Notice. The proposed Suspension Order shall provide that the license to practice law issued to each listed attorney shall be suspended upon the Court's filing of the order and pending the attorney's payment of the delinquent privilege taxes and interest and penalties.

____.05. Upon the Court's review and approval of the order, the Court will file the order summarily suspending the license to practice law of each attorney listed in the order. The suspended attorneys shall comply with the applicable provisions of section 18 of this rule. The suspension shall remain in effect until the attorney pays the delinquent privilege taxes or demonstrates to the satisfaction of the Board that the nonpayment was because of lack of due notice or other good cause and any interest and penalties, as well as any fees imposed by this rule, and he or she is reinstated pursuant to section ____07.

____.06. Each attorney who is issued a Privilege Tax Delinquency Notice (that is not dismissed or dissolved pursuant to Section ____03 above or found to have been issued without due notice or good cause) shall pay to the Board a fee in the amount of \$100 to defray the Board's costs in issuing the Notice. Each attorney whose license to practice law is suspended by the Court pursuant to this rule shall pay to the Board a reinstatement fee in the amount of \$200 as a condition of reinstatement of his or her law license after paying the delinquent privilege taxes and any interest and penalties. The reinstatement fee shall be paid in addition to the fee for issuance of the Notice.

____.07. An attorney suspended by the Court pursuant to this rule may file with the Board an application for reinstatement demonstrating that he or she has paid all delinquent privilege taxes and any interest and penalties. The Board shall review the application within thirty (30) days. If the application is satisfactory to the Board, if the attorney is otherwise eligible for reinstatement, and if the attorney has paid in full all fees due under this rule, the attorney shall be reinstated without further order. From time to time, but at least every six (6) months, the Court shall issue an order removing attorneys who have complied with these requirements from the list of summarily suspended lawyers.

Exhibit B

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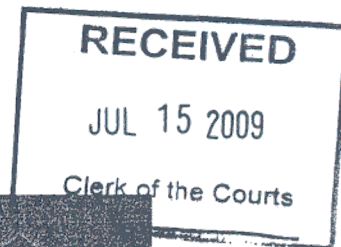
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July 13, 2009

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

Re: Professional Privilege Tax

Mr. Catalano:

In response to your e-mail regarding request for comments regarding changes to the TBA proposed changes to the Rules of Professional conduct (a copy of which is attached hereto), I would like to comment on the professional privilege tax.

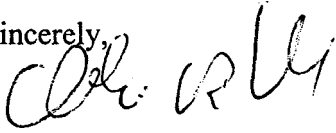
As a person unfortunate enough to have worked 90 hours per week for more than the last 6 years, but still having made an average of less than \$7,000.00 for the last 6 years and who has received no government assistance, and has only been able to purchase @100.00 worth of used clothes per year during said time and slept on friends' floors while trying to raise my son and support my wife before she died in 2006, I would suggest that the rules regarding the professional privilege tax be that be that if I am current with the pending year and have made arrangements with the TN Department of Revenue satisfactory with them regarding any delinquent taxes I owe be deemed sufficient compliance with the Rules of Professional Conduct.

I have been practicing more than 30 years, and there are years I made good money. Unfortunately family issues, heath issues, and my pursuit of contingency cases in the past several years which have not come to fruition have resulted in my present financial circumstances.

I have not give up and I am still hoping to make a million dollars or more in 2009, but there should be some sort of provision for those unfortunate souls such as me who represent almost as many people pro bono as not, are not particularly good businessmen, and live on less than ½ of the Federal Poverty Income Guidelines. I do not know why people, including the Supreme Court Justices, think all lawyers are rich.

I do not even recall receiving any privilege tax form prior to this year, and if I did I could not pay it at the time, as I would have had to choose between eating and paying the tax.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles R. Curbo". The signature is written in a cursive style with a large initial "C" and "R".

Charles R. Curbo, TN Bar #006585

E-Mail Notification - TBA Proposed Amendments to Rules of Professional Conduct

From: Mike Catalano <Mike.Catalano@tncourts.gov>

To: Mike Catalano <Mike.Catalano@tncourts.gov>

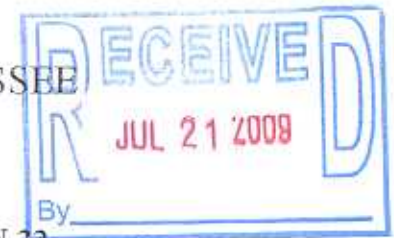
Subject: E-Mail Notification - TBA Proposed Amendments to Rules of Professional Conduct

Date: Tue, Jul 7, 2009 4:19 pm

As the Clerk of the Appellate Courts, I am notifying you that on May 13, 2009, the Tennessee Bar Association ("TBA") filed a petition asking Supreme Court to adopt amended Tennessee Rules of Professional Conduct, the ethics rules applicable to Tennessee lawyers. In light of the important public policy issues raised by the petition, the Supreme Court entered an order on June 22, 2009 soliciting written comments regarding the TBA's proposed amendments from judges, lawyers, bar associations, members of the public, and any other interested parties. The deadline for submitting written comments is Wednesday, December 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

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE



IN RE: AMENDMENT TO RULE 9, SECTION 32
RULES OF TENNESSEE SUPREME COURT

RESPONSE OF THE BOARD OF PROFESSIONAL RESPONSIBILITY TO
THE COMMENT OF THE TENNESSEE BAR ASSOCIATION

On June 24, 2009, the Tennessee Bar Association ("TBA") filed its Comment regarding proposed Section 32 to Rule 9 of the Rules of the Tennessee Supreme Court which would establish new procedures to promote compliance with Tenn. Code Ann. §§ 67-4-1701. et seq. The Board of Professional Responsibility ("Board") submits the following response to the TBA's Comment.

The Board agrees with the proposed revisions to subsections .01, .02 and .04. The Board also agrees with the suggestion to increase the time period for demonstrating compliance in subsection .03 from 30 to 60 days.

The Board respectfully disagrees with the additional proposed revision to subsection .03. It is outside the purview and expertise of the Board to review or attempt to resolve disputes between attorney taxpayers and the Department of Revenue ("Department"). Procedures for resolving such disputes are clearly defined in TCA § 67-1-1801 and the proposed increase to 60 days should provide ample time for an attorney to resolve any dispute with the Department. Should such dispute not be resolved within that time period, the Chief Disciplinary Counsel would have the discretion to withhold the attorney's name from the proposed suspension order until resolution is reached, or it is determined that further review of the dispute is being sought by the attorney merely for the purpose of delay.

The Board does not believe that the proposed additions to subsections .05 and .06 are necessary. Section 20.5 of Rule 9 requires an attorney to keep the Board advised of his or her current addresses. In light of the fact that subsection .02 to the proposed rule would require the Board to provide notice to the attorney of possible suspension for professional privilege tax delinquency by registered or certified mail, there should be no lack of notice issues, except in the circumstance where the attorney has either failed to keep the Board advised of his or her current address as required by Section 20.5 or where the attorney refuses to pick up his or her mail. In either event, lack of notice should not be a reason to avoid suspension.

Similarly, the Board is of the view that the proposed addition to subsection .07 is not necessary. As drafted, this subsection would require a lawyer suspended under Section 32 to be automatically reinstated by the Board without further order of the court once he or she demonstrates that all delinquent privilege taxes, penalties and interest have been paid. Lawyers who have been summarily suspended for non-payment of the annual registration fee are similarly reinstated automatically without further order of the Court pursuant to Section 20.7. The automatic reinstatement process works smoothly under Section 20.7; therefore, there is no need for periodic monitoring by the Court.

The Board appreciates the opportunity to comment further on the proposed new rule related to procedures for ensuring compliance with privilege tax obligations.

Respectfully submitted,



Nancy S. Jones, BPR #16369
Chief Disciplinary Counsel
Board of Professional Responsibility
1101 Kermit Drive, Suite 730
Nashville, TN 37217
(615) 361-7500, ext. 204

/s/ by permission

Thomas Stratton Scott, Jr., BPR
#001086
Chairman of the Board,
Board of Professional Responsibility

/s/ by permission

Roger Alan Maness, BPR #007353

/s/ by permission

William C. Bovender, BPR #000751

/s/ by permission

Calvin Craig Fitzhugh, BPR #000090

/s/ by permission

Clarence Halmon, BPR #005317

/s/ by permission

Virginia Anne Sharber, BPR #011149

/s/ by permission
Frederick B. Hunt, Jr., BPR #003145

/s/ by permission
Lela Hollabaugh, BPR #014894

Board Members,
Board of Professional Responsibility

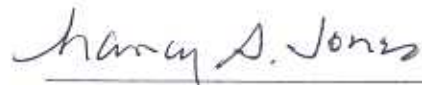
CERTIFICATE OF SERVICE

I certify I have served a copy of the foregoing, Board of Professional Responsibility's Response to Petition, by mailing a copy to the persons listed below on the 20th day of July, 2009.

Michael Catalano
Appellate Court Clerk
Supreme Court Building
401 Seventh Avenue North
Nashville, Tennessee 37219

Allan F. Ramsaur
Executive Director
Tennessee Bar Association
221 Fourth Avenue North, Suite 400
Nashville, Tennessee 37219-2198

Kathy Smith
State of TN - Department. of Revenue
Taxpayer and Vehicle Services Division
Andrew Jackson Building
500 Deaderick Street
Nashville, TN 37242



Nancy S. Jones



July 23, 2009

The Honorable Michael Catalano
Clerk, Tennessee Supreme Court
Supreme Court Building, Room 100
401 Seventh Avenue North
Nashville, TN 37219



IN RE: AMENDMENT TO SUPREME COURT
RULE 9, SECTION 32

Dear Mike:

The Tennessee Bar Association is in receipt of the RESPONSE OF THE BOARD OF PROFESSIONAL RESPONSIBILITY TO THE COMMENT OF THE TENNESSEE BAR ASSOCIATION filed in the above matter.

The TBA's representatives have reviewed the response and the TBA Comment in this matter. The TBA believes that its response is a full and complete response to the issues presented by the original proposed amendment to the Rule and the issues presented in the response by the BPR and does not intend to seek to submit any further written comment. The TBA is, of course, willing to provide further comment if the Court desires. Likewise, the TBA stands ready to participate and answer the Court's questions in any oral argument that may be set in this matter.

Thank you for your acceptance and prompt attention to this matter.

Sincerely,

Gail Vaughn Ashworth
President

cc: William L. Harbison, General Counsel
Brian S. Faughnan, Chair, TBA Standing Committee on Ethics
& Professional Responsibility
Nancy Jones, Chief Disciplinary Counsel, Board of Professional
Responsibility
Kathy Smith, State of Tennessee, Department of Revenue

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