



September 30, 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 RULE 9 -
RULES OF THE TENNESSEE SUPREME COURT
No. M2009-01818-SC-RL2-RL

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: Chief Justice Janice Holder, Tennessee Supreme Court
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Justice Gary Wade, Tennessee Supreme Court
Justice William Koch, Tennessee Supreme Court
Justice Sharon Lee, Tennessee Supreme Court
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IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED

2009 SEP 30 AM 10:00

IN RE: AMENDMENT TO RULE 9,
RULES OF THE TENNESSEE
SUPREME COURT)
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No. M2009-01818-SC-RL2-RLE
APPELLATE COURT CLERK

COMMENT OF THE TENNESSEE BAR ASSOCIATION

INTRODUCTION

The Tennessee Bar Association ("TBA"), by and through its President, Gail Vaughn Ashworth; Immediate Past President George T. "Buck" Lewis; Chair of its Access To Justice Committee, Debra House; General Counsel, William L. Harbison; and Executive Director, Allan F. Ramsaur, recommends that lawyers be required to respond to a request for a report of the number of hours spent each year on pro bono legal services.

BACKGROUND

After endorsement by the TBA House of Delegates, the TBA Board of Governors unanimously resolved at its June 2008 meeting to petition this Honorable Court recommending new pro bono service rule amendments. On November 19, 2008, the Court filed an order publishing the TBA's petition including the proposed amendments and soliciting written comments from judges, lawyers, bar associations and members of the public with a deadline of January 16, 2009.

On April 3, 2009, this Court granted two of the recommendations of the TBA including an aspirational 50-hour annual pro bono goal for lawyers and permitting limited conflicts checks for limited scope consultation. The Court then took under advisement two other recommendations including the instant reporting issue. The Court referred the proposal to require lawyers annually to respond to a request to report the number of hours of pro bono legal services to its newly created commission for consideration and recommendation.

The Tennessee Supreme Court Access To Justice Commission ("Commission") received comments and recommendations, including a draft submitted by the TBA,

at the Commission's July 17, 2009 meeting. The Commission unanimously recommended that a rule requiring lawyers to respond to a request for information, including a provision that the lawyer could respond that they chose not to report, be adopted.

On September 3, 2009, this Court published for comment a proposal to make pro bono reporting wholly voluntary. The TBA respectfully submits that the advancement of the cause of access to justice, encouragement of pro bono participation and enhancement of public trust and confidence in the justice system through measurement and reporting of service contributed by lawyers all lead to the conclusion that required reports are needed.

The arguments cited in the TBA's original petition are even more true today than they were 15 months ago. The economic situation has worsened with unemployment in Tennessee topping ten and seven tenths percent (10.7%). This economic crisis has generated more demand for legal aid and pro bono services for poor Tennesseans.

The ABA Center for Pro Bono reports that there are now eight (8) states which have required pro bono reporting including Florida and Mississippi among the Southeastern states. For more information about the status of other state policies, please see www.abanet.org/legalservices/probono/reporting.html.

What is proposed by the TBA and endorsed by the Commission is a middle ground proposal between a completely voluntary program and a full-blown mandatory reporting program as is required in these eight (8) other states. This uniquely Tennessee approach puts the full force of the Court behind its number one strategic priority, access to justice, without treading on the wholly volunteer spirit of pro bono service.

The TBA is strongly opposed to mandatory pro bono service. The only negative comments received regarding TBA's original petition objected to adoption of a rule as a first step towards mandatory pro bono. A move towards mandatory pro bono is not the TBA's position and the TBA would resist vigorously any effort to mandate pro bono service.

Both the TBA and the Commission, both of which include an extraordinarily diverse array of lawyers, do believe that a requirement that lawyers respond to a report with sanctions is needed. Such a plan will encourage pro bono service. The plan will give the Court and the Commission an opportunity to track the effect of recently enacted changes. It will provide good statistical data upon which the Commission can base its recommendations due in April 2010 and will assist the Commission in discharging its ongoing duties under Tenn. Sup. Ct. Rule 50, Section 2. In addition, it will allow any future actions to encourage pro bono service. Only through adequate required reporting can this happen.

Attached as Exhibit "A" is a redline of the proposal published by the Court with changes necessary to require lawyers to respond to a request to report. In addition, Exhibit "A" contains a new provision for Tennessee Supreme Court Rule 9, Section 20.12 which would unify, as recommended by the TBA and the Commission, the sanctions provisions of the new Tenn. Sup. Ct. R. 43 on IOLTA and this reporting rule. This unified sanctions regime, through the levy of fees assessed on those who do not comply, would provide the funds necessary to administer the program by pairing it with the IOLTA report.

The TBA respectfully submits that only through a requirement that lawyers respond to a request to report will the goals served by pro bono reporting be met.

RESPECTFULLY SUBMITTED,

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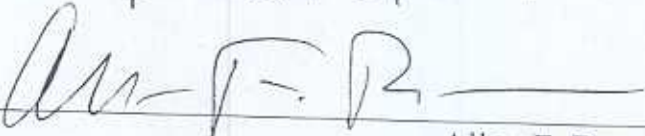
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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing has been served upon the individuals and organizations identified in Exhibit "B" by regular U.S. Mail, postage prepaid on September 30, 2009


Allan F. Ramsaur

APPENDIX A-EXHIBIT A
PROPOSED AMENDMENT TO TENN. SUP. CT. R. 9,
NEW SECTION 20.11

20.11. Every lawyer who is required by section 20.5 to file an annual registration statement with the Board of Professional Responsibility shall report their pro bono service or report that they wish not to report their service ~~is requested to voluntarily file a pro bono reporting statement,~~ reporting the extent of the lawyer's pro bono legal services and activities during the previous calendar year. In reporting the extent of the lawyer's pro bono legal services and activities, the lawyer is requested also to state whether or not the lawyer made any voluntary financial contributions pursuant to Tenn. Sup. Ct. R. 8, RPC 6.1(c), but the lawyer shall not disclose the amount of any such contributions.

The pro bono reporting statement shall be provided to the lawyer by the Board of Professional Responsibility with the lawyer's annual registration statement. ~~The lawyer is requested to~~ shall complete the pro bono reporting statement and file it with his or her annual registration statement.

The pro bono reporting statement shall be promulgated by the Board of Professional Responsibility in substantially the following format:

Many attorneys freely give their time and talents to improve our profession, our system of justice and our communities. Gathering information about this volunteer work and contributions by lawyers is essential to efforts to obtain and to maintain funding for civil and criminal legal services for the indigent and for promoting and maintaining the image of the legal profession. For that reason, the Supreme Court of Tennessee ~~requests~~ requires that you ~~voluntarily~~ report the extent of your pro bono activities in the preceding calendar year or report that you wish not to report this service or contributions.

(1) I hereby report that in the calendar year covered by this report I performed the approximate number of hours of pro bono service indicated: ~~year~~, I worked approximately:

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

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

_____ hours in the 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, *see* Tenn. Sup. Ct. R. 8, RPC 6.1(b)(1);

_____ hours in the delivery of legal services at a substantially reduced fee to persons of limited means, *see* Tenn. Sup. Ct. R. 8, RPC 6.1(b)(2);

_____ hours participating in activities for improving the law, the legal system, or the legal profession, *see* Tenn. Sup. Ct. R. 8, RPC 6.1(b)(3).

(2) I voluntarily contributed financial support to organizations that provide legal services to persons of limited means, *see* Tenn. Sup. Ct. R. 8, RPC 6.1(c): _____ yes; _____ no. (Please do not disclose the amount of any such contributions.)

I CHOOSE NOT TO REPORT AS PERMITTED BY TENN. SUP. CT. R. 9, §20.11.

The Board of Professional Responsibility may promulgate such forms, policies and procedures as may be necessary to implement this rule. Failure to report as provided in this subsection shall be subject to fees for delinquent compliance, non-compliance and suspension as provided in Tenn. Sup. Ct. R. 9, §20.12.

The individual information voluntarily provided by lawyers in the pro bono reporting statements filed pursuant to this section shall be confidential and shall not be a public record. The Board of Professional Responsibility shall not release any individual information contained in such statements, except as directed in writing by the Tennessee Supreme Court or as required by law. The Board, however, may compile statistical data derived from the statements, which data shall not identify any individual lawyer, and may release any such compilations to the public.

Section 15. Upon its receipt of a lawyer's certification under Section 14 of this Rule, the Tennessee Bar Foundation shall, on or before March 31 of each year, report to the Board of Professional Responsibility any evidence of the lawyer's noncompliance known by the Tennessee Bar Foundation. Noncompliance with Tenn. Sup. Ct. R. 43 or Tenn. Sup. Ct. R. 9, § 20.11 will result in the following action:

(a) On or before May 15 of each year, the Board of Professional Responsibility shall compile a list of those lawyers who are not in compliance with Tenn. Sup. Ct. R. 43 or Tenn. Sup. Ct. R. 9, § 20.11. On or before the first business day of May of each year, the Board of Professional Responsibility shall serve each lawyer on the list compiled under Tenn. Sup. Ct. R. 43 or Tenn. Sup. Ct. R. 9, § 20.11 a Notice of Noncompliance requiring the lawyer to remedy any deficiencies identified in the Notice on or before May 31 of that year. Each lawyer to whom a Notice of Noncompliance is issued shall pay to the Board of Professional Responsibility a Noncompliance Fee of One Hundred Dollars (\$100.00). Such Noncompliance Fee shall be paid on or before May 31 of that year, unless the lawyer shows to the satisfaction of the Chief Disciplinary Counsel that the Notice of Noncompliance was erroneously issued, in which case no such fee shall be due.

(b) On or before May 31 of that year, each lawyer on whom a Notice of Noncompliance is served also shall file with the Board of Professional Responsibility an affidavit, in the form specified by the Board of Professional Responsibility, attesting that any identified deficiencies have been remedied. In the event a lawyer fails to timely remedy any such deficiency or fails to timely file such affidavit, the lawyer shall pay to the Board of Professional Responsibility, in addition to the Noncompliance Fee, a Delinquent Compliance Fee of Two Hundred Dollars (\$200.00).

(c) On or before June 30 of each year, the Board of Professional Responsibility shall:

(i) prepare a proposed Suspension Order listing all lawyers who were issued Notices of Noncompliance and who failed to remedy their deficiencies by May 31;

(ii) submit the proposed Suspension Order to the Supreme Court; and

(iii) serve a copy of the proposed Suspension Order on each lawyer named in the Order.

The Supreme Court will review the proposed Suspension Order and enter such order as the Court may deem appropriate suspending the law license of each lawyer deemed by the Court to be not in compliance with the requirements of Tenn. Sup. Ct. R. 43 or Tenn. Sup. Ct. R. 9, § 20.11.

(d) Each lawyer named in the Suspension Order entered by the Court shall file with the Board of Professional Responsibility an affidavit in the form specified by the Board of Professional Responsibility, attesting that any identified deficiencies have been remedied and shall pay to the Board of Professional

Responsibility, in addition to the Noncompliance Fee and the Delinquent Compliance Fee, a Five Hundred Dollar (\$500.00) Suspension Fee as a condition of reactivation of his or her law license. Payment of all fees imposed by this section shall be a requirement for compliance with Tenn. Sup. Ct. R. 43 or Tenn. Sup. Ct. R. 9, § 20.11 and for reactivation of a license. The Board of Professional Responsibility shall not reactivate the license of any lawyer whose license is suspended pursuant to Tenn. Sup. Ct. R. 43 or Tenn. Sup. Ct. R. 9, § 20.11 until the Chief Disciplinary Counsel certifies compliance with the requirements of Tenn. Sup. Ct. R. 43 or Tenn. Sup. Ct. R. 9, § 20.11.

(e) All notices required or permitted to be served on a lawyer under the provisions of Tenn. Sup. Ct. R. 43 or Tenn. Sup. Ct. R. 9, § 20.11 shall be served by United States Postal Service Certified Mail, return receipt requested, at the address shown in the most recent registration statement filed by the lawyer pursuant to Supreme Court Rule 9, Section 20.5, and shall be deemed to have been served as of the postmark date shown on the Certified Mail Receipt.

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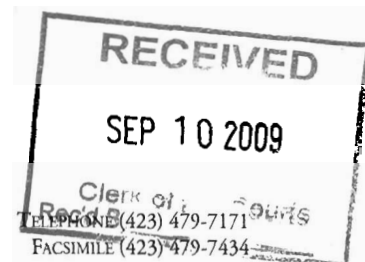
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September 9, 2009

Michael W. Catalano, Clerk
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

Re: Proposed Amendment to Rule 9
M2009-01818-SC-RL2-RL

Dear Mr. Catalano:

This letter is in response to the proposed amendment to Rule 9, regarding voluntary reporting of pro bono services and contributions.

I provide a great deal of pro bono service each year and I contribute regularly to legal aid organizations. However, I am opposed to reporting this information, because I am concerned that any reporting is a step along the way to mandatory pro bono service and mandatory reporting. Hopefully this will not be the case in Tennessee. Pro bono service should be rendered freely and voluntarily, and not under any mandate.

It appears from reading the proposed amendment that it has been improved from the initial proposal that came before the TBA House of Delegates, which was a requirement to report with an opt out provision. I hope this is the case. If the amendment is approved, I hope the reporting form will state very clearly that it is not necessary to complete the form. The form should be only an additional page with no repercussions for not completing and returning it.

With best regards, I am

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Marcia M. McMurray". The signature is written in a cursive style and is positioned above a rectangular box.

Marcia M. McMurray
For the Firm