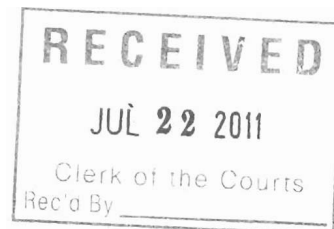


Brendan Loy
Formerly BPR #026871
8325 E. 28th Ave.
Denver, CO 80238
brendanloy@alumni.usc.edu
720-290-3810

July 19, 2011

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



Re: Docket Number M2011-01526-SC-RL2-RL

Mr. Catalano:

I am writing to comment on the proposed Rule change that would allow attorneys to assume inactive status (and pay a reduced fee to maintain that status) if they are practicing law in other jurisdictions but are no longer practicing law in Tennessee. Crucially, such a Rule change would also, as I understand the Professional Privilege Tax statute, exempt out-of-state attorneys from paying the \$400 annual privilege tax.

I strongly support the proposed Rule change, and only wish that it had been made sooner. Having graduated from Notre Dame Law School in 2007 and then moved to Knoxville, I took and passed the Tennessee Bar Exam in February 2008 while clerking for The Honorable Charles D. Susano, Jr. on the Tennessee Court of Appeals. I searched for employment in Tennessee, but ultimately received and accepted a job offer in Denver, Colorado (I had previously taken and passed the Colorado Bar Exam as well), and moved to Denver in October 2008.

Despite having never used my Tennessee law license, I was very proud of it, and very much desired to maintain it. However, because out-of-state attorneys could not go onto inactive status, I was required to pay the full \$170 BPR registration fee *plus* the \$400 privilege tax—a grand total of \$570 per year to maintain a license I never used. In 2009 and 2010, the small law firm in Denver for which I work generously covered these fees, despite the lack of any clear economic benefit for them to do so. In 2011, however, I was informed that the fees were simply too high to continue paying them indefinitely, and I would need to either cover them myself or surrender my Tennessee license.

As a young attorney on a limited budget supporting a family of five, I simply could not afford to pay \$570 per year to maintain my license. Accordingly, just a few months ago, with great regret, I submitted a Petition to Surrender Law License, which was granted on May 18, 2011 (see Docket No. M2011-01018-SC-BPR-BP). I am thus no longer licensed to practice law in Tennessee. This makes me especially sad because

I have not yet been practicing law for long enough to qualify for comity admission, so I would need to retake the Tennessee Bar Exam if I wished to be readmitted, at least during the next 2½ years.

Admittedly, this is fairly unlikely to be a problem as a practical matter, as I intend to stay at my current firm and remain in Colorado for the foreseeable future. But one never knows for certain what the future will bring. If I still had my Tennessee license, then in the event that I were to consider changing jobs and moving to a different jurisdiction, Tennessee would have been the first state I would have considered, given the lack of licensure hurdles. Instead, since I am no longer licensed in Tennessee, it would be no higher on my list than any other state where I might wish to live and work.

If the bill to maintain my license had been \$85 per year instead of \$570, there is little doubt that my law firm would have continued to cover it—and if they, for some reason, had not, I would have paid it myself. Simply put, \$85 is a manageable amount for an out-of-state attorney to pay to maintain licensure. \$570 is not. As such, I strongly support the proposed Rule change.

Frankly, I am uncertain why out-of-state inactive status was eliminated in the first place, back in 1985. I am equally uncertain as to why this rule has not previously been revisited, in light of the passage in 1992 of the Professional Privilege Tax, which greatly increased the stakes. Many other professions covered by the privilege tax have “inactive” status for out-of-state professionals, thus exempting them from the tax; it has always seemed odd that the legal profession does not.

In any event, personal circumstances aside, it has always struck me as unfair—and out of step with reasonable best practices—to impose such a hefty financial burden on out-of-state attorneys who receive no income from Tennessee (since they do not practice there), yet who merely want to maintain their license as a contingency, in the event they might wish to return to Tennessee at some point in the future. It also seems economically unwise. Since the economic benefit of professionals living and working in Tennessee is presumably desirable to policymakers, effectively encouraging out-of-state attorneys to give up their licenses—thus making it less likely that they will ever return to Tennessee—does not seem to be a rational policy choice.

My only additional comment would be a request that the Court consider making this change retroactive, *i.e.*, that the Rule be amended to allow formerly licensed Tennessee attorneys, such as myself, who have surrendered their licenses specifically because of the prior fee and tax structure, to apply to have their licenses reinstated (without re-taking the bar exam or applying for comity), provided that they pay the fees which they would have owed if they had been able to go “inactive” previously.¹ If

¹ I will not comment on whether it would be wiser and/or fairer to utilize the old fee & tax structure (\$570 per year), the old fee structure only (\$170 per year), or the new fee structure (\$85 per year) when attorneys seeking reinstatement are billed for their retroactive payments. In my personal case, I would be willing to pay even the higher amount, if necessary, since it would only be for a *single year*, if I could get my license restored (without re-taking the bar) for \$85 annually going forward.

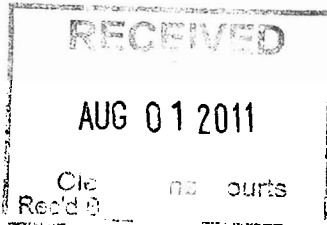
necessary, such attorneys could be required to swear in an affidavit that they surrendered their licenses because of the fee and tax structure that is being repealed. Perhaps this would only affect a handful of individuals, but I cannot imagine what harm it would do, and it would certainly be a blessing for those of us who have faced this dilemma. It would also raise at least a small bit of revenue for the state's coffers.

Thank you very much for your time and consideration.

Sincerely,

A handwritten signature in black ink that reads "Brendan L. Loy". The signature is written in a cursive style with a large initial 'B' and a stylized 'L'.

Brendan L. Loy



United States Department of Justice

**United States Attorney
Eastern District of Tennessee**

Please reply to the Chattanooga Office

Headquarters: 1110 Market Street, Suite 301
800 Market Street, Suite 211 Chattanooga, TN 37402
Knoxville, Tennessee 37902 423.752.5140
865.545.4167 FAX 423.752.5150
FAX 865.545.4176

220 West Depot Street, Suite 423
Greeneville, Tennessee 37743
208 Sunset Drive, Suite 509 Johnson City, Tennessee 37604 423.639.6759
423.282.1889 FAX 423.282.0849 FAX 423.639.6451

July 29, 2011

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

RE: No. M2011-01526-SC-RL2-RL – Filed: July 19, 2011

Dear Mr. Catalano:

Thank you for offering me the opportunity to offer comments, on behalf of the United States Attorney's Office in the Eastern District of Tennessee, regarding the above-referenced proposed amendment to the Supreme Court Rules. After consultation with my staff, some of whom may individually respond to this proposed change, I would like to propose the following revision:

In Section 20.2 of Supreme Court Rule 9, subsection (a), I would propose adding the word "private" before the word "practice." This section would then read "Attorneys who serve as a justice, judge, or magistrate of a court of the United States of America or who serve in any federal office in which the attorney is prohibited by federal law from engaging in the private practice of law."

The reason for this requested change is that some of our staff, on occasion, practice law in the state courts, on behalf of the United States of America, in order to collect certain civil debts, or preserve the United States' right to share in any distribution of funds toward the satisfaction of those debts. I think, technically, under the present definition, those attorneys would still have to pay the registration fee currently in effect.

I think that the change suggested hereinabove might require a redefinition of "the practice of law" contained in subsection (e) of Section 20.2.

If you have questions concerning this comment, please contact me. Otherwise, thank you again for allowing us to comment on this proposed change. I do think it would be most helpful to our staff of attorneys, given that they are prohibited from the private practice of law, to be relieved from the full payment of the registration fee.

Very sincerely yours,

A handwritten signature in black ink, appearing to read "William C. Killian". The signature is fluid and cursive, with a long horizontal stroke at the end.

WILLIAM C. (BILL) KILLIAN
United States Attorney

WCK:tsg

United States District Court
Middle District of Tennessee
745 United States Courthouse
Nashville, TN 37203-3874
E-Mail: joe_b_brown@nmd.uscourts.gov



Joe B. Brown
United States Magistrate Judge

Office: (615) 736-2119
FAX: (615) 736-2121

August 4, 2011

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

Re: M2011-01526-SC-RL2-RL Filed July 19, 2011

Dear Mr. Catalano:

I have reviewed the proposed amendments to Tennessee Supreme Court Rule 9, Sections 20.1, 20.2 and 20.8. I am in favor of their adoption. Federal Judges and their Clerks are prohibited from having a private practice of law and therefore an exemption, while they hold that status, appears entirely appropriate.

The only thing I would note is that in proposed Section 20.2, it refers to a magistrate of a court of the United States. The legal title is "Magistrate Judge" not "Magistrate."

Since the proposed change already refers to judge, I am not at all sure that Magistrate Judge or Bankruptcy Judge need even be mentioned as we should be included under the catch-all title of Judge.

Sincerely,



Joe B. Brown
United States Magistrate Judge

JBB: jmh

UNITED STATES BANKRUPTCY COURT
Western District of Tennessee

G. Harvey Boswell
U.S. Bankruptcy Judge



RECEIVED
AUG 08 2011
Clerk of the Courts
Rec'd By

111 South Highland
Suite 324
Jackson, TN 38301
Telephone (731) 421-9370
Fax (731) 421-9377

Michael W. Catalano, Clerk
100 SUPREME COURT BUILDING
401 SEVENTH AVENUE NORTH
NASHVILLE, TN. 37219-1407

AUGUST 4, 2011

RE: No. M 2011-1526 SCRL2-RL

DEAR MR CATALANO:

I write regarding the ABOVE ORDER PROPOSING TO AMEND
SUP. CT. RULE 9, §§ 20.1, 20.2 and 20.8. I AM happy that the
COURT HAS FINALLY come to realize that the current rule
creates AN INHERENT conflict for ALL FEDERAL Judges IN
our state. This Amendment will not affect me AS I
am retiring in July 2012, but I strongly recommend
it be enacted. It is long over due.

Sincerely
G. Harvey Boswell
U.S. Bankruptcy Judge



AUG 12 2011

UNITED STATES DISTRICT COURT

Eastern District of Tennessee

800 Market Street

Suite 141

Knoxville, Tennessee 37902

CHAMBERS OF
Judge Leon Jordan

(865) 545-4224

August 10, 2011

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

Re: Proposed Amendment to Tennessee Supreme Court Rule 9

Dear Mr. Catalano:

I write to comment on the proposed amendment to Tennessee Supreme Court Rule 9, § 20.2. I have served as a federal judge since 1988. Federal law prohibits me from engaging in the practice of law. As a matter of fairness, I wholeheartedly support the proposed amendment to § 20.2, Rule 9.

Sincerely,

A handwritten signature in black ink that reads "Leon Jordan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Leon Jordan
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
KNOXVILLE, TENNESSEE



UNITED STATES DISTRICT COURT
R. ALLAN EDGAR
DISTRICT JUDGE



□ Eastern District of Tennessee
900 Georgia Avenue, Room 253
Chattanooga, TN 37402
Tel: (423) 752-5220
Fax: (423) 752-5276

□ Western District of Michigan
P.O. Box 698
Marquette, MI 49855
Tel: (906) 226-2084
Fax: (906) 226-6735

August 9, 2011

Elizabeth A. Sykes
Director, Administrative Office of the Court
Supreme Court of Tennessee
Nashville City Center, Suite 600
511 Union Street
Nashville, TN 37219

Dear Ms. Sykes:

I have received the proposed amendments to Tennessee Supreme Court Rule 9, Sections 20.1, 20.2 and 20.8.

My comment is that it is about time that these amendments are made. They are long overdue.

I am a senior status U.S. District Judge who, of course, is prohibited from practicing law. Nevertheless; for years I was required to pay the annual registration fee to the Board of Professional Responsibility (as well as the state privilege tax). As a consequence I was finally compelled for financial reasons to reluctantly surrender my law license.

Thanks for the opportunity to comment.

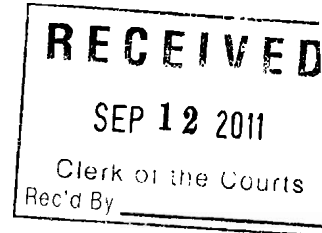
Very truly yours,

R. Allan Edgar
U.S. District Judge

210 First St SW Suite 300
Roanoke VA 24011
Post Office Box 2200
Roanoke VA 24009
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P 540.767.2000
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JOHNSON AYERS & MATTHEWS

COUNSELORS AT LAW
September 9, 2011



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

Re: Docket Number M2011-01526-SC-RL2-RL
(Filed: July 19, 2011)
Proposed Amendments to Rule Governing
Attorneys on Inactive Status

Dear Mr. Catalano:

I appreciate the opportunity to address the Tennessee Supreme Court on the proposed amendments to the rule governing inactive status for attorneys licensed in Tennessee, but living and working elsewhere. I was licensed to practice law in Tennessee in 1980; and I have been so licensed since that time. I am very much in favor of the adoption of the proposed amendments.

I moved my physical residence to the state of Georgia in 1983, and became licensed to practice law there in 1984. During that time, I retained my Tennessee licensure; I moved back to Tennessee in 1985.

I resided and practiced law in Tennessee from 1985 until 1989. In 1989, I moved my physical residence to the state of Virginia, where I became a member of the bar in that year, and where I have practiced law ever since.

For more than twenty years, I have been on "inactive" status with the State Bar of Georgia, which under Georgia law entitled me to be exempt from CLE requirements and from paying a Professional Privilege Tax, and which caused me to be assessed a lower annual fee than lawyers actively practicing within the state of Georgia.

The fact that I have resided and practiced law wholly outside the state of Tennessee has for a number of years entitled me to exceptional relief from Tennessee's rule for mandatory continuing legal education. This practice is in keeping with the statutes and rules of all other states about which I am aware.

On July 1, 1985, the Supreme Court of Tennessee in effect abolished "inactive" status for Tennessee-licensed lawyers. Prior to that time, "inactive" lawyers, including those not practicing within the state of Tennessee, were exempt from the requirement that dues be paid to the Tennessee Board of Professional Responsibility. Apparently, the abolishing of "inactive" status was meant to create a situation in which all attorneys licensed as Tennessee

lawyers would be required to pay an annual fee to the Tennessee Board of Professional Responsibility.

However, the action by the Supreme Court of Tennessee eliminating inactive status for lawyers, in the context of eliminating their exemption from paying fees to the BPR, in effect eliminated from the rules any definition of an "inactive" attorney, other than an attorney who has completely discontinued the practice of law. From that point forward, any attorney practicing law anywhere, whether in Tennessee or elsewhere, who was the holder of a Tennessee law license, was considered "active." There was no longer an option for an out-of-state Tennessee-licensed attorney to claim "inactive" status. The only choices available to an out-of-state Tennessee lawyer were to continue on "active" status, or to surrender one's Tennessee license to practice law.

The distinction between "active" and "inactive" attorney status became much more significant when in 1992 the Tennessee General Assembly instituted the Professional Privilege Tax. This law makes specific reference to the fact that "there is levied a tax on the privilege of engaging in the following...professions...[including] persons licensed as attorneys by the Supreme Court of Tennessee."

I participated in a number of discussions with various officials employed by the Tennessee Department of Revenue, from 1992 forward, regarding the application of the Professional Privilege Tax to a person in my position, who, while the holder of a Tennessee law license, lived out of state, did not practice in Tennessee, and was technically ineligible to do so, having been granted an exemption from the mandatory CLE requirements. Officials of the Tennessee Department of Revenue periodically revisited the issue with me, in 1992, 1998, 1999, 2000, and 2007. The Department of Revenue officials with whom I had discussions during these years agreed with me that an attorney who is technically "active," but who is still ineligible to practice law in the state of Tennessee, and does not do so, was not "engaging" in the profession of practicing law in Tennessee. I was thus informally exempted by the Tennessee Department of Revenue from paying the Professional Privilege Tax, for the years 1992 through 2007.

In 2008, the Tennessee Department of Revenue reversed itself, and insisted that a person in my position, as an out-of-state Tennessee-licensed attorney who was exempt from CLE requirements and thus ineligible to practice law in Tennessee, was still subject to paying the Professional Privilege Tax. I requested and was granted an informal conference with an Administrative Hearing Officer of the Tennessee Department of Revenue, which conference was held by telephone in late 2008.

Administrative Hearing Officer Jeffrey C. Foster conducted the requested telephonic conference, and upheld the assessment of tax, by means of a lengthy and detailed Opinion Letter, dated March 11, 2009, a copy of which is appended hereto as Exhibit 1. Hearing Officer Foster points out in his Opinion that only "inactive" attorneys are exempt from paying

Page 3

September 9, 2011

the Professional Privilege Tax; and at that time (and up until the rule is revised as has been proposed), there are only two methods of attaining "inactive" status as contemplated by Tennessee Code §67-4-1708(a), so that one would not be subject to paying the Professional Privilege Tax. The first is by surrendering one's law license to the Tennessee Supreme Court pursuant to Tennessee Supreme Court Rule 7, Article XV. The second is by notifying the Board of Professional Responsibility in writing that the attorney is retired or has ceased the practice of law, and desires to assume inactive status and discontinue the practice of law.

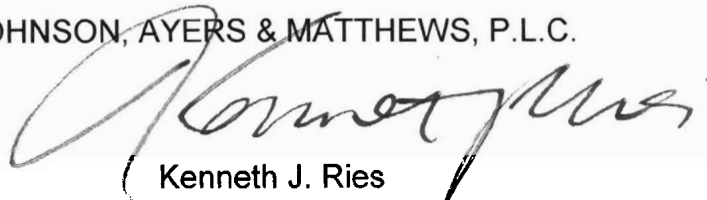
Several of my current law partners are licensed in states other than Virginia; among these states are California, the District of Columbia, and Georgia. In each of these jurisdictions, there is available to attorneys who practice law elsewhere and not in the state or district of licensure, the option of assuming "inactive" status, thus reducing in amount the yearly sum assessed by the State Bar, and thus exempting them from payment of the Professional Privilege Tax. Although I have not done an exhaustive study, it is my understanding that Tennessee is the only jurisdiction in the nation which assesses a Professional Privilege Tax on attorneys who do not practice within the state, who reside elsewhere, and who are exempt from mandatory continuing legal education requirements.

It would certainly appear that establishing an inactive status for attorneys who reside out of state would bring Tennessee into line with every other jurisdiction in the United States. I would strongly urge the Supreme Court of Tennessee to adopt the rule change which has been proposed.

I appreciate the opportunity to address this issue in this manner

Very truly yours,

JOHNSON, AYERS & MATTHEWS, P.L.C.

A handwritten signature in black ink, appearing to read "Kenneth J. Ries", is written over a light blue rectangular background.

Kenneth J. Ries

KJR/dv

Encl.

P.S. Attached as Exhibit 2 hereto is a letter received by me from then-President of the Tennessee Bar Association J. Daniel Breen, which, although it is undated, was most likely received in the period of time shortly after the adoption of the Professional Privilege Tax in 1992. Mr. Breen pledged at that time to "lobby the General Assembly to remove this fee for non-resident attorneys," characterizing the application of the Professional Privilege Tax to attorneys residing outside the state as "inequitable to those...who do not practice regularly in our state."



PHIL BREDESEN
Governor

STATE OF TENNESSEE
DEPARTMENT OF REVENUE
ANDREW JACKSON STATE OFFICE BUILDING
NASHVILLE, TENNESSEE 37242

REAGAN FARR
Commissioner

March 11, 2009

Mr. Kenneth J. Ries
Johnson, Ayers & Matthews, PLC
Suite 300, First Campbell Square
210 First Street, S.W.
Roanoke, VA 24001-1166

Re: Kenneth J. Ries
Account No.: 702372852
Professional Privilege Tax Assessment
Informal Taxpayer Conference: November 5, 2008

Dear Mr. Ries:

This letter is in response to the informal taxpayer conference you requested following an assessment of professional privilege tax by the Tennessee Department of Revenue (the "Department"). You received a Notice of Assessment dated September 27, 2008, which indicated that you had an outstanding liability in the amount of \$400.00 in tax, \$100.00 in penalty, and \$14.29 in interest. To challenge that assessment, you requested an informal conference by letter received in the Hearing Office on October 15, 2008.

Based upon the information presented, you are an attorney who became licensed in Tennessee in 1980. In 1989, you moved to Virginia and began practicing law in that state. In 1990, you applied for and received "exceptional relief on the basis of non-residence" from the Tennessee Commission on Continuing Legal Education, which exempted you from complying with the otherwise mandatory CLE requirements. As a result of that exemption, you are prohibited from practicing law in Tennessee until the CLE requirements are fulfilled.

On at least four occasions from 1992 to 2007, the Tennessee Department of Revenue assessed you for the professional privilege tax. On each occasion, you spoke with a representative from the Department, explained your situation, and were informed that the assessment against you was incorrect. On May 5, 2008, you received another professional privilege tax return with a due date of June 1, 2008. You called the Department and spoke with Ms. Kathy Smith of Taxpayer and Vehicle Services, who asked you to send a copy of your CLE exemption. You heard nothing from the Department until receiving the September 27, 2008, Notice of Assessment, to which you now object.

EXHIBIT

tabbles®

1

Mr. Kenneth J. Ries

Page 2

March 11, 2009

The professional privilege tax is found at Tenn. Code Ann. § 67-4-1701, *et seq.* The tax applies to certain persons, including attorneys licensed to practice law by the Tennessee Supreme Court. Tenn. Code Ann. § 67-4-1702(a)(5). The tax applies only to persons who maintain an active license, as Tenn. Code Ann. § 67-4-1708(a) provides:

The privilege tax levied by this part upon the privilege of engaging in certain occupations requiring registration or a license do not apply to a person so registered or licensed, if the person is inactive or retired pursuant to the regulations of the appropriate licensing board.

The Department administers this tax by contacting each licensing board every year to obtain a list of persons whose license is in active status as of June 1 for that year. If the person's Tennessee license is active as of June 1 of the particular tax year, the Department's assessment of professional privilege tax is correct. Tenn. Code Ann. § 67-4-1708(a). *See Simmons v. Johnson*, 1998 Tenn. App. Lexis 390) (addressing the nature and applicability of the professional privilege tax). *See also Cox v. Huddleston*, 914 S.W.2d 501 (Ct. App. 1995) (upholding the constitutionality and applicability of the professional privilege tax to the privilege of holding a law license).

In this case, you point out that as of June 1, 2008, you were prohibited from practicing law in Tennessee by virtue of your exemption from CLE requirements. Because of that fact, you argue, your law license was "inactive" as contemplated by Tenn. Code Ann. § 67-4-1708(a) and the Department's assessment is thus erroneous.

I cannot accept that contention. With respect to attorneys, there are only two methods of attaining "inactive" status as contemplated by Tenn. Code Ann. § 67-4-1708(a): (1) by surrendering the law license to the Tennessee Supreme Court pursuant to Tenn. Sup. Ct. R. 7, Art. XV; or (2) by complying with Tenn. Sup. Ct. R. 9, §§ 20.8 and 20.9, which provide:

20.8. An attorney who has retired or is not engaged in practice shall advise the Board of Professional Responsibility in writing that such attorney desires to assume inactive status and discontinue the practice of law. Upon the filing of such notice, the attorney shall no longer be eligible to practice law.

20.9. Upon the filing of a notice to assume inactive status, an attorney shall be removed from the roll of those classified as active until and unless the attorney requests and is granted reinstatement to the active rolls. Reinstatement shall be granted unless the attorney is subject to an outstanding order of suspension or disbarment or has been in inactive status for five years or more, upon the payment of any assessment in effect for the year the request is made and any arrears accumulated prior to transfer to inactive status. Attorneys who have been suspended or on inactive status for over five years before filing a petition for reinstatement to active status may be required, in the discretion of this Court, to establish proof of competency and learning in law which proof may include certification by the Board of Law Examiners of the successful completion of an

Mr. Kenneth J. Ries

Page 3

March 11, 2009

examination for admission to practice subsequent to the date of suspension or transfer to inactive status.

Thus, the fact that you are prohibited from practicing law in Tennessee due to your CLE exemption does not mean that your license is “inactive” under the regulations of the Board of Professional Responsibility and Tenn. Code Ann. § 67-4-1708(a). Thus, the assessment will not be removed based upon this argument.

You also contend that given its previous position on the issue, the Department should be estopped from assessing the tax against you. As we discussed at conference, however, I cannot adjust the assessment on that basis, as generally the doctrine of estoppel cannot be asserted against the State. *See Exchange Mut. Ins. Co. v. Olsen*, 667 S.W.2d 62 (Tenn. 1984); *Carpenter v. State*, 838 S.W.2d 525 (Tenn. 1992); *Misenheimer Saw & Tool, Inc. v. Huddleston*, 1994 WL 652155 (Tenn. Ct. App.).¹

Finally, you contend that the professional privilege tax violates the due process and/or equal protection clauses of the federal and state constitutions in your case because it attempts to tax a privilege that cannot in fact be exercised. As I explained at conference, however, in Tennessee administrative agencies cannot address facial constitutional challenges to statutes or rules. *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827, 843-44 (Tenn. 2008); *Richardson v. Board of Dentistry*, 913 S.W.2d 446, 453 (Tenn. 1995). Thus, to the extent that you present a facial challenge, I have no authority to address it.

Even if the constitutional issue you present could be deemed to be an “as applied” challenge, I would still not grant relief. Courts will not invalidate tax statutes – and by extension tax policy as developed by the Department -- on the basis of due process or equal protection if the statute or policy has a reasonable basis. *Sears, Roebuck & Co. v. Woods*, 708 S.W.2d 374, 383 (Tenn. 1986). Because tax measures produce the revenue upon which the government operates, governmental entities have wide discretion in formulating them, and they may impose special burdens on defined classes to achieve permissible ends. *Id.* The statute or policy will not be deemed to be discriminatory if there is any possible reason or justification supporting it. *Id.*; *see also Genesco, Inc. v. Woods*, 578 S.W.2d 639, 641 (Tenn.1979).

Although you contend that the Department is attempting to tax you for a privilege that you cannot exercise, that contention is not true in an absolute sense. You could, if you so choose, reinstate your license by simply fulfilling your CLE requirements. Because your license could be so reinstated, and because you do not contend that the tax is generally constitutionally unsound, I conclude that the statute and rules permitting the imposition of the tax in your case are not unreasonable or irrational.

In view of the foregoing discussion, the assessment of tax is upheld. Nevertheless, given the unique circumstances of this case, I find that there is good and reasonable cause to waive the

¹ A good example of an exception to the general rule is Tenn. Code Ann. § 67-1-803(c)(1)(A), which provides that a penalty for underpayment of tax shall not be imposed if the taxpayer can show that it was misled by erroneous advice of officials charged with the enforcement of Tennessee’s tax statutes.

Mr. Kenneth J. Ries

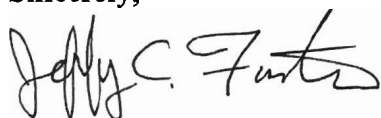
Page 4

March 11, 2009

\$100.00 penalty assessed against you. Tenn. Code Ann. § 67-1-803(d)(2). However, any interest that accrues cannot be waived. Tennessee law expressly states that the Commissioner does not have the authority to waive “any interest payable under the law in connection with any case of tax deficiency or delinquency.” Tenn. Code Ann. § 67-1-803(a)(2).

This letter is in response to the particular facts and circumstances presented and is not intended as a statement of Departmental policy. Pursuant to Tenn. Code Ann. § 67-1-1801(c)(3), the ninety days during which you may file suit to challenge this assessment resumes running upon the issuance of this letter.

Sincerely,



Jeffrey C. Foster

Administrative Hearing Officer

issued: March 11, 2009

c: Commissioner's Office
Annette Franklin, Penalty Unit, Audit Division



TO NON-RESIDENT ATTORNEYS:

Since 1881 the Tennessee Bar Association has worked to enhance the image of the profession and to advance the interests of our members — attorneys licensed in Tennessee. A voluntary association, the TBA membership represents the entire spectrum of the legal community, **including a number of attorneys residing outside the state** who retain an interest in the Tennessee legal profession.

Join the Tennessee Bar Association — we don't want you to be left out. Join one of our 15 sections which engage in special projects, provide avenues for influencing legislative issues of statewide importance, and most have their own newsletters. Bi-monthly, you'll receive the top-rated *Tennessee Bar Journal*, filled with information about Tennessee law and Tennessee lawyers. When you visit Tennessee, you will have access to the largest provider of CLE programs in the state, at a reduced rate, to keep you up-to-date on the latest in the law and procedures.

There is something else we can do for our non-resident members. We recognize that the \$200 professional services fee that you now pay when you renew your Tennessee license is inequitable to those of you who do not practice regularly in our state. We have a respected presence at the State Capitol, and we plan to lobby the General Assembly to remove this fee for non-resident attorneys.

If you join the Tennessee Bar Association now, you will be included in our membership directory, the official directory of the Tennessee Bar Association. There will be a separate section listing members by their areas of interest, to provide ease in referral of cases. All of our members will receive a complimentary copy.

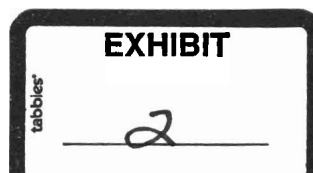
To join the Tennessee Bar Association, and be listed in our upcoming directory, complete the enclosed application form and return it to us with your check.

We have included a list of the benefits you receive with membership, and a membership brochure. I hope you will read them.

Sincerely,

A handwritten signature in cursive script that reads 'J. Daniel Breen'.

J. Daniel Breen
President of the
Tennessee Bar Association



3622 West End Avenue
Nashville, Tennessee 37205-2403
(615) 383-7421 • (800) 899-6993
FAX (615) 297-8058

Jeffrey A. Phelps
1000 Ashwood Parkway #1114
Atlanta GA 30338
TN Bar No. 023831



September 9, 2011

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

RE: Docket No. **M2011-01526-SC-RL2-RL**

Dear Mr. Catalano:

I am writing in support of the proposed amendments to Tennessee Supreme Court Rule 9 Sections 20.1, 20.2 and 20.8.

I support these amendments because they reduce the financial difficulties of attorneys who are returning to the practice of law in multiple states.

Currently I am reactivating my status as a Georgia attorney and must pay the required Georgia fees. If I also have to pay Tennessee fees in full along with the Georgia fees--even though I'm not practicing in Tennessee--the process becomes much more difficult.

The proposed amendments will give attorneys such as myself a chance to become active again without the burden of multiple license fee obligations.

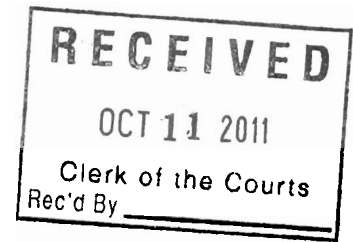
In addition, the amendments make it less likely that we will feel compelled to surrender our Tennessee law licenses and more likely that we will eventually rejoin the Tennessee legal community as productive officers of the Court. Thank you for your consideration.

Regards,

A handwritten signature in black ink, appearing to be "J. Phelps".

Jeffrey A. Phelps
TN Bar No. 023831 / GA Bar No. 435114

JUAN G. VILLASEÑOR
610 Corona St., Denver, CO 80218



October 6, 2011

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

Re: RULE 9, SECTION 20, RULES OF THE TENNESSEE SUPREME COURT, No. M2011-01526-SC-RL2-RL

Dear Mike:

I write to submit written comments in support of the proposed amendments to Tenn. S. Ct. R. 9, §§ 20.1, 20.2 and 20.8. I am a member of the Tennessee and the Colorado bars.

I wholeheartedly support the Court's proposed amendments to Rule 9. First, the amendments acknowledge a fact of life for many attorneys — that they may, during their careers, relocate to a different state and may not require to have several active law licenses. Approving such an amendment would ease the burden of complying with two (or more) continuing legal education ("CLE") requirements that attorneys in my position face.

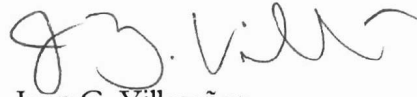
Second, the amendments would eliminate the draconian choice that attorneys licensed in multiple states currently face between surrendering a law license, or keeping it active at a very high expense, which is also accompanied by the burden of complying with potentially duplicative CLEs. The amendment would adopt a reasonable middle ground of allowing attorneys to assume inactive status and to pay one-half of the fees assessed to active attorneys.

Third, the amendments would bring Tennessee in line with many other states that allow its licensed attorneys to assume inactive status. Based on my limited research, 21 out of 26 states allow attorneys to take inactive status or some similar alternative. The states are California, Colorado, District of Columbia, Florida, Georgia, Illinois, Iowa, Massachusetts, Maryland, Minnesota, Missouri, Ohio, Nebraska, New Mexico, North Carolina, North Dakota, Pennsylvania, Utah, Virginia, Wisconsin, and Wyoming. Presently, Tennessee — along with Idaho, New Jersey, New York, and Texas — is in the minority.

I have only one change to propose to the amendments. Proposed Rule 20.2(a) should be from "magistrate" to "magistrate judge" to reflect the correct title of such judicial officers. *See* 28 U.S.C. § 631(a) ("The judges of each United States district court ... shall appoint United States magistrate judges in such numbers and to serve at such locations within the judicial districts as the Judicial Conference may determine under this chapter.").

In summary, I hope that the Court adopts the proposed amendments. Should you need any additional information about this matter, please do not hesitate to contact me. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "J.G. Villaseñor". The signature is fluid and cursive, with a prominent initial "J" and "G" followed by a period and the surname "Villaseñor".

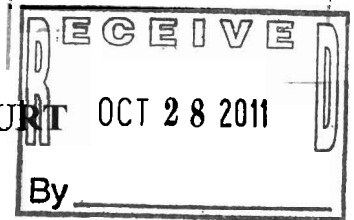
Juan G. Villaseñor

BPR No. 21947

ORIGINAL

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

**IN RE: RULE 9, SECTION 20,
RULES OF THE TENNESSEE SUPREME COURT**



No. M2011-01526-SC-RL2-RL

**COMMENT OF THE BOARD OF PROFESSIONAL RESPONSIBILITY TO
PROPOSED INACTIVE STATUS AMENDMENTS TO TENN. SUP. CT. R. 9**

By Order filed July 19, 2011, the Court issued for Comment proposed amendments to Sections 20.1, 20.2 and 20.8 of Supreme Court Rule 9. The Board of Professional Responsibility (the Board) respectfully submits its comments to the proposed rule amendments as follows.

I. Proposed amendments to Section 20.1

As to the first paragraph of Section 20.1, the Board previously has submitted to the Court for its consideration a proposed amendment which would change the annual registration cycle from March 1 to birth month. The Board respectfully requests that its amendment be approved. The Board has no objection to the proposed language “the amount of which is” being added at the end of the Section. The Board has no objection to the proposed change in the placement of the word “only” in the final sentence of the second paragraph of the Section.

II. Proposed amendments to Section 20.2

The Board has no objection to the proposed amendment to Section 20.2(a) to the extent that it would exempt federal judges, magistrate judges and Members of Congress from payment of the annual fee. The Board, however, opposes extending the exemption to lawyers in federal agencies who engage in “the practice of law,” as that term is defined in subsection (e) of Section 20.2 because they stand in no different position than lawyers who practice law as employees of state agencies.

The Board has no objection to the proposed amendment to Section 20.2(d).

The Board opposes the proposal to amend to Section 20.2(e). The practice of law in Tennessee is a privilege, not a right. For those who have been granted the privilege, an obligation exists to contribute to the financial support of the disciplinary system. Disciplinary jurisdiction exists in Tennessee with respect to attorneys with active law licenses in other states, including, pursuant to the reciprocal discipline provision in Section 17 of Supreme Court Rule 9 and RPC 5.5. The Board agrees that lawyers in Tennessee who are on inactive status and not practicing in any state should pay a reduced fee. However, the Board is of the view that lawyers with an active license

should pay the full annual registration fee. The Board previously has submitted to the Court a request to amend subsection (e) to make clear that an active license in any state will disqualify a lawyer from being granted an exemption.

III. Proposed amendments to Section 20.8

Please see the comments above with respect to subsections 20.2(a), (d) and (e). In addition to which the Board has in place a procedure by which a lawyer must submit an affidavit attesting to the lawyer's eligibility for an exemption. This procedure has been successful in preventing lawyers from claiming an exemption to which they are not entitled. For example, National Guardsmen who are not on active duty are not entitled to the Section 20.2(c) exemption. As a result, the Board would prefer that the final sentence in the first paragraph of Section 20.8 state: "Upon receipt of documentation acceptable to the Board that an attorney is eligible for the claimed exemption ..."

The Board believes there is business justification for the imposition of an inactive fee of one-half of the annual registration fee on the 1,676 Tennessee resident lawyers who are currently on inactive status.¹ Such a fee would generate \$117,320 in new, recurring revenue. However, the Board cannot support the proposal to permit lawyers who are actively practicing law in another state to take inactive status in Tennessee without paying the full registration fee, primarily because of the economic impact on the agency's annual revenue. There are 6,917 lawyers, or one-third of active lawyers, who reside in other states. These lawyers currently account for \$968,380 of the agency's annual recurring revenue. The proposed amendment would reduce this amount to \$484,190.² Even assuming that currently inactive lawyers are required to commence paying an inactive fee, the deficit would be \$366, 870, or 11.5% of the Board's FY '10 – '11 Total Income.

At the June 30 fiscal year-end, the Board had a surplus of approximately \$150,000, not nearly enough to offset the decrease in revenue caused by the proposed amendment. Further, under the State's accounting rules, a shortfall in revenue may not be offset by monies in the agency's reserve account. As a result, there would need to be a registration fee increase to make up the shortfall. In other words, the active lawyers who reside in Tennessee (two-thirds of the active attorney population) would need to pay more than \$26 additional per year so that lawyers in other states with Tennessee licenses (one-third of the active population) could be permitted to pay less.³

In addition to the financial impact of the proposed amendment regarding non-resident lawyers with active licenses in another state, the Board has a concern regarding its ability to monitor the conduct of such lawyers. For example, it is unlikely that the Board would learn that a lawyer

¹ There are approximately an equal number of out-of-state lawyers on inactive status in Tennessee. It is not known whether those lawyers are on inactive status in every state in which they are licensed.

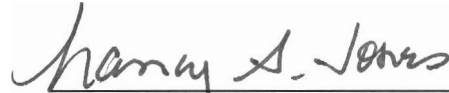
² This calculation is worst case scenario. There are some lawyers who reside across the Tennessee border, but provide legal services to Tennessee residents in Tennessee. Under the proposed amendment, these lawyers would not be eligible for the inactive fee. However, with the data available to the Board, it is not possible to quantify the number of lawyers in this group.

³ In addition to which, should all 6,917 out-of-state attorneys be granted inactive status, the state would lose nearly \$2.77 million in Professional Privilege Tax revenue because only lawyers with active licenses are liable for this tax.

from another state was advising a Tennessee resident on Tennessee legal matters while the lawyer's Tennessee license was on inactive status. This lack of effective monitoring could lead to improper assertions of eligibility for the status.

Finally, the Board does not believe that it will be able to implement these proposed revisions until January 1, 2013, because the creation of an "inactive-status" fee will require changes to both the paper registration statement, as well as to the registration database technology. The Board staff and technology consultants needed to implement the proposed revision will not have adequate time to make the necessary revisions before the 2012 registration packet goes to the mail house for production. As a result, the Board respectfully requests that if adopted, the amendment not become effective until the 2013 registration cycle.

Respectfully submitted,



Nancy S. Jones, BPR No. 16369
Chief Disciplinary Counsel
Board of Professional Responsibility
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