

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED
FEB 10 2010
Clerk of the Courts

**IN RE: PROPOSED RULE 50A, RULES OF THE
SUPREME COURT OF TENNESSEE**

No. M2010-00330-SC-RL2-RL

ORDER

The Access to Justice Commission has proposed that the Court adopt a new rule establishing an “emeritus attorneys pro bono participation program.” The Commission submitted a proposed rule to the Court for our consideration. The Court hereby publishes for public comment the proposed new Rule 50A, Rules of the Supreme Court of Tennessee, set out in the attached Appendix.

The Court solicits written comments from judges, lawyers, bar organizations, members of the public, and any other interested parties. The deadline for submitting written comments is Monday, April 12, 2010. Written comments should be addressed to:

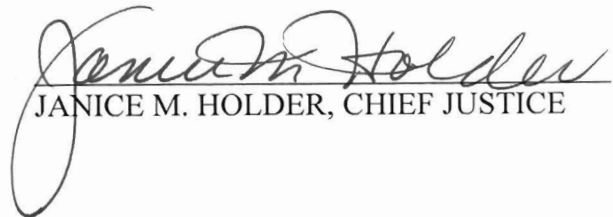
Michael W. Catalano, Clerk
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

and should refer to the docket number stated above.

The Clerk shall provide a copy of this order to LexisNexis and to Thomson Reuters/West. In addition, this order shall be posted on the Tennessee Supreme Court’s website.

IT IS SO ORDERED.

FOR THE COURT:


JANICE M. HOLDER, CHIEF JUSTICE

APPENDIX

RULES OF THE TENNESSEE SUPREME COURT

[PROPOSED] Rule 50A. Special Initiative to Improve Access to Justice.

Section 1. Pro Bono Services by Emeritus Attorneys.

1.01. Purpose: Attorneys have a responsibility to provide competent legal services for all persons, including those unable to pay for such services. As one means of meeting the unmet legal needs of those persons who are unable to afford counsel, this Court establishes the emeritus attorneys pro bono participation program.

1.02. Definitions:

(a) The "active practice of law" means engagement in the practice of law, including, but not limited to: private practice, in-house counsel, public employment, or employment by a not-for-profit organization

(b) An "emeritus attorney" is any person, not currently actively engaged in the practice of law, who was or is admitted to practice before the Tennessee Supreme Court or the highest court of any other state or territory of the United States or the District of Columbia, and

(1) Has been engaged in the active practice of law for a minimum of five of the last ten years immediately preceding application to participate in the emeritus attorneys' pro bono program, or has been admitted under this section for at least five of the previous ten years;

(2) Has not been disciplined for professional misconduct by the Bar or courts of any jurisdiction within the last ten years; Membership in good standing may include retired or inactive status;

(3) If not a member of the State Bar of Tennessee, has graduated from a law school accredited by the American Bar Association;

(4) Agrees to abide by the Tennessee Rules of Professional Conduct and to submit to the Tennessee Supreme Court for disciplinary purposes;

(5) Neither asks for nor receives compensation of any kind for the legal services to be rendered under this section; and

(6) Is certified under section 1.05.

(c) An "approved legal assistance organization" for the purposes of this section is a not-for-profit legal assistance organization which is approved by the Tennessee Supreme Court. An organization which receives funding from the Legal Services Corp. is presumptively approved under this section. Any other organization seeking approval under this section must file a petition with the clerk of the Tennessee Supreme Court certifying that it is a not-for-profit organization and stating with specificity:

- (1) The structure of the organization and whether it accepts funds from clients;
- (2) The major sources of funds used by the organization;
- (3) The criteria used to determine potential clients' eligibility for legal services performed by the organization;
- (4) The types of legal and non-legal services performed by the organization;
- (5) The names of all members of the Tennessee bar who are employed by the organization and who regularly perform legal work for clients;
- (6) The existence and extent of malpractice insurance to cover claims made by clients against an emeritus attorney.

(d) A "supervising attorney" is an active member of the Tennessee bar who oversees the work of an emeritus attorney engaged in activities permitted by this section. The supervising attorney must:

- (1) Be employed by or be a participating volunteer for an approved legal assistance organization; and
- (2) Assume responsibility for overseeing the work of the emeritus attorney to the same extent as any supervising attorney in a legal assistance program supervises any other volunteer attorney;

1.03. An emeritus attorney, in association with an approved legal assistance organization, may perform any legal work on behalf of a client that could be performed by any licensed attorney in the state of Tennessee.

1.04. Supervision and Limitations:

(a) Subject to Tenn. R. Sup. Ct. 8, RPC 5.4(c), an emeritus attorney must perform all activities under the auspices of a supervising attorney. The supervising attorney need not be personally present when the emeritus attorney engages in all activities, nor even be present when the emeritus attorney appears in court. It is, however, the responsibility of the supervising attorney to ensure that the emeritus attorney receives the same supervision as any other volunteer attorney, including compliance with Tenn. R. Sup. Ct. 8, RPC 5.1.

(b) Emeritus attorneys permitted to perform services under this section are not, and shall not represent themselves to be, active members of the Tennessee bar licensed to practice in the state.

(c) The prohibition against compensation for the emeritus attorney contained in section 1.02(b)(5) shall not prevent the approved legal assistance organization from reimbursing the emeritus attorney for actual expenses incurred while rendering services under this section nor shall it prevent the approved legal assistance organization from making such charges for its services as it may otherwise properly charge. The approved legal assistance organization shall be entitled to receive all court-awarded attorneys' fees for any representation rendered by an emeritus attorney.

1.05. Certification: Permission for an emeritus attorney to perform services under this section shall become effective upon filing with and approval by the Tennessee Supreme Court of:

(a) A certificate by an approved legal assistance organization stating that the emeritus attorney is currently associated with that legal assistance organization and that an attorney employed by or participating as a volunteer with that organization will assume the duties of the supervising attorney as required under this section;

(b) A certification from the highest court or agency in the state, territory or district in which the emeritus attorney previously has been licensed to practice law, certifying that the emeritus attorney has fulfilled the requirements of active bar membership and has a clear disciplinary record as required by section 1.02(b)(2); and

(c) A sworn statement by the emeritus attorney that he or she:

(1) Has read and is familiar with the Rules of Professional Conduct and the Rules of the Supreme Court of Tennessee relating to the conduct of lawyers, and will abide by the provisions of those Rules;

(2) Submits to the jurisdiction of the Tennessee Supreme Court for disciplinary purposes, as defined by the Rules of Professional Conduct;

(3) Will neither ask for nor receive compensation for any kind of legal services authorized by this Rule.

1.06. Withdrawal of Certification:

(a) Permission to perform services under this section shall cease immediately upon the filing with the clerk of the Tennessee Supreme Court a notice either:

(1) By the approved legal assistance organization stating that:

(A) The emeritus attorney has ceased to be associated with the organization, which notice must be filed within five days after such association has ceased; or

(B) That certification of such attorney has been withdrawn. An approved legal assistance organization may withdraw certification at any time and it is not necessary that the notice state cause for such withdrawal. A copy of the notice shall be filed with the clerk of the Tennessee Supreme Court and shall be mailed by the legal assistance organization to the emeritus attorney.

(2) By the Tennessee Supreme Court, in its discretion, at any time, stating that permission to perform services under this section has been revoked. A copy of such notice shall be mailed by the clerk of the Tennessee Supreme Court to the emeritus attorney and to the approved legal assistance organization to which he or she had been certified by the Tennessee Supreme Court.

(b) If an emeritus attorney's certification is withdrawn for any reason, the supervising attorney shall immediately file a notice of such action in any court or tribunal in which the emeritus attorney was participating as counsel.

1.07. Discipline and Fees. An emeritus attorney performing services under this section shall abide by the Tennessee Rules of Professional Conduct, and is subject to discipline, including withdrawal of certification under this rule, for any failure to comply with those Rules. An emeritus attorney is exempt from the disciplinary fee required of all practicing attorneys. An emeritus attorney performing services solely under the authority of this section shall not be deemed to be engaging in the practice of law for purposes of Tenn. Code Ann. § 67-4-1701, et seq. (privilege tax applicable to specific vocations, professions, etc.).

1.08. Mandatory Continuing Legal Education: Emeritus attorneys certified under section 1.05 must comply with Tennessee's continuing legal education requirements. Tenn Sup. Ct. R. 21.