

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

June 6, 2002 Session

IN RE: TENNESSEE RULES OF PROFESSIONAL CONDUCT

Filed September 17, 2002

No. M2000-02416-SC-RL-RL

ORDER AMENDING TENNESSEE SUPREME COURT RULE 8

TO ADOPT THE TENNESSEE RULES OF PROFESSIONAL CONDUCT

On August 27, 2002, the Court entered an order amending Tennessee Supreme Court Rule 8 to adopt the Tennessee Rules of Professional Conduct. The Court hereby enters this corrected version of the original order.

On October 9, 2000, the Tennessee Bar Association (“TBA”) petitioned this Court to adopt a comprehensive revision of the ethics rules in this state. The TBA recommended that current Supreme Court Rule 8, which contains the Tennessee Code of Professional Responsibility, be replaced *in toto* with its own Proposed Tennessee Rules of Professional Conduct (“Proposed Rules”). Although these Proposed Rules were initially patterned after the American Bar Association’s Model Rules of Professional Conduct, the ultimate proposal to this Court contained several significant changes to accommodate existing Tennessee law or where revisions were thought to improve the administration of ethics rules in this state.

On November 28, 2000, this Court invited the bench, bar, and public to comment on the Proposed Rules, and we concluded this comment period on June 30, 2001. The TBA then undertook a close examination of its proposal in light of these comments, and on December 3, 2001, it filed its Revised Final Report to respond to these comments and to make some changes from its earlier drafts. On February 6, 2002, the Clerk of the Appellate Courts contacted all of the individuals and organizations who submitted comments about the Proposed Rules and asked each (1) whether the TBA’s Revised Final Report satisfied their initial concerns regarding the Proposed Rules, and (2) whether they would be interested in being heard at oral argument on specific issues.

After receiving these additional responses from various parties, the Court filed an order on April 19, 2002, requesting oral argument on twelve issues and requesting that the Attorney General submit briefing on one additional issue. On April 29, the Court amended this order to include a fourteenth issue raised by the United States Attorneys. The parties completed additional briefing on these issues on May 17, and this Court heard oral arguments on June 6, 2002, in Nashville.

Upon consideration of the Proposed Rules, comments, responses, briefs, and arguments submitted, the Court agrees that, due to the emergence of new areas of practice, along with changes in various procedural and substantive rules of law, the Code of Professional Responsibility is no longer adequate to regulate the conduct of lawyers or the relationship between lawyers and clients. Therefore, in accordance with this Court’s inherent power to establish ethical standards relating to the practice of law and to oversee the administration of law in the courts of this state, IT IS NOW ORDERED that the current provisions of the Code of Professional Responsibility contained in Supreme Court Rule 8 be deleted in their entirety and that the provisions of the Tennessee Rules of Professional Conduct, which are attached as an Appendix to this Order, be adopted in their place.

The Rules of Professional Conduct shall take effect on March 1, 2003, and shall have prospective application only, applying to all relationships existing on, and conduct taken from, that date forward. However, special provisions are made for the operation of the following Rules:

- (a) The provisions governing contingent fee agreements contained in Rule 1.5(c) shall apply only to those agreements that are entered into or amended on or after March 1, 2003;
- (b) The provisions requiring a writing contained in Rules 1.7, 1.8(g), 1.9, and 1.12 shall apply only to conflicts of interest that arise on or after March 1, 2003;
- (c) The provisions governing client consent contained in Rules 1.8(a) and 1.8(i) shall apply only to those transactions that are entered into or amended on or after March 1, 2003.

In addition to the adoption of the Rules of Professional Conduct, other Supreme Court Rules need to be adopted or modified in order to make these rules consistent with revised Supreme Court Rule 8. Therefore, by separate Orders filed simultaneously with this Order today, the Court (1) replaces all general references to the Code of Professional Responsibility in the Supreme Court Rules with references to the Rules of Professional Conduct; (2) adopts new Supreme Court Rule 43 concerning the Interest on Lawyers' Trust Account program; and (3) requests that the Tennessee Board of Professional Responsibility submit draft regulations to implement the provisions of Rule of Professional Conduct 7.6 regarding intermediary organizations.

Finally, the Court wishes to express its sincere appreciation for the extraordinary efforts taken by the Tennessee Bar Association and its Committee for the Study of Standards of Professional Conduct in developing its Proposed Rules. These bodies demonstrated remarkable dedication to the study of ethical rules in jurisdictions around the nation, and their work in consulting, drafting, and revising their proposals cannot be understated. The Court is also appreciative of the exceptional efforts undertaken by these bodies to assist us in marshaling the large volumes of materials submitted for our consideration. These efforts in particular helped to make clear the need for substantial revisions to the Code of Professional Responsibility and helped to clarify the nature of the issues presented. Our adoption today of the Tennessee Rules of Professional Conduct stands as a testament to the invaluable contribution that these parties have made to the practice of law in this State.

The Court also acknowledges the invaluable contributions made by the bench, bar, and general public by submitting comments, suggestions, and responses about these important proposals. Indeed, the Court is *especially* appreciative of the following parties, who gave of their own time to provide considerable insight into specific areas of concern: The Tennessee Board of Professional Responsibility; the Tennessee Attorney General; the Tennessee District Attorneys General Conference; the United States Attorneys; and Mr. T. Maxfield Bahner of the Chattanooga Bar.

To be sure, even if the substance of individual comments or proposals was not ultimately incorporated into the Rules adopted today, these contributions nevertheless served an important function in helping the Court to refine the issues and to understand the implications of many of the proposals. The Court's consideration of the Proposed Rules would have certainly been incomplete without these efforts, and the Court therefore expresses its sincere gratitude to all of these parties for their meaningful contribution to this process.

Because the Tennessee Bar Association and others have provided an invaluable service to the bench and bar of this State, any costs associated with this petition are hereby waived.

IT IS SO ORDERED.

FRANK F. DROWOTA, III, CHIEF JUSTICE

E. RILEY ANDERSON, JUSTICE

ADOLPHO A. BIRCH, JR., JUSTICE

JANICE M. HOLDER, JUSTICE

WILLIAM M. BARKER, JUSTICE