IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: RULES 41 and 42,
RULES OF THE TENNESSEE SUPREME COURT

No. M2011-01747-SC-RL2-RL - Filed: August 16, 2011

ORDER

At the request of the Access to Justice Commission ("ATJ Commission"), the Court is considering amendments to Tenn. Sup. Ct. R. 41 and 42. In summary, the ATJ Commission has asked the Court to amend Rule 41 by adding a provision to state that interpreters should aspire to provide pro bono services, similar to a provision currently applicable to Tennessee attorneys. *See* Tenn. Sup. Ct. R. 8, RPC 6.1. The Commission also asks the Court to amend Rule 42 to explicitly require that the trial court be responsible for arranging for an interpreter, when the court finds that one is needed, and that the trial court also summarize in writing the efforts made to find a certified interpreter.

Based upon the ATJ Commission's recommendations, the Court is considering the following proposed amendments to Rule 41 and Rule 42, sections 3(a) and (f). Proposed new text is indicated by underlining and proposed deletions are indicated by overscoring. The proposed amendments are as follows:

[Rule 41, add the following new Canon 12:]

CANON 12. PRO BONO PUBLICO SERVICE.

Interpreters should aspire to render a reasonable amount of pro bono publico interpretive services per year. In fulfilling this responsibility, interpreters should:

(a) provide a substantial portion of such services without fee or expectation of fee to persons of limited means; or

(b) provide interpretive services at a substantially reduced fee to persons of limited means.

Commentary. Personal involvement in the problems of the disadvantaged can be a rewarding experience in the life of an interpreter. This Canon urges all interpreters to provide a reasonable number of hours of pro bono service annually.

Under paragraph (a), service must be provided without fee or expectation of fee. The intent of the interpreter to render free services is essential for the work performed to fall within the meaning of paragraph (a); accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected. Paragraph (b) permits the pro bono interpreter to accept a substantially reduced fee for services to persons of limited means; again, however, the intent of the interpreter to render reduced-fee services is essential for the work performed to fall within the meaning of paragraph (b); accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected.

Because this Canon states an aspiration rather than a mandatory ethical duty, it is not intended to be enforced through disciplinary process.

[Rule 42, amend Section 3(a) and (f) as follows:]

Sec. 3. Determining Need for Interpretation.

(a) Appointing an interpreter is a matter of judicial discretion. It is the responsibility of the court to determine whether a participant in a legal proceeding has a limited ability to understand and communicate in English. If the court determines that a participant has such limited ability, the court shall appoint an interpreter pursuant to this rule.

* * * *

(f) A summary of the efforts made to obtain a certified or registered interpreter and to determine the capabilities of the proposed non-credentialed interpreter shall be made in ~~open court~~ writing and shall be entered into the record of the proceedings.

The Court hereby publishes the proposed amendments for public comment and solicits written comments from the bench, the bar, and the public. The deadline for submitting written comments is Friday, October 14, 2011. Written comments should be addressed to:

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

and should reference the docket number set out above.

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

IT IS SO ORDERED.

PER CURIAM