

FILED

OCT 23 2009

Clerk of the Courts

**IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE**

**IN RE: PETITION FOR THE ADOPTION OF RULES GOVERNING
THE MULTIJURISDICTIONAL PRACTICE OF LAW**

No. M2008-01404-SC-RLI-RL

ORDER

The Tennessee Bar Association ("TBA") filed a petition asking this Court to amend Tenn. Sup. Ct. R. 8, RPCs 5.5 and 8.5, as well as other provisions of the Rules of the Supreme Court of Tennessee, and to thereby adopt rules governing the multijurisdictional practice of law. In December 2008, the Court filed an order publishing the TBA's petition and soliciting written comments concerning the TBA's proposed amendments. That public-comment period ended on March 9, 2009. Following the public-comment period, and after a thorough review of the TBA's proposed amendments, the Court published a revised version of the proposed amendments and solicited public comments concerning the proposed revisions. That second public-comment period ended on August 10, 2009.

After due consideration, the Court hereby grants the TBA's petition and adopts the amendments to the Rules of the Tennessee Supreme Court set out in the attached Appendix to this Order. The amended Rules are listed below:

Tenn. Sup. Ct. R. 7, Section 10.01 (Licensing of Attorneys – Registration of In-House Counsel);

Tenn. Sup. Ct. R. 8, RPC 5.5 (Rules of Professional Conduct – Unauthorized Practice of Law; Multijurisdictional Practice of Law);

Tenn. Sup. Ct. R. 8, RPC 8.5 (Rules of Professional Conduct – Disciplinary Authority; Choice of Law);

Tenn. Sup. Ct. R. 9, [new] Section 33 (Disciplinary Enforcement – Multijurisdictional Practice);

Tenn. Sup. Ct. R. 25, [new] Section 20 (Tennessee Lawyers' Fund for Client Protection – Multijurisdictional Practice);

[new] Tenn. Sup. Ct. R. 47 (Provision of Legal Services Following Determination of Major Disaster).

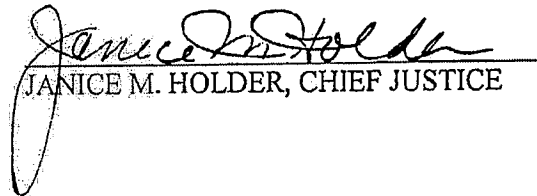
The amendments set out in the Appendix shall become effective on January 1, 2010.

The Court expresses its appreciation to the Tennessee Bar Association and to the members of the TBA's Standing Committee on Ethics and Professional Responsibility for their important contributions to the promulgation of these amendments. The TBA has taken a leadership role in the ongoing development of the Tennessee's Rules of Professional Conduct and has thereby rendered invaluable service to the Court, to Tennessee's judicial system, and to the public.

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

IT IS SO ORDERED.

FOR THE COURT:


JANICE M. HOLDER, CHIEF JUSTICE

APPENDIX

AMENDMENTS TO THE RULES OF THE TENNESSEE SUPREME COURT

Amend Tenn. Sup. Ct. R. 7, § 10.01 to read as follows:

Sec. 10.01. Registration of In-House Counsel. —

(a) A lawyer admitted to the practice of law in another United States jurisdiction who has a continuous presence in this jurisdiction and is employed pursuant to Tenn. Sup. Ct. R. 8, RPC 5.5(d)(1) as a lawyer by an organization, the business of which is lawful and consists of activities other than the practice of law or the provision of legal services, shall register as in-house counsel within 180 days of the commencement of employment as a lawyer or if currently so employed then within 180 days of the effective date of this rule, by submitting to the Board of Law Examiners the following:

(i) A completed application in the form prescribed by the Board;

(ii) A fee in the amount set by the Board pursuant to Article XI:

(iii) Documents proving admission to practice law and current good standing in all jurisdictions in which the lawyer is admitted to practice law; and

(iv) An affidavit from an officer, director, or general counsel of the employing entity attesting to the lawyer's employment by the entity and the capacity in which the lawyer is so employed, and stating that the employment conforms to the requirements of this rule.

(b) A lawyer registered under this section shall have the rights and privileges otherwise applicable to members of the bar of this jurisdiction with the following restrictions:

(i) The registered lawyer is authorized to provide legal services to the entity client or its organizational affiliates, including entities that control, are controlled by, or are under common control with the employer, and for employees, officers and directors of such entities, but only on matters directly related to their work for the entity and only to the extent consistent with Tenn. Sup. Ct. R. 8, RPC 1.7; and

(ii) The registered lawyer shall not:

(A) Except as otherwise permitted by the rules of this jurisdiction, appear before a court or any other tribunal as defined in Tenn. Sup. Ct. R. 8, RPC 1.0(n), or

(B) Offer or provide legal services or advice to any person other than as described in paragraph (b)(i), or hold himself or herself out as being authorized to practice law in this jurisdiction other than as described in paragraph (b)(i).

(c) Notwithstanding the provisions of paragraph (b) above, a lawyer registered under this section is authorized to provide pro bono legal services through an established not-for-profit bar association, pro bono program or legal services program or through such organization(s) specifically authorized in this jurisdiction.

(d) A lawyer registered under this section shall:

(i) Pay all annual fees payable by active members of the bar;

(ii) Fulfill the continuing legal education requirements that are required of active members of the bar;

(iii) Report to the Board, within 30 days, the following:

(A) Termination of the lawyer's employment;

(B) Whether or not public, any change in the lawyer's license status in another jurisdiction, including by the lawyer's resignation;

(C) Whether or not public, any disciplinary charge, finding, or sanction concerning the lawyer by any disciplinary authority, court, or other tribunal in any jurisdiction.

(e) A registered lawyer under this section shall be subject to Tenn. Sup. Ct. R. 8 (Rules of Professional Conduct) and all other laws and rules governing lawyers admitted to the active practice of law in this jurisdiction. The Board of Professional Responsibility has and shall retain jurisdiction over the registered lawyer with respect to the conduct of the lawyer in this or another jurisdiction to the same extent as it has over lawyers generally admitted in this jurisdiction.

(f) A registered lawyer's rights and privileges under this section automatically terminate when:

(i) The lawyer's employment terminates;

(ii) The lawyer is suspended or disbarred from practice in any jurisdiction or any court or agency before which the lawyer is admitted; or

(iii) The lawyer fails to maintain active status in at least one jurisdiction.

(g) A registered lawyer whose registration is terminated under paragraph (f)(i) above, may be reinstated within 180 days of termination upon submission to the Board of the following:

- (j) An application for reinstatement in a form prescribed by the Board;
- (k) A reinstatement fee set by the Board pursuant to Article XI;
- (l) An affidavit from the current employing entity as prescribed in paragraph (a)(iv).
- (m) A lawyer under this rule who fails to register shall be:
 - (i) Subject to professional discipline in this jurisdiction;
 - (ii) Ineligible for admission pursuant to Article V of this rule;
 - (iii) Referred by the Board of Law Examiners to the Board of Professional Responsibility; and
 - (iv) Referred by the Board to the disciplinary authority of the jurisdictions of licensure.

(i) A lawyer seeking to practice in this State under the authority of Tenn. Sup. Ct. R. 8, RPC 5.5(d)(1) and who complies fully with the requirements of this Rule on or before June 30, 2010 shall not be barred from registration under this Rule or from practicing under the authority of RPC 5.5(d)(1) solely by the fact of prior noncompliance with Tennessee law concerning licensure of in-house counsel, including RPC 5.5 in the form in which it was in force from and after March 1, 2003.

Amend Tenn. Sup. Ct. R. 8, RPC 5.5 to read as follows:

Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law. —

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another person in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's representation of an existing client in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's representation of an existing client in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

(e) A lawyer authorized to provide legal services in this jurisdiction pursuant to paragraph (d)(1) of this Rule may also provide pro bono legal services in this jurisdiction, provided that these services are offered through an established not-for-profit bar association, pro bono program or legal services program or through such organization(s) specifically authorized in this jurisdiction and provided that these are services for which the forum does not require pro hac vice admission.

(f) A lawyer providing legal services in Tennessee pursuant to paragraph (c) or (d) shall advise the lawyer's client that the lawyer is not admitted to practice in Tennessee and shall obtain the client's informed consent to such representation.

(g) A lawyer providing legal services in Tennessee pursuant to paragraph (c) or (d) shall be deemed to have submitted himself or herself to personal jurisdiction in Tennessee for claims arising out of the lawyer's actions in providing such services in this state.

(h) A lawyer or law firm shall not employ or continue the employment of a disbarred or suspended lawyer as an attorney, legal consultant, law clerk, paralegal or in any other position of a quasi-legal nature.

Commentary. — [1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person.

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See RPC 5.3.

[3] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[4] Other than as authorized by law or this Rule, a lawyer who is not admitted to practice generally in this jurisdiction violates paragraph (b) if the lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. See also RPCs 7.1(a) and 7.5(b).

[5] There are occasions in which a lawyer admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

[6] There is no single test to determine whether a lawyer's services are provided on a "temporary basis" in this jurisdiction, and may therefore be permissible under paragraph (c). Services may be "temporary" even though the lawyer provides services in this jurisdiction on a recurring basis, or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.

[7] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia and any state, territory or commonwealth of the United States. The word "admitted" in paragraph (c) contemplates that the lawyer is authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a lawyer who while technically admitted is not authorized to practice, because, for example, the lawyer is on inactive status.

[8] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer licensed to practice in this jurisdiction. For this paragraph to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.

[9] Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under paragraph (c)(2), a lawyer does not violate this Rule when the lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a lawyer who is not admitted to practice in this jurisdiction to obtain admission pro hac vice before appearing before a tribunal or administrative agency, this Rule requires the lawyer to obtain that authority.

[10] Paragraph (c)(2) also provides that a lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is authorized to practice law or in which the lawyer reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a lawyer admitted only in another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.

[11] When a lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate lawyers may conduct research, review documents, and attend meetings with witnesses in support of the lawyer responsible for the litigation.

[12] Paragraph (c)(3) permits a lawyer admitted to practice law in another jurisdiction to perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's representation of an existing client in a jurisdiction in which the lawyer is admitted to practice. The lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.

[13] Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the lawyer's representation of an existing client in a jurisdiction in which the lawyer is admitted but are not within paragraphs (c)(2) or (c)(3). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.

[14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the lawyer's representation of an existing client in a jurisdiction in which the lawyer is admitted. A variety of factors evidence such a relationship. The lawyer's client may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each. Lawyers desiring to provide pro bono legal services on a temporary basis in a jurisdiction that has been affected by a major disaster, but in which they are not otherwise authorized to practice law, as well as lawyers from the affected jurisdiction who seek to practice law temporarily in another jurisdiction, but in which they are not otherwise authorized to practice law, should consult Tenn. Sup. Ct. R. 47.

[15] Paragraph (d) identifies two circumstances in which a lawyer who is admitted to practice in another United States jurisdiction, and is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a lawyer who is admitted to practice law in another jurisdiction and who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.

[16] Paragraph (d)(1) applies to a lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The lawyer's ability to represent the employer outside the jurisdiction in which the lawyer is licensed generally serves the interests of the employer and does not create

an unreasonable risk to the client and others because the employer is well situated to assess the lawyer's qualifications and the quality of the lawyer's work.

[17] If an employed lawyer establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the lawyer may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education. See Tenn. Sup. Ct. R. 7, § 10.01 (Registration of In-House Counsel).

[18] Paragraph (d)(2) recognizes that a lawyer may provide legal services in a jurisdiction in which the lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent.

[19] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) or otherwise is subject to the disciplinary authority of this jurisdiction. See RPC 8.5(a). Additionally, under paragraph (g), a lawyer providing legal services in Tennessee pursuant to paragraphs (c) or (d) shall be deemed to have submitted himself or herself to personal jurisdiction in Tennessee for claims arising out of the lawyer's actions in providing such services in this state.

[20] Paragraph (f) requires a lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) to inform the client that the lawyer is not licensed to practice law in this jurisdiction. See also RPC 1.4(b).

[21] Paragraphs (c) and (d) do not authorize communications advertising legal services to prospective clients in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services to prospective clients in this jurisdiction is governed by RPCs 7.1 to 7.5.

[22] Paragraph (h) provides that a lawyer or law firm may not employ or continue the employment of a disbarred or suspended lawyer as an attorney, legal consultant, law clerk, paralegal or in any other position of a quasi-legal nature. That paragraph is consistent with existing Tennessee law. See Formal Ethics Opinion 83-F-50 and Tenn. Sup. Ct. R. 9, § 18.7 (providing, "[u]pon the effective date of the order [imposing disbarment, suspension or transfer to disability inactive status], the respondent shall not maintain a presence or occupy an office where the practice of law is conducted.").

Definitional Cross-References

None.

Amend Tenn. Sup. Ct. R. 8, RPC 8.5 to read as follows:

Rule 8.5. Disciplinary Authority; Choice of Law. — (a) **Disciplinary Authority.** A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

(b) **Choice of Law.** In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct.

Commentary. — *Disciplinary Authority:* [1] It is longstanding law that the conduct of a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction. Extension of the disciplinary authority of this jurisdiction to other lawyers who provide or offer to provide legal services in this jurisdiction is for the protection of the citizens of this jurisdiction. Reciprocal enforcement of a jurisdiction's disciplinary findings and sanctions will further advance the purposes of this Rule. See Tenn. Sup. Ct. R. 9, § 1 ("Jurisdiction") and § 17 ("Reciprocity Discipline").

Choice of Law: [2] A lawyer may be potentially subject to more than one set of rules of professional conduct which impose different obligations. The lawyer may be licensed to practice in more than one jurisdiction with differing rules, or may be admitted to practice before a particular court with rules that differ from those of the jurisdiction or jurisdictions in which the lawyer is licensed to practice. Additionally, the lawyer's conduct may involve significant contacts with more than one jurisdiction.

[3] Paragraph (b) seeks to resolve such potential conflicts. Its premise is that minimizing conflicts between rules, as well as uncertainty about which rules are applicable, is in the best interest of both clients and the profession (as well as the bodies having authority to regulate the profession). Accordingly, it takes the approach of (i) providing that any particular conduct of a lawyer shall be subject to only one set of rules of professional conduct, and (ii) making the determination of which set of rules applies to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory interests of relevant jurisdictions.

[4] Paragraph (b)(1) provides that as to a lawyer's conduct relating to a proceeding pending before a tribunal, the lawyer shall be subject only to the rules of the jurisdiction in which the tribunal sits unless the rules of the tribunal, including its choice of law rule, provide

otherwise. As to all other conduct, including conduct in anticipation of a proceeding not yet pending before a tribunal, paragraph (b)(2) provides that a lawyer shall be subject to the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in another jurisdiction, the rules of that jurisdiction shall be applied to the conduct. In the case of conduct in anticipation of a proceeding that is likely to be before a tribunal, the predominant effect of such conduct could be where the conduct occurred, where the tribunal sits or in another jurisdiction.

[5] If two admitting jurisdictions were to proceed against a lawyer for the same conduct, they should, applying this rule, identify the same governing ethics rules. They should take all appropriate steps to see that they do apply the same rule to the same conduct, and in all events should avoid proceeding against a lawyer on the basis of two inconsistent rules.

[6] The choice of law provision applies to lawyers engaged in transnational practice, unless international law, treaties or other agreements between competent regulatory authorities in the affected jurisdictions provide otherwise.

Definitional Cross-References

None.

Amend Tenn. Sup. Ct. R. 9 by adding the following new Section 33:

Section 33. Multijurisdictional Practice.

33.1. Any attorney practicing in this State under the authority of RPC 5.5(c) or (d) or otherwise subject to this Court's disciplinary jurisdiction under RPC 8.5 is subject to the disciplinary jurisdiction prescribed in Section 1.1 of this Rule 9 and the procedures for exercise of such jurisdiction prescribed in this Rule 9.

33.2. The authorization for practice granted in RPC 5.5(c) or (d) may be terminated or suspended. The grounds and processes for such termination shall be those provided in this Rule 9 for disbarment; and the grounds and processes for such suspension shall be those provided in this Rule 9 for suspension.

33.3. If an attorney is practicing in this State under authority of RPC 5.5(c), or if an attorney is practicing in this State under authority of RPC 5.5(d) and does not maintain an office in this State, hearing panel proceedings shall occur in the disciplinary district, circuit or chancery court proceedings for review of Board action prescribed in this Rule 9 shall occur in the county or disciplinary district, and unappealed final trial court judgments terminating or suspending the authorization for practice shall be forwarded to the office of the clerk of the Supreme Court for

the grand division, where the conduct that forms the basis of the complaint against the attorney occurred.

33.4. The procedures and remedies for reciprocal discipline prescribed in Section 17 of this Rule shall apply to attorneys practicing in this State under authority of RPC 5.5(d)(1). Upon receipt of a certified copy of an order demonstrating that such an attorney has been disciplined in another jurisdiction, the Court shall employ the procedures prescribed in subsections 17.2 through 17.5.

33.5. The information filing, fee payment and other requirements and regulations prescribed in Section 20 of this Rule shall apply to attorneys practicing in this State under authority of RPC 5.5(d)(1).

Amend Tenn. Sup. Ct. R. 25 by adding the following new Section 20:

Section 20. Multijurisdictional practice.

20.01. This Rule 25 shall apply to attorneys practicing in Tennessee under authority of Tenn. Sup. Ct. R. 8, RPC 5.5(d)(1) where dishonest conduct, as defined in Section 1.03 of this Rule, meets the criteria set forth in subsections 1.04(a) and (b) thereof.

Adopt the following new Tenn. Sup. Ct. R. 47.

Rule 47. Provision of Legal Services Following Determination of Major Disaster. —

(a) *Determination of existence of major disaster.* Solely for purposes of this Rule, this Court shall determine when an emergency affecting the justice system, as a result of a natural or other major disaster, has occurred in:

(1) this jurisdiction and whether the emergency caused by the major disaster affects the entirety or only a part of this jurisdiction, or

(2) another jurisdiction but only after such a determination and its geographical scope have been made by the highest court of that jurisdiction. The authority to engage in the temporary practice of law in this jurisdiction pursuant to paragraph (c) shall extend only to lawyers who principally practice in the area

of such other jurisdiction determined to have suffered a major disaster causing an emergency affecting the justice system and the provision of legal services.

(b) *Temporary practice in this jurisdiction following major disaster.* Following the determination of an emergency affecting the justice system in this jurisdiction pursuant to paragraph (a) of this Rule, or a determination that persons displaced by a major disaster in another jurisdiction and residing in this jurisdiction are in need of pro bono services and the assistance of lawyers from outside of this jurisdiction is required to help provide such assistance, a lawyer authorized to practice law in another United States jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in this jurisdiction on a temporary basis. Such legal services must be provided on a pro bono basis without compensation, expectation of compensation or other direct or indirect pecuniary gain to the lawyer. Such legal services shall be assigned and supervised through an established not-for-profit bar association, pro bono program or legal services program or through such organization(s) specifically designated by this Court.

(c) *Temporary practice in this jurisdiction following major disaster in another jurisdiction.* Following the determination of a major disaster in another United States jurisdiction, a lawyer who is authorized to practice law and who principally practices in that affected jurisdiction, and who is not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in this jurisdiction on a temporary basis. Those legal services must arise out of and be reasonably related to that lawyer's practice of law in the jurisdiction, or area of such other jurisdiction, where the major disaster occurred.

(d) *Duration of authority for temporary practice.* The authority to practice law in this jurisdiction granted by paragraph (b) of this Rule shall end when this Court determines that the emergency conditions caused by the major disaster in this jurisdiction have ended except that a lawyer then representing clients in this jurisdiction pursuant to paragraph (b) is authorized to continue the provision of legal services for such time as is reasonably necessary to complete the representation, but the lawyer shall not thereafter accept new clients. The authority to practice law in this jurisdiction granted by paragraph (c) of this Rule shall end 60 days after this Court declares that the emergency conditions caused by the major disaster in the affected jurisdiction have ended.

(e) *Court appearances.* The authority granted by this Rule does not include appearances in court except:

(1) pursuant to that court's pro hac vice admission rule and, if such authority is granted, any fees for such admission shall be waived; or

(2) if this Court, in any determination made under paragraph (a), grants blanket permission to appear in all or designated courts of this jurisdiction to lawyers providing legal services pursuant to paragraph (b). If such an authorization is included, any pro hac vice admission fees shall be waived.

(f) *Disciplinary authority and registration requirement.* Lawyers providing legal services in this jurisdiction pursuant to paragraphs (b) or (c) are subject to this Court's disciplinary authority and the Rules of Professional Conduct of this jurisdiction as provided in Tenn. Sup. Ct. R. 8, RPC 8.5. Lawyers providing legal services in this jurisdiction under paragraphs (b) or (c) shall, within 30 days from the commencement of the provision of legal services, file a registration statement with the Clerk of this Court. The registration statement shall be in a form prescribed by this Court. Any lawyer who provides legal services pursuant to this Rule shall not be considered to be engaged in the unlawful practice of law in this jurisdiction.

(g) *Notification to clients.* Lawyers authorized to practice law in another United States jurisdiction who provide legal services pursuant to this Rule shall inform clients in this jurisdiction of the jurisdiction in which they are authorized to practice law, any limits of that authorization, and that they are not authorized to practice law in this jurisdiction except as permitted by this Rule. They shall not state or imply to any person that they are otherwise authorized to practice law in this jurisdiction.

Commentary. —

[1] A major disaster in this or another jurisdiction may cause an emergency affecting the justice system with respect to the provision of legal services for a sustained period of time interfering with the ability of lawyers admitted and practicing in the affected jurisdiction to continue to represent clients until the disaster has ended. When this happens, lawyers from the affected jurisdiction may need to provide legal services to their clients, on a temporary basis, from an office outside their home jurisdiction. In addition, lawyers in an unaffected jurisdiction may be willing to serve residents of the affected jurisdiction who have unmet legal needs as a result of the disaster or, though independent of the disaster, whose legal needs temporarily are unmet because of disruption to the practices of local lawyers. Lawyers from unaffected jurisdictions may offer to provide these legal services either by traveling to the affected jurisdiction or from their own offices or both, provided the legal services are provided on a pro bono basis through an authorized not-for-profit entity or such other organization(s) specifically designated by this Court. A major disaster includes, for example, a hurricane, earthquake, flood, wildfire, tornado, public health emergency or an event caused by terrorists or acts of war.

[2] Under paragraph (a)(1), this Court shall determine whether a major disaster causing an emergency affecting the justice system has occurred in this jurisdiction, or in a part of this jurisdiction, for purposes of triggering paragraph (b) of this Rule. This Court may, for example, determine that the entirety of this jurisdiction has suffered a disruption in the provision of legal services or that only certain areas have suffered such an event. The authority granted by paragraph (b) shall extend only to lawyers authorized to practice law and not disbarred, suspended from practice or otherwise restricted from practice in any other manner in any other jurisdiction.

[3] Paragraph (b) permits lawyers authorized to practice law in an unaffected jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practicing law in any other manner in any other jurisdiction, to provide pro bono legal services to residents

of the affected jurisdiction following determination of an emergency caused by a major disaster; notwithstanding that they are not otherwise authorized to practice law in the affected jurisdiction. Other restrictions on a lawyer's license to practice law that would prohibit that lawyer from providing legal services pursuant to this Rule include, but are not limited to, probation, inactive status, disability inactive status or a non-disciplinary administrative suspension for failure to complete continuing legal education or other requirements. Lawyers on probation may be subject to monitoring and specific limitations on their practices. Lawyers on inactive status, despite being characterized in many jurisdictions as being "in good standing," and lawyers on disability inactive status are not permitted to practice law. Public protection warrants exclusion of these lawyers from the authority to provide legal services as defined in this Rule. Lawyers permitted to provide legal services pursuant to this Rule must do so without fee or other compensation, or expectation thereof. Their service must be provided through an established not-for-profit organization that is authorized to provide legal services either in its own name or that provides representation of clients through employed or cooperating lawyers. Alternatively, this court may instead designate other specific organization(s) through which these legal services may be rendered. Under paragraph (b), an emeritus lawyer from another United State jurisdiction may provide pro bono legal services on a temporary basis in this jurisdiction provided that the emeritus lawyer is authorized to provide pro bono legal services in that jurisdiction pursuant to that jurisdiction's emeritus or pro bono practice rule. Lawyers may also be authorized to provide legal services in this jurisdiction on a temporary basis under Tenn. Sup. Ct. R. 8, RPC 5.5(c).

[4] Lawyers authorized to practice law in another jurisdiction, who principally practice in the area of such other jurisdiction determined by this Court to have suffered a major disaster, and whose practices are disrupted by a major disaster there, and who are not disbarred, suspended from practice or otherwise restricted from practicing law in any other manner in any other jurisdiction, are authorized under paragraph (c) to provide legal services on a temporary basis in this jurisdiction. Those legal services must arise out of and be reasonably related to the lawyer's practice of law in the affected jurisdiction. For purposes of this Rule, the determination of a major disaster in another jurisdiction should first be made by the highest court of appellate jurisdiction in that jurisdiction.

[5] Emergency conditions created by major disasters end, and when they do, the authority created by paragraphs (b) and (c) also ends with appropriate notice to enable lawyers to plan and to complete pending legal matters. Under paragraph (d), this Court determines when those conditions end only for purposes of this Rule. The authority granted under paragraph (b) shall end upon such determination except that lawyers assisting residents of this jurisdiction under paragraph (b) may continue to do so for such longer period as is reasonably necessary to complete the representation. The authority created by paragraph (c) will end 60 days after this Court makes such a determination with regard to an affected jurisdiction.

[6] Paragraphs (b) and (c) do not authorize lawyers to appear in the courts of this jurisdiction. Court appearances are subject to the pro hac vice admission rules of the particular court. This Court may, in a determination made under paragraph (e)(2), include authorization for lawyers who provide legal services in this jurisdiction under paragraph (b) to appear in all or

designated courts of this jurisdiction without need for such pro hac vice admission. If such an authorization is included, any pro hac vice admission fees shall be waived. A lawyer who has appeared in the courts of this jurisdiction pursuant to paragraph (e) may continue to appear in any such matter notwithstanding a declaration under paragraph (d) that the conditions created by major disaster have ended. Furthermore, withdrawal from a court appearance is subject to Tenn. Sup. Ct. R. 8, RPC 1.16.

[7] Authorization to practice law as a foreign legal consultant or in-house counsel in a United States jurisdiction offers lawyers a limited scope of permitted practice and may therefore restrict that person's ability to provide legal services under this Rule.

[8] The ABA National Lawyer Regulatory Data Bank is available to help determine whether any lawyer seeking to practice in this jurisdiction pursuant to paragraphs (b) or (c) of this Rule is disbarred, suspended from practice or otherwise subject to a public disciplinary sanction that would restrict the lawyer's ability to practice law in any other jurisdiction.

(end of Appendix)

FILED
OCT 23 2009
Clerk of the Courts

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: PRO BONO SERVICE RULES AMENDMENTS

No. M2008-01403-SC-RL1-RL

ORDER

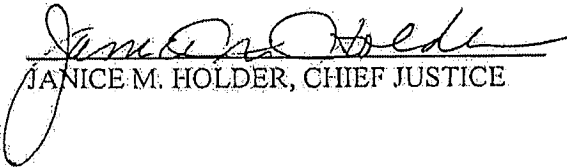
On April 3, 2009, the Court filed an order granting in part the Tennessee Bar Association's petition entitled *In Re: Pro Bono Service Rules Amendments*. In that order, the Court amended Tenn. Sup. Ct. R. 8, RPC 6.1 and adopted the new RPC 6.5, effective January 1, 2010. The Court took under advisement the TBA's request to amend RPC 5.5 "until such time as the Court acts on the separately filed *Petition of the Tennessee Bar Association for the Adoption of Rules Governing the Multijurisdictional Practice of Law*." The Court also took under advisement the petition's request that "each lawyer be required to respond to a request for a report of the number of hours spent per year on pro bono legal services"; the Court referred that issue to the Access to Justice Commission for its consideration and recommendation.

Contemporaneous with the filing of this order, the Court is filing a separate order granting the TBA's petition to adopt rules governing the multijurisdictional practice of law. The TBA's request to amend Tenn. Sup. Ct. R. 8, RPC 5.5, set out in this Pro Bono Services Petition, is granted in that separate order. Additionally, the TBA's request regarding the reporting of pro bono activities has now been acted upon by the Access to Justice Commission; the Court, under a separate docket number, has published and solicited public comments regarding a proposed rule providing for the voluntary reporting of pro bono activities.

With the filing of the separate order addressing the multijurisdictional practice amendments (including the amendment of Tenn. Sup. Ct. R. 8, RPC 5.5), and with the separate matter pending concerning the reporting of pro bono activities, all of the matters raised in the TBA's Pro Bono Services Petition have been acted upon by the Court. Accordingly, the Court hereby files this order formally closing this proceeding, No. M2008-01403-SC-RL1-RL, and the Clerk is hereby directed to close the Court's file in this matter.

IT IS SO ORDERED.

FOR THE COURT:


JANICE M. HOLDER, CHIEF JUSTICE