

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.

JUSTICE

FRANK F. DROWOTA, III, CHIEF

E. RILEY ANDERSON, JUSTICE

ADOLPHO A. BIRCH, JR., JUSTICE

JANICE M. HOLDER, JUSTICE

WILLIAM M. BARKER, JUSTICE

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 REMOVING REFERENCES TO THE CODE OF PROFESSIONAL
RESPONSIBILITY IN THE RULES OF THE SUPREME COURT**

The Court hereby enters a corrected version of this order originally entered on August 27, 2002.

In accordance with this Court's revision of Supreme Court Rule 8 to adopt the Tennessee Rules of Professional Conduct, it is hereby ORDERED that the following general references to the "Code of Professional Responsibility" in the Rules of the Supreme Court be replaced with general references to the "Rules of Professional Conduct":

1. Supreme Court Rule 9, sections 3.2; 9.1(a); 9.2(a); 9.3; 26.4(c); 26.4(d).
2. Supreme Court Rule 10, Canon 3, section (D)(2); Canon 5, section (E).
3. Supreme Court Rule 10, Application of the Code of Judicial Conduct, paragraph (B); Commentary to paragraph (C).
4. Supreme Court Rule 19(1)(C).
5. Supreme Court Rule 21, section 2.01.
6. Supreme Court Rule 31, section 9(b).
7. Any other reference not above mentioned.

In addition, it is hereby ORDERED that the following citations and references to specific provisions of the Code of Professional Responsibility be replaced as follows:

1. In Supreme Court Rule 9, section 26.5(b), replace the phrase “citing the Rules of Court or Canons of Ethics and Disciplinary Rules involved” with the following: “citing the Rules of Court or Professional Conduct involved.”

2. In Supreme Court Rule 9, section 28.3, replace the language “to the Tennessee Supreme Court Board of Professional Responsibility under Tennessee Supreme Court Rule, DR 1-103” with the following: “to the Tennessee Supreme Court Board of Professional Responsibility under Tennessee Supreme Court Rule 8, RPC 8.3(a).”

3. In Supreme Court Rule 33.11(C), replace the language “are relieved of the duty of disclosure of information to authorities as imposed by Rule 8, DR 1-103” with the following: “are relieved of the duty of disclosure of information to authorities as imposed by Tennessee Supreme Court Rule 8, RPC 8.3(a).”

4. In Rule of Civil Procedure 45.07, replace the citation to DR 7-106(C)(7) in the Advisory Commission Comment with a citation to Tenn. Sup. Ct. R. 8, RPC 3.4(c).

IT IS SO ORDERED.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

**IN RE: ADOPTION OF TENNESSEE SUPREME COURT RULE 43:
INTEREST ON LAWYERS' TRUST ACCOUNT PROGRAM**

Filed September 17, 2002

ORDER

The Court hereby enters a corrected version of this order originally entered on August 27, 2002.

On August 27, 2002, this Court revised Tennessee Supreme Court Rule 8 to adopt the Tennessee Rules of Professional Conduct. As part of that revision, the Court adopted Rule of Professional Conduct 1.15, which requires lawyers to participate in the Interest on Lawyers' Trust Account (IOLTA) program, unless the lawyer gives annual written notice to the Chief Justice of the Tennessee Supreme Court. Unlike its predecessor, however, Rule 1.15 contains no specific provisions setting forth the general guidelines for the operation of the IOLTA program. 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, Rule 43 of the Rules of the Supreme Court is hereby adopted:

Rule 43 — Interest on Lawyers' Trust Accounts.

The following rule shall govern the maintenance and operation of the Interest on Lawyers' Trust Accounts program (hereinafter "IOLTA"):

- (a) Lawyers or law firms depositing client funds in an IOLTA account shall direct the depository institution:
 - (1) To remit interest, net any service charges or fees, as computed in accordance with the institution's standard accounting practice, at least quarterly, to the Tennessee Bar Foundation for deposit in its IOLTA program; and
 - (2) To transmit with each remittance to the Tennessee Bar Foundation a statement showing the name of the lawyer or law firm on whose account the remittance is sent, the account number and the rate of interest applied, with a copy of such statement to be transmitted to the lawyer or the law firm.
- (b) All interest transmitted to the Tennessee Bar Foundation shall be distributed by that entity for the following purposes:
 - (1) To provide legal assistance to the poor;

- (2) To provide student loans, grants, and scholarships to deserving law students;
- (3) To improve the administration of justice; and
- (4) For such other programs for the benefit of the public as are specifically approved by the Tennessee Supreme Court from time to time.

(c) The registration required by Supreme Court Rule 9, Section 20.5 shall also include an IOLTA compliance statement, which shall set forth the bank or banks where the lawyer or the law firm maintains the depository account or accounts. This compliance statement shall further designate the account number assigned by any such bank to any such account. The IOLTA compliance statement shall also direct such bank or banks to remit interest thereon as required in Supreme Court Rule 8, RPC 1.15.

(d) A lawyer who does not maintain such depository account for the deposit of clients' funds as referenced above shall advise the Tennessee Board of Professional Responsibility when filing the registration statement and the IOLTA compliance statement as referenced above herein. This statement shall state that the lawyer does not maintain a pooled depository account and shall set forth the reasons for not doing so. A copy of the lawyer's statement declining to participate in the IOLTA program, or a statement that no such pooled depository account is maintained, shall also be transmitted to the Tennessee Bar Foundation by the Board of Professional Responsibility.

(e) The Board of Professional Responsibility, acting in concert with the Tennessee Bar Foundation, may promulgate such forms and procedures as are necessary to implement the provisions of this Rule and of Supreme Court Rule 8, RPC 1.15.

IT IS SO ORDERED.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

In Re: Amendment to Supreme Court Rule 9, Section 28.3

Filed September 17, 2002

ORDER

Supreme Court Rule 9, Section 28.3 is amended to correct an erroneous reference by deleting the phrase "Tennessee Supreme Court Rule DR 1-102" and replacing it with the phrase "Tennessee Supreme Court Rule 8, DR 1-103."

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: TENNESSEE SUPREME COURT RULE 8, RPC 7.6

Filed September 17, 2002

ORDER

The Court hereby enters a corrected version of this order originally entered on August 27, 2002.

On August 27, 2002, this Court revised Tennessee Supreme Court Rule 8 to adopt the Tennessee Rules of Professional Conduct. As part of that revision, the Court adopted Rule of Professional Conduct 7.6, which addresses the lawyer's relationship with intermediary organizations, such as lawyer-advertising cooperatives, lawyer-referral services, and prepaid legal insurance providers.

As adopted, however, Rule 7.6 does not directly regulate the conduct of such organizations with respect to registration, reporting, and advertising. The Court is of the opinion that these regulations should not be included in the ethics rules themselves because to do so would place an unreasonable ethical burden on the lawyer seeking to use such services. Consequently, the Court agrees with the Tennessee Bar Association's proposal that such regulations should be provided by a separate Supreme Court Rule or other regulation.

To this end, the Court desires the assistance of the Board of Professional Responsibility in drafting regulations to implement Rule of Professional Conduct 7.6, as we believe that the Board is in a unique position to be of considerable benefit in this area. Accordingly, we request that the Board submit draft regulations that include, among other things, provisions addressing the registration of such organizations with the Board and the regular reporting of information by such organizations to the Board; provisions governing appropriate advertising and marketing; provisions governing the qualifications of lawyers in such organizations; and any other provisions that the Board deems proper. The Court further requests that the Board's proposals be submitted on or before December 31, 2002.

The Court wishes again to express its genuine appreciation to the Board of Professional Responsibility for its help and assistance throughout the process of considering and adopting the Rules of Professional Conduct.

IT IS SO ORDERED.

PER CURIAM