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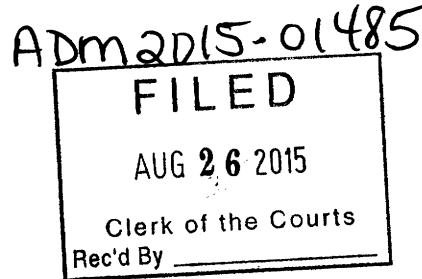
SERVING THE PUBLIC AND THE PROFESSION SINCE 1965

FRANCIS X. SANTORE (1931 - 2004)

FRANCIS X. SANTORE, JR.*

August 19, 2015

Ms. Janice M. Hivner, Clerk
Re: Tennessee Supreme Court Rule 46
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407



P.O. Box 113
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Dear Ms. Hivner:

The Supreme Court is soliciting comments from the Bar regarding the proposed divorce forms it wishes to promulgate for—and, yes, I do say this sarcastically—the “poor and unwashed” among our citizenry. I rise in opposition, vehement opposition, in fact, to the Supreme Court’s once again ripping another method of our livelihood away from us.

In 2014, I was one of the few attorneys who publicly opposed the retention of the three Justices who were running. At that time, in a letter which was published in the TBA JOURNAL, I explained that my position in opposition to retention was not based upon the political affiliation of the Justices then running (Chief Justice Lee, Justice Clark, and now-retired Justice Wade), but was grounded in two reasons: (1) the failure of the Court to push more strongly for increased compensation for indigent defense work, and (2) the Court’s continued fascination with wanting to play Gunga Din for people who, supposedly, do not have enough money to hire attorneys—which, I may add, all the members of the Court were at one time, lest they forget—but can find enough money to do almost everything else.

I copied the letter I sent to the TBA JOURNAL to the three Justices who were then running for retention. Only one, Justice Wade, was kind enough to reply. Thus, most respectfully, I am copying this letter to all four (4) of the current Justices, as well as Deans Koch and Wade, recently-retired Supreme Court Justices themselves, to, again, attempt to beg this Court to stop putting the welfare of the so-called downtrodden ahead of the members of this Bar, many of whom have to, literally, practice out of the trunks of their automobiles.

It was nice of the Supreme Court to come to Greeneville earlier this year, for the SCALES project. I note that the Court was feted by a local businessman, Mr. Niswonger, a multi-millionaire who, it was reported in our local newspaper, just recently gave \$40,000.00 to the campaign of one of the Republican candidates for President.

Well, Ms. Hivner, I cannot afford to give that type of money, nor can 99% of the attorneys in this State. I note that the Access To Justice Committee and its minions is top-heavy with either (a) members of white-shoe, large-city civil defense law firms in this State, who make in the mid-six figures per year from their rich corporate and insurance clients, and who send their young associates out to work in the ATJ

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Committees, probably to assuage their consciences for the roles they play each day as “reverse Robin Hoods “or (b) members of large plaintiffs’ firms, who, at these meetings, after having performed five minutes of work by telephoning an insurance adjustor and wrapping up a large six-figure settlement, tell all present that it is, supposedly, their “duty” to help these so-called “poor and unwashed.”

(With regard to the latter, and concerning one prominent plaintiffs’ attorney in the Tri-Cities area, I have now gotten into the habit, each time someone calls me or comes to me, and I quote them a fee and they say they cannot afford it, to refer them to “Mr. X,” the prominent plaintiffs’ attorney-member of the Access to Justice Committee up here. His slogan, used in his media ads is that you can always “Talk to Him.” So, figuring that he would want real world experience in the milieu in which I operate—a general civil and criminal trial and appellate practice—I refer all these people to him, give them his cell number, tell them that his ads say that he “really wants to talk with them,” and tell them to keep calling him until he calls back! But, I digress.)

It was bad enough that the Supreme Court promulgated these do-it-yourself divorce forms for persons without children. **NOW THE SUPREME COURT WANTS TO TAKE MORE OF OUR LIVELIHOOD AWAY AND ALLOW DIVORCING PARENTS AN OPPORTUNITY TO DO A DO-IT-YOURSELF DIVORCE.** Why, Ms. Hivner? Why does the Supreme Court denigrate attorneys? Why does it always want the public to, in effect, “operate upon itself?” By that, I mean this example, which I have repeated, *ad nauseum*, in prior correspondence.

Medical professionals take care of themselves and every member of their profession, be it doctors, FNPs, RNs, LPNs, CNAs and the like. Never, and I mean NEVER, would any supervisory state medical board allow any layperson to practice medicine upon himself in any form of medicine: regular, homeopathic, osteopathic, chiropractic, podiatric, and so forth. Never would a medical board in this or any other state say, “You don’t have the money, so we’ll let you do brain surgery upon yourself.”

Similarly, when I want something done professionally, that I cannot do myself, I take it to someone who has years of training and experience. I take my car to the auto shop to get it repaired. As of this minute, my general contractor is working on renovating my office (which has not been renovated in 28 years, because my overhead has doubled, my rates have stayed the same, the number of attorneys have increased, and my business is being ripped away from me by administrative fiat of, say, the Court, so I had to borrow the money to have these repairs done). I don’t drill my own teeth: my dentist of many years with his dental degree that he sweated and worked for, does it. I wouldn’t know where to begin to do any plumbing work, so I call my very experienced plumber (who, by the way, charges more per hour than the parsimonious rate we are paid for representing the “poor and unwashed.”)

Yet, most respectfully, the Tennessee Supreme Court, in its infinite wisdom, thinks that everyone can “drill their own teeth,” “operate upon themselves,” or “fix their own clogged drain.” By its well-intentioned, yet wrongfully implemented, Access to Justice Committee, the Court is, unintentionally, turning the screws on most attorneys in this State, who live outside the large metro areas, who practice in the Covingtons, the Huntingtons, the Pulaskis, the Crossvilles, and the Greenevilles of this State, and hundreds more, who, like me, are not starving, are keeping our heads above water and a roof over our head, but who are not living like Donald Trump, and who do not have a mid-six-figure salary, nor a pension to fall back on.

Rhetorically and respectfully, how does the Court think that we small-town attorneys make our living? If

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the Court does not know that we make a portion of our living in our small towns by helping people find earnest solutions to dissolving marriages without incurring a fight that will mar them and their children forever, then, again, respectfully, I wonder in which State the members of the Court have practiced? I'm certainly not charging thousands of dollars in my small town for an agreed-upon, uncontested divorce (unlike, say, some young, harried associate in a Memphis law firm trying to bill enough hours to make partner would). But any fee I do earn, I earned through three years of hard study at Cumberland Law School, years where I had absolutely no social life, so much so that a monk in a monastery had more fun than did I in law school, the modern-day American equivalent of a Soviet gulag. I had to learn things we all had to learn which most of us don't use now, such as the "Rule of Shelly's Case," whatever that has to do with the price of rice in China.

I think my law degree was toiled for harder than any medical, dental or other post-graduate degree. Yet my State's highest court wants to rip my professional livelihood away from me to promote itself as the champion of liberty. That is absolutely horrible.

(Another aside: Why does everyone with a post-graduate, doctoral degree, get referred to as "doctor", except for us attorneys? Do you not think, Ms. Hivner, that we in this profession deserve at least that?)

Most respectfully, the Court may not understand what its good intentions—and, yes, I am not imputing any improper motive to the Court, but I just think that its results are not what it intended—have wrought. For example, in an adjoining county, the civil judges of the courts of record have monthly *pro bono* days for the people who wrongfully filed their pleadings to get an attorney, which they should have used in the first place, to correct their mistakes, BECAUSE THEIR DOCKETS ARE CLOGGED TO THE SATURATION POINT. In Knox County on Order of Protection day in Fourth Circuit Court, the line stretches out the building to Market Square, with people lining up to get an Order of Protection against their spouse, significant other, or baby mama in most cases, in lieu of a divorce, or baby daddy without using an attorney, because, although they have the money to buy cigarettes, beer, and, in most cases, illegal drugs, they cannot, supposedly, afford an attorney.

Two examples from my own county involving me, one in the civil realm and one in the criminal. One day in one of our civil courts, I was awaiting my turn when a *pro se* divorce litigant, dressed reasonably well, came to the podium. He presented to the Court one of those documents that our Supreme Court Justices have lovingly licked their lips over, the *pro se* divorce form for litigants without minor children or property. It turns out that the man, not having gone to law school, nor sought the advice of a competent attorney, did not know that a summons had to be issued and served upon his wife to put her on notice. The Court asked me as a favor to it to take the gentleman to the Clerk's office to show him what to do.

Of course, respecting the Court, I did what the Court asked. But on the way to the Clerk's office, I told/asked the man, "You know, for \$500.00 extra or thereabouts, most any attorney in this town could have done this right for you, don't you?" He said—again, he was dressed as well as I and probably drove a newer automobile than my 1997 Buick Park Avenue with 220,000 miles on it—that he could not afford an attorney. Of course, I saw a pack of cigarettes in his front shirt pocket; why that did not surprise me, I know not.

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The criminal law example comes from what I see every day. Without getting into specific cases, and, thus, incurring the wrath of the BPR, I am only glad to do appointed criminal work. It takes up 20% of my time, and I am fortunate that, unlike most of the young lawyers out of law school, it accounts for only approximately 5% of my income each year. I believe I do my *pro bono* work each time I represent such a client. And, I am particularly proud of a couple of recent cases, involving clients with serious drug addictions, who are getting the treatment they deserve and whom I sincerely believe will live on the "straight and narrow."

But, Ms. Hivner, there's the other side to that. Watch on any arraignment day when a person, with, supposedly, little income but disability or welfare, can yet make a bond, in many cases (particularly drug cases) a five-figure bond. They know they did the crime, and they know that, inevitably, they will have to serve the time, because, as one of our judges says, "They are doing a life sentence on the installment plan," constantly in and out of jail. It is more important for them to get out on bond for a few weeks or months, however, because then they can continue (a) drinking to excess, (b) consuming illegal drugs, and (c) birthing illegitimate children, which will become public charges (and for which my \$400.00 annual professional privilege tax will most likely be raised in the near future). They only think of us attorneys as necessary evils, and, honestly, I don't think that this is what the U.S. Supreme Court envisioned when deciding Gideon v. Wainwright.

In fact, Ms. Hivner, this leads me to my final point, before I pose some proposals to the Court. I realize the Supreme Court thinks that it is attempting to garner good publicity for the Bar by these Access to Justice Initiatives. However, think about this for a second: Will that really leave the public with a better taste in its mouth for attorneys? Are not we attorneys, wrongfully, always considered lower than pond scum? No matter what our Supreme Court does, the opinion of us from the public will always be that we are deceitful, dishonest, and poseurs.

No, Ms. Hivner, as I have told younger attorneys, our first duty is definitely NOT to the public. Our first and primary duty is to the Bench and Bar, which I term collectively. For example, if someone beats me in a case and prepares an order, I don't have to pander to my client and get his or her approval before I approve it, because, obviously, I was in the same courtroom and heard the judge say the same thing that my worthy opponent said. I go into any relationship with a client thinking that the client will stick it to me in some manner, and that I need to be careful.

I think we need to look after each other first. The public has all sorts of wasteful programs that our taxpayer dollars are funding. Internally, we need to take care of each other. Thus, since the Court has solicited comment, I would like to close by making a few proposals, in the hope that the Court, and other members of the Bench and Bar do not think this missive has merely been a diatribe against our Supreme Court.

First, through our BPR fees, the Tennessee Bar Foundation, the TBA or otherwise, there should be created a pool of money to allow law school graduates who (a) do not land a position with a firm, (b) do not land a position with the government, or (c) do not obtain a permanent judicial clerkship, and who (d) have to "hang out their own shingle," to obtain low-cost loans so that they can, indeed, open their own office. This would defray initial startup costs, be financed through a participating bank or banks, guaranteed, as suggested, privately, and not with public money.

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Second, realizing that the Court and the TBA are pressing forward with the General Assembly to raise the parsimonious rates paid for appointed cases, this program must be THE #1 PRIORITY OF THE COURT, ahead of any other program, including Access to Justice. In other words, before trying to take away business from the Bar, the Court, respectfully, should make certain that those who take cases for indigents should be reasonably and fairly compensated, at a rate in excess of the \$60 per hour my plumber charges me for his work.

Third, not wanting to tell the Court to overrule its own decisions regarding who qualifies for indigent counsel, it would seem to me that the General Assembly would be more likely to raise the rate for indigent counsel defense if there were some qualifications concerning who, exactly, qualified for counsel. In the example I gave above, it would seem to me that, if one, or one's mamma, papa, grandma, grandpa, baby mama or baby papa thought enough of them to make a bond, then they ought to be required to pay their own attorney, by Supreme Court Rule. In that manner, the public defender's offices throughout this State immediately become less burdened, the focus can be on those who truly need assistance, and more money would be freed within the present budgetary constraints to pay a higher rate of compensation for indigent defense.

Fourth, the Court, in conjunction with the TBA, ought to write a "Code of Conduct for Indigent Clients," to give to indigent clients each time they are appointed an attorney. I cannot, again, stress the number of times I have had people malign our fine public defenders, or, in some cases, me, because we are "free" lawyers, i.e., if they had the money, they would hire a good lawyer." I think we all are reasonably good, don't you? I think this set of principles (and I would be happy to write such a set, but, after this screed is published, I doubt the members of the Court would want me within 100 feet of them!) should be given to all who are appointed counsel, and they (the public) should sign this document, so that they recognize how truly blessed they are to have advocacy for their cause.

Fifth, if, by now, the Court has not been convinced by my letter to drop its do-it-yourself-divorce with parenting plan, then (a) let's raise our annual BPR fees, so that (b) if a so-called "indigent" person wants someone to do a divorce for them (c) counsel may be appointed to assist them, albeit at a new, higher, more reasonable rate and cap, and not \$40.00 per hour. Obviously, there is precedent in this State for doing this as, despite the U.S. Supreme Court ruling to the contrary, our Court continues to allow those who have possible incarceration facing them in child support contempt cases to have counsel. Even though no incarceration is evident in a divorce matter, it would still be a good way to keep young attorneys from having this aspect of their practice ripped away from them.

Finally—and I realize this proposal may seem "tongue in cheek", but I am actually serious about this—if the Court is adamant that its do-it-yourself divorce mechanism stay in place without any funding for representation for indigents, then should not the work be spread around? Shouldn't the Court require what the Knox County Criminal Courts required then-Mayor Victor Ashe to do some years ago: take indigent representation? Should not the Houston Gordons, Randy Kinnards, and other similar big-time plaintiffs' attorneys be down in Child Support Court taking appointed cases like the rest of us peons, cranking out a meager existence? Should not the named partners in the big "white shoe" firms of our fair cities be required to appear in, say, Shelby County Juvenile Court to provide representation for a poor, unfortunate, young man or woman, raised in the ghetto by a single parent? I would dare say that is only fair, wouldn't you? What makes those men or women better than the rest of us?

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Lest anyone who reads this letter thinks I am the lineal descendant of Ebenezer Scrooge, I believe that I have met my obligations to the public. My *pro bono* work is done every day in this office. For example, I am now handling a conservatorship for a slightly developmentally disabled person absolutely free. I am also, of course, performing as much appointed case work as I can, discounting my hourly rate from \$200 down to \$40. When people come in the office, if they cannot afford me fee, I try to help them the best I can. In many cases, particularly probate of small estates when attorneys are, really, not needed, I give informal advice and advise the public not to spend money. The same thing in bankruptcy cases, where I advise persons without assets whose only income is Social Security, for example, that spending money on filing for bankruptcy would be throwing away good money. I think I owe that to the public, to the Bench, and to the Bar, and, most respectfully, I do not need the Court, the AOC, or the AJC to force me to represent the "public", all of whom would hate us regardless if we spoon-fed them steak dinners.

In other words, to quote Henry Vanderbilt in the 19th Century, "The public be damned." Let's take care of our own first, before we deal with the rabble that detests us.

Sincerely,

SANTORE AND SANTORE

Francis X. Santore, Jr.

cc: All Tennessee Supreme Court Justices (4)
Hon. Gary Wade
Hon. William Koch
Ms. Anne-Louise Wirthlin, Esq.



STATE OF TENNESSEE

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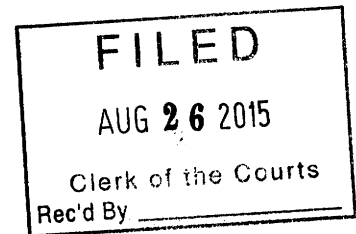
JOSEPH A. WOODRUFF
JUDGE, DIVISION I

JAMES G. MARTIN III
JUDGE, DIVISION II

August 21, 2015

Adm2015-01485

James M. Hivner, Clerk
Re: Tenn. Sup. Ct. R. 46
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407



Dear Mr. Hivner:

In response to the Court's Order of August 18, 2015, I have reviewed the forms developed by the Commission's Self-Represented Litigants Advisory Committee. The forms that I received did not include a change in the current draft of the Permanent Parenting Plan Order. Accordingly, I assume that that form will continue to be used in all cases, including cases involving self-represented litigants.

I would suggest that the Notice of Hearing reflect that both parties must attend. It has been my experience with self-represented litigants that they often do not understand what's required in the forms and changes are frequently necessary with respect to division of property, allocation of debt and other matters. In addition, there have been occasions when I have found that the litigants are misrepresenting facts and circumstances to the Court which cannot be ascertained without the ability of the judge to question both parties under oath in open court. Specifically, I have found cases where income is being misrepresented and where parenting time is being misrepresented to achieve a desired result which is contrary to our child support guidelines.

With kindest personal regards, I remain

Respectfully yours,

James G. Martin, III

JGM/khc

cc: Allan Ramsaur
Christy Gibson