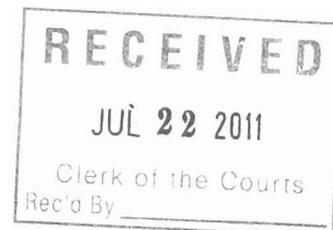


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July 19, 2011

Mike Catalano, Appellate Court Clerk
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407



Re: Docket Number M2011-01526-SC-RL2-RL

Mr. Catalano:

I am writing to comment on the proposed Rule change that would allow attorneys to assume inactive status (and pay a reduced fee to maintain that status) if they are practicing law in other jurisdictions but are no longer practicing law in Tennessee. Crucially, such a Rule change would also, as I understand the Professional Privilege Tax statute, exempt out-of-state attorneys from paying the \$400 annual privilege tax.

I strongly support the proposed Rule change, and only wish that it had been made sooner. Having graduated from Notre Dame Law School in 2007 and then moved to Knoxville, I took and passed the Tennessee Bar Exam in February 2008 while clerking for The Honorable Charles D. Susano, Jr. on the Tennessee Court of Appeals. I searched for employment in Tennessee, but ultimately received and accepted a job offer in Denver, Colorado (I had previously taken and passed the Colorado Bar Exam as well), and moved to Denver in October 2008.

Despite having never used my Tennessee law license, I was very proud of it, and very much desired to maintain it. However, because out-of-state attorneys could not go onto inactive status, I was required to pay the full \$170 BPR registration fee *plus* the \$400 privilege tax—a grand total of \$570 per year to maintain a license I never used. In 2009 and 2010, the small law firm in Denver for which I work generously covered these fees, despite the lack of any clear economic benefit for them to do so. In 2011, however, I was informed that the fees were simply too high to continue paying them indefinitely, and I would need to either cover them myself or surrender my Tennessee license.

As a young attorney on a limited budget supporting a family of five, I simply could not afford to pay \$570 per year to maintain my license. Accordingly, just a few months ago, with great regret, I submitted a Petition to Surrender Law License, which was granted on May 18, 2011 (see Docket No. M2011-01018-SC-BPR-BP). I am thus no longer licensed to practice law in Tennessee. This makes me especially sad because

I have not yet been practicing law for long enough to qualify for comity admission, so I would need to retake the Tennessee Bar Exam if I wished to be readmitted, at least during the next 2½ years.

Admittedly, this is fairly unlikely to be a problem as a practical matter, as I intend to stay at my current firm and remain in Colorado for the foreseeable future. But one never knows for certain what the future will bring. If I still had my Tennessee license, then in the event that I were to consider changing jobs and moving to a different jurisdiction, Tennessee would have been the first state I would have considered, given the lack of licensure hurdles. Instead, since I am no longer licensed in Tennessee, it would be no higher on my list than any other state where I might wish to live and work.

If the bill to maintain my license had been \$85 per year instead of \$570, there is little doubt that my law firm would have continued to cover it—and if they, for some reason, had not, I would have paid it myself. Simply put, \$85 is a manageable amount for an out-of-state attorney to pay to maintain licensure. \$570 is not. As such, I strongly support the proposed Rule change.

Frankly, I am uncertain why out-of-state inactive status was eliminated in the first place, back in 1985. I am equally uncertain as to why this rule has not previously been revisited, in light of the passage in 1992 of the Professional Privilege Tax, which greatly increased the stakes. Many other professions covered by the privilege tax have “inactive” status for out-of-state professionals, thus exempting them from the tax; it has always seemed odd that the legal profession does not.

In any event, personal circumstances aside, it has always struck me as unfair—and out of step with reasonable best practices—to impose such a hefty financial burden on out-of-state attorneys who receive no income from Tennessee (since they do not practice there), yet who merely want to maintain their license as a contingency, in the event they might wish to return to Tennessee at some point in the future. It also seems economically unwise. Since the economic benefit of professionals living and working in Tennessee is presumably desirable to policymakers, effectively encouraging out-of-state attorneys to give up their licenses—thus making it less likely that they will ever return to Tennessee—does not seem to be a rational policy choice.

My only additional comment would be a request that the Court consider making this change retroactive, *i.e.*, that the Rule be amended to allow formerly licensed Tennessee attorneys, such as myself, who have surrendered their licenses specifically because of the prior fee and tax structure, to apply to have their licenses reinstated (without re-taking the bar exam or applying for comity), provided that they pay the fees which they would have owed if they had been able to go “inactive” previously.¹ If

¹ I will not comment on whether it would be wiser and/or fairer to utilize the old fee & tax structure (\$570 per year), the old fee structure only (\$170 per year), or the new fee structure (\$85 per year) when attorneys seeking reinstatement are billed for their retroactive payments. In my personal case, I would be willing to pay even the higher amount, if necessary, since it would only be for a *single year*, if I could get my license restored (without re-taking the bar) for \$85 annually going forward.

necessary, such attorneys could be required to swear in an affidavit that they surrendered their licenses because of the fee and tax structure that is being repealed. Perhaps this would only affect a handful of individuals, but I cannot imagine what harm it would do, and it would certainly be a blessing for those of us who have faced this dilemma. It would also raise at least a small bit of revenue for the state's coffers.

Thank you very much for your time and consideration.

Sincerely,

A handwritten signature in black ink that reads "Brendan L. Loy". The signature is written in a cursive style with a large initial 'B' and a stylized 'L'.

Brendan L. Loy