M2011-1411

PARKER & PUGH

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JUL 21 2011
Clerk of the Courts
Rec'd By

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July 18, 2011

Michael Catalano, Clerk
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219

Re: Court appointed counsel

Dear Sir,

I have read with much dismay the proposal regarding an all new way to shaft attorneys. The solution to this problem is painfully clear yet nobody will address it. The solution is to stop appointing everyone a free lawyer. Recently my firm was doing court appointed work for a couple whose teenage son had gotten into trouble and their yearly income was $100,000.00. This is the root of the problem. Why can no one see this? As I was writing this letter a man came in looking for an attorney to sign his form for a free lawyer and he had made a $10,000.00 bond. This is where the changes should be made. If he can make a bond like that he can certainly pay a lawyer.

This new proposal asks attorneys yet again to take a hit in their wallets. You want us to be a public defender but we wouldn't get the pay, the insurance, the vacations, the staff, the building, and we are still responsible for the huge amount of overhead it takes to run an office.

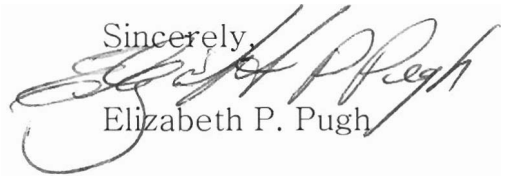
You are probably wondering why any attorney would bother with this mess at all but once again it comes down to everyone getting a free attorney. No one has to hire one so if you want work, you will do appointed work and you won't get paid for months. The Administrative Office of the Courts promised us

we would get paid within ten days with their new ICE system. Well, I have claims still unpaid from April 6 but that is another battle.

I know everyone thinks it is fun to stick it to lawyers but at every turn we are asked to work for free or told that our services are no longer needed (see worker's comp and uncontested divorces) but yet we are expected to maintain an enormously expensive office and devote all of our time for "indigents" that live better than we do while we are supposed to keep our mouths shut a be good little rented mules.

Please consider the dismal affect this proposition would have on lawyers all over the state in firms big and small and don't allow this to go through.

Sincerely,



Elizabeth P. Pugh

#M2011-1411-SC-RL2-RL

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RECEIVED
AUG - 1 2011
Clerk of the Courts
Rec'd By

July 25, 2011

Mr. Michael W. Catalano, Clerk
TENNESSEE SUPREME COURT
100 Supreme Court Building
401 Seventh Avenue South
Nashville, TN 37219

IN RE: Proposed Amendment to Supreme Court Rule 13

Dear Mr. Catalano:

I write this letter to respectfully object to the Proposed Amendment to Supreme Court Rule 13, which would allow the AOC to enter into contracts with firms/individuals for legal services.

In so doing, this writer wants to make clear that he appreciates the efforts of both the AOC and the Supreme Court in attempting to raise the parsimonious rates by which indigent counsel are now paid, rates which, frankly, are lower than those by which my plumber is paid. However, taking the decision of court appointments away from local judges—who know who practice before them and who know whom will do an efficient, fair and decent job representing the indigent—and placing it in the hands of the AOC in Nashville is not the solution. The idea of such services going to the lowest bidder is, in my respectful opinion, abhorrent.

Besides, our AOC, with which I deal on a regular basis and which is always there to help, is swamped with work already. This new task would push the overworked and underpaid staff of the AOC to exhaustion.

I respectfully suggest that the issue of raising the rates for legal services provided, rates which have not been raised in a quarter-century, be addressed instead of the manner by which these services are allocated. Again, please note my respectful objection to the Proposed Amendment.

Sincerely,

Francis X. Santore, Jr.

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July 29, 2011

RECEIVED
AUG - 2 2011
Clerk of the Courts
Rec'd By

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

Re: No. M2011-01411-SC-RL2-RL

Dear Mr. Catalano:

I am writing in opposition to the aforementioned rule change wherein the Administrative Office of the Courts would have the power and authority to select representation for indigent persons under TCSR Rule 13, Section 7.

As the system is now operated, the judge has the ability to select an attorney to appoint for specific cases. This gives the judge the option to appoint one attorney in several cases if the same litigants are involved (one parent with multiple children with various last names, but different case numbers). The judge can also consider litigants with criminal charges pending regarding the same fact situations so that attorneys with knowledge in both litigation arenas are providing advice to the litigant. There are also extreme or unusual fact patterns which warrant special attorneys being appointed.

I do not often take cases by appointment in Juvenile court, but I was formerly a registered nurse, so when my local Juvenile Judge calls and requests that I accept an appointment, I know that it is because someone involved in the case has unusual medical issues and it will be critical that the litigant be appointed an attorney who can understand complex medical problems. For instance, I was asked to be a guardian ad litem for a one-year old child who had a profound seizure problem and someone needed to elect between two horrible choices: whether the child should receive a trial of experimental potentially lethal medication or undergo surgery which would remove half the child's brain. In another case, I was appointed to represent a mother whose child had been profoundly brain damaged by its father and decisions had to be made whether to maintain the child on life support indefinitely or allow the child to die. That same mother had been charged with endangerment for leaving the child in its father's care and constant coordination with the court appointed criminal attorney was necessary.

I have also requested to be appointed in a number of cases where I had previously represented a parent in a former domestic matter and that parent is now involved in Juvenile Court proceedings. Having former knowledge of the client and the situation

greatly enhanced my ability to bring the matters to conclusion expeditiously (and with a cost savings to the State), while giving the client confidence in her counsel's ability to assist them through the process.

We also all know that a number of new attorneys accept appointments with the expectation that they would learn how to practice law as they work. These are likely to be attorneys who would accept lower compensation from the AOC bidding structure. Some attorneys have a knack or flair for certain practice areas where others do not, yet may lack insight into their own shortcomings. A judge exercising his discretion in making appointments is likely to know these things, while these are not considerations that are likely to be ascertainable to the AOC in the contracting process.

The residents of the State of Tennessee who are most at risk by the passage of this amendment are the persons who are the most vulnerable: children and their indigent parents. They are also the persons who are least able to voice their concerns (and have their voices heard) when the system fails them. I recently read a case where the State of Tennessee was sued because a child was "safety placed" with a non-relative and the child died while in the non-relative's care. I think the passage of this amendment will place the State of Tennessee at significant risk if the system by which a judge, exercising his discretion based upon knowledge of the facts and persons involved, is replaced by a system in which the local judge is deprived of the ability to make appropriate appointments on a case by case basis.

Sincerely,

SUE HYNDS DUNNING

SHD/ms

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RECEIVED
AUG 08 2011
Clerk of the Courts
Rec'd By

August 4, 2011

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

Dear Mr. Catalano:

With regard to the new proposed Amendment to Supreme Court Rule 13, the consequences would be detrimental to our indigent defendants. In our experience, we often need to appoint separate counsel due to conflicts of interest. For example, several persons may be charged in a car burglary ring. Each of them meet the criteria for court appointed counsel. Although the public defenders' office will represent of them, we must find attorneys for the remaining from the private bar.

When defendants are in custody and are unable to make bond we are required to comply with the ten-day rule. We find that new attorneys are willing to accept appointed cases until they build sufficient practice to avoid appointments due to other court conflicts. I feel that the new Proposal would create a great disservice to our judicial system.

Sincerely,

Joyce Ward

Joyce M. Ward
General Sessions Court Judge for Hamblen County

Kathy Robertson

Kathy Robertson
Judicial Commissioner for Hamblen County General Sessions Court

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AUG 11 2011

August 9, 2011

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

RE: Amendment to Supreme Court Rule 13
No. M2011-01411-SC-RL2-RL

Honored Justices,

Pursuant to the solicitation for written comments by lawyers and judges, please accept this as my comments to the published proposed amendment to Rule 13, Section 7. As a practicing attorney, as well as Magistrate of the Juvenile Court for Sumner County, this is an amendment that affects my law practice, as well as my judicial authority. I am in opposition to the proposed amendment

As a lawyer who routinely takes appointed cases at both the General Sessions and trial level, I have engaged in several conversations with other local attorneys regarding this proposed amendment and, in every conversation, lawyers have expressed their displeasure. The basis of appointment should not be made upon who made the lowest bid and, sadly, I believe that pure economic conditions spearhead this proposal. It is my fear that the lowest bid will create a lowest-common-denominator style of lawyer; no one with any great skill or experience will want these "public conflictor" contracts and, ultimately, clients will suffer. This has to be against the public interest.

As a Magistrate who routinely is called upon to appoint attorneys, I find this proposed amendment acts against my authority pursuant to Tenn. Code Ann. § 40-14-202 and my discretion to appoint the best lawyer possible to handle cases. At times, Juvenile Court tends to be a world unto itself; not every lawyer practices juvenile law or understands its intricacies. To have "conflict defenders" representing children simply because they are the "first priority of appointment" does not necessarily comfort me. Children deserve the best possible representation and I try to provide this. When I appoint attorneys, I prefer to appoint attorneys because they understand juvenile court and its procedures. I prefer to appoint attorneys with the experience commensurate to the issues I anticipate will occur.

While the AOC has indicated that it will evaluate proposals to determine the quality of representation, I am unsure as to how they plan to do this. How does an administrative agency that does not personally and consistently observe an individual lawyer or law firm practice law plan to evaluate their practice of law? Every licensed attorney is supposed to maintain the necessary skills to represent any client; this is the basis of their professional qualification as a lawyer. A perhaps less than scrupulous attorney, interested more in making money off the State rather than effectively representing their clients, can say or do anything in their proposal to say that they will exercise independent judgment and maintain a workload to devote adequate time to contractual practice. How does an administrative agency instruct a duly-elected or duly-appointed judicial official that they have to appoint lawyers under some tier-based system? This issue is decidedly-problematic when some of these "conflict defenders" may originate in jurisdictions other than the one with which the local court has personal knowledge. The judges are then forced to accept these first-priority attorneys over local attorneys more familiar with the courts, the clients, and the manner in which the courts conduct their business.

I certainly understand the State's desire to save money and I am positive that this proposed amendment was not simply an idea that arose from the ether. In the process of trying to save money, though, we cannot ignore the fact that judicial discretion will be eroded; skilled lawyers may be bypassed in favor of less-experienced, but cheaper alternatives; and the public interest—the interest of the client—will be ignored.

I respectfully request that the Court refuse to ratify this proposed amendment. I fear that it will cause more harm than good.

Respectfully,

David R. Howard