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March 25, 2010

Opinion No. 10-38

Rules of Board of Court Reporting

QUESTION

Does Tenn. Code Ann. § 20-9-613 unconstitutionally exclude from grandfather court reporter licensure status (“grandfathering”) individuals who are not members of the Tennessee Court Reporters Association (“TCRA”) and include individuals on the basis of their TCRA membership?

OPINION

No, the statute provides a mechanism for individuals who are not TCRA members to gain grandfather court reporter licensure status as court reporters and in any event has a rational basis to include TCRA membership among the qualifications making an individual eligible for grandfathering.

ANALYSIS

In the Tennessee Court Reporter Act of 2009 (“the Act”), the General Assembly set out a comprehensive scheme regulating the licensure and practice of court reporting in Tennessee. *See* Tenn. Code Ann. §§ 20-9-601 through 616. In order to be licensed as a court reporter, an individual ordinarily is required both to pass an examination and to pay a fee. Tenn. Code Ann. §§ 20-9-609 and 611. However, the Act also contains a “grandfather clause,” which extends licensure to certain individuals without requiring that they pass an examination:

(a) Any person who is engaged in the practice of court reporting on July 1, 2009, and who provides to the board an affidavit setting forth past education and work experience as a court reporter and an affidavit of a judge for whom the person has worked as an official court reporter or affidavits of three (3) licensed attorneys, unrelated by blood or marriage to the person, and who have utilized the services of the court reporter, which attest to the court reporter's proficiency in court reporting, upon payment of a fee in an amount determined by the board, shall be licensed to practice as a court

reporter. The deadline for receiving applications for grandfathering shall be July 1, 2011.

(b)(1) Any member in good standing of the Tennessee Court Reporters Association who holds the certified court reporter examination designation on July 1, 2009, upon payment of the licensure fee in an amount determined by the board, shall be automatically granted a license pursuant to this part and thereby may practice as a court reporter.

(2) Any member in good standing of the Tennessee Court Reporters Association who holds the certified court reporter designation on July 1, 2009, and does not apply for licensure within one (1) year of July 1, 2010, shall be required to pass the licensed court reporter examination and pay applicable licensure fees in order to become a licensed court reporter.

(3) Any member in good standing of the Tennessee Court Reporters Association who holds the registered professional reporter designation, or higher, from the NCRA, NVRA or AAERT on July 1, 2009, upon payment of the licensure fee in an amount determined by the board, shall be automatically granted a license pursuant to this part and thereby may practice as a court reporter.

Tenn. Code Ann. § 20-9-613 (“the grandfather clause”).

The grandfather clause does not exclude every non-member of the Tennessee Court Reporters Association. On the contrary, subsection (a) authorizes the grandfathering of any individual, provided that such an individual was engaged in the practice of court reporting on July 1, 2009, and can provide affidavit evidence from a judge or three attorneys attesting to the individual’s proficiency.

In subsection (b) the grandfather clause includes TCRA membership among its classifications of individuals eligible for grandfathering. Specifically, subsection (b)(1) authorizes the grandfathering of TCRA members who also have earned from TCRA a certified court reporter examination designation on July 1, 2009. Subsection (b)(3) authorizes the grandfathering of TCRA members who also have earned a registered professional reporter designation from one of several national trade associations.

Legislation which, like the grandfather clause, creates classifications that do not impermissibly interfere with a fundamental right or disadvantage a suspect class are subject to “the rational basis test.” *Harrison v. Schrader*, 569 S.W.2d 822, 825 (Tenn. 1978). Thus, “if some reasonable basis can be found for the classification, or if any state of facts may reasonably be conceived to justify it, the classification will be upheld.” *Id.*

TCRA membership alone does not entitle an individual to grandfathering; the grandfather clause also requires some showing of state or local educational credentialing. There is a rational basis to include TCRA membership among the qualifications making certain individuals eligible for grandfather licensure. The Act “is intended to establish and maintain a standard of competency for individuals engaged in the practice of court reporting . . . for the protection of the public . . . whose rights to personal freedom and property are affected by the competency of court reporters.” Tenn. Code Ann. § 20-9-601. Similarly, TCRA “was formed to establish and maintain a proper standard of proficiency in the profession of court reporting.” Tennessee Court Reporters Association, *TCRA Welcome*, at <http://www.tncra.com/>. TCRA has published an ethical code that sets out standards requiring members of the Association to be fair and impartial, to keep confidences, to be truthful and accurate, and otherwise to maintain the integrity of the profession. Tennessee Court Reporters Association, *Code of Professional Ethics*, at <http://www.tncra.com/about-tcra/code-of-ethics.html>. TCRA has developed a certification program aimed at promoting good practice and protecting the public that requires applicants to demonstrate adequate credentialing, education, or experience in order to gain certification. Tennessee Court Reporters Association, *Voluntary Certified Court Reporter Program*, at http://www.tncra.com/images/stories/pdf/ccr_guidelines.pdf. The congruence of the purposes and goals of TCRA with those of the General Assembly in enacting the Tennessee Court Reporter Act of 2009 furnishes a rational basis to include TCRA membership as a qualification for an individual to be granted grandfather licensure status. Accordingly, the Act’s grandfather clause is a constitutionally valid enactment.

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