

Ruling backs gag rule that shields lawyers

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Decision lets challenge proceed in federal court

Clients with beefs against their lawyers can be fined and thrown in jail for revealing that they have filed a complaint with a state disciplinary board, or for discussing the actions — or inaction — of that board, the Tennessee Supreme Court ruled this week.

The decision faces a challenge in federal court in Memphis, where a man unhappy with his attorney says the state's confidentiality rule violates the First Amendment free-speech provision of the U.S. Constitution.

"I think I will be successful, because everyone else has been successful on these issues," said lawyer Ronald Krelstein, who filed a constitutional challenge in 2001 to the Board of Professional Responsibility's confidentiality rule.

That board, which operates under the supervision of the state Supreme Court, is responsible for taking complaints against lawyers and disciplining them, when warranted.

The Supreme Court rule says that all information relating to proceedings against a lawyer must be kept confidential unless and until the board makes it public. When the board decides not to take action or takes minor action, the cases generally remain under wraps.

Krelstein is representing a man identified in court documents by the fictitious name of "Richard Roe."

Roe wants to have this rule declared unconstitutional so that he can talk about the alleged misconduct of his former attorney and his displeasure about how the disciplinary board handled it.

He had to keep his name secret in the federal lawsuit so the identity of his previous lawyer, whom he wants to criticize publicly, would remain secret as well, Krelstein said. Otherwise Roe would have been in violation of the board's confidentiality rule, Krelstein added.

The disciplinary board, which is represented by the state attorney general's office, wants to keep the confidentiality rule in place. Michael Catalano, the state attorney handling the case, declined to talk about why that is important.

Nashville lawyer David Raybin says the rule is important because clients might decide not to file complaints against rogue lawyers if the board's record were public and the client's identity would be revealed. He says it also preserves the reputation of lawyers who are unfairly accused of wrongdoing by disgruntled clients.

"In my view, it's a good thing," Raybin said.

The state Supreme Court ruling this week stems from legal maneuvering in the federal case. The federal judge asked the state high court to rule on how the confidentiality rule applies to non-lawyers, and whether people filing complaints can be held in contempt of court for breaching the rule.

The state's high court found that non-lawyers, indeed, are bound to remain silent about their complaints and board activities and can be held in contempt for breaching confidentiality. This confidentiality extends to non-lawyers because, in filing a complaint, people voluntarily submit themselves to the rules of the court, the ruling said.

The ruling means that anyone who violates the confidentiality rule can be held in contempt. The penalty for contempt is up to a \$50 fine and 10 days in jail. But for Roe, it is a victory because it means his case can proceed in federal court, Krelstein said.