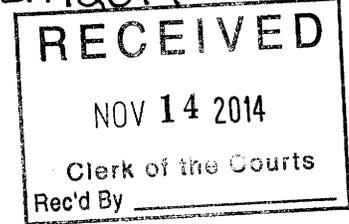


ADM2014-01954



# State of Tennessee

TWENTIETH JUDICIAL DISTRICT

PHILLIP ROBINSON, JUDGE  
THIRD CIRCUIT COURT

1 PUBLIC SQUARE • SUITE 611  
NASHVILLE, TENNESSEE 37201

PHONE (615) 862-5907  
FAX (615) 862-5913

November 5, 2014

James Hivner, Clerk  
Tennessee Appellate Courts  
100 Supreme Court Building  
401 7<sup>th</sup> Avenue North  
Nashville, TN 37219-1407

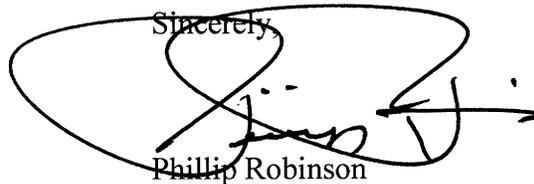
Dear Sir:

Please record my support of the Amendment to RPC7.3(b)(3) to require attorneys to wait thirty (30) days from the filing of divorce actions or related litigation prior to attempting to solicit business from the litigants.

Currently, attorneys often forward correspondence or contact litigants prior to the issuance and service of the statutory injunctions or other necessary restraining orders in these types of cases. In the Court's opinion, the current practice of attorneys contacting litigants prior to service of process puts the parties, their children and their liquid assets potentially at risk. Considering the high rate of domestic violence, the Court should act promptly on this sensitive issue.

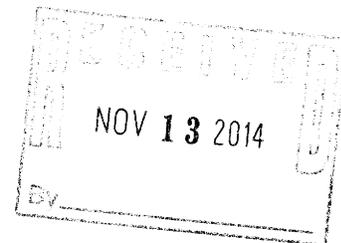
I would urge that the modification to RPC7.3 be adopted immediately. I can think of no good reason not to extend the same protection to divorce litigants as is being provided to tort litigants.

Thank you for allowing me to express my opinion on this issue.

Sincerely,  
  
Phillip Robinson

PR/lsh

November 11, 2014



**VIA U.S. MAIL**

James Hivner, Clerk  
Tennessee Appellate Courts  
100 Supreme Court Building  
401 7<sup>th</sup> Avenue North  
Nashville, TN 37219-14007

**Re: ADM2014-01954; Rule 8, R.P.C. 7.3**

Dear Mr. Hivner,

Caroline Beauchamp and I own and operate a family law practice, representing clients in Davidson and Williamson Counties. We have reviewed the Order (as well as the Appendix) containing an excerpt from the Attorney's Letter regarding the possible amendment to the Tennessee Supreme Court Rule 8, Rules of Professional Conduct 7.3 and requesting written comments on the proposed amendment from interested parties.

We find the amendment to be not only reasonable, but very important, particularly in light of the nature of the issues in which we are often involved. We, therefore, fully support the amendment.

If you have any further questions, or need further comment, please feel free to contact us at (615) 219-0000. Thank you very much.

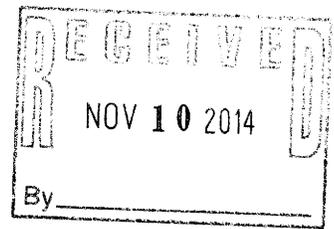
Sincerely yours,

Handwritten signatures of Patricia T. McCarter and Caroline G. Beauchamp.

Patricia T. McCarter  
Caroline G. Beauchamp  
McCarter & Beauchamp, PLLC

PTM/CGB

**CHEATHAM, PALERMO & GARRETT**  
AN ASSOCIATION OF ATTORNEYS



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LEGAL ASSISTANTS:  
JANE ANN WHEELER  
PAMELA G. RICE

LEGAL ASSISTANT:  
JACKIE DAWSON

OF COUNSEL:  
ELIZABETH G. TANNENBAUM

November 7, 2014

James Hivner, Clerk  
Re: Rule 8, RPC 7.3  
Tennessee Appellate Courts  
100 Supreme Court Building  
401 7th Avenue North  
Nashville, TN 37219-1407

**RE: RULE 8, RPC 7.3**  
**Docket No. ADM2014-01954**

To the Honorable Supreme Court of the State of Tennessee:

We are writing to comment on the proposed changes with respect to Supreme Court Rule 8, RPC 7.3. The undersigned attorneys are in favor of the proposed amendment. We practice primarily in the field of domestic relations and, because of these solicitation letters being sent to defendants in newly filed cases, our clients have felt threatened and at risk of violence or retaliation before the statutory injunctions can attach through service of process.

Thank you very much for your attention to this matter, and please do not hesitate to contact us if we can be of any further assistance.

Sincerely,

A handwritten signature in cursive script that reads "Rose Palermo".

Rose Palermo

A handwritten signature in cursive script that reads "Taylor Loring".

Taylor Loring



Story  
Abernathy  
& Campbell

PLLP | AN ASSOCIATION OF ATTORNEYS

Virginia Lee Story +  
virginia@tnlaw.org

Joanie L. Abernathy  
joanie@tnlaw.org

Neil Campbell +  
neil@tnlaw.org

Kathryn L Yarbrough  
kathryn@tnlaw.org

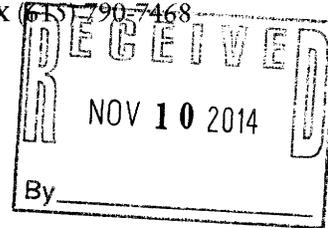
Of Counsel:  
James E. Story,  
Attorney at Law

*\*Licensed in Kentucky*

HISTORIC DOWNTOWN  
FRANKLIN LOCATION  
136 Fourth Avenue South  
Franklin, TN 37064

OFFICE (615) 790-1778

FAX (615) 790-7468



November 5, 2014

James Hiver, Clerk  
Re: Rule 8, RPC 7.3  
Tennessee Appellate Courts  
100 Supreme Court Building  
401 7<sup>th</sup> Avenue, North  
Nashville, Tennessee 37219-1407

**Re: Rule 8, RPC 7-3(b)(3); No. ADM2014-01954**

Dear Mr. Hiver:

This correspondence is being sent to you in full support of the above referenced bill as contained in your Order filed in this matter on October 9, 2014. We, the undersigned attorneys, spend the majority of our practice in family law, including divorce and legal separation, and we share in the concerns with regard to the lack of protection provided to our clients with regard to the potential solicitation of representation from counsel seeking employment from our respective clients' spouses. We further agree that providing clients with a minimum of thirty (30) days in which to prepare for the service of process of their various pleadings is not an unreasonable request, especially given the fact that often times these individuals are seeking relief from the Court as a result of physical and/or emotional abuse for themselves as well as, in many cases, their minor children.

Thank you in advance for your consideration in this issue and please feel free to contact our office should you have any questions regarding this matter.

With best regards, I am

Sincerely,

Virginia Lee Story, BPR #11700  
Attorney at Law

Joanie Abernathy, BPR #11382  
Attorney at Law

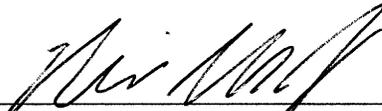
James Hiver, Clerk

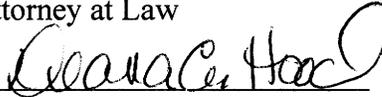
WESTHAVEN LOCATION

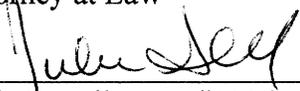
1031 Westhaven Blvd. Franklin, TN 37064 OFFICE (615) 794-3422 FAX (866) 794-3662

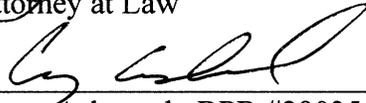
williamsoncountyattorneys.com

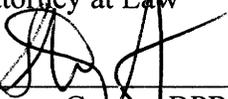
+ Rule 31 Family Law Mediator

  
Neil Campbell, BPR #26228  
Attorney at Law

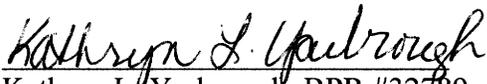
  
Deana Hood, BPR #18042  
Attorney at Law

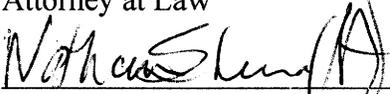
  
Julia Stovall, BPR #13067  
Attorney at Law

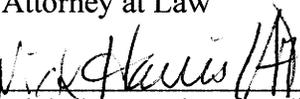
  
Casey Ashworth, BPR #29035  
Attorney at Law

  
Steven Garner, BPR #25922  
Attorney at Law

  
Sean Park, BPR #33051  
Attorney at Law

  
Kathryn L. Yarbrough, BPR #32789  
Attorney at Law

  
Nathan S. Luna, BPR #32230  
Attorney at Law

  
Nicholas Harris, BPR #24471  
Attorney at Law

**CORLEY HENARD LYLE LEVY & LANGFORD PLC**  
ATTORNEYS AT LAW

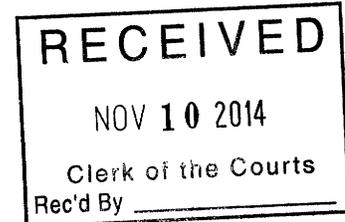
NANCY KRIDER CORLEY  
BRANCH H. HENARD, III  
MARY FRANCES LYLE  
JEFFREY L. LEVY  
MARY B. LANGFORD

401 CHURCH STREET, SUITE 2800  
NASHVILLE, TENNESSEE 37219

TELEPHONE (615) 627-4677  
TELECOPIER (615) 627-4765

Writer's email  
levyjl@bellsouth.net

November 10, 2014



Mr. James Hivner, Clerk  
Re: Rule 8, RPC 7.3  
Tennessee Appellate Courts  
100 Supreme Court Building  
401 7th Avenue North  
Nashville, TN 37219-1407

**Re: Proposed Amendment to Rule 8, RPC 7.3**

Dear Mr. Hivner,

I am writing in support of the proposed Amendment to Rule 8, RPC7.3. I am a family law practitioner with more than seventeen years' experience. While I am heartened by the Tennessee Bar Association's public recognition of the problem that is addressed by the proposed Amendment, passing new legislation will be time-consuming and not necessarily successful. The problem is immediate. At the very least, the proposed Amendment (with one exception) should be approved and implemented pending actual achievement of an alternative solution.

A number of attorneys, notably in Davidson and Williamson Counties, are soliciting business from defendants in divorce and legal separation cases almost immediately upon the filing of the Complaint. Their letters to such defendants may, and often do, arrive before the Complaint is served upon the defendant. This situation can place the plaintiff, the parties' children, the parties' property and/or their financial accounts at severe risk. The potential problem exists in almost every single case.

The problem arises from necessary delays in the legal process itself. When a Complaint is filed, it is immediately entered upon the docket of the court involved. The statutory injunction pursuant to Tenn. Code Ann. § 36-4-106(d) will, however, only take effect upon service of the Complaint on the defendant. If a Temporary Restraining Order is attached, which is also frequently necessary to protect the the plaintiff or the children, it will first be sent to the respective judge for review, approval and signature, before being returned to the filing party's attorney or the sheriff for service. The TRO, will also only take effect on service of the Complaint. Depending on the county, the form of service used and other factors, it can be a week or longer between filing of the Complaint and its service on the defendant.

During this process, the plaintiff and the children in particular are at great risk. The

advance warning given to the defendant by the attorneys' solicitation letters allows that defendant to take punitive action against them without any legal safeguards in place.

I would estimate that at least once per month I am confronted with a prospective client whose spouse has threatened to injure or even kill that person or their children, destroy their property or take all of their funds if the person takes any action to escape the marriage. There is also a risk, far more frequent, that a non-filing spouse will remove all funds from the parties' bank accounts upon learning that a Complaint has been filed but not yet served, since the statutory injunction and TRO are not yet effective. I have had many cases where the non-filing spouse electronically monitors the parties' bank accounts; upon receipt of the attorney's solicitation letter, the parties' joint funds may then "disappear."

It has been suggested that the solution is to obtain an order of protection prior to or simultaneously with the filing of the Complaint. This is, in fact, not a solution. Many magistrates or night court commissioners will not grant an ex parte order if there is not an actual history of physical abuse and violence. There is no defense against someone whose abuse has merely been emotional, or where the police have not been called in the past (typical of situations where one spouse has been subservient to the other in an attempt to preserve the marriage), or where the threat is to assets or monies rather than to the person.

It has also been suggested that there needs to be a balancing against the free-speech rights of attorneys and that the balance would fall in favor of the attorneys' Constitutional rights. I agree that there needs to be a balancing but strongly disagree that the balance falls in favor of the attorneys, so long as the Rule is properly drafted. A leading case with respect to regulation of commercial speech is Central Hudson Gas and Electric Corporation v. New York Public Service Commission, 447 U.S. 557, 65 L. Ed. 2d 341, 100 S.Ct. 2343 (1980) In fact, Hudson stands for several propositions:

1. Commercial speech, such as client solicitation, is protected by the First Amendment, as applied to the states through the Fourteenth Amendment, from unwarranted government regulation, but commercial speech is afforded a lesser protection than is other constitutionally guaranteed expression.
2. A four-part test should be applied to the regulation of commercial speech:
  1. The speech must concern lawful activity and not be misleading.
  2. There must be a substantial government interest in its regulation.
  3. The regulation must directly advance the government interest.
  4. The regulation must not be more extensive than is necessary.

Client solicitation is lawful and there is no reason to assume that the letters sent to prospective clients are misleading. There is a substantial government interest involved in the protection of the plaintiffs and their children from irreparable harm. Indeed, the risk of "asset stripping" and child kidnapping by a parent are recognized in the statutory injunction served with *every* Complaint for divorce and legal separation. The proposed Amendment does directly advance a significant government interest. The regulation is narrowly drawn, particularly if one change is made.

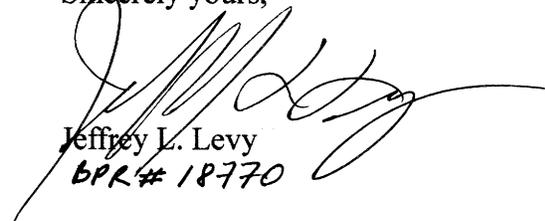
I would suggest that the delay for solicitation of a divorce or legal separation defendant not be thirty days, but rather that it run only until the Complaint itself is served upon the defendant. This is a narrower time limit in almost all cases, but it has certain advantages: the defendant's time to respond to the Complaint only starts to run upon service, so he/she is not prejudiced by a delay in learning of the Complaint; it provides sufficient time for a safety plan to be put in place and implemented; and when the Complaint has been served, the TRO (if applicable) and the statutory injunction will be immediately effective.

The Tennessee Bar Association has suggested that there may be other alternatives, such as a legislative amendment to the Public Records Act, that will accomplish the same goal. I would not disagree that such alternatives may exist. The problem is that it is unlikely that such alternatives, even after they are developed, could be implemented quickly, and that is assuming that every constituency that might be affected by a change in the law is brought on side. Indeed, I would anticipate objections to any broadening of exceptions to the Public Records Act. Passage of an appropriate statute is speculative at best and it will take many months, if not longer.

The legislative process is lengthy and complicated. If an appropriate statute is ultimately passed, and the Amendment is no longer needed, the Supreme Court can take further action. In anticipation of such a statute, the Amendment can be made contingent on its passage into law. In the meantime, however, the safety of the persons who most need protection, which include all married persons and their children, is very much at risk.

I urge the Supreme Court to implement the Amendment, delaying solicitation of divorce and legal separation clients at least until the service on the defendant of the Complaint, either pending the passage of appropriate legislation or permanently. It is the least we can do.

Sincerely yours,



Jeffrey L. Levy  
BPR # 18770

**STATE OF TENNESSEE**JOSEPH A. WOODRUFF  
JUDGE, DIVISION IJAMES G. MARTIN III  
JUDGE, DIVISION II**CIRCUIT JUDGES, TWENTY-FIRST JUDICIAL DISTRICT**  
135 FOURTH AVENUE SOUTH • SUITE 264 & 286  
WILLIAMSON COUNTY JUDICIAL CENTER • FRANKLIN, TENNESSEE 37064  
(615) 426-4009 • FAX (615) 790-4424 • FAX (615) 790-5047MICHAEL W. BINKLEY  
JUDGE, DIVISION IIITIMOTHY L. EASTER  
JUDGE, DIVISION IV

November 10, 2014

**VIA EMAIL [jim.hivner@tncourts.gov](mailto:jim.hivner@tncourts.gov)****VIA FAX NO. 615.532.8757****VIA REGULAR U. S. Mail**Mr. James Hivner, Clerk  
Tennessee Appellate Courts  
100 Supreme Court Building  
401 7<sup>th</sup> Avenue North  
Nashville, TN 37219-1407  
Re: Rule 8, RPC 7.3**RECEIVED BY FAX**  
**DATE: 11-10-14****Re: Proposed Change to Tenn. Sup. Ct. R. 7.3**  
**No. ADM2014-01954**

Dear Mr. Hivner:

I write and speak on behalf of the Judges serving the 21<sup>st</sup> Judicial District in support of the proposed change to Tenn. Sup. Ct. R. 7.3. We firmly believe there should be an opportunity for service of process before defendants in domestic relations cases are notified of the filing of a Complaint.

All four judges serving this Court come from private practices. While our experiences in private practice vary, two of us were heavily involved with a domestic-relations practice. From our experience, both in private practice as well as with the court, we know the filing of a Complaint for Divorce can be an explosive occurrence, and in cases where domestic violence has already occurred, could result in further difficulties. To allow lawyers to solicit clients immediately upon the filing of a Complaint for Divorce without the client's knowledge that a Complaint has been filed creates a very real prospect of violent confrontation between spouses which can be avoided by allowing the filing party to take appropriate steps to seek shelter, orders of protection, and other relief which might be available to him or her as well as their children.

We believe the implementation of the proposed change to Tenn. Sup. Ct. R. 7.3 will do a great deal to alleviate these concerns.

Mr. James Hivner, Clerk  
November 10, 2014  
Page 2

The Judges of the 21<sup>st</sup> Judicial District would greatly appreciate your consideration of this proposed amendment to Tennessee Supreme Court Rule 7.3.

With kindest personal regards, I remain

Respectfully yours,

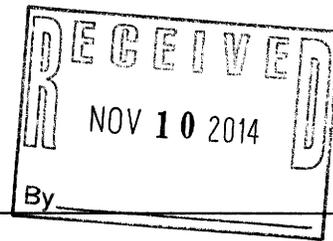
A handwritten signature in cursive script, appearing to read "Michael W. Binkley". The signature is written in black ink and is positioned above the printed name and title.

Michael W. Binkley  
Presiding Judge

MWB/khc/dmr

LAW OFFICE

HAL HARDIN



211 UNION STREET, SUITE 200  
NASHVILLE, TENNESSEE 37201

(615) 369-3377  
FAX: (615) 369-3344

November 7, 2014

James Hivner, Clerk  
Re: Rule 8, RPC 7.3  
Tennessee Appellate Courts  
100 Supreme Court Building  
401 7<sup>th</sup> Avenue North  
Nashville, TN 37219-1407

**Re: *In Re Rule 8, RPC 7.3(b)(3), Rules of the Tennessee Supreme Court***  
***No. ADM2014-01954***

Dear Mr. Hivner:

I am writing to express my support for the proposed amendment to Rule 8. I wish the rule could be extended to all areas of the law. I had one case recently where a spouse received a lawyer solicitation letter prior to being advised of or served with the divorce complaint. Even in a situation that does not include allegations of violence, a spouse's notification of divorce through a solicitation letter may unnecessarily create an environment of distrust and hostility. I agree that a thirty day prohibition against contacting the to-be-served spouse would allow for a more controlled presentation of a divorce or legal separation complaint. Even though I find all solicitation letters to be distasteful, the proposed rule would not be an unreasonable restriction on solicitation of potential clients.

In another case, a similar problem occurred when a young, successful businessman client got into a serious argument with his wife. Distraught and grieving, he aimlessly drove around (drinking, of course) until he saw a beautiful female waving at him on the side of the road. He stopped, foolishly complimented her and sought companionship to a local bar. She quoted a price. He agreed just for the company and he was arrested. I am convinced that he only wanted a talking companion. Regardless, his wife read one of the many lawyer solicitation letters and that was the end of a beautiful marriage and a thriving business.

Yours very truly,

A handwritten signature in cursive script that reads "Hal Hardin".

Hal Hardin

HH/tw

HELEN SFIKAS ROGERS\*†  
LAWRENCE J. KAMM  
SIEW-LING SHEA†  
KATIE MATHEWS ZIPPER  
GEORGE D. SPANOS

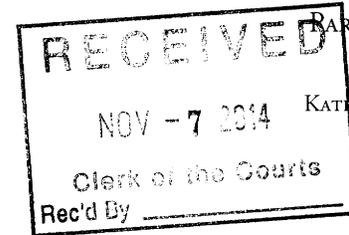
# ROGERS, KAMM & SHEA

ATTORNEYS AT LAW



\*CERTIFIED  
CIVIL TRIAL & PRETRIAL  
PRACTICE SPECIALIST  
†RULE 31  
MEDIATOR

November 6, 2014  
*Via US Mail*



PARALEGAL STAFF:  
ALAN GENTRY  
NANCY HARDT  
KATHLEEN MARCOTTE  
RENEE BROWN  
LAURA BLUM

James Hivner, Clerk  
Re: Rule 8, RPC 7.3  
Tennessee Appellate Courts  
100 Supreme Court Building  
401 7<sup>th</sup> Avenue North  
Nashville, Tennessee 37219

**Re: *Comment on Proposed Change to Rule 8, RPC 7.3(b)(3)***

Dear Mr. Hivner:

I am very grateful for the Court providing the bench and bar the opportunity to respond to the possible amendment to this rule to include divorce and legal separation. Since I wrote my original letter to the Court in January, 2014, I have continued to have problems, and can include with my letter a copy of one such solicitation that a client recently brought to me, and found very offensive.

As the current Chairperson for the Family Law Section Executive Committee of the Tennessee Bar Association, we had voted unanimously to petition the Court for this amendment, at, I believe our September, 2014 meeting. I am not certain at the time of writing what the official TBA position will be, but the Tennessee Association for Justice is fully supportive of this change, and will send their separate commentary. I thank you again for this opportunity, and hope that we can solve this problem, which I believe has been localized only to Davidson and Williamson Counties, but certainly could occur throughout the state.

When we file a divorce or legal separation, it is often helpful to the client to ask them to have a safety plan, or a plan after their spouse is served, and to give the spouse that is served with a divorce or legal separation action, time to regroup and get over the shock or the finality of what is about to occur in their life, since this is a major, life-changing action. The Court's allowing this thirty (30) day period is extremely helpful, especially in the area of domestic abuse, but also in areas where there has simply been a lot of verbal abuse, and conflict, or where a spouse might try to empty bank accounts before being served with the statutory restraining order. This change protects the children by allowing the parties to have a little breathing room to plan

MAIN OFFICE

*The Wind in the Willows Mansion*  
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NASHVILLE, TENNESSEE 37203-1850  
(615) 320-0600 ☎ FAX (615) 320-9933  
WWW.HELENROGERSLAW.COM

FRANKLIN OFFICE

317 MAIN STREET SUITE 206  
FRANKLIN, TENNESSEE 37064  
(615) 807-1287

what they are going to do, and how they are going to break the news, as well as how they are going to serve each other.

I am very grateful that the Court is considering this matter, and look forward to your decision.

With best wishes, I remain,

Very truly yours,

A handwritten signature in black ink, appearing to read 'Helen Sfikas Rogers', written in a cursive style.

Helen Sfikas Rogers

HSR: lsb  
Enclosure



TENNESSEE BAR  
ASSOCIATION

PRESIDENT  
Jonathan Steen  
464 North Parkway, Suite A  
Jackson, Tennessee 38305  
(731) 660-2332  
FAX (731) 664-1109  
Email: jsteen@rsllawfirm.com

PRESIDENT-ELECT  
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FAX (615) 742-4539  
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Fax: (615) 259-1389  
Email: jpannu@lewis Thomason.com

IMMEDIATE PAST PRESIDENT  
Cynthia Richardson Wyrick

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Sarah Sheppard, Knoxville  
Gary Shockley, Nashville  
Mary Dohner Smith, Nashville  
Chris Varner, Chattanooga  
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Shelly Wilson, Knoxville

GENERAL COUNSEL  
Paul Ney, Nashville

EXECUTIVE DIRECTOR  
Allan F. Ramsaur, Nashville  
Email: aramsaur@tnbar.org

November 7, 2014

The Honorable James Hivner  
Clerk, Tennessee Supreme Court  
Supreme Court Building, Room 100  
401 7th Avenue North  
Nashville, TN 37219

IN RE: RULE 8, RPC 7.3(b)(3)  
RULES OF THE TENNESSEE SUPREME COURT  
No. ADM2014-01954

Dear James:

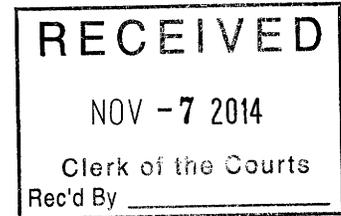
Attached please find an original and one copy of the Comment of the Tennessee Bar Association in reference to the above matter.

As always, thank you for your cooperation. I remain,

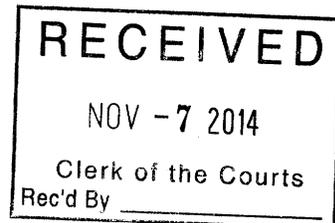
Very truly yours,

Allan F. Ramsaur  
Executive Director

cc: Jonathan Steen, President, Tennessee Bar Association  
Brian Faughnan, Chair, Tennessee Bar Association Standing Committee  
on Ethics and Professional Responsibility  
Paul Ney, General Counsel  
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**IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE**

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**IN RE RULE 8, RPC 7.3(b)(3),  
RULES OF THE TENNESSEE SUPREME COURT**

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**No ADM2014-01954**

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**COMMENT OF THE TENNESSEE BAR ASSOCIATION**

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The Tennessee Bar Association (“TBA”), acting through its President, Jonathan O. Steen; Chair, TBA Standing Committee on Ethics and Professional Responsibility, Brian S. Faughnan; General Counsel, Paul Ney; and Executive Director, Allan F. Ramsaur, in response to this Court’s Order entered October 9, 2014, submits the following comment in opposition to the possible amendment to Tenn. Sup. Ct. R. 8, RPC 7.3(b)(3) that has been proposed by a private-practice attorney.

The discussion of this petition within the TBA has led to a heightened awareness and a legislative proposal to address concerns about parties learning about the filing of divorce complaints before service of process. Although the TBA has no doubt that the private-practice attorney’s proposal is well-intentioned, the TBA urges this Court not to make the suggested revision to RPC 7.3(b)(3). There are, at least, two significant<sup>1</sup> problems with the proposal that prompt the TBA’s opposition. First, the proposal ignores that the existing prohibition on targeted, written solicitations in RPC 7.3(b)(3) exists for the purpose of, and can only be justified

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<sup>1</sup> There are other technical deficiencies in the proposal such as: (1) its failure to include an additional needed reference to the proposed added types of lawsuits in connection with when the 30 days would run; and (2) the lack of any proposed revisions to the pertinent paragraph of the Comment. In light of the TBA’s position in opposition to the proposal on significant substantive grounds, the TBA will not belabor those drafting points.

on the basis of, protecting a person who would be the *recipient* of the solicitation rather than, as this proposal seeks to do, protecting some other person altogether -- here a person who has filed a lawsuit seeking divorce and is presumed to be in need of protection from the recipient of the solicitation letter. Second, the proposal would impose a restriction on commercial speech protected by the First Amendment. Such a restriction cannot be justified where, as here, it is neither narrowly drawn nor likely to be effective to accomplish providing the protection sought. This proposed amendment is not narrowly drawn because it would apply not just in cases where there was shown to be a risk of violence for example but to all divorce filings. And, while the amendment is proposed to provide the filing spouse with some protection against when the non-filing spouse learns of the filing, the filing of a divorce lawsuit would still be a public record and the non-filing spouse could still learn of the filing of the suit through a variety of other channels before service of process.<sup>2</sup>

It is well settled that lawyer advertising, like other commercial speech, is entitled to protection under the First Amendment of the United States Constitution.<sup>3</sup> See, e.g., Florida Bar v. Went For It, Inc., 515 U.S. 618 (1995); Shapiro v. Ky. Bar Ass'n, 486 U.S. 466 (1988); Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626 (1985); In re R.M.J., 455 U.S. 191 (1982); Bates v. State Bar, 433 U.S. 350 (1977). The thirty-day off-limits provision that

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<sup>2</sup> As disturbing as the specter of domestic violence is in our society, unless this Court were to seek to take action that would change the nature of divorce lawsuits from being public records from the time a complaint is filed, then there is no reason to think that expanding the prohibition on written solicitations, as is proposed, would be an effective way of preventing the non-filing spouse from learning of the filing directly or indirectly because of routine publication in print and online media of new civil lawsuit filings.

<sup>3</sup> The Tennessee Constitution generally affords at least as much as protection to speech as the First Amendment to the U.S. Constitution. See Tenn. Const. art. I, § 19; Leech v. American Booksellers Ass'n, 582 S.W.2d 738, 745 (Tenn. 1979). Although no decided Tennessee case addresses Tennessee constitutional protection for lawyer speech, the TBA assumes that this Court would find that the Tennessee Constitution provides such protection, and the TBA relies upon the Tennessee Constitution in support of its argument against the proposal.

currently exists in Tennessee's RPC 7.3 is patterned upon a restriction on lawyer advertising first used by the State of Florida and that was affirmed by the United States Supreme Court in Went For It. A thorough understanding of the interest advanced by the Florida Bar and credited in Went For It to justify upholding such a restriction, as well as how the Court distinguished the thirty-day restriction on solicitations of injury victims and their families from other lawyer advertising restrictions that did not pass constitutional muster readily reveals the fundamental disconnect between the purpose of Tennessee's present RPC 7.3(b)(3) and what is intended by the proposal.

After completion of a two-year study on the effects of lawyer advertising upon public opinion, the Florida Bar enacted a number of additional restrictions on lawyer advertising including a provision that restricted lawyers from sending a written communication "to a prospective client for the purpose of obtaining professional employment if: (A) the written communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, unless the accident or disaster occurred more than 30 days prior to the mailing of the communication." Went For It, 515 U.S. at 620. In seeking to justify imposition of the restriction, the Florida Bar characterized the sending of direct mail solicitations to injury victims and their families in such close temporal proximity to a tragic event as being "universally regarded as deplorable and beneath common decency because of its intrusion upon the special vulnerability and private grief of victims or their families." Id. at 625. As will be elaborated upon more below, the Court gave much credit to this concept that the mere receipt of such a solicitation involved a substantial invasion of the privacy of victims and their families and distinguished other First Amendment precedent where the Court had previously concluded that

“a letter, like a printed advertisement (but unlike a lawyer), can readily be put in a drawer to be considered later, ignored, or discarded.” Shapero, 486 U.S. at 475-76.

Tennessee’s current RPC 7.3(b)(3) seeks to protect the *recipient* of a targeted, written solicitation from a lawyer under the premise that, unlike others for whom the simple act of throwing away an undesired written solicitation into the trash is sufficient to avoid injury, people within 30 days of a disaster or personal physical injury are subjected to a separate second injury from the invasion of their privacy. The proposed amendment does not just seek to expand the types of cases in which the 30-day off limit period to protect *recipients* is applied. In fact, it is not aimed at protecting any *recipient* of a written solicitation letter at all. Rather, its underlying rationale is the possibility that *others need to be protected from the recipient of such a letter*. In addition to Florida and Tennessee, there are 17 U.S. jurisdictions that have this kind of 30-day off limit provision housed in an RPC 7.3(b)(3) or its equivalent and not one such jurisdiction extends the prohibition on written solicitation to a letter to a person named as a defendant in a divorce lawsuit.

In part because this proposal turns the rationale for the thirty-day off limits period on its head, the proposed revision to Tennessee’s RPC 7.3(b)(3) is a restriction upon commercial speech that would be highly likely to run afoul of the First Amendment. In Went For It, the Court yet again confirmed that intermediate scrutiny is applied to constitutional challenges to lawyer advertising restrictions. This means that the proposal cannot be judged solely upon whether it might be “not unreasonable to ask that [a plaintiff in a divorce action] have at least thirty (30) days to decide how and when they are going to serve their, spouse with the divorce or legal separation complaint, and how they will protect themselves and their children, should there be a reaction or over-reaction to the filing.” Instead, if this proposal were to be adopted, the

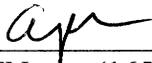
constitutional viability of this restriction on commercial speech would be scrutinized in terms of the three-pronged Central Hudson test in which: “first, the government must assert a substantial interest in support of its regulation; second, the government must demonstrate that the restriction on commercial speech directly and materially advanced that interest; and third, the regulation must be ‘narrowly drawn.’” Went For It, 515 U.S. at 624 (quoting Central Hudson Gas & Electric Corp. v. Public Service Comm’n, 447 U.S. 557, 564-65 (1980)).

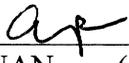
Assuming that protecting victims of domestic abuse could be used as the substantial interest to support the regulation set out in the proposal and that sufficient evidentiary support could be gathered (over and above the anecdotal evidence the letter writer offers) to support a conclusion that the proposed change would be motivated by such evidence, there is no reason to think it could satisfy either, much less both, of the other two Central Hudson prongs. First, as long as the filing of divorce complaints continue to be a matter of public record, then there will be a multitude of ways that a person named as a defendant in such a public court filing could learn of the suit prior to being served and, thus, a multitude of ways in which someone prone to commit an act of violence or other illegal act could still find their way to doing so. Thus, restricting lawyers from being able to send a written solicitation letter to the defendant in a public lawsuit will not “directly and materially” advance any interest in protecting victims of domestic abuse. Second, the proposal is not at all “narrowly drawn” as it would apply not just to divorce complaints or complaints for legal separation where there has been an some showing of an actual concern that the defendant is likely to over-react to the filing or is somehow prone to violence, etc. Rather, it would apply to all instances of filings for divorce or legal separation.

### **CONCLUSION**

The TBA is keenly aware of the problems of domestic violence and domestic abuse in our state and in society as a whole. Nevertheless, the TBA strongly urges the Court to decline to adopt the proposed revision to RPC 7.3 as it is not the solution to any of those problems and will only serve to restrict commercial speech in a way that the First Amendment will not condone.

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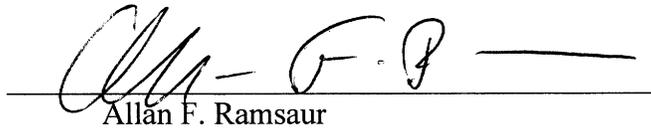
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The undersigned certifies that a true and correct copy of the foregoing has been served upon the individuals and organizations identified in Exhibit "A" by regular U.S. Mail, postage prepaid within seven (7) days of filing with the Court.



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Union County Bar Association President  
105 Monroe Street  
Maynardville, TN 37807-0013

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Hardeman County Bar Association  
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Monroe County Bar Association President  
Worthington & Weiss, P.C.  
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Madisonville, TN 37354-3103

John Lee Williams  
Humphreys County Bar Association  
President  
Porch Peeler WilliamsThomason  
102 S. Court Square  
Waverly, TN 37185-2113

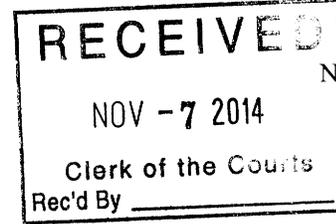
Matthew Willis  
Dyer County Bar Association President  
Ashley Ashley & Arnold  
P.O. Box H  
Dyersburg, TN 38025

Marsha Wilson  
Knoxville Bar Association Executive  
Director  
Knoxville Bar Association  
P.O. Box 2027  
Knoxville, TN 37901



# Thomas H. West

Attorney At Law



P. O. Box 292102  
Nashville, TN 37229-2102

Phone: (615) 889-1051  
Cell: (615) 478-1109  
thwest60@gmail.com

November 5, 2014

James Hivner, Clerk  
Tennessee Appellate Courts  
401 7<sup>th</sup> Ave. N., Suite 100  
Nashville, TN 37219-1407

Re: Rule 8, RPC 7.3, **ADM2014-1954**

Dear Mr. Hivner:

Please add my comment to this matter.

My practice is almost exclusively family law in Tennessee and Kentucky.

I care about all parties to a divorce action, even as I represent only one party in such a case, especially when domestic abuse and/or violence is involved. I do from time to time solicit divorce clients by direct postal mail according to the current version of the Rules of Professional Conduct. In doing so, however, I am cautious about who I choose to solicit, as I share my colleagues' concerns about stirring up trouble in a potentially volatile matter.

For example, if the record shows that a case has been filed and the summons issued, especially for personal service, the service of process generally can take place at any time outside of the control of the plaintiff. In Davidson County, the Sheriff's Office will coordinate service of process with the plaintiff on an occasional basis. Also, they do ask to be informed in any case that is volatile or dangerous, as they will respond by serving with two deputies, instead of one. As a matter of routine and in most other counties statewide, however, once the process is turned over to the sheriff, it is out of the plaintiff's hands such that a direct mail solicitation of the adverse party should not make the matter more dangerous.



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Attorneys probably would be best advised to carefully consider when and whether to file the complaint. They probably should not file until and unless he/she and the client are absolutely certain the case should proceed. Unlike in personal injury, health care liability, and other areas of law, there generally are no statutes of limitation or repose that would force filing of a complaint by a specific deadline, except sometimes when interstate child custody is involved.

Divorce cases can be distinguished from accidents and disasters in which a 30 day ban on direct mail advertising already exists. In a divorce case, the adverse party is, by definition, being sued, and he/she has only 30 days to file an answer. If a 30 day ban is imposed for divorce cases, by the time the ban expires, the adverse party may be facing a motion for default judgment. By contrast, victims of accidents and disasters generally are not being sued and they face no mandate to bring a suit if they choose not to do so. Further, I would respectfully submit that the importance of this matter may well be undermined by the fact that no bar associations have submitted comments in this matter, particularly the Tennessee Bar Association, the Nashville Bar Association, and the Memphis Bar Association.

As the Court knows, the balance in this matter is the attorney's constitutional rights of commercial free speech as against the safety of the plaintiff and/or other parties to the litigation. U. S. Supreme Court precedent, specifically *Shapero v. Kentucky Bar Association*, 486 U.S. 466 (1988), the Court ruled on an ethical provision prohibiting the "mailing or delivery of written advertisements 'precipitated by a specific event or occurrence involving or relating to the addressee or addressees as distinct from the general public.'" Speaking to the difference between the permissible general mail and the impermissible targeted mail, the Court stated that the First Amendment "does not permit a ban on certain speech merely because it is more efficient." *Ibid.* at 473. In like fashion, a ban on soliciting divorce clients likely would be unconstitutional. Whether a ban on such communications for 30 days after filing would be constitutional is an open question. In the case of *Florida State Bar v. Went For It, Inc.*, 515 U.S. 618 (1995), the Court stated that, "The purpose of the 30-day targeted direct mail ban is to forestall the outrage and irritation with the state licensed legal profession that the practice of direct



# Thomas H. West

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solicitation only days after accidents has engendered. The Bar is concerned not with citizens' 'offense' in the abstract . . . but with the demonstrable detrimental effects that such 'offense' has on the profession it regulates." Further, in that case, the Florida Bar submitted the results of two years of empirical study and major newspaper editorials in the state that supported their position in the case. It appears that no state currently has a 30 day ban in place for divorce cases, and the reason likely is that citizens are not so irritated or outraged with attorneys advertising for business in such cases. Also, as I noted above, neither the Tennessee Bar Association nor any of this state's other major bar associations is clamoring for such a ban.

Instead of a 30 day ban, I recommend adding a comment to Rule 7.3 such as the following:

"In seeking business under this rule, attorneys are well advised to be mindful to act with great care and caution in soliciting clients in matters that frequently are volatile or dangerous, such as divorce cases."

Most attorneys likely would take heed of such a comment, such that an outright ban would be unnecessary.

Thank you for your consideration of this comment.

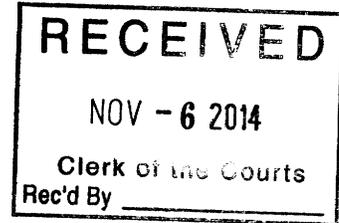
Sincerely,

Thomas H. West

LAW OFFICES OF  
**JOHN DAY** P.C.  
INJURY ATTORNEYS

November 5, 2014

James Hivner, Clerk  
Tennessee Appellate Courts  
100 Supreme Court Building  
401 7<sup>th</sup> Avenue North  
Nashville, TN 37219-1407



Re: No. ADM2014-01954  
Rule 8, RPC 7.3

Dear Mr. Hivner:

I write in support of the proposed change to Tenn. Sup. Ct. R. 7.3.

Although I do not practice domestic relations law, I have been advised by lawyers whom I respect that practice in this field that persons alleged to have abused their spouse have received, from lawyer solicitations, notice of a pending divorce complaint before the aggrieved spouse has been able to move to a place of safety. This obviously increases the risk that harm may come to the both spouses (and their children), either because of aggressive action by one spouse or defensive action by the other.

Under these circumstances, I think the risk of harm to both spouses (and their children) substantially outweighs the free-speech right of lawyer to let a defendant in divorce cases know that an action has been filed against him or her in an effort to solicit a new client. Likewise, the proposed rule change does not harm the legitimate rights of the domestic relations defendant, who is permitted thirty days to answer the complaint from the date of service) and thus has plenty of time to seek out, interview and employ legal counsel.

I encourage the Court to adopt the proposed change to Rule 7.3

Sincerely,

**LAW OFFICES OF JOHN DAY, P.C.**

A handwritten signature in black ink, appearing to be "John A. Day", written over a horizontal line. The signature is stylized and somewhat abstract.

John A. Day

JAD/kc

THE LAW OFFICE OF  
**CYNTHIA C. CHAPPELL**

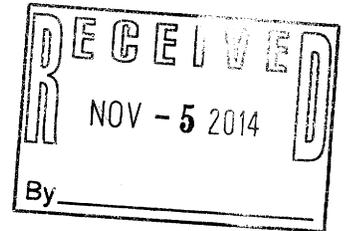
211 Union Street, Suite 200  
Nashville, Tennessee 37201

Phone: (615) 620-3272

Fax: (615) 369-3344

November 3, 2014

James Hivner, Clerk  
Re: Rule 8, RPC 7.3  
Tennessee Appellate Courts  
100 Supreme Court Building  
401 7<sup>th</sup> Avenue North  
Nashville, TN 37219-1407



**Re: *In Re Rule 8, RPC 7.3(b)(3), Rules of the Tennessee Supreme Court***  
***No. ADM2014-01954***

Dear Mr. Hivner,

I am writing to express my support for the proposed amendment to Rule 8 pertaining to divorce or legal separation. My practice includes family law matters, and I have had one instance recently of a spouse notified via a solicitation letter of the divorce filing prior to being advised of or served with the complaint. Even in a divorce situation that does not include allegations of violence, a spouse's notification of divorce via a solicitation letter may unnecessarily create an environment of distrust and hostility. I agree that a thirty day prohibition against contacting the to-be-served spouse would allow for a more controlled presentation of a divorce or legal separation complaint, would adequately address safety needs in potentially violent situations, and would not unreasonably restrict solicitation of potential clients.

Yours very truly,

  
CYNTHIA C. CHAPPELL

**JACKSON, KWELLER, MCKINNEY,**

**HAYES, LEWIS & GARRETT**

FOUNDED 1930

*AN ASSOCIATION OF ATTORNEYS*

ONE WASHINGTON SQUARE

214 SECOND AVENUE NORTH

SUITE 103

NASHVILLE, TENNESSEE 37201

TELEPHONE (615) 256-2602

FACSIMILE (615) 242-5967

**ROBERT L. JACKSON**

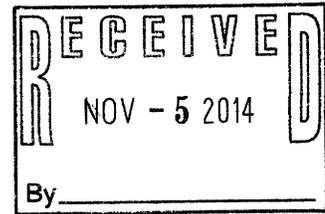
EUGENE D. JACKSON (1895-1958)

EUGENE D. JACKSON, JR. (1915-1979)

November 3, 2014

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Re: Rule 8, RPC 7.3  
Tennessee Appellate Courts  
100 Supreme Court Building  
401 7<sup>th</sup> Avenue North  
Nashville, TN 37219-1407

Adm 2014-01954



**Re: Rule 8, RPC 7.3**

Dear Mr. Hivner:

I am writing you to endorse and support the proposed amendment of RFP 7.3(b)(3) as relates to solicitation by attorneys of newly filed divorce or legal separation cases.

I have been a duly licensed attorney in Tennessee since 1965, practicing in Nashville and Middle Tennessee. My practice is concentrated in domestic relations. I have mediated more than 800 divorce/domestic relations matters in the past eight (8) years.

This solicitation by attorneys and law firms often leads to domestic violence or a spouse transferring, secreting or concealing assets before the statutory injunction is in place. We need this amendment.

If I can be of further service, please feel free to call on me.

November 3, 2014

Page - 2 -

With kind regards, I am,

Yours truly,

A handwritten signature in black ink, appearing to read "Robert L. Jackson". The signature is written in a cursive style with a large initial "R" and a long, sweeping tail.

Robert L. Jackson

RLJ/cws

**JACKSON, KWELLER, MCKINNEY,**

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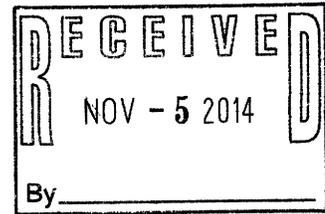
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November 3, 2014

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THE LAW OFFICE OF  
**CYNTHIA C. CHAPPELL**

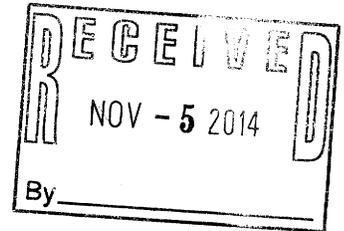
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**Re: *In Re Rule 8, RPC 7.3(b)(3), Rules of the Tennessee Supreme Court***  
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Yours very truly,

  
CYNTHIA C. CHAPPELL



# TENNESSEE ASSOCIATION FOR JUSTICE

1903 Division Street, Nashville, TN 37203 • Phone 615.329.3000 • Fax 615.329.8131 • E-mail: skeith@tnaj.org

Jon Peeler, Nashville - President

Suzanne G. Keith - Executive Director

## OFFICERS

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Immediate Past President

Megan England, Chattanooga  
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Tony Duncan, Nashville  
Parliamentarian

## AT LARGE REPRESENTATIVES

Danny Ellis, Chattanooga  
Brandon Newman, Trenton  
Taylor Sutherland, Nashville

Tuesday, November 4, 2014

James Hivner, Clerk  
Re: Rule 8, RPC 7.3  
Tennessee Appellate Courts  
100 Supreme Court Building  
401 7<sup>th</sup> Avenue North  
Nashville, TN 37219-1407

Re: No. ADM2014-01954

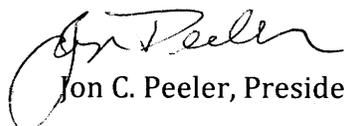
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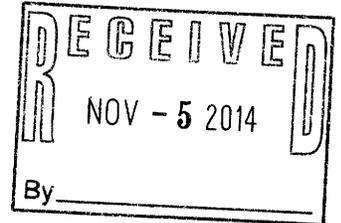
The Tennessee Association for Justice (TAJ) endorses the proposed change to Tenn. Sup. Ct. R. 7.3.

It is common practice, in representing victims of domestic violence, to withhold service of a complaint against a person charged with abuse until the victim or victims – many of these cases involve wholly innocent children – can be moved to a safe place. Our members have encountered instances in which persons charged with abuse have received, from lawyer solicitations, notice of a pending complaint prior to a move to safety having been accomplished. These instances have endangered victims.

TAJ hesitates to endorse any proposal that limits the fundamental constitutional right of access to courts, as this proposal and current Rule 7.3 both do. But TAJ is dedicated to preserving the safety of clients. Its members are practical people whose views of the law are shaped by their daily experiences in courtrooms throughout the state. Their experience indicates that this proposal addresses a problem that exists, appears to be growing, and endangers the lives of victims of domestic violence. The rationale supporting this amendment to Rule 7.3 is much more powerful than the rationale supporting the Rule's existing prohibitions on solicitation. We find the proposed amendment within the narrow bounds drawn in *Florida Bar v. Went for It, Inc.*, 515 U.S. 618 (1994), and suggest that its quick adoption is warranted.

Very truly yours,

  
Jon C. Peeler, President





## TENNESSEE ASSOCIATION FOR JUSTICE

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Jon Peeler, Nashville - President

Suzanne G. Keith - Executive Director

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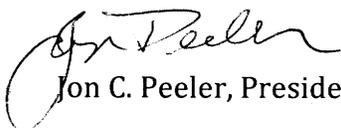
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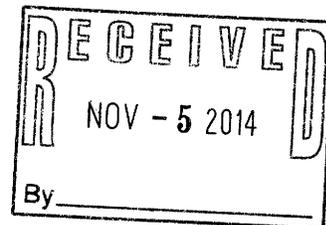
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Very truly yours,

  
Jon C. Peeler, President



HELEN SFIKAS ROGERS\*†  
LAWRENCE J. KAMM  
SIEW-LING SHEA†  
KATIE MATHEWS ZIPPER  
GEORGE D. SPANOS

ROGERS, KAMM & SHEA  
ATTORNEYS AT LAW

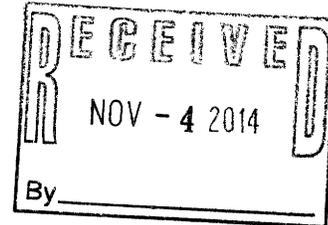


\*CERTIFIED  
CIVIL TRIAL & PRETRIAL  
PRACTICE SPECIALIST  
†RULE 31  
MEDIATOR

November 3, 2014

PARALEGAL STAFF:  
ALAN GENTRY  
NANCY HARDT  
KATHLEEN MARCOTTE  
RENEE BROWN  
LAURA BLUM

Mr. James Hivner, Clerk  
Re: Rule 8, RPC 7.3  
Tennessee Appellate Courts  
100 Supreme Court Building  
401 7<sup>th</sup> Avenue North  
Nashville, TN 37219-1407



**RE: Rule 8, RPC 7.3, No. ADM2014-01954**

Dear Mr. Hivner:

I am a domestic attorney practicing in Nashville and middle Tennessee. I am writing to express my support of the proposed amendment to Tenn. Sup. Ct. R. 8, RPC 7.3.

There are several attorneys in middle Tennessee who check the court filings daily to solicit business from domestic defendants, mainly in divorce cases. This practice has to stop (at least for a certain time period) to protect the plaintiffs in these sensitive and often dangerous situations.

I recently had one client who, for various reasons, needed to file for divorce prior to telling her husband that she planned to file. We filed her Complaint on a Thursday. She asked if we could wait to serve her husband until Monday so that she could tell him face-to-face over the weekend that she had filed for divorce. I told her that was fine with me, but warned her that her husband could possibly receive a solicitation from an attorney after we filed the Complaint. Sure enough, the husband received a letter from an attorney the following Saturday, before the wife had an opportunity to tell him herself. The husband was quite upset to learn that his wife had filed for divorce by receiving a letter from an attorney soliciting his business. The husband became angry with the wife. Thankfully, his anger was only expressed verbally and not physically, but the situation could have been much worse.

I have heard of other similar situations with much more serious and dangerous consequences. This rule needs to change so that plaintiff spouses have an opportunity to file for divorce then make any necessary arrangements to ensure their safety. That might mean telling the other spouse face-to-face, moving out of the home, and/or asking the court to enter a restraining order.

I appreciate your time and consideration of this letter, and I hope you will make this important amendment to Tenn. Sup. Ct. R. 8, RPC 7.3.

Best regards,

Katie Mathews Zipper

MAIN OFFICE  
*The Wind in the Willows Mansion*  
2205 STATE STREET  
NASHVILLE, TENNESSEE 37203-1850  
(615) 320-0600 • FAX (615) 320-9933  
WWW.HELENROGERSLAW.COM

FRANKLIN OFFICE  
317 MAIN STREET SUITE 206  
FRANKLIN, TENNESSEE 37064  
(615) 807-1287

HELEN SFIKAS ROGERS\*†  
LAWRENCE J. KAMM  
SIEW-LING SHEA†  
KATIE MATHEWS ZIPPER  
GEORGE D. SPANOS

ROGERS, KAMM & SHEA  
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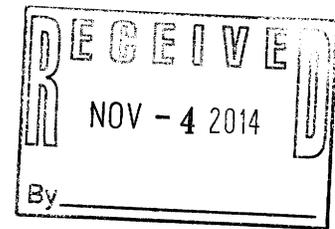
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November 3, 2014

James Hivner, Clerk  
Re: Rule 8, RPC 7.3  
Tennessee Appellate Courts  
100 Supreme Court Building  
401 7<sup>th</sup> Avenue North  
Nashville, TN 37219-1407

**Re: No. ADM2014-01954**



Dear Mr. Hivner:

I am writing in support of amending Tenn. Sup. Ct. R. 8, RPC 7.3 as set forth in Docket No. ADM2014-01954. I practice in the area of family law and have had several clients who have had grave concern as to whether they should file or not, specifically due to the reaction that their spouse may have. These situations do not always include physical abuse, but even psychological and financial abuse. These situations are very delicate and should not be blindly interfered with by an attorney who simply scours new court filings to contact potential clients. When a client files for divorce in any type of abusive situation, they should not have to suffer additional distress from the possibility of someone with no knowledge of their situation informing their abuser that a divorce has been filed.

There is no way to delineate a case where abuse is alleged or not as every case has its own strategy and may not set out specific averments of abuse. The rule change has only one goal: to protect a class of people, abuse victims, that the law has set out specific measures to protect. If someone is arrested on domestic assault charges, they are restrained from returning home and the victim is notified of how long the person will be detained. I feel that we would be promoting the opposite by not approving this rule change. Abuse victims should have security in knowing that if they file for divorce, proper safeguards are in place to prevent their spouse from finding out about the divorce and being vulnerable to potential harm.

This is not only a very realistic fear that clients have, but a situation that my office has recently seen. Luckily, our client was not harmed, but underwent a significant amount of verbal/psychological abuse from their spouse. In addition to going through this, they felt betrayed by our office as they could not understand how someone could simply find out about the filing and contact their spouse for no reason. It significantly impacted our relationship with the client at a time that trust between both sides was needed, due to the acts of the spouse. Our

MAIN OFFICE  
The Windover Inn  
2205 STATE STREET  
NASHVILLE, TENNESSEE 37203-1850  
(615) 320-0600 FAX (615) 320-9933  
WWW.HELENROGERSLAW.COM

FRANKLIN OFFICE  
317 MAIN STREET SUITE 206  
FRANKLIN, TENNESSEE 37064  
(615) 807-1287

Mr. James Hivner  
November 3, 2014  
Page 2

concern is that this situation will arise again, whether it is our client or someone else's, but will result in much more dire consequences.

Please approve this rule change.

With best wishes I remain,

Very truly yours,

  
George D. Spanos

HELEN SFIKAS ROGERS\*†  
LAWRENCE J. KAMM  
SIEW-LING SHEA†  
KATIE MATHEWS ZIPPER  
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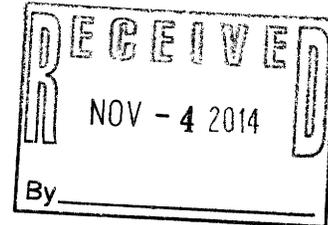


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**RE: Rule 8, RPC 7.3, No. ADM2014-01954**

Dear Mr. Hivner:

I am a domestic attorney practicing in Nashville and middle Tennessee. I am writing to express my support of the proposed amendment to Tenn. Sup. Ct. R. 8, RPC 7.3.

There are several attorneys in middle Tennessee who check the court filings daily to solicit business from domestic defendants, mainly in divorce cases. This practice has to stop (at least for a certain time period) to protect the plaintiffs in these sensitive and often dangerous situations.

I recently had one client who, for various reasons, needed to file for divorce prior to telling her husband that she planned to file. We filed her Complaint on a Thursday. She asked if we could wait to serve her husband until Monday so that she could tell him face-to-face over the weekend that she had filed for divorce. I told her that was fine with me, but warned her that her husband could possibly receive a solicitation from an attorney after we filed the Complaint. Sure enough, the husband received a letter from an attorney the following Saturday, before the wife had an opportunity to tell him herself. The husband was quite upset to learn that his wife had filed for divorce by receiving a letter from an attorney soliciting his business. The husband became angry with the wife. Thankfully, his anger was only expressed verbally and not physically, but the situation could have been much worse.

I have heard of other similar situations with much more serious and dangerous consequences. This rule needs to change so that plaintiff spouses have an opportunity to file for divorce then make any necessary arrangements to ensure their safety. That might mean telling the other spouse face-to-face, moving out of the home, and/or asking the court to enter a restraining order.

I appreciate your time and consideration of this letter, and I hope you will make this important amendment to Tenn. Sup. Ct. R. 8, RPC 7.3.

Best regards,

Katie Mathews Zipper

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HELEN SEIKAS ROGERS\*  
LAWRENCE J. KAMM  
SIEW-LING SHEA

ROGERS, KAMM & SHEA  
ATTORNEYS AT LAW



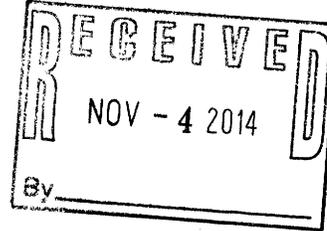
OF COUNSEL:  
AUDREY ANDERSON

November 3, 2014  
*Via U.S.P.S. 1<sup>st</sup> Class Mail*

\*CERTIFIED CIVIL  
TRIAL SPECIALIST  
AND RULE 31  
MEDIATOR

PARALEGAL STAFF:  
ALAN GENTRY  
NANCY HARDT  
GEORGE D. SPANOS  
KATIE MARCOTTE  
RENEE BROWN

James Hivner, Clerk  
Re: Rule 8, RPC 7.3  
Tennessee Appellate Courts  
100 Supreme Court Building  
401 7<sup>th</sup> Avenue North  
Nashville, Tennessee 37219-1407



**Re: *In the Supreme Court of Tennessee at Nashville;*  
*In re Rule 8, RPC 7.3(b)(3); Docket No.ADM2014-01954***

Dear Mr. Hivner:

I am writing to comment on the proposed change to Tennessee Supreme Court Rule 8, Rule of Professional Conduct 7.3(b)(c), and to state that I am wholeheartedly in favor of the requested modification.

At the inception of divorces and/or legal separations that stem from domestic violence and/or abuse, timing is everything – particularly when restraining orders are involved. As the plaintiff spouse's attorney in a domestic violence case one must: a) develop a plan for keeping the plaintiff and other family members safe during the divorce process; b) file a complaint containing a request for a restraining order; c) wait for the restraining order to be signed by a Judge – usually a period of one or two days; d) pick up the service packet (the summons, complaint, and restraining order) from the Clerk of the Court; d) implement the safety plan; and e) serve the summons, complaint, and restraining order on the defendant.

Generally, in these types of cases the defendant is served at a pre-arranged time, or the process server immediately notifies the plaintiff when the divorce packet has been served upon the defendant. Under either scenario the plaintiff knows exactly when the defendant is made aware of the divorce action, and the pre-determined safety measures are put into place contemporaneously with the service of the complaint and restraining order.

All of the carefully-crafted protective measures can be short-circuited, however, by the delivery of an attorney's solicitation letter to the would-be defendant before he or she has been served. Essentially, the solicitation letter completely eradicates the safety plan and converts the plaintiff into a sitting duck at ground zero. I have seen enough of this to know that sooner or later one of these solicitation letters is going to get someone severely injured or dead.

In all honesty, I have often wondered why the crafters of RPC 7.03 thought it was necessary to protect injured workers and accident victims from immediate solicitation by attorneys. To me it seems like it would be helpful for such persons to have timely access to representation before they unknowingly release or otherwise relinquish rights.

*The Wind in the Willows Mansion*

James Hivner, Clerk  
November 3, 2014  
Page 2

On the other hand, it has never made sense to me that we impose a 30-day stay of solicitation in worker's compensation and personal injury cases, but divorce and legal separation matters – in which people can be physically injured or killed as a result of untimely solicitation letters – have no such stay in place.

It is my hope that our Supreme Court will see modify Rule 7.3(b)(3) as proposed in the Appendix to its Order of October 9, 2014.

With best wishes, I remain

Very truly yours,

A handwritten signature in cursive script that reads "Lawrence J. Kamm". The signature is written in black ink and is positioned above the printed name.

Lawrence J. Kamm

LJK/rb

HELEN SEIKAS ROGERS\*  
LAWRENCE J. KAMM  
SIEW-LING SHEA

ROGERS, KAMM & SHEA  
ATTORNEYS AT LAW



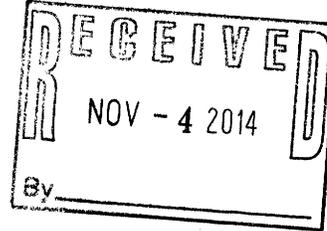
OF COUNSEL:  
AUDREY ANDERSON

November 3, 2014  
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401 7<sup>th</sup> Avenue North  
Nashville, Tennessee 37219-1407



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*The Wind in the Willows Mansion*

James Hivner, Clerk  
November 3, 2014  
Page 2

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Lawrence J. Kamm

LJK/rb

HELEN SFIKAS ROGERS\*†  
LAWRENCE J. KAMM  
SIEW-LING SHEA†  
KATIE MATHEWS ZIPPER  
GEORGE D. SPANOS

ROGERS, KAMM & SHEA  
ATTORNEYS AT LAW



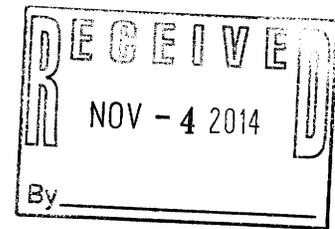
\*CERTIFIED  
CIVIL TRIAL & PRETRIAL  
PRACTICE SPECIALIST  
†RULE 31  
MEDIATOR

PARALEGAL STAFF:  
ALAN GENTRY  
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KATHLEEN MARCOTTE  
RENEE BROWN  
LAURA BLUM

November 3, 2014

James Hivner, Clerk  
Re: Rule 8, RPC 7.3  
Tennessee Appellate Courts  
100 Supreme Court Building  
401 7<sup>th</sup> Avenue North  
Nashville, TN 37219-1407

**Re: No. ADM2014-01954**



Dear Mr. Hivner:

I am writing in support of amending Tenn. Sup. Ct. R. 8, RPC 7.3 as set forth in Docket No. ADM2014-01954. I practice in the area of family law and have had several clients who have had grave concern as to whether they should file or not, specifically due to the reaction that their spouse may have. These situations do not always include physical abuse, but even psychological and financial abuse. These situations are very delicate and should not be blindly interfered with by an attorney who simply scours new court filings to contact potential clients. When a client files for divorce in any type of abusive situation, they should not have to suffer additional distress from the possibility of someone with no knowledge of their situation informing their abuser that a divorce has been filed.

There is no way to delineate a case where abuse is alleged or not as every case has its own strategy and may not set out specific averments of abuse. The rule change has only one goal: to protect a class of people, abuse victims, that the law has set out specific measures to protect. If someone is arrested on domestic assault charges, they are restrained from returning home and the victim is notified of how long the person will be detained. I feel that we would be promoting the opposite by not approving this rule change. Abuse victims should have security in knowing that if they file for divorce, proper safeguards are in place to prevent their spouse from finding out about the divorce and being vulnerable to potential harm.

This is not only a very realistic fear that clients have, but a situation that my office has recently seen. Luckily, our client was not harmed, but underwent a significant amount of verbal/psychological abuse from their spouse. In addition to going through this, they felt betrayed by our office as they could not understand how someone could simply find out about the filing and contact their spouse for no reason. It significantly impacted our relationship with the client at a time that trust between both sides was needed, due to the acts of the spouse. Our

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FRANKLIN, TENNESSEE 37064  
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Mr. James Hivner  
November 3, 2014  
Page 2

concern is that this situation will arise again, whether it is our client or someone else's, but will result in much more dire consequences.

Please approve this rule change.

With best wishes I remain,

Very truly yours,

  
George D. Spanos

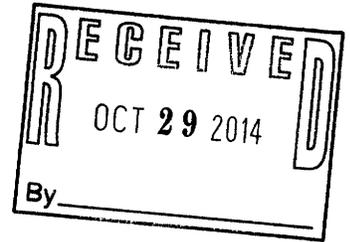
James H. Drescher

**J.D.**

Attorney at Law

October 28, 2014

James Hivner, Clerk  
Re: Rule 8, RPC 7.3  
Tennessee Appellate Courts  
100 Supreme Court Bldg.  
401 7<sup>th</sup> Avenue North  
Nashville, TN 37219-1407



**Re: ADM2014-01954**

Dear Mr. Hivner:

Please add my concerns to those expressed in the attached. My law practice is predominantly family law. I have been licensed since 1982. I joined a Nashville firm in 1991 when I left the Marine Corps. I was a judge advocate for nine years.

If it were up to me, lawyer solicitation of potential clients in divorces would be completely forbidden.

Several years ago, I was retained to represent the wife of a very wealthy businessman. The parties had been married for over twenty years and had several minor children. At that time in Davidson County, it was generally accepted that filing first had potential advantages. My client was unsure about wanting to end the marriage but I advised her that filing first could be beneficial. Thus, she opted to file but we had no immediate intention of serving the complaint. My client clung to the hope that she and her husband might reconcile. A few days later, my client called me in a breathless panic. Her husband had received a form solicitation letter in the mail which essentially said "we see you have been sued for divorce, you need to hire a lawyer right away". Naturally, the husband was demanding to know what was afoot.

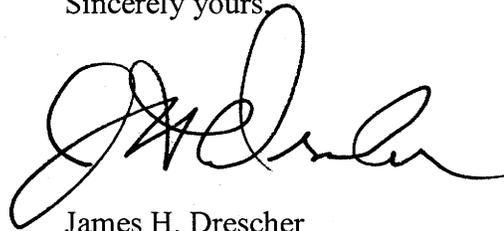
I was furious. My client was, in turn, furious with me.

I knew the lawyer who sent the letter. I spoke to several colleagues about my concerns. What if my client had been beaten or murdered? These things do happen. I spoke privately to the family law judges in Davidson County, wondering, perhaps, if a local rule might be implemented to halt this dangerous practice. More particularly, I confronted the lawyer who sent the letter. I firmly explained to him the dangers posed by his letters. I sternly warned him to refrain from doing this in any future case I might file. In the midst of these conversations, I learned that he was not the only one who routinely sent these letters to divorce defendants. As it turns out, the lawyer who sent the letter agreed not to send future correspondence in cases I filed

(how he might assure an exception for me made me skeptical at best). Perhaps most importantly, my client and her husband sought counseling and were able to avoid divorce.

Should the Supreme Court declined to bar these letters in domestic cases, it is still my strong view that a waiting period be imposed and the longer the better. Thirty days would seem to be a minimum. I truly believe that these letters pose a palpable threat to the safety of litigants and their children. The manner and timing of telling an emotional, angry and violent person that a divorce action has been filed should be solely left to the plaintiff and his or her lawyer, not to someone trolling for business.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'J. Drescher', written in a cursive style.

James H. Drescher

Enclosure

**Robert J. Turner**

Ieshia M. Dupes

Brad H. Frakes

Paul J. Reynard

Caroline K. Thompson

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Dear [REDACTED]

If you have already hired or retained a lawyer for this matter, please disregard this letter. The public records of the Davidson County Circuit Court Clerk reveal that a Complaint for Divorce has been filed against you. Failure to retain an attorney and to defend yourself from the allegations of your spouse can result in significant emotional and financial hardships. Our law firm has over twenty (20) years of experience handling family law matters, and we have represented over ten thousand citizens in divorce cases. Based on the pleadings filed, we believe that our law firm is suited to handle your legal needs.

We are so committed to our belief that people involved in court proceedings **should not** represent themselves that we are dedicated to provide high quality legal representation at affordable prices. You should hire an attorney **before your court appearance**, as the first court appearance is a hearing date on the issues raised by your spouse. Call us when you receive this letter and make an appointment so that you can be sure that we have ample opportunity to prepare your case and are in court to represent you from the beginning. Failure to take this matter seriously can result in your spouse receiving support and sole and exclusive possession of the marital residence. Additionally, Courts generally **DO NOT** change any order until the final divorce hearing, which can be over a year away. Therefore, it is important to hire an attorney and to protect yourself from the very beginning!

We have developed a reasonable fee schedule wherein you are charged based on the difficulty of your case. Furthermore, we understand that our clients are not generally prepared to deal with the costs of defending divorce filed against them. For this reason, we offer affordable payment plans with low down payments, and we also accept MasterCard, VISA, and Discover.

Please call my office now or visit our website to set your free, no obligation initial consultation regarding your case. To learn more information regarding divorce law, please visit [www.TurnerLawOffices.com/divorce](http://www.TurnerLawOffices.com/divorce). I will be happy to talk with you further, and to determine if I can assist you in this matter.

Very truly yours,  
TURNER LAW OFFICES, P.C.

Robert J. Turner, Esq.

Not certified as a family law specialist by the Tennessee Commission on Continuing Legal Education and Specialization

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[www.TurnerLawOffices.com](http://www.TurnerLawOffices.com)

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