FILED
FEB 01 2021
Clerk of the Appellate Courts
Rec'd By ______

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January 27, 2021

The Tennessee Bar Association
221 4th Avenue North, Suite 400
Nashville, Tennessee 37219

Chief Justice Jeffrey S. Bivens
401 7th Avenue North, Suite 321
Supreme Court Building
Nashville, Tennessee 37219-1407

Re: Amendment to Rule 21, Tennessee Supreme Court Rule
Number ADM2020-01159

Gentlemen:

It has come to my attention that the Tennessee Bar Association is proposing an amendment to Rule 21, Section 3.01(a) of the Rules of Tennessee Supreme Court to mandate that each attorney complete two hours of the annual fifteen hours of required continuing legal education in diversity, inclusion, equity, and elimination of bias. The deadline for written comments is now March 3, 2021.

I have great concerns about this proposed amendment. Who or what will define "diversity," "inclusion," "equity," and "elimination of bias"?

All individuals are generally in favor of the concepts of diversity, inclusion, equity, and the elimination of bias. However, many well-intentioned but misguided people in society are using the concept of diversity, inclusion, equity, and elimination of bias, to put forth various "lifestyle" agendas with which many individuals in our great country strongly disagree.

We are now seeing that many of the same proponents of this diversity, inclusion, equity and elimination of bias agenda combine this agenda with an agenda wherein those who disagree with their version of "diversity" agenda, are dishonest, racist, homophobic, etc., and must be "reeducated" and/or must be "reprogrammed" to eliminate their (beliefs) dishonesty, racism, homophobia, etc..

To put it bluntly, the liberals desire to reeducate and/or reprogram the conservatives to eliminate any debate and/or opposition to this liberal agenda.

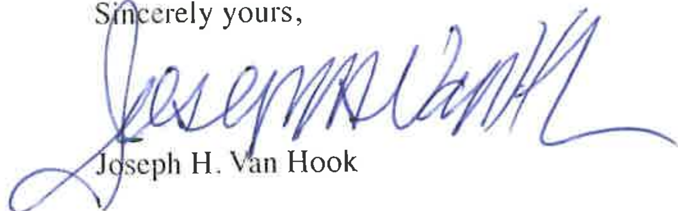
I have great concerns that this "noble-sounding" concept of diversity, inclusion, equity, and elimination of bias, is nothing more than the attempt to introduce a liberal agenda to destroy sincere conservative beliefs held by what I believe to be the majority of citizens in Tennessee.

If the required continuing legal education on these specific topics ignore and/or attack individuals who do not necessarily agree with the liberal interpretations of these worthy concepts, this will result in an attack, and in today's climate, it would be an attack to obliterate and destroy any individual that disagrees with these liberal definitions and understandings of these topics.

Therefore, I am opposed to any mandate that each attorney complete two hours of required continued legal education in diversity, inclusion, equity, and elimination of bias.

Thank you very much.

Sincerely yours,



Joseph H. Van Hook

JHV:srb

TBA letter 1.26.21

FILED
JAN 15 2021
Clerk of the Appellate Courts
Rec'd By ______

Adam Bennett - Docket number ADM2020-01159

From: Deborah Buchholz <dbuchholz@bskplc.com>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 1/15/2021 8:55 AM
Subject: Docket number ADM2020-01159

I'm writing to express my opposition to the Nashville Bar Association's proposed modification of Rule 21 to mandate that 2 of the 15 hours of mandatory continuing legal education be devoted to diversity, inclusion, equity, and elimination of bias.

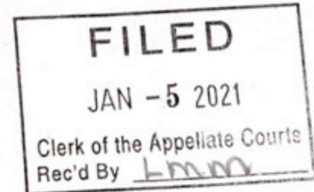
Mandating such training presupposes and accepts the position that the United States is a country rife with deeply rooted and systematic racism, gender bias, and other forms of discrimination and that 2 hours of education per year is necessary to combat such inequities. Not all attorneys subject to Rule 21 share that position. To the extent that some attorneys believe such training to be valuable, they are already free to voluntarily pursue CLE on those topics. Thus, the proposed modification would serve no purpose other than to force those attorneys who fundamentally disagree with the underlying premise to attend 2 hours of propaganda in an attempt to indoctrinate them to the preferred viewpoint. Such forced attendance is unlikely to change minds. Accordingly, it is my belief that mandating this training would serve no practical purpose and the Nashville Bar Association's petition to modify Rule 21 should be denied.

Best regards,

Deborah Buchholz

BROCK · SHIPE · KLENK

265 Brookview Centre Way, Suite 604
Knoxville, Tennessee 37919
(865) 338-9700



Christopher A. Hall
1429 Cherokee Blvd
Knoxville, TN 37919
(865) 274-9898

January 5, 2021

Mr. James M. Hivner. Clerk
100 Supreme Court Building
401Seventh Avenue North
Nashville, TN 37219-1407
appellatecourtclerk@tncourts.gov

VIA E-MAIL TRANSMITTAL

Re: Tenn. Sup. Ct. R. 21, section 3.01
Supreme Court of Tennessee No. ADM2020-01159
My Comments with Respect to the Proposed Change to Rule 21

Dear Mr. Hivner:

I previously submitted a letter in response to the Order of the Court filed on September 28, 2020 soliciting comments with respect to the Petition filed by the Nashville Bar Association to amend Tenn. Sup. Ct. R. 21, Section 3.01(a) on December 30, 2020, which I understood to be the deadline for submitting such comments at that time.

I have since learned that the deadline has been extended to March 3, 2021 to permit the Tennessee Bar Association (the "TBA") to meet and consider its response to the proposed rule change.

As a result of such development, I ask that you withdraw my previously submitted comments set forth in my letter to the Tennessee Supreme Court and to you dated December 30, 2020. After the TBA publishes its response to the proposed rule change, I will refine and resubmit such letter.

I have been unable to locate your telephone number to call you and confirm the withdrawal of my response with you. Would you please be kind enough to advise me electronically (chall@lrwlaw.com) or by phone call ((865) 274 – 9898) to confirm that you have withdrawn such comments.

I must also acknowledge that, as a transactional lawyer, December is invariably an extremely busy month for me, so I was not able to give adequate attention to some of the syntax and style of my December 30, 2020 letter.

Thank you for your time and consideration with respect to this matter.

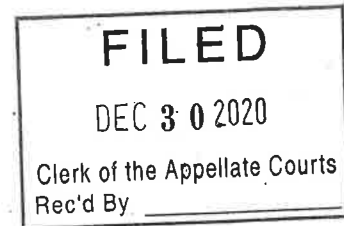
With best regards,

Christopher A. Hall

Christopher A. Hall

CAH/mkl

Christopher A. Hall
1429 Cherokee Blvd
Knoxville, TN 37919
(865) 274-9898



December 29, 2020

The Honorable Jeffrey S. Bivins, Chief Justice
The Honorable Cornelia A. Clark, Justice
The Honorable Holly Kirby, Justice
The Honorable Sharon G. Lee, Justice
The Honorable Roger A. Page, Justice

Attn: Mr. James M. Hivner. Clerk
100 Supreme Court Building
401Seventh Avenue North
Nashville, TN 37219-1407

Re: Tenn. Sup. Ct. R. 21, section 3.01
Supreme Court of Tennessee No. ADM2020-01159

Dear Chief Justice Bivins, Justice Clark, Justice Kirby, Justice Lee, and Justice Page:

I send this letter in response to the Order of the Court filed on September 28, 2020 soliciting comments with respect to the Petition filed by the Nashville Bar Association to amend Tenn. Sup. Ct. R. 21, Section 3.01(a) (the "Petition").

1. **Background.**

In considering the Petition, it is appropriate to frame its broader context by viewing it in tandem with the Joint Petition of the Tennessee Board of Professional Responsibility (the "BPR") and the Tennessee Bar Association (the "TBA") that was filed on November 21, 2017 and which urged the Court to adopt amendments to Rule of Professional Conduct 8.4 to mimic the ABA Model Rule 8.4(g) (the "Joint Petition"), because the similarities between them are so striking. The Court declined to so amend Rule 8.4.

The purpose of the amendments set forth in the Petition is to dictate how lawyers think, while the purpose of those set forth in the Joint Petition was to direct how lawyers speak (or, more accurately, not speak).

But their greater purpose is to ask the Court to use its powers to mandate that lawyers follow the political orthodoxy of the parties who signed them.

In a letter to the Court dated March 16, 2018, Attorney General Herbert H. Slatery III eloquently explained how the proposed amendment to Rule 8.4 set forth in the Joint Petition would unlawfully restrict the free speech rights of lawyers guaranteed by the United States Constitution and the Tennessee Constitution and how it conflicts with other Rules of Professional Conduct. The fact

that the TBA and the BPR were so unconcerned about the First Amendment rights of Tennessee lawyers begs the question whether they were unaware of the Joint Petition's suggested intrusions on free speech or they simply did not care about them. Given the vast legal expertise represented by the TBA and the BPR and their respective members, I can certainly make an educated guess as to the answer to such question.

2. **The Politicization of Bar Associations.**

It is not at all surprising that the TBA would proffer a patently unconstitutional rule to the Court. Engaging in this type of wantonly political activity, under the pretext of protecting our profession and its public image, is a part of the pathology of the TBA and other bar associations.

The TBA's efforts with respect to the Joint Petition were consistent with the its earlier failed attempts to perpetuate its role in blocking the duty of a Governor under the Tennessee Constitution to freely appoint appellate judges and justices. To say the least, the TBA's efforts did not seek to obtain diversity and inclusion on the Court. Instead, it endeavored to enshrine in the Tennessee Constitution a mechanism to maintain control of the Court by one political party. Those efforts were abundantly clear at the time.

The TBA and its lobbyist worked with its legislative emissaries prepare a proposed amendment to the Tennessee Constitution which would thwart the ability of a Governor to appoint appellate judges and Court justices of his or her own choosing. Its desire was to cause an unelected commission, accountable to no one, decide which applicants would go to the Governor for his or her assessment and those whom the Governor could not consider. In so doing, the TBA was attempted to disenfranchise the voters of Tennessee with respect to judicial appointments.

The TBA chose political party affiliation as a prerequisite for service on the Court.

The TBA's true motive was to prevent the composition of the Court as it presently exists.

But the citizens of Tennessee decided differently in ratifying the "Yes on 2" amendment to the Tennessee Constitution and, in so doing, proved that the TBA had bet unwisely.

While the TBA and its sponsors contemplated a "roll out" of their amendment to the public, the sponsors of the "Yes on 2" amendment got their bill through their respective committees and to the floor of the Senate and House and to the voters for their consideration. After being legislatively outflanked, the TBA fell in line and supported the "Yes on 2" amendment as if it was its own legislation. Other bar associations followed lockstep in line with respect to the "Yes on 2" amendment that the TBA had unsuccessfully attempted to thwart.

When all of this drama played out in the General Assembly, the TBA's actions had become comedic. This is unfortunate, because the TBA had rightfully served as the vanguard for the practice of law in our State for decades. In pursuing its partisan political agenda, in this case unsuccessfully, it sacrificed its reputation as a trustworthy representative of our profession. Each time it and other bar associations pursue these types of politically motivated activities, they continue to sacrifice their remaining stature and credibility.

One would think that the trade-off between being regarded as the objective public face of our profession on the one hand and being viewed as a partisan political voice on the other would be an easy decision, but bar associations have, nonetheless, continued to barter away their longstanding professional reputations for the opportunity to advance their own political initiatives.

The TBA is by no means alone as a bar association with respect to these matters, but it serves as the best example in our State as a result of its prominence. I declined to renew my TBA membership many years ago solely as a result of its political agenda. It did not remotely represent my views. If the TBA and local bar associations were to completely abandon their political efforts and focus solely on matters affecting our profession and the clients we serve, I would rejoin it without hesitation.

One needs to look no further than the American Bar Association (the "ABA") to witness the steep cost a bar association pays when it pursues politics over professionalism. The once venerable and powerful legal institution has been in a state of complete freefall for decades. The public views the ABA as a liberal lobbying organization and not as the public image of our profession. At this point, the ABA has become the legal arm of one political party. It has no remaining influence. As of 2017, it only counted 14.4% of licensed attorneys as dues-paying members. It has hemorrhaged members to the point that it has been forced to lay off employees and offer buyouts to others. The fine work that the ABA continues to do to educate lawyers with its outstanding legal publications and to evaluate and accredit law schools is completely overshadowed by the political zealotry of its leadership.

Our profession, and I respectfully believe, the Court, need bar associations. But we do not need ones which have been co-opted by any political party. Nor do we need bar associations which are more political than professional. The void created by a lack of serious, apolitical bar associations can only be filled by them. They need to look deeply inward and reflect on the consequences of their political activism before they can reverse course and once again become the voice of all lawyers and not simply those who adhere to their political narratives.

The current efforts of the NBA, along with the foregoing past efforts the TBA and others which will invariably follow (and also seek the imprimatur of the Court), are based on attempts to advance the partisan ideologies held by many bar associations. When they engage in partisan politics, however, they do so at a steep cost, because they forfeit any semblance of credibility among lawyers who do not share their political agendas and, much more importantly, among the public. To the very same extent that bar associations become political, they cease to be professional. Their members respond by resigning or declining to renew their memberships, and the bar associations further marginalize their influence.

More critically, though, trying to use bar associations, and ultimately the Court, to inject political activism into how attorneys think and practice law is wrong for our profession at multiple levels, and it is certainly not in the best interests of our clients, who would undoubtedly prefer that we focus on more germane matters, such as practicing law competently and honorably.

3. **The Relief Requested in the Petition.**

With this history as a backdrop, the Petition pays a rather obligatory reference to several provisions of the preamble to Rule 8 (that I still enjoy reading as a mantra for what a lawyer should be and what the practice should entail) and then seeks to refashion them as somehow necessitating Court-mandated lawyer education on the topics of diversity, inclusion, equity and bias elimination. I do not come to this same conclusion when I read the preamble to Rule 8. This attempted stretch of the concepts set forth in the preamble goes on for several paragraphs, citing no meaningful authority whatsoever. It is a loose litany of rationalizations designed to sway the Court to bring its considerable powers to such cause.

All of this caterwauling set forth in the Petition, and the similar arguments contained in the Joint Petition, are based on the false notion that the practice of law and attorney licensure should serve as the crucible in which all societal issues must be resolved. This is not the case.

The job of the Court does not include solving the various entrenched societal issues relating to race relations in our State, nor would attorney licensure requirements constitute the proper vehicle for effectuating such result if the Court possessed those vast capabilities.

As lawyers, we zealously represent our clients, irrespective of their race, religious beliefs, sexual preferences (or choices) or other defining aspects of their personalities or belief systems. We represent our clients with respect to their legal issues. Many of us take their needs to heart and think about them constantly when circumstances merit such concern. We frequently come to care for our clients very deeply and develop life-long friendships.

However, we take ourselves way too seriously as a profession if we think that clients seek our counsel for anything other than the handling of their legal matters. When bar associations clamor that we need to serve the public in other areas, usually to advance the political agendas of their leadership, they miss the mark entirely. Clients do not care about bar associations. Why would they? Most of their contacts with lawyers involves muting insufferable lawyer advertisements which, although legal, do not place our profession in a serious public view.

If the NBA's leadership was truly concerned about what the public expects from our profession, it should ask its members to poll their clients to learn their most critical concerns with our profession and the services those members perform for them. This would actually take courage, because the NBA members may not like their clients' answers. Does the NBA leadership truly believe that their clients would be most concerned with diversity, inclusion, equity and bias elimination? One does not need to be a clairvoyant to know that the greatest criticisms of most clients would undoubtedly be the cost of legal services and the timeliness in which lawyers provide them.

I do not expect the NBA, the TBA or any other bar association to petition the Court to require specific CLE hours to be devoted to billing and punctuality, although virtually all of us would benefit greatly from such instruction. I would write a letter to the Court in support of such a petition.

If a bar association is truly as concerned about the practice of law, including the protection of clients and the safeguarding of our profession's public image, as the NBA claims to be, presumably it would also look to the BPR for guidance regarding the nature of ethical complaints against Tennessee attorneys. Fortunately, the BPR is remarkably organized and publishes a very helpful pie chart which illustrates the categories of alleged infractions committed by lawyers. In reviewing the pie chart for 2019 ethical complaints, I do not see any categories which lend themselves to complaints involving a lack of diversity, inclusion, equity or bias elimination. This pie chart is set forth on page 31 of the Fall 2020 edition of *Board Notes*.

The stated purpose of the Petition is to amend a Rule of Professional Conduct to include matters which do not relate to any existing provisions of Rule 8 regarding the ethical obligations of lawyers or to any types of specific ethical complaints filed against Tennessee lawyers with the BPR. There reason for this incongruity is the fact that the NBA is seeking a Court-directed disciplinary approach to the fulfillment of its political agenda.

The Petition goes on to ask the Court to appropriate two (2) of the fifteen (15) required CLE hours to use for the study of "diversity, inclusion, equity, and elimination of bias". Thus, the NBA has determined that we need this specific instruction to the partial exclusion of substantive law courses and professionalism and ethics courses. Even if a need existed for the mandated study of the topics the NBA currently finds compelling, is such need paramount to our profession's need for instruction on substantive law matters or ethics and professionalism? I think that fifteen (15) hours of mandatory CLE is inadequate to satisfy the practice of law issues that lawyers routinely face. And the NBA really wants us to reduce our fifteen (15) hours of CLE by two (2) hours to require us to endure instruction in its new ideology?

I find the NBA's present leadership to be rather dubious standard-bearers for any efforts relating to race, diversity and inclusion. I suggest that the Court go to the NBA's website and click on the links of the NBA's 2020 officers. After doing so myself, I discerned that such slate of officers, as well as some of their own law firms, have an inordinately high Caucasian representation. And yet they seek to lead the charge to require the rest of us to learn about diversity, inclusion, equity and bias.

And what exactly would such CLE courses teach and who would select the permitted speakers? I will hazard a guess that the proposed required instruction will certainly not include the "discussion about race" that we frequently hear bandied around by the media and others. Instead, it will be a *lecture* about race. The presenters will speak and the Tennessee lawyers will dutifully listen.

If the NBA feels so strongly about these issues, perhaps it should sponsor a a series of debates about them. Or perhaps the TBA should do so on a statewide basis. I would certainly attend. When hearing differing views about these topics, perhaps everyone will hear different perspectives, learn something new and have better informed views regarding these topics.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

4. The Motives Underlying the Petition.

At its core, the Petition is grounded on the assumptions that:

1. The deaths of persons dying at the hands of a police officer (we will assume wrongfully for purposes of discussion) is something that the Court and the lower judiciary are incapable of satisfactorily addressing (it is noteworthy that the NBA chooses to concern itself with matters involving police officers on the street and not rogue prosecutors who violate their Brady disclosure obligations and let innocent parties languish for years in prison);

2. Lawyers are completely unaware of racism, gender bias, discrimination on the basis of gender identity and sexual orientation and other forms of inherent discrimination which exist in our legal system;

3. Lawyers must not only receive course work on these topics, but must also "acknowledge[e]", and presumably agree with the presenters' assessments of, them;

4. Riots, destruction of property, looting and assaults on law enforcement and others constitute "protests";

5. Law enforcement, including police officers, detectives, prosecutors and judges, are inherently racist; and

6. Caucasian people suffer from the original sin of racism.

These are the implicit tenets of the agenda the NBA is putting forth, although the NBA is intentionally rather circumspect in its diction.

I disagree with each of them. The purveyors of these untruths are the same types of activists who shout down public speakers who have a contrary viewpoint. Anyone with a television or a computer knows about the underlying issues even if we reach diametrically opposite conclusions as to their causes and effects.

They are issues best suited for the ballot box – not the Rules of Professional Conduct or bar associations.

More importantly, though, is the fact that these notions, as well as the stated concepts of diversity, inclusion, equity and bias elimination are code words for Critical Race Theory, which has become the new theology with respect to which bar associations and other institutions adhere. It includes reparations for slavery, the elimination of history, the removal of statues, rioting and looting, white fragility and a host of other actions and beliefs. All of these notions and concepts have absolutely nothing to do with the practice of law or attorney licensure, which are supposed to serve as the basis of the Petition.

In drafting the Petition, the NBA, which I assume to not want for excellent legal writers, chose to be extremely oblique in the concepts it presents to the Court to cause it to foist upon the Tennessee attorneys as licensure requirements. Its attempts to present rather amorphous, undefined and general terms to the Court is by design. The NBA seeks to avoid asking the Court to impose the study of Critical Race Theory and similar progressive and "woke" political agenda items on Tennessee lawyers. The Petition thus asks the Court require lawyers to study concepts and theories that it fails to even describe, with any particularity whatsoever, to the Court. This is analogous to the idea that Congress needs to pass legislation so it can later "find out what's in its"

5. Personal Observations on Race and the Practice of Law.

The Petition presupposes that attorneys lack sufficient knowledge of all matters involving race. Because this categorical assertion includes me, I will seek to briefly disabuse the NBA of its claim.

I was born in East St. Louis, Illinois, I grew up in St. Louis and Memphis, and I have practiced law in St. Louis, Shelby County (including Memphis) and Knoxville. Race has been a constant factor in my life for a very long time. I could not escape race, race relations and race politics if I tried. I am a graduate of a public school in the former Memphis City Schools system. We were not able to afford the cost of tuition for private colleges to which I was accepted, so I went to an in-state public university. I similarly attended an in-state public university law school and a state university tax school program. I worked side by side with both black and white people in menial jobs at the bottom of the economic food chain. I rode city and national bus lines with them until I graduated law school and tax school.

These experiences inform my thinking on all matters every day, including race. I would not trade them for anything. They have had a remarkable impact on my appreciation for other people of all races and persuasions and of all rungs on the socio-economic ladder. They continue to give me a perspective that I could never learn from reading a book or sitting in a class.

These same life experiences, particularly those I shared with the working poor, have led me to the rather simple approach that I employ in the practice of law and otherwise – namely, to treat people kindly and to try to help them. The results have suited me well in my life and in my practice of law.

The fact that a bar association now seeks to control my thoughts on racial matters is itself rather rich. I should be teaching whatever classes they propose – not sitting in in the audience.

My personal experiences are not unique. To the contrary, in my practice of law in Tennessee for the last 36 years, I know of many lawyers who have had similar, or even more hands-on, experiences in race and social class matters. A good many of our attorneys are combat veterans who have experiences which make my own pale by comparison.

I like notions of diversity and inclusion, but I place a much higher value on character and competence. It is not a close call to me, even though it makes me very happy to see our profession and other institutions garner greater representation among various ethnicities and groups.

Ordinarily, these notions should not conflict with one another, but when law schools, bar associations and law firms venerate skin color and sexuality over character and capabilities and insist that others do so as well, a conflict necessarily arises.

No required classes or ideological inculcation will ever cause me to be in league with the proponents of these practices. Are we to believe that they have no personal biases? Does anyone really think that if they needed a cutting-edge medical procedure, they would select a physician on the basis of diversity and inclusion or on the basis of competence? Consider the same question if such a person came home from work to find a divorce lawyer's business card on his or her refrigerator. Is that lawyer going to try to find the best divorce lawyer he or she can find or, alternatively, look to notions of diversity and inclusion in selecting a divorce lawyer?

The lawyers who insist on viewing our profession through a prism of black and white, so to speak, certainly do not need any assistance on my part to wander their chosen path. There is nothing anyone can say or do, nor are there any courses I can take or books I can read, which will cause me to view the practice of law from such a cynical and shallow perspective..

6. **Conclusion.**

I appreciate the Court's consideration of my comments on the Petition. For the reasons set forth hereinabove, I respectfully request that the Court decline to provide the relief requested in it.

Sincerely,

Christopher A. Hall

CAH/mkl

FILED
DEC 30 2020
Clerk of the Appellate Courts
Rec'd By LMM

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

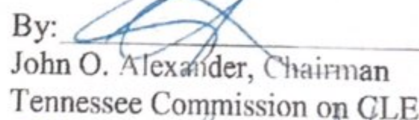
IN RE: AMENDMENT OF RULE 21, RULES OF THE TENNESSEE SUPREME COURT

No: ADM2020-01159

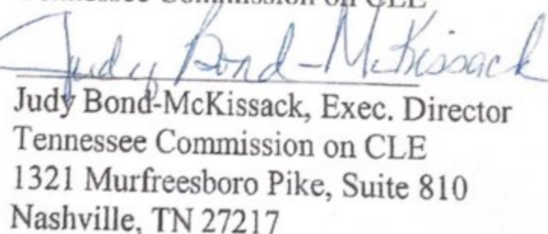
RESPONSE OF THE TENNESSEE COMMISSION ON CONTINUING LEGAL EDUCATION

In response to the petition filed by the Nashville Bar Association, the Tennessee Commission on Continuing Legal Education (hereinafter "Commission") would show unto the Court that the Commission has considered the Nashville Bar Association's thorough and detailed petition on this worthy and important issue. After much consideration, it is the Commission's position that a CLE requirement incorporating coverage of diversity and elimination of bias should be in the form of a one (1) hour professionalism CLE requirement imposed on an annual basis. The Commission also submits that a one (1) hour CLE requirement on professionalism should count as one (1) of the three (3) Dual credit hours required each year. Furthermore, in addition to diversity and elimination of bias programs, CLE programs on pertinent social and professional topics—including but not limited to mental health, substance abuse, sexual harassment, and congeniality among the bar—should also be designated to satisfy the CLE requirement on professionalism.

Respectfully submitted:
Tennessee Commission on
Continuing Legal Education

By: 

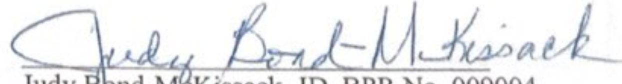
John O. Alexander, Chairman
Tennessee Commission on CLE



Judy Bond-McKissack, Exec. Director
Tennessee Commission on CLE
1321 Murfreesboro Pike, Suite 810
Nashville, TN 27217

CERTIFICATE OF SERVICE

I certify that a photocopy of this Response was mailed, first class postage paid, to the attached list of individuals and organizations, and was posted on the Commission's web site, www.cletn.com, this 29th day of December, 2020.



Judy Bond-McKissack, JD, BPR No. 009004
Executive Director, *Tennessee Commission on Continuing Legal Education*

List of Individuals and Organizations Receiving Notice of the Foregoing by Mail

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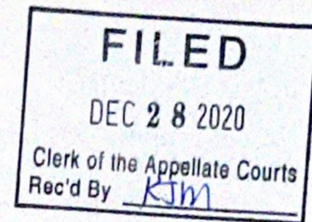

EMAIL TO: appeallatecourtclerk@tncourts.gov

James M. Hivner, Clerk
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Re: No. ADM2020-01159 Regarding Tenn. Sup. Ct. R. 21, §3.01

Opposition to "Petition of the Nashville Bar Association to Modify Rule 21 of the Rules of the Tennessee Supreme Court to Require 2 Hours of CLE Annually in Diversity, Inclusion, Equity, and Elimination of Bias" (the "Petition")

Dear Sir:

I am writing ***in opposition*** to the above-referenced Petition of the Nashville Bar Association ("NBA"). I am submitting my comments anonymously because, as stated by others who have submitted negative responses, I expect retribution. I can take care of myself, but without my name they cannot harm my clients to get to me.

1. The False Accusation of "Systemic" Injustice: The Petition charges that the Tennessee judicial system is "systemically" and "structurally" racist, gender-biased and discriminatory. By proposing the re-education and indoctrination of lawyers as a remedy, the Petition impliedly charges every lawyer in Tennessee with racism, gender-bias and other discrimination.

Neither charge is true. The NBA offers no evidence for the truth of the charges. It simply mentions some recent examples of police misconduct—which everyone abhors—and then appeals to the authority and opinions of other "woke" leftist lawyers and legal organizations. The truth is that recent studies, including one for the Obama Justice Department, tend to disprove "systemic" racism or bias in the criminal justice system in relation to arrests, prosecution or sentencing. [i]

I am offended by the false charge against me and other Tennessee lawyers. The Court should be offended that it is accused of presiding over a "systemically" unjust system, and it should stand up for the judges, court clerks, prosecutors and lawyers who are being smeared without evidence.

2. The Petition Seeks an Official Confession to the False Accusation: The proposed rule change cannot be separated from the reasoning which purportedly necessitates it. If the Court grants the Petition, it will be construed as an official confession of the false accusations that the Tennessee judicial system is systemically racist, gender biased and discriminatory. Beyond that, it will be construed as an admission that the Court believes that all Tennessee lawyers are racist, gender biased, discriminatory and in need of re-education.

3. Do Not Be Fooled—the Proposed Rule Change is Not "Neutral": The Court should not be fooled by arguments that the proposed change to Tenn. Sup. Ct. R. 21, §3.01(a) is "neutral"—by those who contend it is just a minor change to further the laudable goal of "bias elimination" ("BE"). And who doesn't want to eliminate bias? Those who make that argument are inviting the Court to wreck its own credibility. Everyone knows what this is about because we have seen it play out in other jurisdictions. The proposed rule change is intended as a vehicle for indoctrinating all Tennessee lawyers in highly dubious "woke" leftist political theories like "critical race theory" and "feminist jurisprudence." [ii] No one would believe the Court if it claimed to be approving the proposed change as some sort of "neutral" educational requirement.

4. What Real "Neutrality" Would Look Like: If the true objective of the Petition is to eliminate "all forms of discrimination within the judicial system," then the proposed rule change would define BE to include the elimination of political, religious, philosophical and ideological viewpoint bias as well as bias due to race, gender and gender assignment. If, for example, lawyers can earn 2 hours of CLE credit learning about "critical race theory," then they should be able to earn the same credit attending seminars that criticize critical race theory as is biased, divisive, racist and linked to Marxism. Also, a neutral rule change must be accompanied by an order that the Commission on CLE be "unbiased" in its approval of qualifying courses, and that the Commission must approve an equal number of equally aggressive courses presenting the opposing views.

5. Unconstitutional Remedy: If the Court issues a new rule that is not neutral—*i.e.* like the proposed rule, which requires all Tennessee lawyers to take 2 hours of CLE per year on BE and, as a practical matter, results in all Tennessee lawyers being indoctrinated in leftist political (or quasi-religious) theories—then the rule would be unconstitutional. The Court would be imposing moral, ethical and viewpoint conformity in violation of the religious liberty clauses of the U.S. and Tennessee Constitutions. [iii]

6. What the NBA is Not Telling the Court: The most glaring omission in the Petition is that the NBA fails to inform the Court of the natural and logical consequences of taking the actions the NBA urges upon it. If the Court does what the NBA wants—*i.e.* confesses to the lie that the Tennessee justice system is "systemically racist"—then it begs this question: Why waste time re-educating lawyers? That is a practically useless remedy, like putting a band-aid on a broken leg. After all, lawyers are just the worker-bees licensed by the state to help people negotiate the racist system. [iv]

If "systemic racism" or "systemic gender bias" is to be meaningfully remedied, isn't the obvious first step to cleanse the racist and bigoted "system" of the racists and bigots who run it—you know, the justices, judges, court clerks, and prosecutors, the people getting the tainted money from the rotten system? Why isn't the NBA calling for these officials to be stripped of their ill-gotten gains—their positions, salaries, pensions, and all of the other benefits and perks of office? Are they afraid to inform the Court of where they are leading it? Is the strategy to obtain the crucial confession first and give the Court the bad news later?

7. What the Court Should Do: Rather than confess a lie, which will then be unjustly imputed to the rest of the legal community, ***the Court*** (and its Access to Justice Commission) ***should do more than just reject the Petition***. It should issue a full-throated defense of the U.S. justice system and, by extension, the Tennessee justice system. It should explain why our system of justice, while imperfect, is the most "just" in the world and the envy of the world. It should make clear that the critics of our justice system are largely reduced to relying upon "microaggressions" that no reasonable person can detect and that have no measurable impact on justice. It should note that the critics rarely leave because no other country provides such justice or aspires to be a just place where "all men are created equal." The Court should affirmatively declare that Tennessee is not going to mandate that its lawyers be indoctrinated in dubious political theories like "critical race theory" and "feminist jurisprudence." It should explain why those theories: (a) are themselves divisive and racist or sexist, (b) are contrary to the fundamental principles on which the U.S. was founded, (c) are designed to coerce conformity of viewpoint, (d) they perpetuate racial and gender stereotypes, and (e) they reinforce biases.

That is the only proper response of the Court to the Petition. The people who work in the system deserve the Court's defense, not a betrayal. What will the Court do?

Sincerely,

A Tennessee Lawyer

cc: Access to Justice Commission [Email To: bcoley@hdclaw.com]

ENDNOTES:

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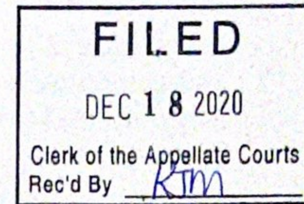
[i] *See, e.g.* https://www.washingtonpost.com/graphics/investigations/police-shootings-database/. According to this Washington Post database, police fatally shot 14 unarmed blacks and 25 unarmed whites in 2019; https://www.phillypolice.com/assets/directives/cops-w0753-pub.pdf. Fachner & Carter, *An Assessment of Deadly Force in the Philadelphia Police Department* (2015). According to this U.S. Justice Department study, white police officers were less likely than black and Hispanic officers to shoot unarmed black suspects (see pg. 33); https://www.pnas.org/content/116/32/15877 Proceedings of the National Academy of Sciences, *Officer Characteristics and Racial Disparities in Officer-Involved Shootings* (2019). "[The researchers] did not find evidence for anti-Black or anti-Hispanic disparity in police use of force across all shootings, and, if anything, found anti-White disparities when controlling for race-specific crime."

[ii] *See, e.g.*, Richard A. Posner, *The Skin Trade*, NEW REPUBLIC (Oct. 13, 1997) (calling critical scholars the "lunatic fringe" and critical race scholars "whiners" and the "lunatic core."); *see also* Daniel A. Farber & Suzanna Sherry, *Beyond All Reason: The Radical Assault on Truth in American Law* (1997); Heather MacDonald, *The Myth of Systemic Police Racism*, WALL STREET JOURNAL (June 2, 2020).

[iii] *See* U.S. Const., Amend. 1 and Tenn. Const., Art. I, § 3; *see also West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943)("If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.").

[iv] Besides, if some Tennessee lawyers are inalterably and irredeemably racist and gender biased by virtue of their race, sex and privilege—as some of these philosophies teach—then 2 hours of CLE each year would be of no benefit.



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December 18, 2020

Re: Docket No. ADM2020-01159 - Opposition to Amendment to Rule 21 of Section 3.01(a)

Dear Mr. Hivner,

On behalf of the Beacon Center Legal Foundation, we write to oppose the petition from the Nashville Bar Association to amend Rule 21 Section 3.01(a) to require that two hours of continuing education be dedicated to the study of systemic racism. While we commend the willingness to address ongoing racial disparities, the NBA's proposal appears to endorse critical race theory. This is not a productive approach, and we suggest an alternative.

Defining terms

The petition employs terms that it does not define: "systemic racism," "structural racism," "implicit bias and privilege," "systemic oppression," and "systemic change."[1] The failure to define terms was either unintentional or deliberate. If it is the former, then it provides reason enough deny the request. Until the NBA says what it means, we cannot sufficiently evaluate the proposal. If the NBA intended to be vague, then we should question what will happen when the curriculum takes forms. More on this below.

The NBA is using the language of critical race theory. Even if it will not acknowledge it, we should discuss what this entails. Critical race theory accepts as a given that white supremacy surrounds us, pervading all aspects

[1] Petition at 2.

of American life.[2][3] Under critical race theory, America was built upon white supremacy with all institutions, including the U.S. Constitution, oriented to its perpetuation. These are among the "structures" referenced in the term "structural racism."

We know what it looks like when these ideas become realized. An investigation into critical race theory in the federal government found the following:[4]

- The Treasury Department held a training session telling employees that "virtually all White people contribute to racism" and demanding that white staff members "struggle to own their racism" and accept their "unconscious bias, White privilege, and White fragility."
- The National Credit Union Administration held a session for 8,900 employees arguing that America was "founded on racism" and "built on the backs of people who were enslaved."
- Sandia National Laboratories—which produces our nuclear arsenal—held a three-day reeducation camp for white males, teaching them how to deconstruct their "white male culture" and forcing them to write letters of apology to women and people of color.

Perhaps NBA was not deliberately employing "strategic ambiguity,"[5] whereby one says something uncontroversial while intending something radical. If it wished to find common ground, then we would welcome the discussion.[6] But if it sought commonality, then it had an obligation to avoid confusing things with polemical terms. Until it says something different, we have no option but to

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[2] The book *White Fragility* — a canonical text in this ideology – puts it this way: "Racism is a systemic, societal, institutional, omnipresent, and epistemologically embedded phenomenon that pervades every vestige of our reality." Robin Diangelo, WHITE FRAGILITY: WHY IT'S SO HARD FOR WHITE PEOPLE TO TALK ABOUT RACISM (2018) < https://www.amazon.com/White-Fragility-People-About-Racism/dp/0807047414>.

[3] According to Professor Ibram X. Kendi – who literally wrote the book on how to be an "anti-racist" – "[t]here is no such thing as a nonracist or race-neutral policy. Every policy in every institution in every community in every nation is producing or sustaining either racial inequity or equity between racial groups." Ibram X. Kendi, HOW TO BE AN ANTI RACIST (2019) <https://www.ibramxkendi.com/how-to-be-an-antiracist-1>.

[4] Christopher Rufo, Summary of Critical Race Theory Investigations <https://christopherrufo.com/summary-of-critical-race-theory-investigations/>.

[5] Jonathan Butcher and Mike Gonzalez, *Critical Race Theory, the New Intolerance, and Its Grip on America*, The Heritage Foundation (Dec. 7, 2020) < https://www.heritage.org/civil-rights/report/critical-race-theory-the-new-intolerance-and-its-grip-america>.

[6] Racism remains with us and Americans should engage into open and frank conversations over how to improve upon racial disparities. The language the NBA chose to employ implies that its vision is not limited to the preceding observations.

understand these terms as having the intended meaning under critical race theory with all that implies.

The Proposal Should Be Rejected.

So, with these terms now identified, the suggested rule change ought to be rejected. It should go without saying that the Supreme Court should not take sides on a topic that is, to put it mildly, contentious and debatable. The purpose of CLE is to ensure professional competency, not to promulgate controversial viewpoints. It should equally go without saying that the Supreme Court should not require training in an ideology that openly promotes racial discrimination in the name of combatting racial discrimination.[7] Nor should we lend any credence to the suggestion that any *thought*, racism included, is so dangerous that it should be criminalized. Make no mistake about it; that is embraced under critical race theory. [8]

Hostility to freedom of speech is part of critical race theory's abandonment of liberal values wholesale, with its emphasis on the protection of individual liberty, and the rule of law which is, to its collective mind, a non-neutral power grab "favor[ing] the historically privileged and disadvantage[ing] the historically underprivileged."[9] We should absolutely be swimming upstream against the rising waters of this trend.

But there is a far more important reason why the Supreme Court should reject the petition's effort to force training in critical race theory. It undermines our shared sense of American self-worth by accepting as true that America and its Founding ideals rest on white supremacy.

To this, we cannot accede.

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[7] According to Professor Kendi: "The only remedy to racist discrimination is antiracist discrimination. *The only remedy to past discrimination is present discrimination. The only remedy to present discrimination is future discrimination.*" (emphasis added) <https://www.goodreads.com/work/quotes/62549152-how-to-be-an-antiracist?page=2>.

[8] Professor Kendi proposes an "anti-racist" amendment to the Constitution that would, among other things, make illegal "racist ideas" and create a "Department of Anti-Racism" empowered with "disciplinary tools to wield over and against policymakers and public officials who do not voluntarily change their racist policy and ideas." Ibram X. Kendi, *Pass an Anti-Racist Constitutional Amendment*, Politico <https://www.politico.com/interactives/2019/how-to-fix-politics-in-america/inequality/pass-an-anti-racist-constitutional-amendment/>.

[9] Butcher, SUPRA, n. 5 (quoting Cornell Law School, "Critical Legal Theory," <https://www.law.cornell.edu/wex/critical_legal_theory>).

Frederick Douglass was neither stupid, nor guilty of false consciousness, when he described the Constitution as a "glorious liberty document." [10] The widespread misperceptions about the role white supremacy played in our Nation's Founding show a real need for serious reacquaintance with our state and federal constitutions. We would better confront racial injustice if we committed ourselves to a reengagement with American constitutional thought. Critical race theory implies that the entire project was corrupt from the start, cannot be redeemed, and we need to start over.

We should not foster antipathy towards our shared heritage. We should cultivate a sense of gratitude and reverence for America and its Founding documents. We have an obligation to understand and pass down our appreciation to future generations as part of their cultural inheritance. As lawyers, the custodial duty over this sort of informed reverence for our legal structure adheres particularly to us. If we can no longer stand, or stand for, the extraordinary ideas woven from the beginning into the culture that nurtured us and gave us a home – that is, to *advocate for* our country – then I cannot see any way in which we are, on the whole, a beneficial profession.

No one is advocating for a sanitized view of our Nation's history. An examination of slavery's uncomfortable existence alongside our Founding documents is an entirely worthy project. But we should never be less than perfectly clear that the moral philosophy represented in the Declaration of Independence and Constitution was a repudiation of this horrid but longstanding aspect of humanity, and would one day destroy it. It took far too long to actualize, but it is nevertheless true. "Take the Constitution according to its plain reading," said Frederick Douglass, "I defy the presentation of a single pro-slavery clause in it."[11] On the subject, a number of excellent books and articles have recently been written. The NBA would do well to consider them.[12]

---

[10] Frederick Douglass, *What to the Slave is the Fourth of July*? (July 5, 1852) in 50 Core American Documents 202, 222 (Ashbrook Press, 2015).

[11] *Id.* at 223.

[12] Timothy Sandefur wrote excellent articles rebutting the argument of the *1619 Project* that America was founded to promote slavery and white supremacy. *See* Timothy Sandefur, *The Anti-Slavery Constitution*, National Review (Sept. 30, 2019) <https://www.nationalreview.com/magazine/2019/09/30/the-anti-slavery-constitution/> and *The Founders Were Flawed. The Nation is Imperfect. The Constitution is Still a 'Glorious Liberty Document'"* Reason (Aug. 21, 2019) (reprinted in <https://www.cato.org/publications/commentary/founders-were-flawed-nation-imperfect-constitution-still-glorious-liberty>. For longer treatments, see C. Bradley Thompson, America's Revolutionary Mind: A Moral History of the American Revolution and the Declaration That Defined It (2010) and Sean Wilentz, No Property in Man: Slavery and Antislavery at the Nation's Founding (2018).

A Counter-Proposal

Let us be the first to submit a counter-proposal to the NBA. Let us wield America's political philosophy as a tool to combat racial injustice. The Constitution is written one way, but enforced another. I propose that we ask what role the failure to enforce the Constitution *as written* contributes to present-day racial inequalities. We would enthusiastically contribute to the development a legal program along these lines.

Our state and federal constitutions have quite a lot to say that remains relevant. For instance, health care is one area in which the American Bar Association identified racial disparities.[13] As of 2017, Tennessee maintained and enforced monopolies in 23 forms of health care services alone,[14] notwithstanding Tennessee's constitutional prohibition on state-sanctioned monopolies.[15] Here is a question only lawyers can address: if monopolies "shall not be allowed" in Tennessee, TENN. CONST. ART. I, § 22, then how could we have 23 of them in Tennessee's health care services alone? What role do these state-sanctioned restrictions on health care services play in promoting disparate health care outcomes? Health care is but one field in which we may have a productive discussion.

It strikes me that, as lawyers, here we might actually be of some use because the project is, at its heart, a legal question. We are less well positioned as a profession to be instrumental in the "[r]ooting out of systemic racism, gender bias, and all forms of discrimination within the judicial system,"[16] which are already illegal and policed by a variety of agencies.

Conclusion

I propose we make good use of our skills while knitting together our divisions as a country and profession by fostering an appreciation for America's true purpose. While we recognize that racial injustices are real, and commend the NBA's willingness to confront them, forcing lawyers to absorb a deeply polarizing and ahistorical doctrine is the wrong approach.

---

[13] Khlara M. Bridges, *Implicit Bias and Racial Disparities in Health Care* (excerpted from CRITICAL RACE THEORY: A PRIMER (2018)) <https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-state-of-healthcare-in-the-united-states/racial-disparities-in-health-care/>.

[14] A 2017 study by the Mercatus Institute identified 23 health care services that require a certificate of need for a new or expanded service as a matter of state law. <https://www.mercatus.org/system/files/tennessee_state_profile.pdf>.

[15] "That perpetuities and monopolies are contrary to the genius of a free State, and shall not be allowed." TENN. CONST. ART. I, § 22.

[16] Petition at 2.

We respectfully ask the Supreme Court to reject the adoption of the proposed rule in question.

Respectfully submitted,

s/B.H. Boucek
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ADM2020-01159
FILED
DEC 1 6 2020
Clerk of the Appellate Courts
Rec'd By KJM

From: "Porter, Kaya Grace" <KPorter@LewisThomason.com>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 12/16/2020 3:55 PM
Subject: No. ADM2020-01159

Dear Sir or Madam:

I wholeheartedly support the above referenced initiative requiring that Tennessee attorneys complete two hours of continuing legal education focused on diversity, inclusion, equity, and elimination of bias. In my opinion, this is the least we of an esteemed profession can do to make our world a better place for all.

Sincerely,

Kaya Grace Porter

LEWIS THOMASON

Kaya Grace Porter Attorney at Law
Lewis Thomason, P.C.
424 Church Street, Suite 2500 | P.O. Box 198615 | Nashville, TN 37219
Tel: 615-259-1366 | Fax: 615-259-1389
Web Page | My Bio

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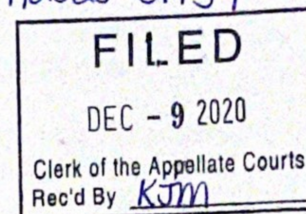
ADM2020-01159



Gary S. Humble, Esq.

James M. Hivner, Clerk
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

RE: Tenn. Sup. Ct. R. 21, section 3.01

Dear Mr. Hivner:

Thank you for the opportunity to provide input regarding the modification of Rule 21. I have always appreciated how our bar (of which I have been a proud member since 1980) seeks input from practitioners regarding policy matters. Please accept my suggestions in the spirit in which they are intended: borne out of humility, experience, and careful consideration.

I oppose the petition submitted by the Nashville Bar Association ("NBA") asking the Court to modify Rule 21, section 3.01(a) to require lawyers to complete two hours training in diversity, inclusion, equity, and elimination of bias. While I believe the proposal is well-intended, I respectfully submit that it misses the mark and may be counterproductive.

Firstly, I always take issue with the concept of generalizing from the specific. The petition is political in nature. It assumes systemic racism. It bases this assumption on cases, such as George Floyd, that may not support the conclusion. Like all others, I found Mr. Floyd's treatment and subsequent death horrific. However, there is no publicly available evidence that the force used was motivated by racism. Similar cases may show that some police officers engaged in excessive force, but there are obviously motivations other than racism that may be the drivers of such behavior. More significantly, there is no evidence that racist *policies* are in place in any of our institutions, especially our court system.

Secondly, I respectfully note that the Court is a state actor and that the Court's requirements are coercive. A recommendation that lawyers take diversity training rather than making it compulsory would be a better approach, assuming the Court were to find such training worthwhile. Compulsory bias training assumes that lawyers are biased and need to be taught otherwise. I do not believe lawyers in this state are. As a retired federal prosecutor and sitting judge, I have never witnessed a lawyer give any client less than her/his best effort irrespective of the client's color, national origin, sex, or sexual orientation. Most attorneys are sufficiently aware to know where they need help and CLE is a good place to get it.

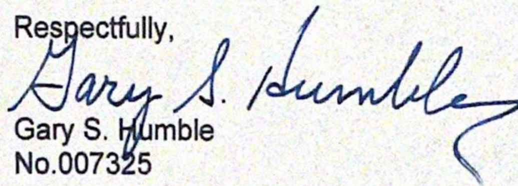
Currently, only ethics training is mandatory. We can all agree that such training is a necessary requirement for practicing law and being current in that area is important. We cannot all agree on diversity training. If the Court is contemplating using its coercive

powers to improve the ability of lawyers to represent all clients, there may be other, substantive areas that are more important to improving the quality of our representation.

Finally, while not intending to write a vouching or self-serving letter, it is important I note that since my retirement from the U.S. Attorney's Office I have represented all kinds of defendants in state and federal court. As an Assistant U.S. Attorney, I prosecuted cases involving all varieties of individuals. I have prosecuted law enforcement officers (including elected sheriffs and federal officers, such as an FBI agent),con men and women of every stripe, drug distributors, and violent predators. I also prosecuted individuals associated with white supremacist groups who had committed violent crimes. I have a small concern that *requiring* diversity training will be used by certain groups against defense counsel, particularly in the nationalist or white supremacist realm. As I am certain the Court is aware, defendants can be quite creative when raising conflict and post-conviction theories. Giving any ammunition to such defendants ("my lawyer took diversity training and was hostile to me") to suggest that a lawyer/prosecutor was not impartial is a mistake.

For the reasons cited above, I object to compulsory diversity training. Thank you for allowing me to share my thoughts.

Respectfully,



Gary S. Humble
No.007325

FILED
DEC - 9 2020
Clerk of the Appellate Courts
Rec'd By LMM

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Michael J. Stanuszek
Amanda Tonkin
Elizabeth Towe
Mikel A. Towe

Executive Director
Marsha S. Watson
mwatson@knoxbar.org

December 9, 2020

VIA E-Mail: appellatecourtclerk@tncourts.gov

James Hivner, Clerk of Appellate Courts
Tennessee Supreme Court
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

Re: No. ADM2020-01159 - Amendments to Tennessee Supreme Court Rule 21

Dear Mr. Hivner:

I am writing to you and to the Tennessee Supreme Court on behalf of the Board of Governors of the Knoxville Bar Association (KBA) regarding the Nashville Bar Association's (NBA) petition to amend Rule 21 of the Rules of the Tennessee Supreme Court to require mandatory CLE training for Tennessee attorneys on the topics of diversity, inclusion, equity, and elimination of bias.

In August, when the NBA shared a copy of their petition, the KBA began requesting input from members regarding the proposed change to Rule 21. Since that time, we have heard from members strongly advocating both for and against the petition. The KBA's Professionalism Committee carefully considered the Court's Order with the NBA's petition during both its October and November 2020 meetings. For more than twenty-five years, the KBA's Diversity in the Profession Committee, and its predecessor, the Minority Opportunities Committee, have sponsored at least one annual continuing legal education (CLE) program on the topics of diversity and inclusion. During its October meeting, members of the Diversity in the Profession Committee expressed their support for the NBA petition.

The members of the KBA Board of Governors were asked to consider the proposed changes to Rule 21 and to inquire of their colleagues in the bar about the NBA petition. Having been made aware of concerns and questions raised during Committee discussions and by other KBA members, the Board was provided with a summary, including but not limited to, the following:

1. Whether two of the fifteen mandatory hours should be spent on this, or some lesser amount, e.g. one hour, one hour every other year, or expiration of the requirement after an attorney has taken a certain number of hours.
2. How the hours should be categorized, i.e., whether for general credit, ethics/professionalism credit, or dual credit.
3. Whether it is appropriate to use any mandatory CLE instruction time to take the place of other substantive legal topics addressing attorneys' most pressing needs and deficiencies.
4. How the proposed CLE programs would be evaluated for effectiveness or approved as diversity or inclusion programs.
5. Whether the existence of systemic racism or bias in the bar, as opposed to in society at large, has been established and/or is assumed in the petition.

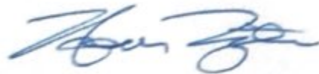
6. Whether, if systemic racism is an issue in the bar, two hours of CLE would be enough to address it or whether additional measures would be required.
7. Whether, even if the existence of systemic racism in the bar has not been established, the proposed CLE courses are still a good idea because of the prevalence of diversity and inclusion-related issues that lawyers and judges encounter.
8. Whether the petition is seeking to require instruction in a particular political or another viewpoint that might not be appropriate for required legal education.
9. Whether the petition subjects attorneys to viewpoints in violation of the First Amendment right to freedom from expression.
10. What is the scope of the diversity or bias that will be addressed in the approved CLE courses, e.g., whether in addition to race and gender, the scope will or should include other areas such as cultural, political, or religious diversity and bias.

At the November 18, 2020 meeting, the Board of Governors engaged in extended discussion about the proposed changes and unanimously voted to support the proposed amendment to the extent that it requires some CLE on the subjects of Diversity and Inclusion. The Board did not vote specifically on whether to support an annual requirement of two hours but did vote to share the concerns above, as raised by the Professionalism Committee and other members of the Knoxville bar, to assist the Court as it evaluates the petition.

As always, the KBA appreciates the invitation to consider and comment on proposed rules changes.

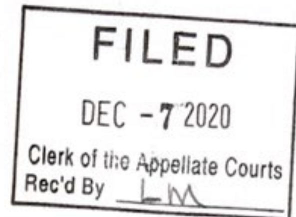
As always, the KBA appreciates the opportunity to comment on proposed Rules and changes to such Rules promulgated by the Tennessee Supreme Court.

Sincerely,



Hanson Tipton, President
Knoxville Bar Association

cc: Marsha Watson, KBA Executive Director (via e-mail)



Crane, Lee & Moya, P.L.L.C.

Attorneys and Counselors at Law

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December 7, 2020

James M. Hivner, Clerk
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

re: No. ADM2020-01159

Dear Sir:

I write to express my opposition to the petition filed by the Nashville Bar Association (NBA) under the above docket number. I have been licensed to practice law in Tennessee since 1985.

While mandatory continuing legal education(CLE) is acceptable, mandating the content of any part of CLE is not, with the notable exception of Tennessee's requirement of three (3) hours of legal ethics education. Tennessee's current ethics education requirement allows a broad spectrum of content within its scope. The CLE requirement proposed by the NBA is narrowly tailored and politically charged. If the Tennessee Supreme Court grants the NBA's petition, I expect to be compelled to listen to Marxist/Communist/totalitarian dogma under the guise of "racial equality" training. I expect to be told that I am a racist, sexist, and unfairly privileged merely because I am a Caucasian male, and that the United States of America is an evil, racist nation. Such CLE bears a frightening resemblance to the "re-education camps" of the Marxist/Communist governments of the former Soviet Union and the People's Republic of China. Much of the content of such so-called "education" will doubtless be created by persons with Marxist/Communist/anti-American/totalitarian leanings, while flying the false flag of racial equality. I have heard enough of it already. I object to being forced to pay to hear more.

The first paragraph of page 3 of the NBA's petition notes that "the vast majority" of jurisdictions do not require the sort of CLE that the NBA's petition proposes, and that the few jurisdictions that have such a requirement only require one (1) hour every three (3) years. If Tennessee attorneys are subjected to such a mandate, all of our required annual ethics CLE hours will be consumed with such training. There is no shortage of such CLE courses available to those who wish to take them and are willing to pay for them.

The first paragraph of page 3 of the NBA's petition also urges Tennessee's Supreme Court to become a "leader" by requiring three (3) hours of diversity, inclusion, equity, and elimination of bias training each year for attorneys licensed to practice law in Tennessee. Tennessee does not need to be that sort of "leader." I do not want my state to "lead" the United States into socialism/Marxism/totalitarianism. We are too far along that path already.

The Constitutions of the United States and the State of Tennessee probably protect Tennessee attorneys from the sort of political indoctrination proposed in the NBA's petition, but I will leave those arguments to my colleagues who are constitutional attorneys. Hopefully some of them will find the courage to bring their legal abilities to bear against such forced indoctrination.

Yours truly,

Stewart M. Crane

Stewart M. Crane
BPR No. 011257

- Critical Race Theory

FILED
DEC 04 2020
Clerk of the Appellate Courts
Rec'd By ______
ADM2020-01159

From: Linda Thomas <slt1956@hotmail.com>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 12/4/2020 9:33 AM
Subject: Critical Race Theory

Critical race theory is racist and should not be allowed. Everyone should be treated equally by the law.
Nashville Bar Association Petitions Tennessee Supreme Court to Require Annual Critical Race Theory Training of Tennessee Attorneys and Judges - Tennessee Star

Linda Thomas
Lebanon Tennessee

- NBA Petition Annual Critical Race Theory - Tenn. Sup Ct. R.21, section 3.01, 100

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DEC - 4 2020
Clerk of the Appellate Courts
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From: Angela Ball <angela@angela-ball.com>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov> ADM2020-01159
Date: 12/4/2020 9:03 AM
Subject: NBA Petition Annual Critical Race Theory - Tenn. Sup Ct. R.21, section 3.01, 100
Cc: Angela Ball <angela@angela-ball.com>

Mr. James M. Hivner, Clerk

Dear sir, it has come to my attention that the Nashville Bar Association has petitioned for continued education to now include critical race theory. This is dangerous and walking a fine line of allowing social justice to enter what is already assumed in Rule 6, Admission of Attorneys. As a resident of the state of Tennessee and a constituent in Davidson county, I already feel powerless to have a voice. I hope and pray you will consider the outspoken, those supportive but unaware of how to voice opposition and others who are scared to object. We cannot allow a continued threat of social justice to enter what is already perfect because of a popular culture war issue.

With all respect and concern

Angela M Ball
615-477-9214
angela@angela-ball.com
LinkedIn

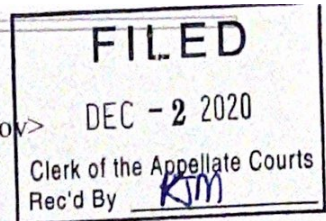
FILED
DEC - 2 2020
Clerk of the Appellate Courts
Rec'd By KJM

From: "Wm. J. Hart" <bill.crossbridge@gmail.com>
To: <appellatecourtclerk@tncourts.gov>
Date: 12/2/2020 6:14 PM
Subject: ADM2020-01159

Please be advised that I oppose the imposition of mandatory diversity training as a condition of maintaining or renewing my law license.
Sincerely,
William J. Hart
BPR #009984

Sent from my iPad

From: "Blue, Zan" <ZBlue@constangy.com>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 12/2/2020 6:45 PM
Subject: NBA proposed CLE requirements ADM2020-01159



Good evening, and thank you for the opportunity to present comments.

I speak only for myself and not on behalf of the firm or anyone else.

The purpose of CLE requirements is to maintain competence as an attorney. While diversity and inclusion is an admirable social objective, requiring attorneys to take classes concerning diversity and inclusion does not further the purpose of CLE. It furthers a social and/or political objective. Harold Maier, an excellent professor at Vanderbilt in my day, taught us that the policy behind the rule should inform its application. The policy of CLE is not to further social or political objectives other than maintaining a competent bar in which the public can have confidence.

While I stand behind no one with respect to my support, proven by my actions, for diversity and inclusion, I must oppose this proposed requirement.

In my view, the Supreme Court takes the proper approach to social issues with its active encouragement of pro bono legal work. The Court does not require pro bono legal work, and it should not.

One of my ongoing concerns as an officer of the court is the growing involvement of the judiciary in political and social issues better left to the democratic process and elected officials. The judiciary is already called upon far too often to resolve social and political issues posed as legal questions and engaging in that process has created a public perception of politicized judges. That is socially undesirable and jurisprudentially unwise.

Again, I must oppose this proposed requirement.

Zan Blue

Zan Blue
Partner - Office Head

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SunTrust Plaza
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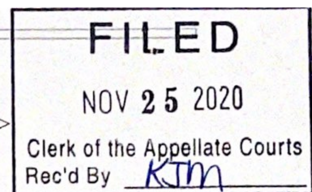


From: STEPHEN GARRETT <stephengarrett0702@comcast.net>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 11/25/2020 8:57 AM
Subject: Docket No. ADM2020-01159

The practice of law is a demanding, yet highly rewarding endeavor. For the vast majority of time, I love what I do for a living. I treasure, most of all, my interaction with my clients and with my colleagues in the bar and on the bench. Those clients and colleagues range the broad spectrum of people of different faiths, races and backgrounds.

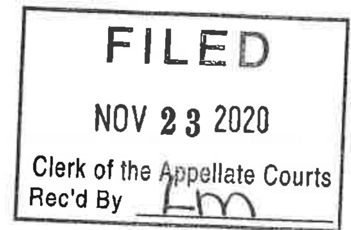
I do believe that racism continues to exist in this country, but I do not believe that racism to be systemic. I certainly believe that our bench and bar in this State do not suffer from that horrible issue to any pervasive extent. For these reasons, I oppose the proposal put forward by the Nashville Bar Association to mandate that two hours of the required fifteen hours of annual CLE be taken in diversity, inclusion, equity and elimination of bias. When the requirement for CLE was put into effect many years ago, it was certainly a very good idea. One definitely understands the need for all attorneys to remain abreast of new developments in the substantive law. It is indeed a necessity.

However, to place a new requirement such as is being proposed would put the profession onto what I would view a "slippery slope" toward an era wherein attorneys might continually be required to "learn" about any sort of social issue that some organization might find appropriate at any given time. Learning "the law" with which we attorneys must deal on a daily basis is vital. Learning about some person's or organization's take on the social or political "issue of the day" is not.

For these reasons, I respectfully urge the Court to **not** modify Rule 21, section 3.01(a) in the manner suggested.

Stephen K. Garrett (BPR No. 012082)
7838 Barker Road
Corryton, TN 37721

Saturday, November 28, 2020



James M. Hivner, Clerk
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407
appellatecourtclerk@tncourts.gov

RE: Tenn. Sup. Ct. R. 21, section 3.01, Docket No. ADM2020-01159

I am writing to you today to request that you deny the Nashville Bar Association's petition to modify Rule 21, Section 3.01(a) to require each attorney to complete two hours of diversity, inclusion, equity, and elimination of bias training.

To put it bluntly, this endeavor is an attempt at forced indoctrination. Diversity, inclusion, equity, and elimination of bias are political doctrines based on the moral values of those who adhere to them. Though those people may be well-intentioned, their belief in the rightfulness of their cause does not entitle them to force those values on others. Additionally, it is not the place of government to decide that bias, like any other idea, shall be eliminated. Though I believe that people ought not to be biased, it is a violation of the First Amendment for government to obligate anyone to be trained to stop holding any particular idea. There is no exception in the First Amendment for the elimination of bad ideas. Moreover, there is no exception in the First Amendment for the forced promotion of good ideas. Thus, even if their views are morally righteous, the First Amendment still prohibits ideological indoctrination like what is proposed here. The adherents to this ideology seek a captive audience for promoting their beliefs. If the Tennessee Supreme Court grants them such a captive audience by modifying Rule 21 as proposed, then the Court will have deprived us of our First Amendment rights.

I anticipate that arguments will be made that the proposed modification imposes no greater violation upon our First Amendment rights than the requirement that we receive three hours of ethics courses. However, though the concept of ethics in general does involve moral values, the purpose of ethics courses is to provide instruction regarding the rules of professional conduct to avoid violation. It is not the purpose of ethics courses to provide instruction as to what the providers of the course view as right and moral. Likewise, it is not the purpose of ethics courses to eliminate any particular ideas held by the attorneys attending them. Providing instruction regarding the content and interpretation of the law is not a violation of the First Amendment, but compelling instruction in the tenants of a political ideology is.

Furthermore, the ideology sought to be promoted by the Nashville Bar Association is wrong and un-American. The term "equity" refers to people receiving the same outcome.[1] Adherents of this ideology use the term "equity" to distinguish their endeavor from the American concept of "equality," which refers to treating people the same way. Adherents of the equity ideology, which is sought to be promoted by force through the Nashville Bar Association's petition, believe that equality is morally inferior to equity because equality allows for people to have different outcomes. Some people become more successful than others in an equal system. By contrast, in an equitable system, no one is more successful than anyone else. Success in an equal system is often attributed by these adherents to privilege, the accusation of which is then used both to denigrate successful individuals and to attack the notions of individual responsibility and the value of hard work.

An extreme example of the diversity, inclusion, and equity ideology in action can be found in the training materials used by Sandia National Laboratories in its mandatory training called "White Men's Caucus on Eliminating Racism, Sexism, and Homophobia in Organizations." These materials were leaked by whistleblowers at Sandia National Laboratories to Christopher Rufo, the director of the Discovery Institute's Center on Wealth & Poverty, who brought national attention to the content of this training.[2] This training involved racially and sexually targeted criticisms of its participants, obligated that those participants acknowledge and apologize for racist and sexist stereotypes of themselves, and claimed that concepts like "rugged individualism" and "hard work" are racist and sexist.

Another example of this ideology can be found in materials provided to employees of the Department of Homeland Security in a document titled "Diversity and Inclusion Certificate Program."[3] These materials, like the Sandia National Laboratories materials, were provided by whistleblowers to Christopher Rufo, who keeps a record of them at the website provided in the footnote below. This particular training in diversity, inclusivity, and equity sought to provide instruction regarding the concepts of "microinequities" and "microaggressions." The materials claim that statements such as "America is a melting pot," "I believe the most qualified person should get the job," and "America is the land of opportunity" are racist and sexist.

By providing these examples, I do not intend to suggest that completely identical trainings would necessarily be mandated for Tennessee attorneys. However, the ideology that led to these trainings is the same as that which the Nashville Bar Association now petitions for this Court to force upon the attorneys of the State of Tennessee. Regardless of what form such trainings take, the courses created by the adherents to this ideology will seek to indoctrinate

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[1] A brief description of this concept was provided by Senator Kamala Harris in a video that she promoted, which can be found here: https://twitter.com/KamalaHarris/status/1322963321994289154.

[2] https://christopherrufo.com/national-nuclear-laboratory-training-on-white-privilege-and-white-male-culture/

[3] https://christopherrufo.com/department-of-homeland-security-training-on-microinequities/

these values into Tennessee attorneys, and granting the Nashville Bar Association's petition will enable them to do so with the force of law.

Finally, in the Nashville Bar Association's petition, it lists five jurisdictions that it claims have implemented CLE requirements around bias elimination and diversity. Of those five jurisdictions, only one appears to share Tennessee's long history of embracing the freedoms enshrined in the First Amendment: West Virginia. However, here the Nashville Bar Association engages in deception. The Rule 6 revisions that the Nashville Bar Association cites do not require any training in diversity, inclusion, equity, or the elimination of bias. Rather, the Rule 6 revisions merely allow attorneys to take elimination of bias courses instead of taking ethics, office management, or attorney well-being courses. West Virginia does not appear to require any particular instruction in diversity, inclusion, equity, or elimination of bias. I have attached a copy of West Virginia's Rule 6 revisions to this letter.

Tennesseans are a free people who enjoy living in a free country, and the rules governing the practice of law in Tennessee should reflect our enjoyment of our freedoms. Courses promoting the diversity, inclusion, and equity ideology should continue to be permitted so long as participation is voluntary. Though I personally disapprove of the ideology of equity, as explained above, I believe that a free Tennessee requires tolerance of all ideologies but compelled indoctrination of none. Therefore, I respectfully request that this Court deny the petition to modify Rule 21.

Sincerely,

Anthony Berry
Attorney at Law

5.05 Canvassing of ballots.

(a) The results of the electronic ballots shall be canvassed by the committee on elections. On March 21st of each year, or within five days thereafter, not counting weekends and holidays, the committee shall meet and review the electronic ballot results.

(b) The nominee who receives the plurality of the votes cast in their district shall be declared to be elected from that district. If for any district two or more nominees are found to have received an equal and the highest number of votes, the committee shall, cause a run-off election to be conducted by electronic ballot, in such manner as it may select, and the one so determined shall be certified as elected.

(c) The committee shall certify to the Executive Director of the State Bar the results of the election.

(d) The Executive Director shall forthwith publicly announce the results of the canvass and notify each candidate of the results of the election. At the Board's quarterly meeting following the election the Executive Director shall present the certificate of the committee on elections and the President shall officially declare the result.

5.06 Other elections and referenda.

Unless otherwise provided by order of the Supreme Court of Appeals, the applicable provisions of this Rule shall apply to any election on the adoption of proposed amendments to the Constitution and Bylaws and to any referendum on any proposal submitted to the membership under the applicable provisions of Article 11 of the Bylaws.

[CLERK'S COMMENTS: This Rule is derived from Chapter I of the State Bar Rules and Regulations. In addition to formatting and consistency changes, the Rule now provides flexibility with regard to certain types of notice and eliminates archaic provisions that have not been followed. The electronic voting procedures have been in use for several years under a Supreme Court Administrative Order. In addition, inserted language would allow the Court to issue an order modifying deadlines and procedures.]

Rule 6 Mandatory continuing legal education

6.01 Definitions

(a) "Active non-practicing lawyers" — An active non-practicing member of the West Virginia State Bar as defined in Bylaw 2.04.

(b) "Approved activity" — A continuing legal education activity that is offered by a presumptively-accredited provider under Rule 6.08, or an individual continuing legal

education activity that has been approved by the Mandatory Continuing Legal Education Commission ("Commission").

(c) "Commission" — The Mandatory Continuing Legal Education ("MCLE") Commission established in Bylaw 15.02.

(d) "Credit hour" —Each period of fifty minutes of instruction actually attended in an approved activity.

(e) "Inactive lawyers" — An inactive member of the West Virginia State Bar as defined in Bylaw 2.05.

(f) "In-house activity" — Activities offered by law firms, corporate legal departments, governmental legal agencies, or similar entities for the education of lawyers who are members of the firm, department, or entity.

(g) "Lawyer"or "active member"— An active member of the West Virginia State Bar as defined in Bylaw 2.03.

(h) "Reporting period" — A time period during which a certain number of credit hours must be obtained.

(i) "Provider" — An entity that offers a continuing legal education program.

(j) "Written materials" — Any materials, whether in writing or electronic digital format, required to be provided as part of the approval of a continuing legal education activity.

6.02 Minimum continuing legal education requirements; required reporting; carry-over credits

(a) *Obligation.* As a condition of maintaining a license to practice law in the State of West Virginia, every active member shall satisfy the minimum continuing legal education and reporting requirements in this Rule.

(b) *MCLE requirements.* Each active member shall complete a minimum of twenty-four hours of continuing legal education, as approved by this Rule or accredited by the Commission, every two fiscal years. At least three of such twenty-four hours shall be taken in courses on legal ethics, office management, attorney well-being, or elimination of bias in the legal profession.

(c) *Reporting.* On or before the first day of July of every even year, each active member must file a report of completion of continuing legal education activities. The reporting is to be completed electronically using the web-based membership portal maintained by the State Bar. Any lawyer who submits a paper-based report must include a $25 fee with the report or it will not be processed.

(d) *Carryover credits.* Members who exceed the minimum requirements in this Rule may carry a maximum of six credit-hours forward to only the next reporting period, except

that no carryover credits can be applied to the three-hour minimum requirement for courses on legal ethics, office management, attorney well-being, or elimination of bias in the legal profession.

6.03 Bridge-the-Gap Program

(a) *Obligation.* Newly admitted members are required to complete a mandatory Bridge-the-Gap Program sponsored by the State Bar within twenty-four months after admission to the West Virginia State Bar. The mandatory Bridge-the-Gap Program shall be provided by the State Bar at least twice per year at locations within West Virginia. The Bridge-the-Gap Program will be provided free of charge to newly admitted members. Continuing legal education credit shall be available for completing the mandatory Bridge-the-Gap Program.

(b) *Suspension.* Any lawyer subject to this requirement who fails to complete the mandatory Bridge-the-Gap Program within six months after written notice of noncompliance from the Commission shall have their license to practice law in the State of West Virginia automatically suspended until such lawyer has complied with this requirement. Any member of the West Virginia State Bar otherwise in good standing who is suspended for failure to complete the mandatory Bridge-the-Gap Program shall be reinstated as a member of the West Virginia State Bar upon completion of the mandatory course, payment of a reinstatement fee of $200, and fulfillment of any other administrative requirements.

(c) *Exemption.* A member required to complete the Bridge-the-Gap Program may, upon application to and approval by the Executive Director, be exempted from the requirement if: (1) the member can certify having been admitted to practice in another jurisdiction for a minimum of five years; or (2) the Commission can certify that the member has completed a comparable mandatory new lawyer training program offered by the state bar of another jurisdiction of at least seven credits, including two credits of legal ethics, office management, attorney well-being, or elimination of bias in the legal profession. The request for an exemption must be filed no later than twenty-four months after admission to the West Virginia State Bar and no extensions of time are permitted.

(d) *Extension of time.* The time for completion of the Program may, upon application to and approval by the Commission, be extended. Written applications for an extension must be received by the Commission no later than thirty days after the deadline to complete the Program or obtain an exemption. If the written application includes supporting documentation that demonstrates hardship or other good cause for an extension, the member will be permitted to complete the Program at the next regularly scheduled opportunity. If the application for extension does not demonstrate hardship or good cause warranting an

extension, the member must pay a late fee of $200 and complete the Program at the next regularly scheduled opportunity.

6.04 Exemptions from mandatory continuing legal education requirements

(a) Any lawyer not previously admitted to practice in West Virginia who is admitted during the first twelve months of any 24-month reporting period is required to complete twelve hours in approved MCLE activities including at least three hours in legal ethics, office management, attorney well-being, or elimination of bias in the legal profession before the end of the reporting period. Any lawyer not previously admitted who is admitted during the second twelve months of any 24-month reporting period is exempt for that entire reporting period.

(b) Any lawyer previously admitted to the State Bar who is restored to active status pursuant to Rule 6.07 during the first twelve months of any 24-month reporting period is required to complete twelve hours in approved MCLE activities including at least three hours in legal ethics, office management, attorney well-being, or elimination of bias in the legal profession before the end of the reporting period. Any lawyer who is restored to active status under Rule 6.07 during the second twelve months of any 24-month reporting period is exempt for that entire reporting period.

(c) For good cause shown, the Commission may, in individual cases involving extreme hardship or extenuating circumstances, grant conditional, partial or complete exemptions of these minimum continuing legal education requirements. Any such exemption shall be reviewed by the Commission at least once during each reporting period unless a lifetime conditional exemption has been granted.

(d) Active non-practicing and inactive members, judicial members as specified in Bylaw 2.07(d), the Clerk of the Supreme Court of Appeals, Deputy Clerks of the Supreme Court of Appeals, and any other individuals as may hereafter, from time to time, be designated by the Supreme Court of Appeals, are not required to comply with these requirements.

6.05 Obtaining credits to satisfy mandatory continuing legal education requirements

Members of the State Bar may obtain credit for purposes of the mandatory continuing legal education requirements as follows:

(a) One hour of credit may be obtained for each period of fifty minutes of instruction attended in an accredited course.

(b) One hour of credit may be obtained for each period of fifty minutes of digital or electronically presented instruction provided that such digital or electronic presentation is accredited by the Commission.

(c) No more than half of the total required mandatory continuing legal education requirements may be satisfied by pre-recorded presentations that do not offer an interactive component.

(d) A maximum of six hours of mandatory continuing legal education credit may be obtained for the teaching of each individual accredited course when the period of teaching lasts for at least fifty minutes. If the teacher participates in a panel discussion or teaches for a period of less than fifty minutes, three hours of credit may be obtained. No more than half of the total required mandatory continuing legal education credit for any reporting period may be satisfied by teaching credits.

(e) The Commission may give credit for publication, including, but not limited to, publishing an article in the law review of an ABA-accredited law school; publishing an article in the official publication of the State Bar; authorship or co-authorship of a book; contribution of a paper published in a legal society's annual, hardbound collection; publication of an article in a bar journal in another state; and contribution through either editing or authorship to periodic newsletters designed to serve the interests of specialists. The Commission has authority to allocate the amount of credits to be given for publication.

(f) A lawyer may obtain one credit hour for every three completed hours of pro bono legal service which satisfies Rule 6.1 of the West Virginia Rules of Professional Conduct and is performed during the reporting period through one or more of the following approved pro bono organizations: (1) Legal Aid of West Virginia; (2) the State Bar's West Virginia Free Legal Answers Program; (3) the State Bar's Tuesday Legal Connect Program; and (4) the West Virginia University College of Law Center for Law and Public Service. The approved pro bono organizations shall report each lawyer's pro bono service hours by June 1 of each year in the format required by the Commission. Credits obtained under this subsection are subject to the limitation set forth in Rule 6.05(c) and are not credited as live instruction under Rule 6.05(a). A maximum of six hours of mandatory continuing legal education credit for approved pro bono service hours may be obtained for any two-year reporting period, and no additional service or credit hours may be carried over to the next reporting period. The Commission has the authority to review a lawyer's pro bono service hours to ensure compliance with this rule.

6.06 Noncompliance and sanctions

(a) Noncompliance with the reporting or minimum continuing education requirements of this Rule may result in the suspension of a lawyer's license to practice law until such lawyer has complied with these requirements.

(b) As soon as practicable after July 1, the Commission shall notify all active members of the State Bar who are not in compliance with the reporting or minimum continuing education requirements of this Rule of the specific manner in which such member has failed, or appears to have failed, to comply with this Rule. Any member of the State Bar shall have until October 1 to correct such noncompliance or provide the Commission with proper and adequate information to establish that such member is in compliance with this Rule. A delinquency fee of $200.00 shall be imposed upon any lawyer who does not submit a report of MCLE activity by July 31, including a request for teaching or publication credit.

(c) An additional fee of $200.00 shall be paid upon application for reinstatement by those attorneys whose licenses have been suspended for failure to comply with the MCLE requirement. This fee is in addition to the reinstatement fee charged for suspension for non-payment of membership fees. The attorney will not be reinstated unless all outstanding fees have been paid. MCLE credits, if reported late, will not be entered until all outstanding fees have been paid.

(d) As soon as practicable after October 1, the Commission shall give notice, by certified or registered mail to the mailing address of record with the State Bar, to any active member who has still not established that they are in compliance with this Rule for the preceding two-year reporting period that after thirty days, the Commission will notify the Supreme Court of Appeals of such this fact and request the Court to suspend such lawyer's license to practice law until the lawyer has established that they have complied with the requirements of this Rule for the preceding two-year reporting period.

(e) During such thirty-day period, any lawyer having received a thirty-day notice may demand a hearing before the Commission. Any such hearing shall be conducted within a reasonable period of time after receipt of the demand. At such hearing the lawyer shall have the burden of establishing either (1) that they are in fact in compliance with the requirements of this Rule or (2) that they are entitled to an exemption. In the event such burden is not carried, the Commission shall by appropriate petition notify the Supreme Court of Appeals that the lawyer has failed to comply with the reporting or education requirements for the preceding two-year reporting period and request the Court to enter an appropriate order suspending such lawyer's license to practice law in the State of West Virginia until the lawyer has complied with such requirements. Any adverse decision by the Commission may be appealed to the Supreme Court of Appeals. In the event such lawyer does not prevail at such hearing or appeal, they shall be assessed the costs thereof.

(f) In the event no demand for a hearing is received within the thirty-day period, the Commission shall by appropriate petition notify the Supreme Court of Appeals of the names of any members of the State Bar who have failed to comply with the reporting or education requirements of this Rule for the preceding two-year reporting period and request the Court to enter an appropriate order suspending each such lawyer's license to practice law in the State of West Virginia until the lawyer has complied with such requirements.

(g) A lawyer who has not complied with the mandatory continuing legal education requirements by June 30 may thereafter obtain credits to be carried back to meet the requirements of the preceding two-year reporting period. However, any credit obtained may only be used to satisfy the mandatory continuing legal education requirements for one reporting period.

(h) No lawyer shall be permitted to make use of a transfer from active to inactive or active non-practicing membership in the State Bar as a means to circumvent the mandatory continuing legal education requirements.

6.07 Change to active status

(a) Any person previously enrolled as an active member of the State Bar who is an active non-practicing or an inactive member of the State Bar, administratively suspended by the State Bar, or suspended or disbarred by the Supreme Court of Appeals, shall demonstrate that they have complied with a minimum of twelve hours of continuing legal education, as approved by this Rule or accredited by the Commission, at least three hours of which shall be taken in courses in legal ethics, office management, attorney well-being, or elimination of bias in the legal profession within twelve months immediately preceding the application to change to active status. Any person previously enrolled as an active member of the State Bar who has served as a Justice of the Supreme Court of Appeals, Circuit Court Judge, or Family Court Judge immediately preceding the change to active status shall be exempt from this requirement but shall be subject to the mandatory continuing legal education requirements upon change to active status.

(b) Any lawyer who was administratively suspended by the State Bar for any reason under Bylaw 2.09(a) and who is returned to active status within six months of the date of suspension will not be required to submit any additional information regarding mandatory continuing legal education provided that the attorney has otherwise been in compliance with the continuing legal education requirements.

6.08 Accreditation of providers and approval of courses, generally

(a) The Commission has sole authority to accredit providers and approve courses and programs for purposes of the mandatory continuing legal education requirements established by this Rule.

(b) The Commission may establish a list of presumptively accredited providers whose courses—including those provided through digital and electronic mediums—are approved activities. The Commission shall publish the list of providers that are presumptively accredited on the State Bar website and update the list periodically.

(c) Courses offered by organizations that are not on the list described in Rule 6.08(b) may be approved by the Commission upon the request of an individual lawyer or organization on a case-by-case basis in accordance with this Rule.

(d) To be approved, a course shall have significant intellectual or practical content; it shall deal primarily with matter directly related to the practice of law (which includes professional responsibility and office practice); it shall be taught by persons who are qualified by practical or academic experience in the subjects covered and must include the distribution of high quality written materials pertaining to the subjects covered. One-hour courses presented by local bar associations shall be exempt from the written materials requirement. In rare instances, providers other than local bar associations may exhibit good cause for waiver of the written materials requirement. A provider seeking a waiver of the written materials requirement shall present a written request of such waiver to the Commission, explaining why the provider believes that written materials should not be provided. The Commission will consider each request for a written waiver on a case-by-case basis.

(e) One hour of continuing legal education credit shall be given for each period of fifty minutes of instruction in an accredited course. Based upon this standard, providers of approved activities given in West Virginia shall include with their course materials a statement that, "This course or program has been approved for ____ hours of continuing legal education credit in West Virginia."

(f) The Commission may refuse to accredit a course change or may revoke the accredited status of any provider that misrepresents the extent to which any information relating to course approval under this Rule.

(g) In cases where approval could not be reasonably obtained in advance for a given course, an individual lawyer may request approval after attendance in accordance with this Rule.

(h) All decisions of the Commission concerning accreditation of providers and approval of courses shall be final.

6.09 Standards for approval of continuing legal education activities

(a) A continuing legal education activity qualifies for approval if the Commission determines that: (1) it is an organized program of learning (including a workshop, symposium or lecture) which contributes directly to the professional competency of a lawyer; (2) it deals primarily with matter directly related to the practice of law or to the professional responsibility or ethical obligations of the member, and may include activities that involve the crossing of disciplinary lines, such as a medicolegal symposium or an accounting tax law seminar; (3) each activity is taught by a person qualified by practical or academic experience to teach the activity the person covers; (4) high quality, readable, carefully prepared written materials pertaining to the subjects covered shall be distributed to attendees at or before the time the course is offered in accordance with Rule 6.08(d); and (5) the provider must keep digital records of all attendees for a minimum of three years following the activity, and those attendee records must be made available to the Commission upon request.

(b) No credit shall be given for any activity attended before being admitted to the West Virginia State Bar, including preparation for admission to the West Virginia State Bar.

(c) Credit may be earned through teaching or participating as a panelist in a panel discussion in an approved continuing legal or judicial education activity. In awarding credit for teaching or participating as a panelist in an approved program, the Commission will be controlled by Rule 6.05(d). A lawyer may receive credit for teaching or participating as a panelist in a panel discussion in an approved continuing legal or judicial education activity by submitting an application to the Commission that furnishes the appropriate information using the web-based membership portal maintained by the State Bar. Any lawyer who submits a paper-based request must include a $25 fee with the request or it will not be processed.

(d) Credit hours for writing an article published in the law review of an ABA-accredited law school or for other approved publication activity shall be allocated in the year of publication and limited as provided in Rule 6.05(e).

(e) An in-house activity may be approved for continuing legal education credit under the rules applicable to any other provider, plus the following additional requirements: (1) the courses shall be submitted through electronic format for approval on a course-by-course basis, rather than an accredited-provider basis; (2) the courses shall be submitted for approval at least thirty days in advance; (3) an outline or written materials must be presented to the Commission through the appropriate West Virginia State Bar electronic interface at the time of submission for approval and written, digital, or electronic copies of the outline and/or materials must be distributed to all attendees at the course; (4) the courses must be open to observation by the Justices of the Supreme Court of Appeals of West Virginia, the officers or staff of the State Bar, the members of the Board, and members or staff of the Commission;

(5) the courses must be scheduled and arranged at a time and location so as to be free of interruptions from telephone calls and other office matters; (6) No more than half of the mandatory continuing legal education requirements may be satisfied by in-house teaching or attendance at in-house activities; and (7) an in-house activity on legal ethics may not be taught by a member of the firm or entity offering such activity.

(f) Client-oriented seminars shall not be approved for CLE credit.

(g) The total credit for digital or electronic training courses and in-house instruction shall not exceed half of the mandatory continuing legal education requirements.

(h) A lawyer attending a digital or electronic presentation or training course is entitled to credit hours under the following circumstances: (1) if a course is an approved activity, digital or electronic distribution of that course is also an approved activity; (2) Any digital or electronically distributed presentation produced by an provider that is not presumptively accredited must meet the requirements for approval set forth in Rules 6.08(c) and 6.09(a); (3) Unless the entire digital or electronically distributed presentation has been produced by a presumptively accredited provider, the person or organization offering the program or the attorney seeking credit must receive advance approval from the Commission by submitting the appropriate information using the web-based membership portal maintained by the State Bar. Any lawyer who submits a paper-based request must include a $25 fee with the request or it will not be processed.

(i) The Commission may permit an active member to meet the full mandatory continuing legal education requirements by attending or participating in a seminar that includes a digital or electronic presentation as part of a live program.

(j) Simultaneous electronic synchronous broadcasts will be approved for the full mandatory continuing legal education requirements if the following criteria are met: (1) the broadcast is designed and organized for interaction among a group of attorneys; (2) the broadcast is merely a distribution of a live program with the same qualified speakers which would address a seminar with live attendees; and (3) attendees are able to have questions answered through synchronous or asynchronous digital media.

(k) The mandatory continuing legal education requirements may not be satisfied by receiving credit for teaching the same activity more than once during a two-year reporting period.

(l) A lawyer may receive credit for authorship and publication of legal materials by submitting an application to the Commission using the web-based membership portal maintained by the State Bar. Any lawyer who submits a paper-based request must include a $25 fee with the application or it will not be processed. The application must include: (1) a copy of the work and a statement by the applicant that the material is an original work; and (2) the name and address of any other person participating in the authorship of the published

material, and a statement with respect to the extent to which the applicant contributed to the authorship of the material; and (3) a statement that the authored material has been published in a publication having distribution to at least 300 attorneys; and (4) the name and address of the publisher. Credit hours shall be allocated for the authorship and publication of the material in the year in which the publication actually occurs. The Commission will determine the number of credits to be allocated to the authorship and publication of the work. Credits will be awarded for scholarly pieces involving legal research as indicated by citation to authority. A lawyer may not receive more than half of their credit hours for authorship and publication of any materials in any two-year reporting period except as set forth in Rule 6.04(a).

(m) An attorney may not earn double credit for either (1) attending the same seminar held in different locations or (2) attending a seminar and completing a digital or electronically distributed presentation of the same seminar.

(n) To earn continuing legal education credit for attendance at any Bar Committee meeting, the Committee must submit an approved agenda at least thirty days in advance, which lists the topics covered and a brief biographical sketch of each speaker. Presentations at Bar Committee meetings must include at least fifty minutes of actual instruction. No audio or video taped presentations of Bar Committee meetings will be approved. If the meeting is approved by the Commission, only those members of the Bar Committee may earn continuing legal education credit. Committee meeting attendance credit may not be earned by attorneys that are not members of that Committee. The maximum number of continuing legal education credits that may be earned from attendance at Bar Committee meetings during any two-year reporting period is three credits.

(o) Any person employed on a full-time or part-time basis as a professor of law or other instructor of courses in a law school or other academic institution shall not receive CLE credit for teaching those courses.

(p) Digital or electronic training courses may be approved for continuing legal education credit under the rules applicable to any other course or program, plus the following additional requirements: (1) the digital or electronic training course must be part of a structured course of study; (2) a written outline or written materials fully describing the course must be presented to the Commission at the time of submission for approval; (3) in awarding credit for digital or electronic training courses, the Commission shall consider the extent to which the lawyer's educational effort in the course is evaluated by the provider; (4) The provider shall provide the number of credits possible for completion of the course; and (5) credit reported shall not exceed the maximum number of credits as designated by the provider.

6.10 Procedures for accreditation of providers, activities

(a) *Presumptive accreditation of providers.* A provider not presumptively accredited by the Commission may apply for presumptive accreditation by submitting an application in the form required by the Commission. Presumptively accredited providers shall provide to the Commission, upon request, a list of all courses offered in the preceding year by August 30 of each year. A list of all lawyers in attendance at any presumptively accredited program shall be maintained by the provider for not less than three years and made available to the Commission upon request. Presumptively accredited providers shall allow the West Virginia State Bar or MCLE Commission members and staff to audit, free of charge, any of its accredited continuing legal education programs. Failure to comply with MCLE rules shall result in the revocation of presumptively accredited status.

(b) *Prior approval of individual activities of providers who are not presumptively accredited.* A provider desiring prior approval of an activity shall apply for approval by submitting an application in the form required by the Commission at least 30 days in advance of the commencement of the activity. A lawyer desiring prior approval of an activity shall apply for approval to the Commission using the web-based membership portal maintained by the State Bar at least 30 days in advance of the commencement of the activity. Any lawyer who submits a paper-based request must include a $25 fee with the request or it will not be processed.

(c) *Post-approval of activities of providers that are not presumptively accredited.* A lawyer seeking approval of an activity that was not conducted by a presumptively accredited provider and was not otherwise approved shall request credit within 30 days after completion of such activity using the web-based membership portal maintained by the State Bar. Any lawyer who submits a paper-based request must include a $25 fee with the request or it will not be processed.

(d) *Multiple providers.* Courses offered by more than one provider are presumptively accredited if at least one of the providers is presumptively accredited.

6.11 Ethics in reporting continuing legal education activities

The filing of a false report, form, or statement, or any other misrepresentation may result in the initiation of a disciplinary proceeding for engaging in unethical conduct.

6.12 Time limits

For good cause shown, any time limitations or requirements imposed by this Rule may be modified by the Commission.

6.13 Confidentiality

The files, records, and proceedings of the Commission, as they relate to or arise out of the compliance or noncompliance of an active member of the State Bar with the requirements of this Rule, shall be deemed confidential and shall not be disclosed, except in furtherance of the Commission's duties, or upon written request of the lawyer affected, or as directed by the Supreme Court of Appeals.

[CLERK'S COMMENTS: Rule 6 integrates and reconciles three different governance documents. The first was previously reviewed and approved by the Court: Chapter VII of the Rules and Regulations of the State Bar, entitled "Rules to Govern Mandatory Continuing Legal Education." The second is a stand-alone document that was posted on the State Bar's website, entitled: "Regulations, WV Mandatory Continuing Legal Education Commission." The third source for this rule is the October 25, 2017 Supreme Court Administrative Order relating to changes in the Bridge-the-Gap Program. This Rule incorporates those documents, with some modifications to be consistent with changes already made in other areas. The major governance provisions relating to a lawyer's basic obligation to maintain CLE credits, the existence of the Commission, and its powers and duties, are now all contained in Article 15 of the Bylaws. Rule 6 sets forth the specifics of the process. When combining the disparate parts, a number of inconsistencies in terminology (accredited vs. approved, provider vs. sponsor) needed to be addressed on a uniform basis. In Bylaw Article 15 and this Rule, the term "accredited" is used to apply to a provider; while the term "approved" applies to an individual course. All of the courses offered by a "presumptively accredited" provider are approved, whereas an unaccredited provider must apply for approval on a course-by-course basis. The provisions set forth in Rule 6.03 relating to the Bridge-the-Gap Program are a revised version of amendments that were drafted by the Young Lawyer Section, approved by the Board of Governors, and by the Supreme Court in October 2017. The changes set forth in Rule 6 are not effective until the July 1, 2020 – June 30, 2022 reporting period, with two exceptions: changes to the Bridge-the-Gap Program set forth in Rule 6.03 are effective July 1, 2019, and Rule 6.05(f), which allows lawyers to obtain MCLE credits for pro bono service in certain circumstances, is also effective July 1, 2019.]

Rule 7 Procedure for Unlawful Practice Committee matters

7.01 Origin of cases

A case before the Unlawful Practice Committee may originate upon a request for investigation from the Unlawful Practice Committee, upon a request from a grievance committee, upon the request of the Board, the president, the president-elect or vice president,

John Griffith, Franklin, President

Suzanne Keith, Executive Director
skeith@ttla.org

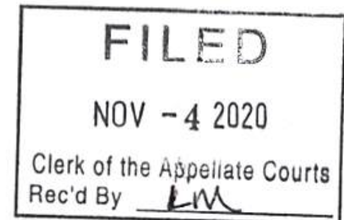
629 Woodland Street | Nashville, TN 37206 | 615.329.3000 | fax 615.329.8131

WRITTEN COMMENT ON BEHALF OF TTLA

AMENDMENT OF RULE 21, RULES OF THE TENNESSEE SUPREME COURT

No. ADM2020-01159

November 2, 2020



James M. Hivner, Clerk
RE: Tenn. Sup. Ct. R. 21, section 3.01
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407
appellatecourtclerk@tncourts.gov

Dear Mr. Hivner:

The Tennessee Trial Lawyers Association appreciates the opportunity to comment regarding Supreme Court Rule 21 regarding diversity. Our association's comments are set out below.

Understanding and addressing issues of diversity, inclusion, equity, and elimination of bias are consistent with TTLA's mission. The Tennessee Supreme Court noted, "it is our moral obligation and our sworn duty to ensure that the people of Tennessee receive equal protection of its law." As attorneys, we share that obligation to uphold the guarantees of rights in the United States and Tennessee constitutions. Discrimination, implicit or otherwise, threatens the constitutional rights of Tennesseans. Moreover, discrimination threatens access to our civil justice system.

As the Tennessee Supreme Court stated, "racism still exists and has no place in our society." Discrimination continues to exist in other forms, as well. As attorneys and as members of the TTLA, our sworn obligations do not permit us to sit passively by as our sisters and brothers suffer discrimination in our state.

Accordingly, the TTLA supports the Nashville Bar Association's petition regarding education for attorneys licensed to practice law in Tennessee to increase the awareness and understanding of issues of diversity, inclusion, equity, and elimination of bias. We defer to the wisdom of the Tennessee Supreme Court and the CLE Commission to determine the scope of the educational requirement that most effectively and fairly accomplishes this imperative.

OFFICERS: Tony Seaton, *President Elect*; Matt Hardin, *Immediate Past President*; Danny Ellis, *Vice-President East*; Mark Chalos, *Vice-President Middle*; Carey Acerra, *Vice-President West*; Brandon Bass, *Secretary*; Troy Jones, *Treasurer*; Caroline Ramsey Taylor, *Parliamentarian* AT LARGE REPRESENTATIVES: Audrey Dolmovich, Jim Higgins, George Spanos

John Griffith, Franklin, President

Suzanne Keith, Executive Director
skeith@ttla.org

629 Woodland Street | Nashville, TN 37206 | 615.329.3000 | fax 615.329.8131

November 2, 2020

Please don't hesitate to contact us if you have questions or we can assist you in any way. Thank you for your service to our legal community and the citizens of Tennessee.

Respectfully submitted,

John Griffith, President of the Tennessee Trial Lawyers Association

And Suzanne G. Keith, Executive Director

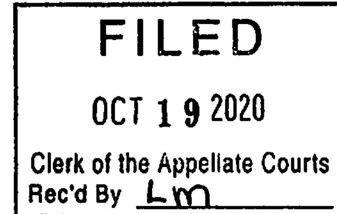
OFFICERS: Tony Seaton, *President Elect;* Matt Hardin, *Immediate Past President;* Danny Ellis, *Vice-President East;* Mark Chalos, *Vice-President Middle;* Carey Acerra, *Vice-President West;* Brandon Bass, *Secretary;* Troy Jones, *Treasurer;* Caroline Ramsey Taylor, *Parliamentarian* AT LARGE REPRESENTATIVES: Audrey Dolmovich, Jim Higgins, George Spanos

DISABILITY RIGHTS TN

800.342.1660 | www.disabilityrightstn.org | gethelp@disabilityrightstn.org

Middle Tennessee Regional Office
Administration & Legal Department
2 International Plaza, Suite 825
Nashville, TN 37217
615.298.1080 phone
615.298.2046 fax

Appellate Court Clerk, State of Tennessee


FILED
OCT 19 2020
Clerk of the Appellate Courts
Rec'd By LM

RE: Docket # No. ADM2020-01159

VIA EMAIL: appellatecourtclerk@tncourts.gov

Dear Appellate Court Clerk:

Disability Rights Tennessee (DRT) is Tennessee's Protection & Advocacy organization. We are a legally-based organization which protects the rights of individuals with disabilities across the state. DRT believes that Docket # No. ADM2020-01159, which proposes to update the state's mandatory 15 continuing legal education credits to require "each attorney to complete two hours of the required fifteen in diversity, inclusion, equity, and elimination of bias," will have a positive impact on Tennesseans with disabilities. As an organization, DRT's primary goal is to ensure individuals with disabilities, who include people from diverse racial and ethnic groups, have freedom from harm and discrimination and are afforded equal access to services and programs in their communities. DRT openly condemns discrimination of any kind, including systemic racism, and is prioritizing its own efforts to ensure a bias-free, diverse, and inclusive workplace. Members of the Tennessee Bar should also prioritize diversity, inclusion, and equity in their own practices, whether that be in the people they hire, work alongside, or the clients they serve. Diversity, equity, and inclusion allow all individuals, regardless of disability or race, to access the legal profession, allow the best ideas to flourish, connect talented individuals from underrepresented backgrounds with opportunities that those in the majority often have unfair access to, and empower lawyers, firms, and other organizations to thrive. Therefore, DRT believes that requiring lawyers to take two continuing legal education credits a year regarding diversity, inclusion, equity, and the elimination of bias will positively impact Tennesseans with disabilities.

We would be happy to speak further with you about the positive impact we think this proposed update will have for Tennesseans with disabilities. My contact information is below.

Sincerely,

Jack W. Derrybery, Jr., Legal Director
Disability Rights Tennessee
2 International Plaza, Suite 825
Nashville, TN 37217
(615) 298-1080
Email: jackd@disabilityrightstn.org

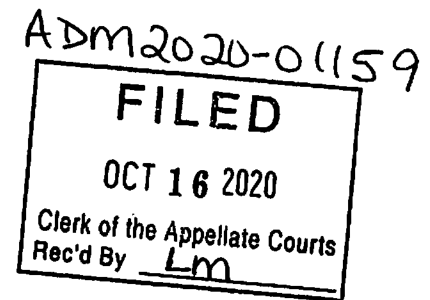
Lisa Marsh - Comments re: ADM2020-01016; Inclusion of Diversity in CLE Requirements

From: Darla Walker <darlawalkerlaw@gmail.com>
To: <appellatecourtclerk@tncourts.gov>
Date: 10/16/2020 9:49 AM
Subject: Comments re: ADM2020-01016; Inclusion of Diversity in CLE Requirements

Just my thoughts on this: If you require any type of CLE, this takes away hours the attorney could use for a CLE that focuses on his/her specific law practice, which would be much more beneficial to the attorney than requiring a CLE he/she may not want to take.

Also, I have found that most times when someone takes a class or performs a task only because it is required, it is of little to no benefit to the person. He/she does not make an effort to learn, and he/she takes the class/completes the task to get it finished and out of the way.

ADM2020-01159



Just my thoughts. Thanks!

Darla Walker

--

Darla M. Walker, Esq.
2125 Middlebrook Pike
Knoxville, TN 37921
865-546-2141

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Kim Meador - AMENDMENT OF RULE 21, RULES OF THE TENNESSEE SUPREME

ADM2020-01159

FILED
OCT 07 2020
Clerk of the Appellate Courts
Rec'd By KJM

From: Steve Newton <sdnewton50@outlook.com>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 10/7/2020 5:57 AM
Subject: AMENDMENT OF RULE 21, RULES OF THE TENNESSEE SUPREME

I believe that there is no empirical evidence to show that this is need for our attorneys in Nashville. This is simply a political stunt by parties that want to subvert our legal system.

Sincerely
Steve Newton

Kim Meador - CLE on diversity, inclusion

ADM2020-01159

FILED
OCT 06 2020
Clerk of the Appellate Courts
Rec'd By KJM

From: Melody Bock <melodybock@yahoo.com>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 10/6/2020 10:02 AM
Subject: CLE on diversity, inclusion

There are too many CLE hour requirements already. If you want to do this, require it once every 3 years, offer it for free and don't increase the minimum number of required hours of CLE each year. It is hard to ask working female attorneys with children to comply with so many CLE hours and then the Supreme Court is always asking them to do pro bono work on top of CLE. The Bar has never understood the difficulty of working parents.

As a female attorney, I found more discrimination within the firms I worked for dealing with pregnancy and partnership issues than I did while actually practicing law. I did have one Judge, now retired, give the opposing attorney a new trial based on the argument that I was pregnant while trying the case; and the jury must have felt sorry for me as the reason my client prevailed.

September 28, 2020

James M. Hivner, Clerk
RE: Tenn. Sup. Ct. R. 21, section 3.01
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

RE: Memphis Bar Association's Letter in Support of Nashville Bar Association's Petition to Modify Tennessee Supreme Court Rule 21
Docket No. ADM2020-01159

Dear Clerk Hivner,

Please accept this letter on behalf of the Memphis Bar Association ("MBA") in support of the Petition to Modify Rule 21 of the Tennessee Supreme Court ("Petition") filed by the Nashville Bar Association on
August 28, 2020.

The MBA was established in 1874, four years before the founding of the American Bar Association. The MBA is a professional organization for attorneys in Memphis and the surrounding Mid-South area that seeks to provide a place for lawyers to grow, connect and serve. The MBA stands committed to ensuring diversity, equity, and inclusion in the practice of law, and recently created a Diversity and Outreach Committee that will focus on raising awareness and educating the membership around the issues of systemic racism, implicit bias, and diversity and inclusion within the legal profession

In June, the MBA proudly participated in the Bar Unity March organized by the Ben F. Jones Chapter of the National Bar Association. Along with local judges, lawyers, and law students, MBA members proudly participated in a peaceful march to show that our local bar organizations stand unified in recognizing that because racism reaches every facet of our lives, it must be addressed within the legal community and legal system. Now we stand united with the Nashville Bar Association in support of its Petition requiring that all Tennessee lawyers educate themselves on topics related to diversity, inclusion, equity, and the elimination of bias every year.

For many years, the MBA has sought out speakers on issues related to these topics and encouraged its members to attend these sessions. For example, the MBA sought out nationally known speaker, Kimberly Pappillion, to speak at the 2017 Bench Bar Conference in St. Louis about the neuroscience of decision-making, which focused on the implicit biases we all have. Following

her presentation in St. Louis, Ms. Pappillion spoke to a number of different groups of legal professionals as part of a series presented by the MBA and the Center for Excellence in Decision Making ("CEDM"). Since that time, the MBA has continued to partner with the CEDM to present CLE sessions focused on diversity, inclusion, equity, and the elimination of bias.

As an organization, the MBA has been and remains committed to these important issues and proudly supports the Nashville Bar Association's Petition. To require all Tennessee attorneys to take two (2) hours of continuing legal education focused on diversity, inclusion, equity, and elimination of bias is but a small step toward ensuring that the legal profession can move past issues of systemic racism that have plagued our state and our nation for far too long.

Sincerely,

Lucie Brackin
President, Memphis Bar Association

Memphis Bar Association • 145 Court Avenue, Suite 301 • Memphis, TN 38103 • 901.527.3573 • Fax 901.440.0426 • www.memphisbar.org

appellatecourtclerk - ADM2020-01159 Comments

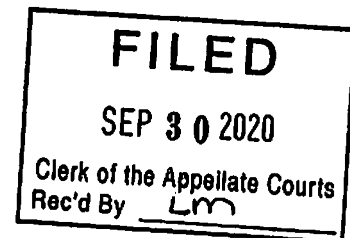
From: John Harris <jharris@slblawfirm.com>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 9/30/2020 11:57 AM
Subject: ADM2020-01159 Comments

Dear Sirs

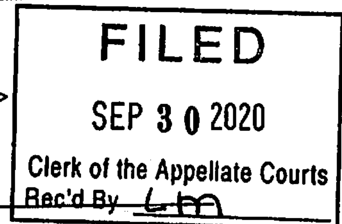
As a practicing attorney in Tennessee, I oppose the petition of the Nashville Bar Association for many of the same reasons that President Trump has issued an Executive Order on September 22, 2020, regarding Combating Race and Sex Stereotyping training.

I urge the Court not to modify the existing CLE requirements by requiring annual hours devoted to diversity or sensitivity training. If individual attorneys, law firms, or employers want to provide this training as part of either the existing 3 hours of ethics requirements or as part of the required 12 hours of general credits, that can be done now. However, for many of Tennessee's practicing attorneys there is no need for a requirement of 2 hours of training on diversity or sensitivity annually.

John I. Harris III
TBPR - 012099
3310 West End Avenue, Suite 460
Nashville, Tennessee 37203
(615) 244 6670 Ext. 111
Fax (615) 254-5407
www.johniharris.com
www.slblawfirm.com



appellatecourtclerk - Re petition regarding docket No. ADM2020-01159



From: Richard Archie <RArchie@hmcompany.com>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 9/30/2020 3:27 PM
Subject: Re petition regarding docket No. ADM2020-01159

Per the NBA's request No. ADM2020-01159 that all Tennessee attorneys be required to take at least two hours of their yearly fifteen (15) hour requirement in continuing education to specifically include "diversity, inclusion, equity, and elimination of bias", I purport a far better use of their time, (and of benefit to the People of Tennessee), would be a requirement that each attorney take that two (2) hour course in the Tennessee Constitution.

Should the powers that be decide on this course of action, the aforementioned qualifiers would be addressed.

As a disproportionate number of attorneys wind up as legislators, I think it would be prudent to have all their continuing education consist of the study of said document (Constitution) with emphasis on Article one (1) Sections one (1) and two (2)and Article eleven (11) Section sixteen (16) where the Power to govern is explained.

Should such action be taken, the learned of jurisprudence could then temper their more base brothers and sisters in service to the People with good instruction.

I oppose the mandating of the course matter included in the petition, as it is too narrowly focused and generally inconsiderate of the Rights of all the People of Tennessee.

Disclaimer

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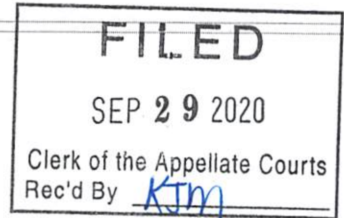


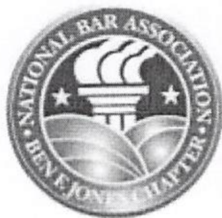
From: Ward Huddleston <ward.huddleston@gmail.com>
To: <appellatecourtclerk@tncourts.gov>
Date: 9/29/2020 1:48 PM
Subject: No. ADM2020-01159

I respectfully opposed the Petition of the Nashville Bar Association and even though I fear retribution in the form of being called a "racist," and otherwise demeaned for my opposition, I submit my reasons. I have been a supporter of Civil Rights legislation and court rulings for more than the 44 years I have been licensed as an attorney in Tennessee. However, I adhere to our legal tradition of requiring proof before a thing is accepted as established fact. The NBA relies upon "systemic racism" as a basis for its position. The anecdotal evidence of police misconduct and apparent criminal behavior in the instances cited by Petitioner has not been adjudicated in a court of law as proof of "systemic racism." I observed the De Jure and De Facto discrimination against minorities that existed during my lifetime. Legislation followed by judicial enforement addressed that head on with specific detail describing prohibited activity such as racial discrimination in employment, housing and access to public services. I was taught to be "color blind" as was the goal of the Civil Rights Acts and court rulings.
My concern is sloppy thinking confuses insulting or insensitive actions and/or language with unlawful racist activity or behavior. Diversity is a current catch-phrase that seems to be targeted toward an undefined objective or specific goal. My question is, does the Petitioner seek to educate lawyers about the area of law called diversity or is it an attempt at indoctrination to a social movement? As I understand the Tennessee Supreme Court Rules regarding CLE, attendance is mandatory subject to certain exceptions and time frames but may result in loss of license to practice law. This is a heavy weapon for a social movement that has not been codified into law. I have personally observed the fantastic good our system of laws and norms have produced over the last 60 years for everyone especially minorities. "Social Justice" and elimination of "systemic racism" appear to be logically admirable but are too vague and unproven to be a subject matter for CLE. Thank you for allowing me this opportunity to address the petition.

Ward Huddleston Jr
1687 Shelby Oaks Dr Ste 6
Memphis, TN 38134
BPR 004281

ADM2020-01159

FILED
SEP 29 2020
Clerk of the Appellate Courts
Rec'd By KJM



National Bar Association
BEN F. JONES CHAPTER
P.O. Box 3493
Memphis, Tennessee, 38173

2020 EXECUTIVE OFFICERS

Judicial Commissioner, Shayla Purifoy-ABSTAIN
President

Quinton E. Thompson
Vice President (President-Elect)

Edd L. Peyton
Immediate Past President

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LaTanyia Walker
Zayid Saleem

September 29, 2020

Via Electronic Mail Only (Due to COVID-19 and Other USPS Concerns)

Chief Justice Bivins
Supreme Court of Tennessee
401 Seventh Avenue North
Nashville, TN 37219
Via Email: justice.jeff.bivins@tncourts.gov

Justice Cornelia Clark
Liaison Justice to Tennessee Commission on Continuing Legal Education
401 Seventh Avenue North
Supreme Court of Tennessee
401 Seventh Avenue North Nashville, TN 37219
Via Email: cclark@tncourts.gov

Re: Ben F. Jones Chapter of the National Bar Association's Letter of Support for the Nashville Bar Association's Petition to Modify Rule 21 of the Rules of the Tennessee Supreme Court, Docket No. ADM2020-01159

Dear Justices of the Tennessee Supreme Court:
On behalf of the Ben F. Jones Chapter of the National Bar Association, we join the Tennessee Employment Lawyers Association and the Center for Excellence in Decision-Making, among multiple other groups, in strongly supporting the Nashville Bar Association's Petition to Modify Rule 21 of the Tennessee Supreme Court requiring two hours of continuing legal education annually in diversity, inclusion, equity and the elimination of bias.

The Ben F. Jones Chapter of the National Bar Association was officially founded in 1966 to address the unique needs of African-American lawyers and to enhance performance and professionalism at a time when they were systemically excluded by the majority bar. One of the purposes of our Chapter is to proactively and visibly advocate causes that protect and advance the rights and privileges of its members, families and communities. More specifically, we strongly promote diversity within the bar.

Over the last several years, it has become more evident than ever that systemic racism continues to subvert the basic constitutional promises of equal protection by the justice system.

As attorneys, it is our job to denounce racism and acts of racial injustice to

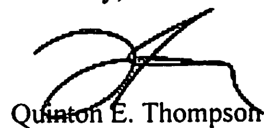
accomplish constructive change in the justice system and the legal profession—but members of the Tennessee bar cannot do that if they cannot recognize it.

The effects of systemic racism have only recently begun to be studied in earnest, but recent findings are instructive. A report[1] released earlier this month by researchers with the Criminal Justice Policy Program at Harvard Law School illuminates how an examination of the disproportionate amount of criminal cases involving African-American and Latino suspects and defendants reveals that institutional racism permeates the Massachusetts criminal justice system. The researchers point to the creation of legislation that results in racially disparate impacts and the fostering of racially disparate treatment by police, prosecutors, and judges as the reasoning behind this disproportionality. Like Massachusetts, the Tennessee criminal justice system experiences similar disproportionalities with regard to African-American suspects and defendants in relation to the African-American population as a whole, and the possibility that systemic racism similarly permeates the criminal justice system—from legislation to policing—in our state deserves the legal community's attention.

Systemic racism not only affects the legal system, but also impacts every other facet of society. Indeed, yet another report[2] released this month by researchers with Citigroup found that since 2000 alone, systemic inequities and racism has resulted in the loss of $16 trillion from the gross domestic product through discrimination in housing, lending, employment, education, and elsewhere. It is overly simplistic to conclude that an entire segment of society is held down due solely to its own shortcomings; instead, outside forces at play should regularly be identified, explored, and discussed to make this imperfect Union more perfect.

It is vital for members of the bar, their families, and communities that we have more lawyers who are competent and willing to advocate for citizens who are supposed to enjoy equal protection under the law. We cannot continue to live in a society in which some are more equal than others. We believe that mandatory training will nurture better understanding within the legal profession of the impact of racism, discrimination, and implicit bias in our legal system and, in doing so, will produce more culturally competent attorneys. In order to steward a system that fosters justice for all we must root out and dismantle systemic racism and other forms of discrimination that deny this basic right. It is the collective opinion of our Board that requiring those charged with upholding and promoting the law to regularly complete training in diversity, inclusion, equity and the elimination of bias is the first and necessary step in doing so.

Sincerely,



Quinton E. Thompson
National Bar Association, Ben F. Jones Chapter
2020 Vice President and President-Elect 2021

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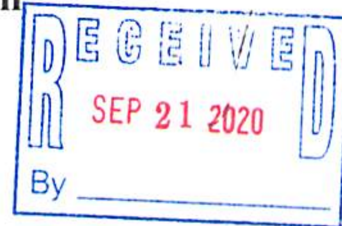
[1] Bishop, Elizabeth Tsai, et al. "Racial Disparities in the Massachusetts Criminal System." *Criminal Justice Police Program*, Harvard Law School, Sept. 2020, cjpp.law.harvard.edu/assets/Massachusetts-Racial-Disparity-Report-FINAL.pdf.

[2] Peterson, Dana, et al. "Closing the Racial Inequality Gaps." *Citi GPS: Global Perspectives and Solutions*, Citigroup, Sept. 2020, ir.citi.com/NvIUklHPilz14Hwd3oxqZBLMn1_XPqo5FrxsZD0x6hhil84ZxaxEuJUWmak51UHvYk75VKeHCMI%3D.

TENNELA

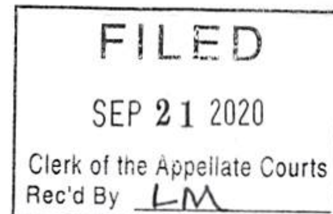
Tennessee Employment Lawyers Association



September 16, 2020

Chief Justice Bivins
Supreme Court of Tennessee
401 Seventh Avenue North
Nashville, TN 37219

Via U.S. Mail and Email:
justice.jeff.bivins@tncourts.gov



Justice Cornelia Clark
Liaison Justice to Tennessee Commission on Continuing Legal Education
401 Seventh Avenue North

Via U.S. Mail and Email:
cclark@tncourts.gov

Supreme Court of Tennessee
401 Seventh Avenue North
Nashville, TN 37219

Re: Nashville Bar Association's Petition to Modify Rule 21 of the Rules of the Tennessee Supreme Court, Docket No. ADM2020-01159

Dear Justices of the Tennessee Supreme Court:

On behalf of the Tennessee Employment Lawyers Association (TENNELA), I submit this letter to strongly support the Nashville Bar Association's August 28, 2020, Petition to Modify Rule 21 of the Tennessee Supreme Court to require two hours of continuing legal education annually in diversity, inclusion, equity and the elimination of bias. It is the collective opinion of our members that such a requirement is long overdue and necessary to ensure that Tennessee attorneys can meet their oath to practice with fairness, integrity, and civility.

TENNELA is an affiliate chapter of the National Employment Lawyers Association (NELA), the largest group of plaintiffs' employment lawyers in the country and the only professional membership organization comprised of lawyers who represent employees in labor, employment, and civil rights disputes. Specifically, TENNELA consists of lawyers dedicated to eradicating employment discrimination in all forms from the workplace.

Over the last several years, a movement has been building that has created a consensus that we as a society and especially as attorneys must forcefully and actively address the

TENNELA

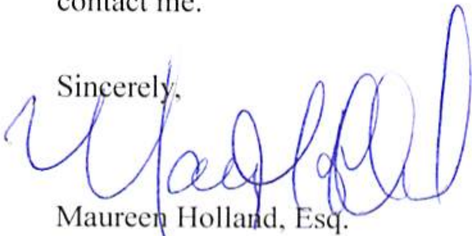
Tennessee Employment Lawyers Association

engrained factors that have allowed systemic racism to undermine the fundamental constitutional promises of equal justice and treatment within our legal system. It is incumbent upon us as attorneys to insist that our profession meets those highest ideals.

Critically, it is not simply the headline-grabbing instances of discrimination and bias that we must address. In fact, implicit biases begin before an attorney-client relationship is even formed. A number of recent studies in California, for example, found that white-sounding names from potential clients received 50% more replies from attorneys than potential clients with black-sounding names. Because of the pervasiveness and depth of bias within our system and within all of us as individuals, we believe that our profession should lead the effort to face and overcome these challenges.

Accordingly, we believe that the Nashville Bar Association's petition to include two hours of diversity, inclusion, equity, and elimination of bias training is a proper and appropriate step toward reaching the goal of eliminating bias in our profession. If TENNELA can provide any other information to assist you in your consideration of this important proposal, please contact me.

Sincerely,



Maureen Holland, Esq.
TENNELA President

cc: Jim Hivner, Clerk of Court (jim.hivner@tncourts.gov)

TENNELA
Tennessee Employment Lawyers Association
℅ Maureen Holland, Esq., TENNELA President
1429 MADISON AVENUE
MEMPHIS, TENNESSEE 38104

MEMPHIS TN 380
18 SEP 2020 PM 3 L

Supreme Court of Tennessee
401 Seventh Avenue North
Nashville, TN 37219

37219-140001

ADM2020-01159

FILED
SEP 15 2020
Clerk of the Appellate Courts
Rec'd By KJM

September 15, 2020

Chief Justice Bivins
Supreme Court of Tennessee
401 Seventh Avenue North
Nashville, TN 37219
Via U.S. Mail and Email: justice.jeff.bivins@tncourts.gov

Justice Cornelia Clark
Liaison Justice to Tennessee Commission
401 Seventh Avenue North
Liaison Justice to the Tennessee Commission on Continuing Legal Education
Supreme Court of Tennessee
401 Seventh Avenue North
Nashville, TN 37219
Via U.S. Mail and Email: cclark@tncourts.gov

Re: Center for Excellence in Decision-Making's Letter of Support for the Nashville Bar Association's Petition to Modify Tennessee Supreme Court Rule 21 Docket Number ADM2020-0115

Justices of the Tennessee Supreme Court:

The Center for Excellence in Decision-Making (CEDM) unequivocally supports the Nashville Bar Associations' (NBA) Petition to modify Tennessee Supreme Court Rule 21 to require, on an annual basis, two hours of continuing legal education on the topics of diversity, inclusion, equity, and the elimination of bias.

The CEDM is a judge-led initiative that began in 2018 in response to a recognized need in Shelby County to address systemic institutional racism and combat detrimental unconscious bias in decisions made by community leaders and stakeholders. The CEDM's Board of Directors includes U.S. Sixth Circuit Court of Appeals Judge Bernice Donald, U.S. District Court Judge

Tommy Parker, Shelby County Circuit Court Judge Gina Higgins, and Shelby County Chancellor JoeDae Jenkins.

Since its inception, the CEDM has provided intensive interactive training and education in the areas of diversity, inclusion, cultural competence, and unconscious bias to judges, attorneys in the district attorney's and U.S. attorney's offices, federal public defenders, and key decision-makers in law firms and corporate legal departments. This training includes workshops facilitated by world-renowned experts in the fields of neuroscience and psychology and authors who have studied and written extensively on implicit bias. The CEDM's initiatives have also included dual credit CLE webinars addressing these topics.

The proposed modification to Rule 21 emulates the CEDM's mission and is a tangible step toward addressing certain obstacles that have plagued the Tennessee justice system for generations. Evidence of these obstacles can be found in a multitude of areas. For instance, in the criminal justice system, the U.S. Justice Department's Civil Rights Division, under the Obama administration, investigated Memphis's juvenile justice system and found that "African-American children [were] treated differently and more harshly" than white children. And, black juveniles arrested in Shelby County were twice as likely as white juveniles to be detained in jail and twice as likely to be recommended for transfer to adult court, where a conviction generally brings harsher punishment. The adult population suffers from similar institutional inequity in the Shelby County criminal justice system. Despite making up 60.2% of Shelby County's population, blacks and Hispanics, on average, make up 86% of the total jail population.

In the civil justice system, evidence of racial inequity can be found in the ethnic composition of large Memphis-based civil law firms. In 2018, only 5.2% of attorneys employed by the 22 largest Memphis law firms identified as minorities, with only 8.9% classified as associates and 4.3% classified as partners. This low percentage must be considered in context; from 2008 through 2020, an average of 21.4% of students enrolled in the University of Memphis law school were minorities, with little attrition from a corollary graduation rate.

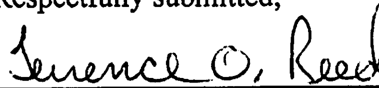
The CEDM strongly suspects that Memphis is a microcosm for many other communities in Tennessee, and we cite these statistics to exemplify the need for increased education and training on diversity, inclusion, equity, and the elimination of bias that perpetuate the above-referenced obstacles. The Tennessee Bar should not ignore the renewed call for social justice sparked by the civil unrest following the repeated high-profile mistreatment of members of our minority communities. On the contrary, the Tennessee Bar should proactively meet this moment with bold action and lead the charge to eradicate inequality and injustice, and a good start would be the proposed modification to Rule 21. Indeed, our beloved profession has a special duty to lead in this initiative since we are guardians of justice, help develop the law, practice within the criminal justice system, and help clients navigate the legal system.

It was encouraging that the Tennessee Supreme Court issued a statement on its commitment to equal justice on June 25, 2020 and set forth a plan to combat racism in our society.

The CEDM respectfully asks that the proposed amendment to Rule 21 be incorporated in that plan. It is time for Tennessee to join the other states, as identified in the NBA's Petition, that require such annual CLE credit.

For the foregoing reasons, and infinite others, the CEDM proudly joins the NBA's Petition to modify Rule 21.

Respectfully submitted,



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