>>> "Harold G. Speer, Jr." <Budspeer@aol.com> 11/21/2013 11:05 AM >>>
Submitted on Thursday, November 21, 2013 - 11:05am
Submitted by anonymous user: [74.239.110.100]
Submitted values are:

RECEIVED
NOV 21 2013
Clerk of the Courts
Rec'd By

Your Name: Harold G. Speer, Jr.
Your Address: 629 Lynah Ln, Beech Grove, TN 37018
Your email address: Budspeer@aol.com
Your Position or Organization: Harold G. Speer, Jr., Attorney-at-Law
Rule Change: Supreme Court Rule 21
Docket number: ADM2013-02417
Your public comments:

Dear Sir or Madam:

I strongly disagree with the recommendation to require five (5) hours of "live" CLE in Tennessee. My review of the ABA.org website shows that 31 states require no live CLE. An an additional fourteen (14) states do not require live CLE, but do set some limits on the number of hours that can be satisfied by recorded on-line courses (i.e., Tennessee's current limitation of 8 hrs). Thus, a great majority of the states forty-five (45) do not require any "live" CLE hours. My research on this website shows the following states required annual live hours: CA (4), IN (10), MS (6), PA (12), and TX (3). This website does not show that NJ requires 1/2 of its hours to be live.

While it may be true that the requirement of live CLE hours "might" help attorneys' interaction and professionalism, there are already rules in place to sanction attorneys who do not interact professionally. Other professions in Tennessee are allowed to satisfy their continuing education requirements without any live hours (i.e., Dentistry) without concern for lack of professionalism. In this day and age of smart phones, video conferencing, webinars, work-from-home jobs, etc., it seems that a requirement for live CLE is a quaint, but unnecessary, desire to return to the "good old days."

Thank-you for considering my comments to the proposed amendment to Rule 21.

Sincerely,

Harold G. Speer, Jr., BPR 013424

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE, TN

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IN RE: PETITION TO AMEND TENNESSEE SUPREME COURT RULE 21 * * * * * * * * *

No.: ADM2013-02417

COMMENT IN SUPPORT OF PETITION BY D. BRUCE SHINE

Comes D. Bruce Shine, a licensed attorney (BPR No. 000815) in the State of Tennessee since March 31, 1964, joins in support of the Petition to Amend Tennessee Supreme Court Rule 21 governing requirements of continuing legal education as proposed by the Tennessee Commission of Continuing Legal Education and Specialization ("Commission").

The undersigned would state to the Court as follows:

1. I am over the age of 65, having been born on August 11, 1938, and have **NOT** previously requested a waiver of the CLE requirements pursuant to Rule 21, Section 2.04(a), Rules of the Tennessee Supreme Court.

2. For approximately two years, I have had a "draft" Petition to Amend Tennessee Supreme Court Rule 21 Section 2.04(a) seeking removal of the exemption for attorneys over the age of 65 from engaging in annual mandatory continuing legal education but was hesitant to file such a petition.

3. The undersigned would note to the Court the Alternative Dispute Resolution Commission of the Tennessee Supreme Court of which the undersigned has been a member since 1996 and is currently chair, does not and never has

recognized an age exemption for attorneys listed as "Rule 31 Mediators" in terms of their continuing mediation education requirements.

4. The ADRC adopted on April 26, 2004 a requirement pursuant to Tennessee Supreme Court Rule 31, Section 18(a) that all "listed" Rule 31 Mediators have six hours of continuing mediation education every two years. This policy became effective with the renewal process for listed Rule 31 Mediators on January 1, 2005.

5. Some years ago, a Rule 31 Listed Mediator also licensed as an attorney and over the age 65 requested an exemption from the continuing mediation education required by Rule 31, Section 18(a). In moving for such a waiver, the attorney cited Rule 21, Section 2.04(a) of the Supreme Court Rules of Tennessee. The ADR Commission at that time determined Rule 21 applied to licensed attorneys and their "qualifications to practice law" and did not apply to the Alternative Dispute Resolution Commission listing of Rule 31 Mediators. All Rule 31 Listed Mediators in the State of Tennessee since 2005 irrespective of age and whether licensed lawyers or not have been required to take six hours every two years of continuing mediation education cited above.

6. On October 31, 2011, the Commission provided undersigned figures then applicable showing that of the then 17,133 licensed lawyers in Tennessee that those over the age of 75 who had paid their annual license fee and sought an exemption under Rule 21, Section 2.04(a) numbered 949 or .06 percent of the then licensed lawyers in the state. The number of lawyers over the age 75 on October 31, 2011 who had paid their annual license fee and who had **NOT** sought an exemption under Rule 21, Section 2.04(a) numbered 16 or .001 percent of the lawyers then licensed in Tennessee.

7. There is no rational reason nor does an objective academic study exist to support the proposition that attorneys over 65 would not benefit from the continuing legal education requirements inherent in the intent behind the adoption of Rule 21 in 1986.

8. Citizens of the State of Tennessee should be able to rely upon the continued competence of attorneys irrespective of age who hold themselves out to the general public as competent to practice law.

9. While the age of 65 and over exemptions served at one time as a useful means of achieving support among the legal profession for the adoption of Rule 21, the exemption no longer serves the best interest of the citizens of Tennessee as consumers of legal services.

10. Exhibit C to the subject Petition as well as its Exhibit E, amply demonstrate the need and the necessity for the removal of the age 65 exemption as it currently exist under Rule 21, Section 2.04(a) of the Supreme Court Rules of Tennessee.

WHEREFORE, the undersigned moves the Court to adopt the Petition to Amend the Tennessee Supreme Court Rule 21.04(a).

By: D. Bruce Shine

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TN BPR No. 000815
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ANDREW A. WARTH

OF COUNSEL
LARRY W. LINDEEN

November 25, 2013

Mike Catalano, Clerk
Appellate Court Clerk's Office
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

Re: Tenn. Sup. Ct. R. 21
Supreme Court No. ADM2013-02417

Dear Mr. Catalano:

I was surprised and disappointed to learn that the Commission on Continuing Legal Education and Specialization has petitioned the Supreme Court to remove the CLE credit exemption in Rule 21, §2.04(a), for those of us who are 65 and over. As a confessed member of the affected class, I am opposed to the change in the Rule.

I have been a consistent supporter of continuing legal education for our profession and a supporter and participant in the formal program in our state. As you know, however, it is not a perfect solution to the problem of disparate quality across the bar; and while the goal of continuing legal education is necessary and laudable, (and helps to promote the profession's image among our citizens) it certainly does not insure that practicing lawyers will keep abreast of the changes in the statutory and case law. Given that there are no absolutes here, I respectfully suggest that the proposed change imposes more unnecessary burdens than positive benefits.

The stated justifications for the change are particularly unpersuasive. Merely because economic and demographic changes have resulted in more practicing "veterans of the bar" does not prove a need to remove the age exemption. And the reliance on the increase in the number of complaints lodged against the age group is tenuous at best and unfair at worst. At the very least, one would expect some nexus be drawn between those complaints that are legitimate and whether 15 hours of continuing legal education a year would have conceivably prevented the

offense(s). In other words, and respectfully, more study and analysis are necessary before the age exemption is removed.

Having talked to a number of "veterans," I hope and expect that you will hear from them, so I shall not belabor the point, nor expand on it; but I would be pleased to discuss the matter further or answer any questions or concerns.

Please register my "vote" as an emphatic, "Don't do it."

Respectfully submitted,

James F. Sanders

JFS/mlk

CHAMBLISS

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November 25, 2013

RECEIVED
NOV 26 2013
By

Mr. Michael W. Catalano, Clerk
Tennessee Supreme Court
100 Supreme Court Bldg
401 7th Avenue North
Nashville, TN 37219-1407

Re: Comments on Amendments to Supreme Court Rule 21

Dear Mr. Catalano:

As a Tennessee lawyer now 80 years of age, I strongly support the proposed amendment. For years I have in conversation with lawyers said that I saw no basis for relieving lawyers the requirement of continuing legal education who continue to practice. A part of the joy of practicing law is that we continue to learn and to grow. There is no good reason to excuse lawyers over 65 of the CLE requirement. In fact, I believe that just the opposite is the case, the older we get the more we need to continue learning.

Respectfully,

T. Maxfield Bahner

TMB/mms

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OF COUNSEL
LARRY W. LINDEEN

November 22, 2013

Justice Cornelia A. Clark
Supreme Court Building, Suite 318
401 7th Avenue North
Nashville, Tennessee 37219

ADM2013-02417

FILED
NOV 27 2013
Clerk of the Courts

Justice Janice M. Holder
50 Peabody Place, Suite 209
Memphis, Tennessee 38103

Justice William C. Koch
Supreme Court Building, Suite 321
401 7th Avenue North
Nashville, Tennessee 37219

Justice Sharon G. Lee
505 Main Street, Suite 236
P.O. Box 444
Knoxville, Tennessee 37902

Justice Gary R. Wade
505 Main Street, Suite 200
P.O. Box 444
Knoxville, Tennessee 37902

RE: Petition to Amend Tennessee Supreme Court Rule 21

Dear Supreme Court Justices:

I have often thought that mandatory CLE in Tennessee is probably on balance good, although I was somewhat skeptical about it initially. It was my view that really good lawyers did not need it because they relied on other resources to keep up with changes in the law. On the other hand, I understood that there were a number of lawyers who would probably benefit from some form of continuing education.

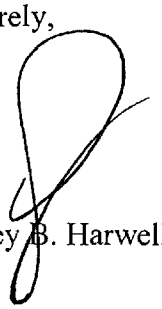
I was also somewhat troubled by the fact that an entire industry has been created by virtue of mandatory CLE, and it is often driven by profit considerations. Some of the programs, very frankly, as I'm sure the Court knows, are not really of any significant benefit to the attendees.

Having said that, the purpose of this letter is to comment on the Commission's proposal to eliminate the exemption for lawyers age 65 and over regarding CLE.

It's my strong view that, although 65 may be an arbitrary age, good lawyers who practice for a number of years simply have gained a tremendous knowledge and understanding of the law and mandatory CLE should not be required for them. I've discussed this with a number of other lawyers who, like me, are still actively practicing and are post-65. None of those to whom I've spoken, think that eliminating the exemption is well-advised.

I respectfully urge you to deny the request, and keep the exemption as it is for lawyers 65 and over.

Sincerely,



Aubrey B. Harwell, Jr.

ABHJr/lp

c: Tom Greenholtz, Chairperson
Judy Bond-McKissack, J.D., Executive Director

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Allen T. Malone
901-524-5157
Email: amalone@bpjlaw.com

ADM2013-02417

November 26, 2013

Mike Catalano, Clerk
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, Tennessee 37219-1407

RE: Tennessee Supreme Court Rule 21

Dear Mr. Catalano:

In response to the Supreme Court's request for comments concerning the proposed amendments to Tennessee Supreme Court Rule 21, this is to address that part of the proposed amendments, which would reinstate annual CLE requirements for lawyers who are 65 years old or older.

Several years ago, an organization of senior lawyers known as the "Gray Knights" was formed in Shelby County to support Memphis Area Legal Services ("MALS") with pro bono service for its clients, as well as financial contributions. There are currently sixty-seven lawyers serving as Gray Knights.

The pitch used in recruiting Gray Knights has been that senior lawyers, who are no longer obligated to meet the fifteen hour per year CLE requirement, should commit the fifteen hours to pro bono service for MALS' clients. I believe the pitch has been effective, but of course would be negated by the proposed Rule amendment. It has been my experience that work performed in pro bono service for MALS' clients has been of far more value, in terms of continuing legal education, than attending CLE courses.

Accordingly, what I would propose is that lawyers who (1) are 65 years old or older and (2) have been engaged in the practice of law for not less than 35 years, may satisfy their CLE requirement by performing pro bono services on behalf of clients referred to them by MALS and similar organizations throughout the state totaling at least fifteen hours each year.

Sincerely,

Allen T. Malone

cc: Linda Warren Seely
Memphis Area Legal Services

ADM2013-2417

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December 9, 2013

Chief Justice Gary R. Wade
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Justice William C. Koch, Jr.
Supreme Court Building, Suite 318
401 7th Ave. N.
Nashville, TN 37219-1407

Justice Cornelia A. (Connie) Clark
Supreme Court Building, Suite 318
401 7th Ave. N.
Nashville, TN 37219-1407

Justice Sharon Gail Lee
505 Main Street, Suite 200
P.O. Box 444
Knoxville, TN 37902-0444

Justice Janice M. Holder
50 Peabody Pl., Suite 209
Memphis, TN 38103-3665

Re: Rule 21

Dear Chief Justice Wade and Members of the Court:

I write in opposition to a change in Rule 21 requiring attorneys over the age of 65 to continue obtaining CLE credits to retain their law licenses. The proposed change will not materially affect me because I am a Rule 31 mediator. As such I will continue with the CLE requirements of that rule. Nevertheless, I oppose the change in the rule because for those of us who have retained a law license to age 65 it is extremely unlikely that CLE will make a significant difference in our competence. Having been involved with CLE from the beginning, I have noticed on many occasions a lack of attention paid to the subject matter of a given course irrespective of age. Moreover, there has been an explosion of a cottage industry in "CLE" and no doubt considerable lobbying of the Commission by that industry to broaden the base to the fullest extent.

No doubt there are those of us, 65 and older, who should not continue to practice law by reason of physical or mental infirmities associated with that age, perhaps including this writer; however, in all likelihood, adding CLE requirements will not in any way identify or cure that issue.

Thanks for considering my thoughts.

Very truly yours,

Lew Conner

Lew Conner

LC: mh
cc: Tom Greenholtz
Judy Bond-McKissack

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December 10, 2013

Mr. Mike Catalano, Clerk
Tenn. Sup. Ct. R. 21
Appellate Court Clerk's Office
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

DEC 12 2013

RE: Amended Rule 21, No. ADM 2013-02417

Dear Sir:

I am writing to comment on the proposed changes to Supreme Court Rule 21, and in particular the exemptions under Section 2. Certainly one cannot argue that the number of attorneys who are still practicing law (at least to some extent) past 65 years of age is increasing. First, there are varying reasons why attorneys continue to maintain a law license past age 65. These reasons could range from many years of well deserved pride and honor that comes from holding a law license. Secondly, there is a huge difference between practicing law and holding a law license. Obviously holding a law license does not mean that individual is necessarily practicing law. To change the rules in the later stage of a long licensed attorney creates an environment that such attorneys are not welcome to the brotherhood.

I would make some alternative recommendations for consideration.

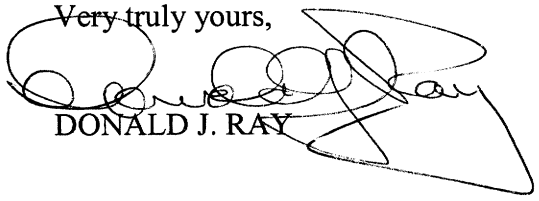
1. Perform some research on incremental license similar to the process young people go through to get a driver's license. For example, a limited license could be issued for an attorney who does not want any privileges of representing any client in Court. Although it's apparently not been studied, there is a likelihood that the research would show this would curtail disciplinary complaints if there is not Court advocacy involved.

2. The research cited in the Petition to Amend ceases its consideration once the attorney passes age 65. Could the same conclusions be made for attorneys who are 70 or older? 75? It seems massively over broad that this rule change provides a life sentence for a lawyer who has earned and wants to maintain the Honorable license perhaps until death. The Honorable Commission has made some valid points, but did not look far enough at alternatives to avoid this

life sentence. Again, would those points be valid for lawyers over 70? 75? If this wasn't studied, then we don't know if there is an alternative that might work.

Like all age groups, there are a few who can contaminate the entire group. In no age group do we "shoot" the rest of the group because of the sins of a few. I just don't think this rule change has been thoroughly researched to find suitable alternatives. Many thanks to the members of the Commission for their service.

Very truly yours,



DONALD J. RAY

DJR/jt

JOHN BUMPUS

ATTORNEY AT LAW*

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SHELBYVILLE, TENNESSEE

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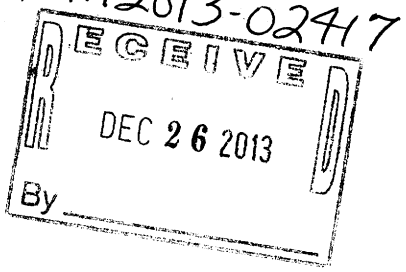
***ALSO LICENSED BY DISTRICT OF COLUMBIA**

ADM2013-02417



December 24, 2013

Mr. Mike Catalano, Clerk
Re: Tennessee Supreme Court Rule 21
Appellate Court Clerk's Office
100 Supreme Court Building
401 7th Avenue North
Nashville, Tennessee 37219-1407

Dear Mr. Catalano and Ladies and Gentlemen of the Supreme Court:

This letter is to briefly comment on the proposed revision of existing Supreme Court Rule 21 *re* removing the age 65 limitation for mandatory CLE. I oppose this TCCLE revision proposal.

I seriously doubt that very few lawyers practice law full-time after age 65. And the extent to which any of these lawyers may continue to practice law after arriving at this milestone will decrease for each one with every succeeding year. Yet TCCLE's proposal would have these senior, increasingly part-time, lawyers treated the same as though they were 35 instead of 65+.

I suspect that many senior attorneys in Tennessee reside and practice in small communities, not in prosperous city law firm practices, and what law they do practice is a limited practice (e.g., probate, deed preparation, and the like) for which the requirements, and the expense therefor, of full-scale mandatory CLE would increasingly be both unequally burdensome and unnecessary for them. All that these lawyers likely want to do is to perform such minor legal tasks as will enable them to supplement such other retirement income as they have.

TCCLE's formal proposal in its Exhibit E cites the percentage of attorneys age 65 and older as of 8-22-2013—13.37%. But TCCLE's proposal document does not indicate what the percentage of attorneys age 65 and older has been each year throughout the history of mandatory CLE in Tennessee since its beginning in 1987. I suspect that the percentage in 2013 does not differ much, if at all, from what the percentage of attorneys age 65 and older has been throughout the history of mandatory CLE in Tennessee. And if this is true, then why change now?

And likewise, concerning the cited percentage of filed complaints in 2013 for attorneys age 65 and older, I suspect that the same reasoning, and similar percentages, also apply.

Certainly the Supreme Court should know the foregoing additional information before it would vote to revise its existing Rule 21, and should require such information beforehand from TCCLE.

Thank you for your consideration of my concern.

Sincerely,

John Bumpus
Tennessee BPR no. 002797

ROBERTSON COUNTY GENERAL SESSIONS COURT

531 SOUTH BROWN STREET, SPRINGFIELD, TENNESSEE 37172

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BURTON D. GLOVER, JUDGE

January 9, 2014

Mr. Mike Catalano, Clerk
Re: Tenn. Sup. Ct. R. 21
Appellate Court Clerk's Office
100 Supreme Court Building
401 7th Avenue North
Nashville, Tennessee 37219-1407

RECEIVED
JAN 13 2014
Clerk of the Courts
Rec'd By

Re: Docket Number ADM2013-02417

Dear Mr. Catalano:

I was elected Robertson County General Sessions Judge in 2006. My date of birth is January 3, 1939. Because of my age I have not been required to submit proof of CLE when attending the fall and winter General Sessions Judges Conferences. During each session there are at least 12 hours of CLE offered. If I had been reporting CLE, at this time I would have had in excess of 24 hours to carry forward to 2014. I would respectively request this be considered during the course of revising Supreme Court Rule 21 eliminating the exemption for lawyers age 65 and over.

Sincerely,

Burton D. Glover, Judge
BDG/ad

LAW OFFICE

HAL HARDIN

ADM2013-02417

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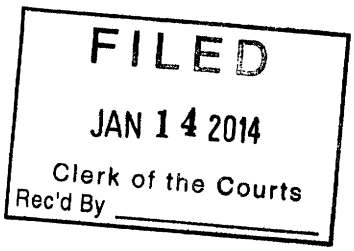
January 10, 2014



Justice Janice M. Holder
50 Peabody Place, Suite 209
Memphis, TN 38103

Justice Cornelia A. Clark, Suite 318
Justice William C. Koch, Suite 321
Supreme Court Building
401 7th Avenue North
Nashville, TN 37219

Justice Sharon G. Lee, Suite 236
Justice Gary R. Wade, Suite 200
505 Main Street
P.O. Box 444
Knoxville, TN 37902

RE: Petition to Amend Tennessee Supreme Court Rule 21

Dear Supreme Court Justices:

When CLE became mandatory, many of us welcomed it but also viewed it with some skepticism. I felt that the good lawyers probably did not need it. Good lawyers always devoted the time and resources to keep current on legal matters. I felt those lawyers who truly needed CLE would pay their fees and doze through the classes (or now stay on their lap tops). I also was concerned about the emergence of another powerful, cottage industry in the legal business. Even though some CLE has been most fulfilling, I still have some of those original concerns. In my humble opinion, it is not the one fix all that its most ardent supporters claim.

I oppose the commissions proposal to eliminate the age 65 CLE credit exemption currently set forth in Rule 21, Section 2.04(A). Most lawyers who have reached this age should have enough knowledge and understanding of the law that mandatory, expensive CLE is no longer necessary. Lawyers, because of the internet and growing number of legal societies, etc., probably read more law now than ever before.

I know several lawyers that have elected to retire from the active practice of law but continue doing pro bono work. Some...most I fear, will quit if they have to pay for CLE. These lawyers should not be required to support this expanding cottage industry of CLE. Finally, I was disappointed in the commissions' arguments in support of the rule change. The BPR statistical proof used by the commission falls short of supporting the stated position. I urge the Court to deny the request.

Respectfully yours,

Hal Hardin

HH/ts

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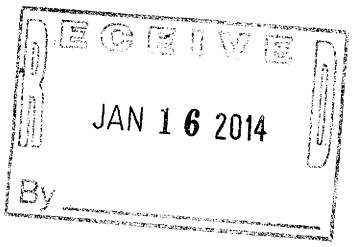
January 14, 2014

Mike Catalano, Clerk
Appellate Court Clerk's Office
100 Supreme Court Building
401 7th Avenue North
Nashville, Tennessee 37219-1407



Re: Tennessee Supreme Court R.21
Docket #ADM2013-02417

Dear Mr. Catalano:

The November 25, 2013 edition of the Tennessee Attorneys Memo reports that the Tennessee Commission on Continuing Legal Education and Specialization has proposed, among other things, the elimination of the age 65 and over CLE credit exemption.

If that proposal is adopted, I think it should only be applicable to lawyers who reach the age of 65 years after the date the proposal is adopted. I do not think lawyers who are already age 65 and older should now be told that they again have to start meeting the CLE requirements. Another thought is maybe the age exemption should be raised to age 70 and over. Senior lawyers certainly deserve an age exemption. Most seniors attend CLE courses anyway, but it should not be required.

The Commission gave some statistics about the number of attorneys over age 65 and those between the ages of 25 and 34 and the number of complaints filed in each age bracket. Where are the statistics for the attorneys between ages 34 and 65? Just because a complaint is filed does not mean the attorney has violated any rule of ethics or done anything improper. There are many explanations why complaints are filed. It is misleading to imply lawyers over 65 years old have an inordinate amount of complaints because they don't have to attend CLE courses. I think these statistics are hand-picked to justify eliminating the age exemption so as to generate more revenue.

I would appreciate your passing on these comments to the commission or any other interested party.

Yours truly,

CARRIER & HICKIE, Attorneys at Law

By: Jack R. Carrier
JACK R. CARRIER, Attorney

JRC/bb

Peter K. Shea
5007 Flint Hill Drive Knoxville, TN 37921 / Tel: 865-584-5023 / E-mail: Sheapt@aol.com

January 16, 2014

Mike Catalano, Clerk
Re: Tenn. Sup. Ct. R. 21
Appellate Court Clerk's Office
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

JAN 21 2014

Docket: No. ADM2013-02417

Dear Mr. Catalano:

I recently read in the *Tennessee Attorneys Memo* of a proposal to reinstitute mandatory CLE requirements for attorneys over 65, based in part on the number of complaints received regarding persons in that age group. Without further information about those complaints, however, it simply is not possible to provide informed comments about this change to CLE requirements.

For example, it would be very helpful to know what categories the complaints fall under. If a great many complaints have to do with inadequate representation based on a lack of substantive knowledge, there may be a case for additional education in some instances, (preferably, from my point of view, only for those who show such a need). Conversely, if the gist of the complaints is a failure to respond to telephone calls, failure to notify clients of case developments, theft, or deception of some sort, no amount of additional education is going to reform an attorney with many years of experience. Also, how many of the complaints were deemed worthy of further investigation; and, of those investigated, how many complaints merited some form of sanction?

I would appreciate it if you could direct me to a source that contains the information noted above so that I may provide specific comments regarding the proposal.

Sincerely,

Peter K. Shea

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ANDREW A. WARTH
L. WELLS TROMPETER

OF COUNSEL
LARRY W. LINDEEN

January 17, 2014

ADM2013-02417

Mike Catalano, Clerk
Appellate Court Clerk's Office
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

JAN 21 2014

Re: Tennessee Supreme Court, Ruling 21

Dear Mike:

I am sending this letter to you consistent with the Order of the Court of November 18, 2013 concerning the petition of the Tennessee Commission on Continuing Legal Education and Specialization to amend Rule 21.

I totally and completely oppose eliminating the age 65 and over CLE credit exemption.

I have read the proposed revisions and I understand the number of attorneys who turn 65 every year is increasing. I also understand that the practice of law is an ever-evolving profession.

Nonetheless, while I appreciate the comments by the Commission that lawyers 65 and older are among the best and the brightest, I respectfully suggest they are also lawyers who are highly experienced, who recognize their abilities, and who simply do not need required CLE.

Continuing legal education is a cottage industry and while there are benefits in requiring some CLE, to dictate that seasoned lawyers take CLE is, in my opinion, not necessary nor is it appropriate.

It's been five years since I was exempted from CLE and in my view, it has enabled me to handle client matters, serve on non-profit boards, and do pro bono work in lieu of attending CLE.

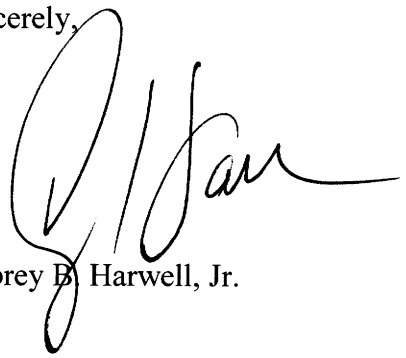
Simply put, if there are lawyers who have practiced 30+ years and need CLE, I assume they will take whatever courses they believe appropriate. On the other hand, if they practice in a given area where CLE would be of no benefit, to mandate that they take CLE is simply not well advised in my opinion.

I appreciate the members of the Commission spending their time and energy looking at this issue. I say, however, that I completely and totally disagree with their conclusion and respectfully submit, the Court should not accept this proposed amendment.

I would be grateful if you would share this with members of the Court, some of whom I've already written about this matter.

Thank you, sir.

Sincerely,



Aubrey B. Harwell, Jr.

ABHJr/lp

JAN 21 2014

LAW OFFICE

SPEER AND SPEER

HAROLD G. SPEER, JR.*
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*Admitted: Tennessee Western District U.S. Federal Court
*Admitted: U.S. Supreme Court
*Admitted: District of Columbia Court of Appeals

January 16, 2014

Mike Catalano, Clerk
Re: Tenn. Sup. Ct. R. 21
Appellate Court Clerk's Office
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

Re: IN THE SUPREME COURT OF TENNESSEE AT NASHVILLE
IN RE: PETITION FOR ADOPTION OF AMENDED TENNESSEE SUPREME COURT RULE 21
No. ADM2013-02417

Dear Mr. Catalano:

I strongly disagree with the recommendation to require five hours in a classroom setting or in other types of live, in-person CLE activity in Tennessee. My review of the Americanbar.org website shows that only six states require live, in-person annual CLE hours: DE (14), KS (14), MS (7), NJ (7), OH (13.25), and PA (12). [*See, attached table*]. Thus, a great majority of the states (44) do not require any live, in-person CLE hours. Indeed, the trend seems to be going the other way and allowing webinars/teleconferences (see pending accreditation in Delaware). Eighteen states set some limits to the number of hours that can be satisfied by recorded on-line courses (i.e., Tennessee's current limitation of 8 hrs), however, these hours can be satisfied by other formats, such as, ABA approved CD's, CD-ROM's, DVD's, webinars, or teleconferences.

It may be true that the requirement of live, in-person CLE hours "might" help attorneys' interaction and professionalism. However, other opportunities for interaction are provided by various attorney associations. In addition, a requirement for live, in-person CLE to enhance professionalism seems superfluous in light of the guidance provided in the Disciplinary Rules and Ethical Opinions applicable to all Tennessee attorneys. Other professions in Tennessee are allowed to satisfy their continuing education requirements without any live, in-person hours (i.e., Dentistry) and without concern for lack of professionalism. In this day and age of smart phones, video conferencing, webinars, work-from-home jobs, etc., it seems that a requirement for live, in-person CLE is a quaint, but unnecessary, desire to return to the "good old days." The added time and costs of live, in-person CLE, especially for attorneys practicing in rural areas, must be weighed against any purported gain in professionalism.

Regardless of how many interactive opportunities are provided, Attorneys must be ethical or professional in their own right. As Saint Augustine of Hippo stated: "Right is right even if no one is doing it; wrong is wrong even if everyone is doing it."

Thank-you for consideration of my comments.

Very truly yours,

Harold G. Speer, Jr.

Harold G. Speer, Jr., Esq.

Attachment: State CLE Requirements

State CLE Requirements per Americanbar.org website

State	CLE/yr	In-Person	Limit Recorded	Formats accepted
AL	12 + 2 ethics	0	0	Live, in-person or Webinars/Teleconferences
AK	9 + 3 ethics	0	0	Live, Web/Teleconf, CDs, CD-ROMs, DVDs, etc.
AZ	15 + 3 ethics	0	0	Live, Web/Teleconf, CDs, CD-ROMs, DVDs, etc.
AR	12 + 1 ethics	0	0	Live, in-person or Webinars/Teleconferences
CA	8.3 + 2 other	0	4.5 participatory	Live, in-person or Webinars/Teleconferences
CO	15 + 2.3 ethics	0	0	Live, Web/Teleconf, CDs, CD-ROMs, DVDs, etc.
CT	0	0	0	N/A
DE	12 + 2 ethics	14	N/A	Live, in-person , but pending webinars/teleconf
DC	0	0	0	N/A
FL	10 + 1.6 ethics	0	0	Live, Web/Teleconf, CDs, CD-ROMs, DVDs, etc.
GA	12 + 2 + 3 (trial)	0	0	Live, Web/Teleconf, CDs, CD-ROMs, DVDs, etc.
HI	3	0	0	Live, Web/Teleconf, CDs, CD-ROMs, DVDs, etc.
ID	10 + .6 ethics	0	0	Live, Web/Teleconf, CDs, CD-ROMs, DVDs, etc.
IL	15 + 3 other	0	0	Live, Web/Teleconf, CDs, CD-ROMs, DVDs, etc.
IN	12 + 1 ethics	0	0	Live, in-person or Webinars/Teleconferences
IO	15 + 1.5 ethic	0	0	Live, in-person or Webinars/Teleconferences
KS	12 + 2 ethics	14	N/A	Live, in-person
KY	12.5 + 2 ethics	0	0	Live, in-person or Webinars/Teleconferences
LA	12.5 + 2 other	0	0	Live, in-person or Webinars/Teleconferences
ME	11 + 1 ethics	0	5.5	Live, Web/Teleconf, CDs, CD-ROMs, DVDs, etc.
MD	0	0	0	N/A
MA	0	0	0	N/A
MI	0	0	0	N/A
MN	15 + 1.6 other	0	0	Live, in-person or Webinars/Teleconferences
MS	12 + 1 other	7	6	Live, in-person or Webinars/Teleconferences
MO	15 + 2 other	0	6	Live, Web/Teleconf, CDs, CD-ROMs, DVDs, etc.
MT	15 + 5 other	0	5	Live, Web/Teleconf, CDs, CD-ROMs, DVDs, etc.
NE	10 + 2 other	?	?	Attys must submit for approval
NV	12 + 4 other	0	0	Live, Web/Teleconf, CDs, CD-ROMs, DVDs, etc.
NH	12 + 2 other	0	6	Live, Web/Teleconf, CDs, CD-ROMs, DVDs, etc.
NJ	12 + 2 other	7	N/A	Can get only 1/2 req'd hrs by non-live
NM	12 + 2 other	0	4	Live, Web/Teleconf, CDs, CD-ROMs, DVDs, etc.
NY	12 + 2	0	0	New attys must get live or interactive videoconf
NC	12 + 2.3 other	0	4	Live, in-person or Webinars/Teleconferences
ND	15 + 1 ethics	0	15	Live, in-person or Webinars/Teleconferences
OH	12 + 1.25 other	13.5	N/A	Live, in person
OK	12 + 1 ethics	0	6	Live, in-person or Webinars/Teleconferences
OR	15 + 2.5 other	0	0	Live, Web/Teleconf, CDs, CD-ROMs, DVDs, etc.
PA	12 + 1 ethics	12	N/A	Live, in person
RI	10 + 2 ethics	0	0	Live, in-person or Webinars/Teleconferences
SC	14 + 2.3 other	0	0	Live, in-person or Webinars/Teleconferences
SD	0	0	0	N/A
TN	15 + 3 ethics	0	8	Live, in-person or Webinars/Teleconferences
TX	15 + 3 ethics	0	3 self study	Live, Web/Teleconf, CDs, CD-ROMs, DVDs, etc.
UT	12 + 1.5 other	0	12	Live, Web/Teleconf, CDs, CD-ROMs, DVDs, etc.
VA	12 + 2 other	0	8 ?	Live, in-person or Webinars/Teleconferences

State CLE Requirements per Americanbar.org website

VT	10 + 2 other	0	10	Live, Web/Teleconf, CDs, CD-ROMs, DVDs, etc.
WA	15 + 2 ethics	0	7.5	Live, Web/Teleconf, CDs, CD-ROMs, DVDs, etc.
WV	12 + 1.5 ethics	0	12	Live, Web/Teleconf, CDs, CD-ROMs, DVDs, etc.
WI	15 + 1.5 ethics	0	10	Live, in-person or Webinars/Teleconferences
WY	15 + 1 ethics	0	0	Live, in-person or Webinars/Teleconferences

STEPHEN J. COX,
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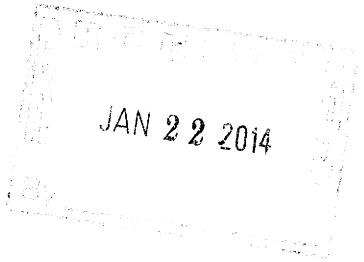


January 21, 2014

Mike Catalano, Clerk
Re: Tenn. Sup. Ct. R. 21
Appellate Court Clerk's Office
100 Supreme Court Building
401 7th Avenue North
Nashville, Tennessee 37219-1407

Dear Mr. Catalano:

Thank your for accepting commentary on the proposed changes to Rule 21. Reference is made to: No. ADM2013-02417.

As a now 65 year-old attorney, as of late 2013, I admit that I had looked forward, for the first time, to saving on the time and expense required to obtain 15 hours of CLE for this calendar year (I turn 66 on August 28th). I do, however, understand the Commission's thoughts on this issue, and appreciate that many senior attorneys, myself now included, are continuing to practice their profession beyond the typical, for the "old days," semi-mandatory retirement age of 65.

Might I ask that the Commission consider the following for us oldsters:

That mandatory CLE continue at the rate of eight (8) hours general CLE credit each calendar year for those age 66 and older, with a maximum of three [or four, in the Commission's discretion] hours being "distance" learning, the remainder to be "live" or "on-site."

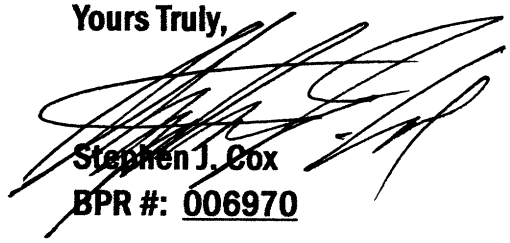
Further, that the three (3) hours of Ethics & Professionalism CLE requirement be dropped for senior attorneys (I feel that if you're not ethical and professional by age 66, you're never going to be so, and a few hours of training on E&P will neither maintain your ethical behavior, nor change anything in your make-up, at this late date!).

I believe that the 8-hour general CLE requirement would better meet the needs of the senior attorney, as it would allow him or her to take a course updating him or her in one or two areas in which that attorney now "specializes," even if not a certified Specialist through TCCLES. For instance, I have been more involved than ever the last few years with Trusts and Estates, and appreciate CLE courses in those areas, but I still represent clients in personal injury matters and other related fields, as well.

If the senior attorney wishes to take the 12- or 15-hour block CLE courses offered each year by the late Don Paine's group (TLI), among others, giving a broad overview of changes in the law, new case law, etc., and carry over for the next year the hours beyond the eight (8) required for senior lawyers, that would be fine; any "E&P" or "Dual" hours taken as part of this or any other course could be considered "general" CLE hours for this purpose, and count toward next year's 8-hour total requirement for us old guys.

Thank you very much, and with best regards, I remain

Yours Truly,



Stephen J. Cox
BPR #: 006970

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RECEIVED
JAN 23 2014
BY

January 21, 2014

ADM2013-02417

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

RE: Proposed Amendments to Supreme Court Rule 21

Dear Mr. Catalano:

I am a practicing lawyer aged 72. The proposed Rule seems to work an inequity with respect to lawyers over the age of 65 who are practicing and who have taken advantage of the exemption heretofore afforded. For that reason some transitional relief should be granted in the event the proposed change is adopted to require attorneys over the age of 65 who are practicing to be covered by Rule 21.

For myself I typically have had substantial carry over credits from year to year sometimes to the extent that I need very few if any additional credits for the next reporting year. That has not prevented me from attending seminars alive and online regardless of the need for credits. However, I have been very casual in asking for credit for many of those seminars because, being exempt, I did not want to impose any greater financial burden on the seminar provider than was necessary. Even then some providers have filed with the CLE for my attendances.

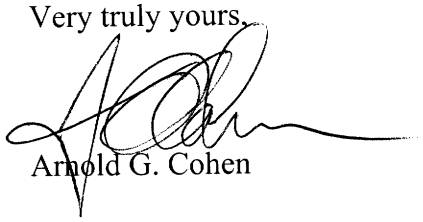
The transitional relief should excuse lawyers from all or a substantial portion of the required credits for the first year after which the proposed change becomes effective or give lawyers the option of being excused. An alternative would be to immediately give written notice to each and every lawyer in the over age 65 category that this Rule may become effective in the near future and that each lawyer should be diligent in causing their 2014 seminar credits to be reported. Even with written notice mailed to each such lawyer, it is likely that such notices would not be received for some time later this year. If so, then each lawyer could be excused *pro rata* from the full year's requirements.

For lawyers who have caused their CLE credits to be reported during 2013, carry over credit should be granted. If so, then additional credits earned during 2014 should, to the extent the combination of 2013 and 2014 credits exceed the amount of credits otherwise required for 2014, be eligible for carry

over to 2015. Further, I am not aware that either the BPR or CLE have a program to identify those of us aging lawyers whose cognitive facilities become impaired due to aging. If such a program does not already exist, one should be instituted. There should be some appropriate means of preventing such lawyers from committing harm inadvertently.

Thank you for considering my comments.

Very truly yours,



Arnold G. Cohen

AGC/cms

AGC\Miscellaneous Corr/Catalano, Michael 001.012114

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RETIRED
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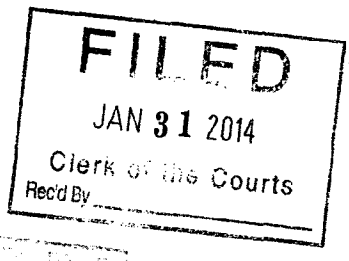
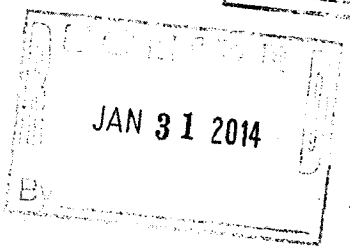
WILLIAM F. ALLEY, JR

J.H. HODGES (1896-1983)
J.H. DOUGHTY (1903-1987)
RICHARD L. CARSON (1912-1980)
JOHN P. DAVIS, JR. (1923-1977)





January 28, 2014

Mr. Mike Catalano, Clerk
Re: Tenn. Sup. Ct. R. 21
Appellate Court Clerk's Office
100 Supreme Court Building
401 7th Avenue North
Nashville, Tennessee 37219-1407

Re: No. ADM2013-02417
Tennessee Supreme Court Rule 21

Dear Mr. Catalano:

I have reviewed the Petition to Amend Tennessee Supreme Court Rule 21 Governing the Requirements of Continuing Legal Education. I take issue with the proposed revisions to Tennessee Supreme Court Rule 21, § 2. The Rule proposed would eliminate the age 65 and over CLE credit exemption currently set forth in Rule 21, § 2.04(a). The sweeping reversal of the court's rule, which previously existed, is not warranted given the facts. The use of statistics to suggest that the current 2,827 lawyers over the age of 65 have 1,139 complaints compared to the 3,684 attorneys between the ages of 25 and 34 who have 1,268 complaints is not persuasive. First, on its face, the requirement of continuing legal education is not diminishing the complaints between the ages of 25 through 34. Thus, there does not seem to be a relationship between taking CLE and the filing of complaints. The fact that there are 2,827 lawyers who have 1,139 complaints during the same time period does not suggest that the addition of CLE will increase or reduce the number of complaints, as evidenced by the complaints filed against those ages 25 to 34.

I would suggest that the complaints filed on the age bracket of 25 to 24 are more serious than those in the elderly age bracket. Although I have not done an analysis of the complaints to make such a determination (and apparently neither has the Commission), my experience suggests, in reading the disciplinary notices, that to be true.

I would strongly urge the Commission to reverse its position or, alternatively, reduce the amount of CLE suggested for the age 65 and over bracket.

Cordially yours,

Hodges, Doughty & Carson, PLLC

Albert J. Harb

AJH/tjm
Q:\Tammy\Albert\Personal\CatalanoMike1-28-2014.doc

FILED
JAN 31 2014
Clerk of the Courts
Rec'd By

IN THE SUPREME COURT OF TENNESSEE, AT NASHVILLE

IN RE:	PETITION TO AMEND TENNESSEE SUPREME COURT RULE 21)	NO. ADM2013-02417

PETITION TO AMEND TENNESSEE SUPREME COURT RULE 21 GOVERNING THE REQUIREMENTS OF CONTINUING LEGAL EDUCATION

COMMENTS OF ROBERT M.STIVERS, JR., BPR NO. 000737

I would submit the following as two (2) comments with regard to the above-Petition, and particularly with regard to the proposed amendment to TSCR 21, Section 2.04(a), proposed to eliminate the exemption for lawyers age sixty-five (65) and older from annual CLE certification:

I.

At pages 2 and 3 of the original Petition, the Tennessee Commission on Continuing Legal Educational and Specialization ("Commission"), advances that the exemption for lawyers over age sixty-five (65) should be stricken, and, instead, those lawyers at and above that age should be required to secure continuing legal education on an annual basis. As evidence of the need for having lawyers over age sixty-five (65) continue to take continuing legal education, reference is made to Exhibit E to the Petition, and it is pointed out that lawyers in the over sixty-five (65) and over age group have more complaints filed against them than do the lawyers in the age twenty-five (25) to thirty-four (34) age group, and a chart, Exhibit E, is attached to support that premise. The Commission continues to say that this is a reason for requiring continuing legal education, implying that lawyers in the oldest bracket are "performing" less well than those beginning the practice of law, who are required to take continuing legal education; however, a simple review of Exhibit E shows the fallacy of the Commission's reasoning in this regard.

By simply reviewing the complaints filed, versus the active attorneys in Tennessee as of August 22, 2013, an interesting pattern emerges, which is obviously completely contradictory to the Commission's position. It is absolutely correct that, among the lawyers in the ages twenty-five (25) to thirty-four (34) group, some thirty-four percent (34%) of the lawyers had a complaint against them, assuming an individual complaint matches an individual lawyer. Going further, the Commission is exactly correct when it states that, for the age sixty-five (65) and older bracket, forty percent (40%) of the attorneys would have a complaint against them based on the same criterion. The balance of Exhibit E is omitted from the discussion, but should be reviewed by the Court.

In the lawyers thirty-five (35) to forty-four (44) age group, sixty-four percent (64%) of the attorneys had a complaint filed against them; in the age fifty-five (55) to sixty-four (64), seventy percent (70%) of the lawyers would have had a complaint filed against them; finally, in the age forty-five (45) to fifty-four (54) bracket, eighty-eight percent (88%) of the attorneys would have had an complaint filed against them, under the facts presented in Exhibit E. In each of those age groups, from age thirty-five (35) to age sixty-four (64), continuing legal education is required. At the same time, the highest number of complaints per number of lawyers is found among the age forty-five (45) to fifty-four (54) bracket, and is over twice the number of complaints to the number of attorneys in the age sixty-five (65) and older bracket. Under the premise advanced by the Commission, either the need for continuing legal education is the greatest for the forty-five (45) to fifty-four (54) age group, or lawyers age sixty-five (65) and older do better without continuing legal education, than they might have done earlier in their careers.

If the Court is to remove the exemption for lawyers over sixty-five (65), then a rational basis for that removal needs to be found and not theory advanced by the Commission, that, without continuing legal education, lawyers above age sixty-five (65) become less ethical than their younger counter parts; this is simply a false presumption.

II.

If the Court does see fit to remove the exemption for lawyers age sixty-five (65) and older, then a decision should be made as to if a "grandfather" provision is needed in the Rules. For example, in August 2013, there apparently were 2,827 attorneys over the age of sixty-five. The Commission never mentions how many of those lawyers have asked for, and received the exemption, but we could assume, probably falsely, that each one has asked to be exempted. Are those lawyers to now be required to make-up continuing legal education requirements for all prior years from which they were exempted, or does the removal of the exemption come into play for succeeding years only?

III.

As a summary, and as a member of the effected group, I would hope that the Court will take the view that a factual basis for removing the exemption should be found, or any consideration of the false theory that the lawyers age sixty-five (65) and older have more complaints filed against them than their younger counter-parts be stricken from consideration. There are a number of lawyers in the over sixty-five (65) bracket that enjoy continuing to maintain their membership at the Bar, but focus on very specific areas of practice, and are quite comfortable in declining to take matters in other areas of practice. Also, some lawyers in the age sixty-five (65) and older category have in excess of forty (40) years of practice at the Bar, with continuing legal education, which, hopefully, has not been lost by age.

Respectfully submitted this 30th day of January, 2014.

Robert M. Stivers, Jr. w/perm LMS

ROBERT M. STIVERS, JR.
BPR No. 000737
Attorney at Law
P. O. Box 10911
Knoxville, TN 37939-0911
(865) 386-1630

STATE OF TENNESSEE)
COUNTY OF KNOX)

I, Robert M. Stivers, Jr., do hereby certify that I have caused to be delivered by United States Mail a true and exact copy of the foregoing comments to Tom Greenholtz, Chairperson, and Judy Bond-McKissack, J.D., Executive Director, Tennessee Commission on Continuing Legal Education and Specialization, 221 Fourth Avenue North, Suite 300, Nashville, TN 37219, by depositing the same in the United States Mail to them at that address.

WITNESS my hand this 30th day of January, 2014.

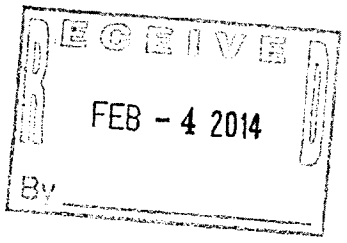
Robert M. Stivers, Jr. w/perm LMS

ROBERT M. STIVERS, JR.

KM KENNERLY MONTGOMERY

Attorneys & Counselors Since 1916

February 1, 2014



Mike Catalano, Clerk
Re: Tenn. Sup. Ct. R. 21
Appellate Court Clerk's Office
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

In Re: Petition For Adoption Of Amended Tennessee Supreme Court Rule 21 -- No. Adm2013-02417

Dear Mr. Catalano:

On my 65th birthday, I am writing this comment on the proposed CLE rule change for Tennessee lawyers. The rule would extend the 15 hour per year rule for CLE to lawyers age 65 and over, a group that has previously been exempt.

I have to tell you that I was looking forward to the benefit of the rule. Not because I mind learning, but because I'm of a generation -- as some of you may be -- that does not like to be compelled to do anything. I was looking forward this year to picking what I wanted to learn, not necessarily from the limited catalog of lawyer courses. In my practice, math, statistics, actuarial principals, industrial organizational physiology, business management, financial investment, etc., would all be pertinent, useful to my clients, and of interest to me.

However, I am continuing to practice law, I am continuing to receive the benefits of the privilege of my license, I am continuing to enjoy working with my older and younger colleagues, I am continuing to charge a fee to lay people who rely on my advice on the law, I am continuing to take assignments that my younger fellows at the bar would otherwise get, and I continue to be embarrassed by people with law licenses who do a poor job, whether from lack of knowledge or otherwise.

Our firm, Kennerly Montgomery, is almost 100 years old and we are working hard to adapt to the technology, social, media, government, economic, demographic, and other changes facing the profession, to be ready for the next 5, 10 and more years. One of the changes is that people live and work longer than in the past. Continuing education for capable lawyers is not one of the things that I expect to change.

KENNERLY, MONTGOMERY & FINLEY, P.C.
550 MAIN STREET, FOURTH FLOOR | KNOXVILLE, TENNESSEE 37902
P.O. BOX 442 | KNOXVILLE, TENNESSEE 37901
PH (865) 546-7311 | FX (865) 524-1773 | WWW.KMFPC.COM

I agree the good of our profession requires the adoption of the rule, and I urge the Court to promulgate it. Happy Birthday.

Respectfully submitted,

William E. Mason
BPR # 001481

LAW OFFICES

SPEARS, MOORE, REBMAN & WILLIAMS

PROFESSIONAL CORPORATION

801 BROAD STREET

SIXTH FLOOR

P. O. BOX 1749

CHATTANOOGA, TENNESSEE 37401-1749

(423) 756-7000

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(1906-1992)

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(1912-1998)

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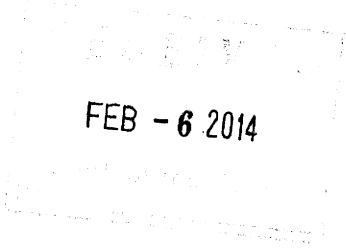
(1931-2006)

SILAS WILLIAMS, JR.
(1923-2011)

RETIRED:
E. BLAKE MOORE
JAMES W. GENTRY, JR.
L. HALE HAMILTON
ROBERT J. BOEHM

January 31, 2014

Supreme Court of Tennessee at Nashville
C/O Mike Catalano, Clerk
Re: Tenn. Sup. Ct. R. 21
Appellate Court Clerk's Office
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407



Re: Docket No. ADM2013-02417

Dear Sirs:

The Tennessee Commission on Continuing Legal Education (the "Commission") has filed a petition with the Supreme Court of Tennessee (the "Court") on October 30, 2013, proposing various changes to the Court's Rule 21. This petition reflects many hours of hard work, performed as a public service, by excellent and careful lawyers. Nevertheless, the undersigned respectfully urge the Court to deny the portion of the petition which proposes to delete section 2.04(a) of the present Rule 21, i.e., the exemption from continuing legal education ("CLE") requirements as to attorneys over age 65 who are and continue to be otherwise in good standing to practice law in this state.

In its proposal, the Commission argues (at least implicitly) that (1) attorneys aged 65+ are generating more complaints than their youngest counterparts (specifically attorneys aged 25-34), who are required to attend CLE instruction, (2) the imposition of CLE requirements on attorneys aged 65+ will reduce the number of complaints against us, (3) CLE is so obviously beneficial that every lawyer (and, by extension, every client)

in the state should, in the words of the Commission, "enjoy the benefits" it confers, and (4) there will be more attorneys aged 65+ in the years to come. The undersigned address these points in turn.

In support of (1), the Commission has attached to the petition and relies upon Exhibit E, a table that breaks down the total number of complaints filed against Tennessee attorneys in 2013 (actually, January to August, a period of less than eight months) into age categories. Exhibit E's deficiencies are numerous. A copy is attached.

The gross total shown is 13,162 complaints against 21,142 attorneys collectively. When compared to earlier years, this is an astronomical, even unbelievable number of complaints for an eight-month period, and Exhibit E thus appears facially defective. In addition, it is impossible to tell from the data adduced (a) what types of complaints are being lodged or their relative frequency, (b) whether the numbers from 2013 for over-65 lawyers are consistent with those from the previous twenty-six years and (c) the rate at which exempt lawyers take voluntary CLE. Still, this is the data the Commission presents and on which it bases its recommendation.

Even ignoring these flaws in the data collection and accepting the accuracy of these figures, Exhibit E does nothing to advance the Commission's arguments. Of special note is the rate at which complaints are purportedly filed when analyzed according to age. Lawyers aged 25-34 had a complaint rate of .34 complaints per lawyer; those aged 35-44 had a rate of .64; those aged 45-54 had a rate of .88 (!); those aged 55-64 had a rate of .70; and those aged 65+ had a rate of .40. As these numbers plainly show, 25-34-year-olds were the only age group generating complaints at a lower rate than lawyers over 65, and the difference is insignificant. Moreover, the lawyers with the greatest exposure to CLE (ages 35-64) have, by far, the highest rates of complaints lodged against them.

Thus, point (1), that the rate of complaints against lawyers aged 65+ is a problem that needs correcting, is facially invalid according to the numbers provided by the Commission itself. Indeed, if the only factor involved in the generation of complaints is the absence or presence of CLE, the Commission's numbers suggest that less is better than more, and the status quo is more benign than the processed amendment.

Even assuming that the Commission's figures did not directly contradict the inference that older lawyers were generating complaints at a greater rate than non-exempt younger lawyers, argument (2), that imposing a CLE requirement on them would lower the complaint rate, is intuitively not well grounded.

As noted above, the data provided do not categorize the types of complaints being filed; thus, it is impossible to tell if the complaints relate to attorney ethics (which CLE probably cannot substantially improve), or to problems of addiction or failures of mental capacity (which CLE cannot cure), or professional knowledge base (which CLE, as opposed to ordinary research and attention to advance sheets, might marginally advance), or were summarily rejected by the BPR, etc.

The above paragraph notwithstanding, and with respect to argument (3), it is beyond our scope of purpose here to attack CLE as an institution or quibble about whatever benefits it may confer. But it imposes significant costs that many older practitioners may decide outweigh continued practice. CLE is inconvenient, and it is not cheap. It takes more than two days' of most attorneys' time to reach the fifteen-hour threshold, and "a lawyer's time and advice is his stock in trade." Moreover, the out-of-pocket costs are far from nominal. The law firm in which the undersigned practice estimates that its costs for CLE have averaged about $1,600.00 per attorney during the last twelve months, including tuition, fees, travel, lodging, and other legitimate expenses. When weighing the time invested and the out-of-pocket cost against the perceived benefits of continued practice contingent on CLE participation, many over-65 attorneys may doubt that the game is worth the candle.

To the extent that eliminating the exemption will encourage departure of older, experienced, and usually wiser attorneys from the bar, it would do a grave disservice to those departing practitioners, to their clients, and to the bar.

While it could create more work opportunities for younger lawyers, the overall effect of such departure on younger lawyers and the public would be unfortunate, because wisdom is so heavily correlated with experience. Younger lawyers learn a great deal about proper comportment, ethical conduct, and legal practice by observing and imitating "veterans of the bar," as the Commission graciously characterizes us, and, as the saying goes, these skills are more often caught than taught. Old heads are a resource, not a liability, and should be encouraged to stick around. War stories, after all, do tell one something about how war is waged.

The present rule and the exemption at issue have existed since 1987, so far as the undersigned can tell. Beyond the arguments discredited above, and facts purportedly showing that the number of attorneys aged 65+ is increasing year by year (argument (4)) that have the character of non sequitur, the Commission has not explained why an exemption that has existed for nearly thirty years without injury to the public, the bar,

or the legal system must now be eliminated. Given this paucity of evidence and sound reasoning, the undersigned contend that the exemption should remain as it is.

Sincerely yours,

SPEARS, MOORE, REBMAN & WILLIAMS, P.C.

Thomas S. Kale

Scott N. Brown, Jr.

W. Ferber Tracy by David with permission

Fred H. Moore

David C. Burger

G. Michael Luhowiak

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

Chattanooga Bar Association
801 Broad Street, Suite 420
Chattanooga, Tennessee 37402

LAW OFFICES

SPEARS, MOORE, REBMAN & WILLIAMS

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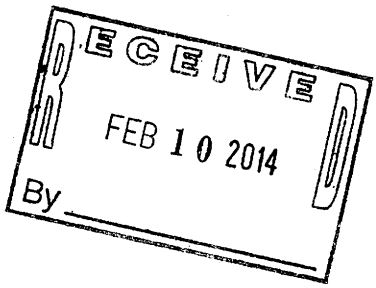
SILAS WILLIAMS, JR.
(1923-2011)

RETIRED:
E. BLAKE MOORE
JAMES W. GENTRY, JR.
L. HALE HAMILTON
ROBERT J. BOEHM

February 6, 2014

Supreme Court of Tennessee at Nashville
C/O Mike Catalano, Clerk
Re: Tenn. Sup. Ct. R. 21
Appellate Court Clerk's Office
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407



Re: Docket No. ADM2013-02417

Dear Sirs:

We are not certain whether we attached the Commission's Exhibit E to our January 31, 2014 letter. As a result we enclose that Exhibit. We request this be added to our January 31 letter and apologize for the inconvenience.

Sincerely yours,

SPEARS, MOORE, REBMAN & WILLIAMS, P.C.

Scott N. Brown, Jr.

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

Chattanooga Bar Association
801 Broad Street, Suite 420
Chattanooga, Tennessee 37402

346426.docx

EXHIBIT E to Petition to Amend Tennessee Supreme Court Rule 21
Complaints Filed with the Board of Professional Responsibility in 2013

RECEIVED
FEB 10 2014
Clerk of the Courts
Rec'd By

Complaints Filed			Active Attorneys in Tennessee as of 8/22/2013		
13,162			21,142		
Number	Age Group	Percent of Total Complaints	Number	Age Group	Percent of Total Attorneys
1,139	65+	8.65%	2,827	65+	13.37%
3,206	55-64	24.36%	4,588	55-64	21.70%
4,096	45-54	31.12%	4,645	45-54	21.97%
3,453	35-44	26.23%	5,398	35-44	25.53%
1,268	25-34	9.63%	3,684	25-34	17.43%

Table 2:

Number of Complaints filed with the Board of Professional Responsibility for Calendar Year 2013.

Source: Tennessee Board of Professional Responsibility

Charles I. Poole*
Attorney At Law
Licensed in Tennessee and Florida
*Certified Criminal Trial Specialist
lawpoole@hotmail.com

Timothy J. Gudmundson
Attorney At Law
lawpoole_tjg@hotmail.com

Belinda Jamerson
Certified Paralegal
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CHARLES POOLE
AND ASSOCIATES, PLLC
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877.500.LAW1
Facsimile
865.453.5147
877.600.LAW1

January 27, 2014

ADM2013-02417

RECEIVED
FEB 13 2014
Clerk of the Courts
Rec'd By _____

Chief Justice Gary R. Wade
505 Main Street, Suite 200
PO Box 444
Knoxville, TN 37901

RE: CLE Credits for *Pro Bono* Services for Non-profit Organization

Dear Chief Justice Wade:

At the suggestion of Bill Calhoun, Esq. Associate Director, Tennessee Commission on CLE and Specialization, I am respectfully requesting that the Tennessee Supreme Court consider amending Rule 21 § 4.07(c) to include *pro bono* legal representation to a corporation organized under the Non-Profit Public Benefit Corporation Law for charitable purposes.

Mr. Calhoun has advised me that he has discussed this matter with Judy McKissack, the Executive Director of Tennessee CLE, and she agreed that the current Rule 21 does not allow *pro bono* credit for providing free legal advice to a non-profit organization.

I have been serving as *pro bono* counsel for Safe Harbor Child Advocacy Center, Inc. since September 25, 2008 and in 2012 I provided in excess of 150 hours of *pro bono* services and in 2013, I provided well over 100 hours and probably closer to 150-200 hours of *pro bono* services. I have enclosed for your reference copies of letters from Donna Koester, Executive Director of Safe Harbor acknowledging my services.

I am enclosing a copy of the Charter of Safe Harbor Child Advocacy Center, Inc., for your reference. Thank you for your consideration of this suggestion.

Very truly yours,

Charles I. Poole

CIP/mc
Cc. Bill Calhoun, Esq.
Donna Koester
Enclosures (2)

Safe Harbor
CHILD ADVOCACY CENTER, Inc.
4th Judicial District of Tennessee
Cocke, Grainger, Jefferson & Sevier Counties

October 18, 2013

Mr. Charles I. Poole, Esq.
Charles Poole & Associates, PLLC
118 Court Ave.
Sevierville, TN 37862

Dear Mr. Poole,

Once again we write to thank you for the incredible patience and skill you have shown to Safe Harbor and our Staff for the benefit of the victimized children and adolescents that we serve. Your willingness to share your expertise on our behalf has only been compounded by the fact that you have graciously offered it at no charge to us. Your pro-bono services have been appreciated far more than you will ever know.

This past year seemed to be incredibly intense, filled with one legal challenge after the other as we faced several subpoenas and legal battles over the confidentiality of our HIPAA records, personnel and forensic interview files, etc. I know that you spent well over 100 hours and probably closer to 150-200 hours, which you donated on our behalf in consultation, correspondence and court appearances. Your willingness to represent us as we strive to provide the best services possible for the physically and sexually abused children we serve has allowed us to concentrate on other matters and to direct our limited resources to specific client services such as therapy and non-offender caregiver support.

Please accept our heartfelt appreciation for your services for yet another year.

Gratefully for the Children,

Donna J. Koester
Executive Director

1266 Foster Avenue Nashville, TN 37210
(615) 327-9450 Phone (615) 327-9896 Fax
It Shouldn't Hurt to be a Child
P.O. Box 4536 • Sevierville, TN 37864-4536 • (865) 774-1777

Safe Harbor
CHILD ADVOCACY CENTER, Inc.
4th Judicial District of Tennessee
Cocke, Grainger, Jefferson & Sevier Counties

March 28, 2013

Mr. Charles Poole, Esq.
Charles Poole & Associates, PLLC
118 Court Ave.
Sevierville, TN 37862

Dear Charles,

It is with grateful heart that I write to personally "Thank You" for the 150 plus hours of research, legal consultation, phone calls, correspondence and court accompaniment that you have provided pro bono on behalf of SAFE HARBOR Child Advocacy Center for the 2012 calendar year.

I know that at times our needs have seemed particularly time consuming this year, especially with the approximately five months we spent resolving one difficult case. You have always returned my calls in a timely manner, and addressed each issue we faced with courtesy, knowledge and professionalism. Being a non-profit, especially during these difficult economic times, I cannot begin to thank you enough as without your willingness to share your expertise and personal commitment without compensation we would have had difficulty securing experienced representation.

Thank you again.

Respectfully for the Children,

Donna J. Koester
Executive Director

Safe Harbor
CHILD ADVOCACY CENTER, Inc.
Of Tennessee's Fourth Judicial District
Serving Cocke, Grainger, Jefferson & Sevier counties
Post Office Box 4536
Sevierville, Tennessee 37864
Phone: (865) 774-1777 Fax: (865) 774-8063
www.SafeHarborCAC.com

Facsimile Transmission

To: Charles Poole, Atty
Fax: 453-5147
Phone:
Re:

From: Safe Harbor CAC
Pages: 5 including cover sheet
Date: 6-15-12
Cc:

Confidentiality Notice

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Comments:

Secretary of State

Division of Business Services
312 Eighth Avenue North
h Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243

DATE: 09/01/05
REQUEST NUMBER: 5540-1919
TELEPHONE CONTACT: (615) 741-2286
FILE DATE/TIME: 09/01/05 1107
EFFECTIVE DATE/TIME: 09/01/05 1107
CONTROL NUMBER: 0501488

VOL:2336/496-499

0504922

CH 4 PG BA: 67940
09/07/2005 02:05 PM
VALUE 0.00
MTG TAX 0.00
TRN TAX 0.00
REC FEE 5.00
DP FEE 2.00
REG FEE 0.00
TOTAL 7.00

STATE OF TENNESSEE, SEVIER COUNTY
SHERRY ROBERTSON HUSKEY
REGISTER OF DEEDS

TO:
SAFE HARBOR CHILD ADVOCACY CENTER, INC.
735 OLD DOUGLAS DAM
ROAD
SEVIERVILLE, TN 37876

RE:
SAFE HARBOR CHILD ADVOCACY CENTER, INC.
CHARTER - NONPROFIT

CONGRATULATIONS UPON THE INCORPORATION OF THE ABOVE ENTITY IN THE STATE OF TENNESSEE, WHICH IS EFFECTIVE AS INDICATED.

A CORPORATION ANNUAL REPORT MUST BE FILED WITH THE SECRETARY OF STATE ON OR BEFORE THE FIRST DAY OF THE FOURTH MONTH FOLLOWING THE CLOSE OF THE CORPORATION'S FISCAL YEAR. ONCE THE FISCAL YEAR HAS BEEN ESTABLISHED, PLEASE PROVIDE THIS OFFICE WITH THE WRITTEN NOTIFICATION. THIS OFFICE WILL MAIL THE REPORT DURING THE LAST MONTH OF SAID FISCAL YEAR TO THE CORPORATION AT THE ADDRESS OF ITS PRINCIPAL OFFICE OR TO A MAILING ADDRESS PROVIDED TO THIS OFFICE IN WRITING. FAILURE TO FILE THIS REPORT OR TO MAINTAIN A REGISTERED AGENT AND OFFICE WILL SUBJECT THE CORPORATION TO ADMINISTRATIVE DISSOLUTION.

WHEN CORRESPONDING WITH THIS OFFICE OR SUBMITTING DOCUMENTS FOR FILING, PLEASE REFER TO THE CORPORATION CONTROL NUMBER GIVEN ABOVE. PLEASE BE ADVISED THAT THIS DOCUMENT MUST ALSO BE FILED IN THE OFFICE OF THE REGISTER OF DEEDS IN THE COUNTY WHEREIN A CORPORATION HAS ITS PRINCIPAL OFFICE IF SUCH PRINCIPAL OFFICE IS IN TENNESSEE.

FOR: CHARTER - NONPROFIT ON DATE: 09/01/05

FROM:
BILL YETT
735 DOUGLAS DAM RD.
SEVIERVILLE, TN 37862-0000

	FEES	
RECEIVED:	$100.00	$0.00
TOTAL PAYMENT RECEIVED:		$100.00

RECEIPT NUMBER: 00003794682
ACCOUNT NUMBER: 00090462

Riley C. Darnell

RILEY C. DARNELL
SECRETARY OF STATE

CHARTER

OF

SAFE HARBOR CHILD ADVOCACY CENTER, INC.

STATE OF TENNESSEE
2006 SEP -1 AM 11:07
SECRETARY OF STATE

The undersigned, acting as the Incorporator under the Tennessee Nonprofit Corporation Act, adopts the following Charter for such Corporation:

FILED

1. The name of the Corporation is:

SAFE HARBOR CHILD ADVOCACY CENTER, INC.

2. The Corporation a nonreligious, public benefit corporation.

3. The street address and zip code of the Corporation's initial registered office is:

719 Hickory Hills Road
Sevierville, Tennessee 37862

4. The Corporation's initial registered office is located in Sevier County, Tennessee.

5. The name of the Corporation's initial registered agent at that office is:

Donna J. Koester

6. The name, address, and zip code of the incorporator is:

Carole L. Yett
735 Old Douglas Dam Road
Sevierville, Tennessee 37876

7. The street address and zip code of the principal office of the Corporation is:

719 Hickory Hills Road
Sevierville, Tennessee 37862

8. The Corporation is not for profit.

9. Members of the Board of Directors shall constitute membership of the Corporation.

10. The Corporation is a nonprofit public benefit corporation and is not organized

for private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for charitable purposes. Such purposed for which this Corporation is formed are exclusively charitable and educational within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986. More particularly, the mission of **SAFE HARBOR CHILD ADVOCACY CENTER, INC.**, is to meet the physical, emotional, and educational needs of physically and sexually abused and neglected children, including the operation of facilities in which professionals gather to provide services to children and non-offending family members in crisis and in need, and in the distribution of information concerning family violence and child abuse and neglect in the counties of Cocke, Grainger, Jefferson and Sevier which is the Fourth Judicial District of the State of Tennessee. The Corporation shall focus its efforts and resources in the areas of treatment, prevention, education and research with the intent of combating and eventually eradicating child abuse and neglect.

11. This Corporation is organized and operated exclusively for charitable purposes withing the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986.

12. No substantial part of activities of this Corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and this Corporation shall not participate or intervene in any political campaign (including the publishing or distribution of statements) on behalf of any candidate for public office.

13. Notwithstanding any other provision of these Articles, this Corporation shall not carry on any activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986 (or corresponding provision of any future United States Internal Revenue Law), or (b) by corporation contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986 (or corresponding provision of any future United States Internal Revenue Law).

14. The property, assets, profits and net income of this Corporation are dedicated irrevocably to charitable and educational purposes, and no part of its profits or net income of this Corporation shall ever inure to the benefit of any director, trustee, officer or member thereof or to the benefit of any private individual.

15. No Director or Officer of the Corporation shall be personally liable to the Corporation for monetary damage for breach of duty of loyalty to the Corporation except for acts or omissions not in good faith, or which involve intentional misconduct or a knowing violation of law or for unlawful distributions.

DATED: The 31st day of August, 2005.

Incorporator

Carole L. Yett

Carole L. Yett

RECEIVED
FEB 20 2014
Clerk of the Courts
Rec'd By

S. Ralph Gordon, P.C.

A Professional Corporation

S. Ralph Gordon
1407 Tyne Blvd.
Nashville, TN 37215
Tel [615] 371-0712
Fax [615] 371-9618
srg1@att.net

#ADM2013-2417

Received
FEB 19 2014
TN Supreme Court
Admin. Office of the Courts

February 17, 2014

Administrative Office Of The Court
511 Union Street
Suite 600
Nashville, TN 37219

Re: Comment to Sup Ct Rule 21, Sec 2.04

Gentlemen:

I have been licensed to practice law in the State of Tennessee since 1963. The proposed rule discriminates against persons who, at 65 years of age or older, may not be able to physically attend CLE courses or to pay the fees associated with the courses. At 75 years of age and retired, I am no longer able physically to meet the schedule as proposed, nor do I wish to surrender my license or be subject of fines.

I strongly urge the Supreme Court to reconsider this rule and take into consideration the burden it places on persons affected.

Yours truly,

S. Ralph Gordon

S. Ralph Gordon

HUSCH BLACKWELL

Ronald I. Feldman
Partner
736 Georgia Avenue, Suite 300
Chattanooga, TN 37402
Direct: 423.757.5906
Fax: 423.266.5499
ron.feldman@huschblackwell.com

RECEIVED
FEB 25 2014
Clerk of the Courts
Rec'd By

February 24, 2014

Mr. Mike Catalano, Clerk
Re: Tennessee Supreme Court Rule 21
Appellate Court Clerk's Office
100 Supreme Court Building
401 Seventh Avenue North
Nashville, Tennessee 37219-1407

Re: Comments to Petition for Adoption of Amended Tennessee Supreme Court Rule 21
Number ADM2013-02417

Dear Mr. Catalano:

I have reviewed the Petition to Amend Supreme Court Rule 21 governing the requirements of continuing legal education submitted by the Tennessee Commission on Continuing Legal Education and Specialization and submit the following comments:

A. **Proposed Revisions to Tennessee Supreme Court Rule 21, Section 2 – Scope and Exemptions.**

1. The Commission recommends that the present exemption from CLE for active attorneys over age 65 be eliminated and cites Exhibit C to the Petition which estimates the number of attorneys turning 65 during the years 2014 through 2023. This Table is suspect in that it is assumes that all of those attorneys will remain active, which is unlikely. A more accurate table would estimate the number of active attorneys currently age 70 and over who practice law and would extend that estimate for the next 10 years. That would require an actuarial analysis of the retirement rate factor and the mortality rate factor among the Bar.

2. On page 4 of the Petition, the Commission makes the statement that "without attempting to pass on the merits of any complaint, some 1,139 complaints were filed with the BPR in this age bracket [age 65+] as of August 22, 2013." A careful analysis of Exhibit E to the Petition reveals that the 65+ age group comprises 13.37% of the active bar and accounts for 8.65% of the complaints. By comparison, the 45 to 54 age group comprises 21.97%

of the active bar and accounts for 31.12% of the complaints. This illustrates empirically that the senior bar has dramatically fewer complaints filed against it than those who are in the mid-years of their careers and contradicts the conclusion of the Commission that the exemption should be eliminated.

3. The statistics in Exhibit E cited by the Commission are suspect because they do not eliminate frivolous complaints. The Tables would be meaningful if they included only complaints that have merit. Any person can file a complaint for virtually any reason.

4. The Commission's recommendation is a "one size fits all" rule that does not take into account that many lawyers do not retire and simply walk away from their practices. Many go through a "wind down" period of several years and gradually transition into retirement. The proposed rule does not differentiate between those categories and creates a gray area in determining when a lawyer is no longer "active".

5. Recommendation. Continue the standard CLE requirement for "active" attorneys until the age of 70 in recognition of the fact that many are active, even if not in full time practice. In the year in which an attorney reaches 70 years of age, all CLE requirements should be eliminated.

B. **Internal CLE Presented by Law Firms:**

1. At present, the Commission does not recognize CLE presented internally by a law firm to its attorneys, unless outside attorneys are invited to attend. This rule, while it may have been intended to prevent an abuse, does not appear to be justified.

2. Many law firms, including our own, conduct a regular program of CLE on many focused topics that are relevant to the practitioners in the firm. These programs are presented by highly qualified attorneys in the firm and also by outside presenters. The programs are presented by video conference and are available to attorneys in all of our several offices. Written materials are furnished, and call-in is available to the presenter via speaker phone on the conference tables. Attendance is taken. CLE credit is awarded to the attorneys in our firm for these internal seminars in the states of Illinois, Iowa, Kansas, Missouri, Nebraska and Texas in which our firm has offices or attorneys licensed.

   For example, the state of Missouri treats a law firm presenter like any other presenter and allows credit for its internal programs. A copy of Rule 15.04 of the Missouri Supreme Court Rules is attached. See Regulation 6 for In-House Programs.

3. Recommendation. The Commission should update and amend its rules to permit internal CLE presentations by a law firm to qualify for CLE credit in Tennessee.

Thank you for your consideration of these comments. If you or any member of the Commission wish to discuss them, please contact us at 423-266-5500.

Respectfully submitted,

Ronald I. Feldman
BPR #000917

Alan L. Cates
BPR #001632

Michael K. Alston
BPR #13697

RIF:jns
Enclosure

Regulations for Minimum Continuing Legal Education

The Supreme Court of Missouri approved the following Regulation for Minimum Continuing Legal Education:

Regulation 15.03. Duties of The Missouri Bar

1. Pursuant to Rule 15.03(e), The Missouri Bar shall report in writing to the Supreme Court of Missouri on or before December 31st of each year. The report shall include but not be limited to: the number of lawyers referred to the chief disciplinary counsel and the Commission on Retirement, Removal and Discipline for failure to comply with Rule 15 during the previous reporting year.

2. After February 1, 1988, notice of all Regulations to be promulgated implementing Rule 15 shall be sent sixty (60) days prior to promulgation to the Supreme Court of Missouri for comment. These initial regulations shall take effect on the date directed by the Supreme Court of Missouri.

(Approved eff. July 1, 1988. Amended eff. Nov. 1, 2009.)

15.04. Accreditation of Programs, Activities and Sponsors

(a) The Missouri Bar may designate a sponsor of continuing legal education programs or activities as an "accredited sponsor" if the sponsor has substantial recent experience in offering continuing legal education or a demonstrable ability to organize and effectively present continuing legal education programs and activities.

(b) A program or activity may be an accredited program or activity if it directly contributes to the professional competency of lawyers or judges and has significant intellectual or practical content related to the development or practice of law, professional responsibility, or law office management.

(c) A program or activity offered by an accredited sponsor shall be an accredited program or activity. Continuing legal education programs and activities of identified sponsors may be accredited programs and activities if so designated by The Missouri Bar. Self-study, videotape, audiotape, or other similar programs or activities may be accredited programs and activities if so designated by The Missouri Bar.

(Adopted Dec. 3, 1986, eff. Jan. 1, 1987. Amended Jan. 22, 1988, eff. July 1, 1988; Nov. 16, 2009, eff. Jan. 1, 2010.)

Regulations for Minimum Continuing Legal Education

The Supreme Court of Missouri approved the following Regulation for Minimum Continuing Legal Education:

Regulation 15.04. Accreditation of Programs, Seminars, Activities and Sponsors

1. Standards. In addition to the standards of Rule 15.04, the following standards apply to accredited programs, seminars, or activities offered by an accredited or identified sponsor or programs, seminars, or activities accredited pursuant to Regulation 15.04.3(c).

(a) It is desirable, although not required, that thorough, high quality written materials be made available to all participants at or before the time the program, seminar, or activity is presented.

(b) The program, seminar, or activity must be conducted in a comfortable physical setting, conducive to learning, and it is desirable although not required that there be suitable writing surfaces if the program, seminar, or activity is conducted in a lecture format.

(c) Programs, seminars, or activities where electronically presented live, recorded or reproduced material is used may be accredited programs, seminars, and activities and such programs, seminars, or activities will not be considered as self-study programs, seminars, or activities if a qualified instructor is available, either in person or via telephone or other means of communication, to comment and answer questions.

(d) The program, seminar, or activity must include at least fifty (50) minutes of instruction or the equivalent.

(e) Programs, seminars, or activities that cross professional lines, such as an accounting tax program or a medical legal program, shall be accredited programs, seminars, or activities if the standards of Rule 15.04 and Regulation 15.04.1 are satisfied.

(f) At the conclusion of an approved program, seminar, or activity conducted after July 1, 1988, each participating lawyer must be given the opportunity to complete an evaluation questionnaire addressing the quality, effectiveness and usefulness of the particular program, seminar, or activity. Summary results of the questionnaires applicable to each speaker must be provided to that speaker in a timely fashion. Sponsors must maintain the questionnaires for one year following a program, seminar, or activity pending a request for submission of them or a summary thereof to The Missouri Bar.

Text of Regulation 15.04.2 effective until July 1, 2013. See, also, text effective July 1, 2013.

2. **Accredited Sponsors by Designation.** The following sponsors of programs, seminars, or activities are designated as accredited sponsors: American Bar Association; American Judicature Society; The American Law Institute; all United States Armed Forces legal service schools; the United States Coast Guard legal service school; Missouri Association of Trial Attorneys; The Missouri Bar; Bar Association of Metropolitan St. Louis; St. Louis County Bar Association; Kansas City Metropolitan Bar Association; National Academy of Arbitrators; National Bar Association; National Judicial College; Judicial Education Committee of the Supreme Court of Missouri; all law schools approved by the section of legal education and admissions to the bar of the American Bar Association; Missouri Office of Prosecution Services; Missouri Organization of Defense Lawyers; the Office of the State Public Defender, and the Practicing Law Institute.

Text of Regulation 15.04.2 effective July 1, 2013. See, also, text effective until July 1, 2013.

2. **Accredited Sponsors by Designation.** The following sponsors of programs, seminars, or activities are designated as accredited sponsors: Advanced Science and Technology Adjudication Resource Center, Inc.; American Bar Association; American Judicature Society; The American Law Institute; all United States Armed Forces legal service schools; the United States Coast Guard legal service school; Conference of Chief Justices; Conference of State Court Administrators; Missouri Association of Trial Attorneys; The Missouri Bar; Bar Association of Metropolitan St. Louis; St. Louis County Bar Association; Kansas City Metropolitan Bar Association; National Academy of Arbitrators; National Bar Association; National Center for State Courts and its affiliates; National Courts Science Institute; National Judicial College; the Supreme Court of Missouri and any committee appointed by the Court; Office of State Courts Administrator; all law schools approved by the section of legal education and admissions to the bar of the American Bar Association; Missouri Office of Prosecution Services; Missouri Organization of Defense Lawyers; the Office of the State Public Defender; and the Practicing Law Institute.

3. **Accreditation Process.**

(a) Any sponsor desiring accreditation of all its continuing legal education programs, seminars, or activities must apply to The Missouri Bar for accredited sponsor status not less than sixty (60) days prior to presentation of its first program, seminar, or activity as an " accredited sponsor." Application shall be made on forms provided by The Missouri Bar and applicants may be required to provide information which demonstrated that the applicant satisfies the standards of Rule 15.04 and Regulation 15.04.1.

(b) Any sponsor not accredited pursuant to Regulations 15.04.2 or 15.04.3(a) and desiring approval of an individual program, seminar, or activity must apply to The Missouri Bar for identified sponsor status not later than sixty (60) days prior to the date on which the program, seminar, or activity is scheduled. Application shall be made on forms provided by The Missouri Bar and such applicants may be required to provide information which demonstrates that the program, seminar, or activity will satisfy the standards of Rule 15.04 and Regulation 15.04.1. The applicant may also be required to include a description of any written materials to be used in the program, seminar, or activity.

(c) Any lawyer may seek accreditation of a program, seminar, or activity by a sponsor other than an accredited or identified sponsor. The lawyer should apply either before the occurrence of the program, seminar, or activity or within thirty (30) days after completion of the program, seminar, or activity. The applicant lawyer should provide sufficient information to establish that the standards of Rule 15.04 and Regulation 15.04.1 are satisfied by the program, seminar, or activity. Ordinarily a brochure published by the sponsor of the program, seminar, or activity and a description of any written materials shall be sufficient information to make a determination of whether the program, seminar, or activity satisfies the standards of Rule 15.04 and Regulation 15.04.1.

(d) Upon application of a lawyer or sponsor and the submission of sufficient information to make a determination, The Missouri Bar shall designate the programs, seminars, and activities or portions of activities which satisfy the requirements of subdivisions (e) and (f) of Rule 15.05.

(e) Upon application of a lawyer or sponsor and the submission of sufficient information to establish that the standards of Rule 15.05 (d) and Regulation 15.04.7 are satisfied, The Missouri Bar shall designate a program, seminar, or activity as substantially equivalent to The Missouri Bar Annual Law Update.

(f) The Missouri Bar shall advise the applicant in writing within thirty (30) days of the receipt of the application whether the application for accredited or identified sponsor status or for accreditation or designation of a program, seminar, or activity is approved or disapproved. Applicants denied approval may submit a letter of reconsideration setting forth the basis for reconsideration to The Missouri Bar within fifteen (15) days of the receipt of notice of disapproval.

4. **Sponsor Reports and Recordkeeping.**

(a) By July 31 of each year, commencing July 31, 1988, each accredited sponsor shall file a report with The Missouri Bar, on a form provided by The Missouri Bar, which lists all accredited programs, seminars, and activities conducted by the sponsor during the preceding reporting year and the number of credit hours for each program, seminar, or activity. The report shall indicate the number of credit hours of each program, seminar, or activity designated which satisfy the requirements of subdivisions (e) and (f) of Rule 15.05.

(b) Each accredited or identified sponsor shall retain records of attendance at all programs, seminars, and activities for at least three (3) years after the date of completion of the program, seminar, or activity. A record of attendance by an individual lawyer shall be made available to the lawyer or his or her attorney upon request and The Missouri Bar upon its request.

5. **Self-Study.**

(a) Any lawyer may receive up to six hours of self-study credit in a reporting year by studying law-related materials, including but not limited to videotapes, audiotapes and advance sheets, in furtherance of general academic and professional competence.

(b) Self-study credit may not be reported to satisfy the requirements of Rule 15.05 (e) or Rule 15.05 (f) that a lawyer complete credit hours of programs, seminars, and activities devoted exclusively to professionalism, legal or judicial ethics or malpractice prevention every, unless approval is obtained pursuant to Rule 15.05 (c) and Regulation 15.05.3 based upon hardship or extenuating circumstances.

(c) A lawyer may receive in excess of six credit hours for self-study in a reporting year if the self-study in excess of six hours is approved by The

Missouri Bar as an alternative method of compliance with Rule 15 pursuant to Rule 15.05 (c) and Regulation 15.05.3.

(d) Self-study credit shall be accounted for on the affidavit required by Rule 15.06.1.

6. In-House Program, Seminar, or Activity Accreditation.

(a) A private law firm, corporate law department, federal, state or local government agency or similar entity may apply for accredited sponsor status or identified sponsor status and shall be approved or disapproved for accredited or identified sponsor status under the same standards applicable to all other applicants for accredited or identified sponsor status.

(b) An in-house program, seminar, or activity, such as a program, seminar, or activity limited only to the lawyers of a private law firm, corporate law department, or a federal, state or local government agency, which is offered by an accredited or identified sponsor, shall be an accredited program, seminar, or activity if the standards of Rule 15.04 and Regulation 15.04.1 are satisfied.

7. Intellectual and Practical Content Substantially Equivalent to The Missouri Bar Annual Law Update Program.

(a) at least 9 hours of instruction, and

(b) the program content includes information on substantially all of the following topics: practice and procedure before Missouri and federal courts, domestic relations, estate planning and administration, business organizations, real estate, criminal practice and workers' compensation. The instruction on substantial law topics shall focus upon Missouri law and the program shall include practice tips in the various subject areas as well as instruction on substantive law.

8. Deadline Waivers. By its own application or upon written request for good cause shown, or in the interest of justice, The Missouri Bar shall waive application and reporting deadlines in Regulation 15.04. The application deadlines of Regulation 15.04.3 are waived for applications filed within sixty (60) days after the date of the publication of these regulations in a publication of general distribution to all lawyers as required by Rule 15.03(g).

9. Records Confidential.

(a) Unless otherwise directed by the Supreme Court of Missouri, the files, records and proceedings to The Missouri Bar, as they may relate to or arise out of a lawyer attempting to satisfy the continuing legal education requirements of Rule 15, shall be confidential and shall not be disclosed except in furtherance of the duties of The Missouri Bar or as provided in Regulation 15.04.8(b).

(b) The files, records and proceedings as they may relate to or arise out of a lawyer attempting to satisfy the continuing legal educational requirements of Rule 15, shall be disclosed to the lawyer affected upon written request by the lawyer affected or by his or her attorney.

(c) The Missouri Bar shall retain the affidavits of compliance for the three reporting years prior to the current reporting year. Affidavits not required to be retained may be disposed of by The Missouri Bar but only in a manner that preserves the confidentiality of the affidavits required by Regulation 15.04.9(a).

(Approved eff. July 1, 1988. Amended eff. July 1, 1990; July 1, 1992; Nov. 1, 2009. Amended December 28, 2012, eff. July 1, 2013.)

15.05. Continuing Legal Education Requirements

(a) After July 1, 1988, except as provided in Rule 15.05(c), each lawyer shall complete and report during each reporting year at least 15 credit hours of accredited programs and activities. Credit hours of accredited programs and activities completed pursuant to Rules 15.05(e) and 15.05(f) may be used to fulfill the requirements of Rule 15.05(a). Not more than six other credit hours may consist of self-study, videotape, audiotape or other similar programs or activities that are accredited programs or activities. A speaker at an accredited program or activity may receive credit for preparation time and presentation time. An author of written material published or to be published by an accredited sponsor or in a professional journal or as a monograph may receive credit for research time and composition time.

(b) For purposes of Rule 15.05(a), a lawyer reporting completion of more than 15 credit hours of accredited programs and activities during one reporting year may receive credit in the next succeeding reporting year for the excess credit hours.

(c) A lawyer is not required to complete or report any credit hours in the reporting year in which the lawyer is initially licensed to practice law in this state except as provided in Rules 15.05(d) and 15.05(e). Any lawyer not an active judge who, during a reporting year, has neither engaged in the active practice of law in Missouri nor held herself or himself out as an active practicing lawyer in Missouri shall not be required to complete or report any credit hours during that reporting year. Upon written application and for good cause shown, waivers or extensions of time of the credit hour or reporting requirements of this Rule 15 may be granted in individual cases or classes of cases involving hardship or extenuating circumstances.

(d) A person seeking admission under Rule 8.10 shall, prior to being issued a license, attend The Missouri Bar annual law update program or a continuing legal education program accredited as provided in this Rule 15 that has intellectual and practical content substantially equivalent to The Missouri Bar annual law update program. Attendance shall be no earlier than 12 months prior to the date the application for admission under Rule 8.10 is filed. The person shall report the completion of this requirement to the board of law examiners as the board shall specify.

(e) Each lawyer who:

(1) Between June 30, 1990, and July 1, 2009:

IN THE SUPREME COURT OF TENNESSEE

IN RE:	**PETITION TO AMEND TENNESSEE SUPREME COURT RULE 21**	))))	**No. ADM2013-02417**

FILED
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KNOXVILLE

COMMENT OF THE KNOXVILLE BAR ASSOCIATION

The Knoxville Bar Association ("KBA"), by and through its President, Wade V. Davies; Co-Chairs of its Committee on Continuing Legal Education Committee ("CLE Committee"), Shelly Wilson and Robert Stivers; and Executive Director, Marsha Wilson, files this comment pertaining to the amendment to Tennessee Supreme Court Rule 21.

As members of the legal profession and bar, the KBA recognizes the importance of CLE and we applaud the Tennessee Commission on Continuing Legal Education and Specialization ("Commission") for its commitment to helping lawyers develop practices that can support a highly professional, rewarding career. These updates to the rules and regulations for CLE in Tennessee recognize the changing needs and realities of modern law practice. We hope that these changes will help lawyers to better serve their clients and the administration of justice in Tennessee.

The KBA's CLE Committee, Board of Governors and Executive Committee have convened on several occasions to discuss the Commission's proposed amendment to Rule 21 and after careful consideration, we provide the following comments regarding the proposed changes to Rule 21:

SECTION 2. – SCOPE AND EXEMPTIONS

The KBA believes that regular participation in CLE programs strengthens the professional skills of practicing lawyers and enhances the quality of legal services rendered to the public. Nevertheless, there does not appear to currently be a consensus within the KBA as to whether it is appropriate to eliminate the CLE exemption as set forth in Rule 2.04 (c). Considerable, varied and responsible opinions have been expressed to the KBA and its CLE Committee. Thus, the KBA would encourage the Court to consider this change carefully.

SECTION 3: CONTINUING LEGAL EDUCATION REQUIREMENT

The KBA believes that a lawyer's participation in substantive, live CLE programs is critical to maintaining competency among attorneys as required under Rule 1.1 of the Tennessee Rules of Professional Conduct. Rule 1.1 provides that: "[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation."

The significant proposed changes to Section 3.01 will require each attorney admitted to practice in the State of Tennessee to "obtain" a minimum of 15 hours of CLE, including a minimum of 5 "in classroom" hours. Both terms, however, do not on their face appear to fix the current concerns that brought about the need for the changes.

Replacing the requirement that attorneys "earn" CLE hours in the context of a required deadline with the word "obtain" still leaves room for interpretation of what the lawyer needs to do by the deadline. Frankly, the current word "earn" seems more definitive than "obtain." The current word "earn" is defined in Webster's Dictionary as "to receive as return for effort and especially for work done or services rendered." In Webster's Dictionary, the word "obtain"

means to "gain or attain usually by planned action or effort" or "to be generally recognized or established." In light of its definition and in the context of its use in Rule 21, Section 3.01, does a lawyer "obtain" CLE hours by registering/participating in the program even if not completed or submitted by the deadline? Does the lawyer "obtain" CLE hours by applying for the credit by the deadline, even if the hours are not approved by the deadline? Or, does the lawyer "obtain" CLE hours by registering, paying, completing, submitting and getting approval for the credit by the CLE deadline? It thus appears that changing the requirement that an attorney "earn" CLE by the deadline to "obtain," without defining the new term, will lead to more confusion than improvement of the CLE program.

The KBA strongly supports the requirement of a minimum number of "classroom" hours of CLE. However, failure to provide a definition for the word "classroom" leaves much room for interpretation as to what type of CLE program environment is required. In reading the comments for the suggested change, it is clear the Commission intends the requirement of attendance at a live presentation in which there can be interaction with the presenter. Nonetheless, to make it perfectly clear as to what type of programs will be accepted as "classroom" hours, the term should be defined.

If the primary role of CLE is to promote competence, the KBA believes substantive, live seminars offer the best format for achieving this objective. The KBA recommends that "classroom" be defined as a setting with face-to-face interaction with other attendees. During live seminars, there is typically an opportunity to obtain insights from more than one attorney by listening to varying viewpoints on a particular seminar topic. Insights are obtained from multiple program speakers as well as other program attendees. Audience members are often given the ability to participate in question and answer sessions where all panelists in the program as well as

other audience members have an opportunity to weigh in on a response.

SECTION 4. CONTINUING LEGAL EDUCATION CREDITS

The KBA has members who are full-time law professors as well as part-time law professors/teachers. The KBA notes that no explanation is given for the proposed change to Section 4.03(b) seeking to exclude full-time professors who engage in the practice of law, but not part-time professors who engage in the practice of law, from receiving CLE credit for teaching law related classes. This disparity in treatment would allow adjunct professors to receive CLE credit for teaching a law school class, but prevent a full-time law professor from receiving any CLE credit for teaching the same class. It is respectfully submitted that this distinction is unfair.

Accordingly, the KBA recommends that the last sentence in proposed Section 4.03 (b) be amended as follows:

> Full time teachers who engage in the practice of law and choose to maintain their licenses to practice law are fully subject to the MCLE requirements established herein. ~~**and may not earn any credits by their ordinary teaching assignments.**~~

In addition, the KBA recommends that the last sentence in proposed Section 4.04 be amended as follows:

> 4.04. Credit may be earned through formal enrollment and education of a postgraduate nature, either for credit or by audit, in an approved law school. **Upon successful completion of the course, the Commission will award one (1) credit hour for each hour of academic credit assigned to** ~~**successful completion of**~~ **the course.**

SECTION 5: CONTINUING LEGAL EDUCATION PROVIDERS

The KBA believes that nonprofit bar associations and law schools have been the backbone of CLE since Rule 21 was first adopted. With more than twenty-six years of experience providing the legal community with high quality CLE programs, the KBA believes that the proposed change to Section 5.02 is unnecessary. Section 5.02 currently provides a definition for presumptively approved providers and the CLE Commission has the authority in Section 5.4 to revoke approval of CLE credit for a particular seminar or to re-evaluate the providers deemed to be presumptively approved.

SECTION 7. NONCOMPLIANCE AND SANCTIONS

The KBA strongly supports the proposed revisions to Section 7. The proposed revisions to this Section clarify the CLE compliance deadlines, and allow attorneys to better understand whether they are in compliance with the requirements of Section 3.01, the deadlines for such compliance, and the fees assessed at various stages in the process for non-compliance.

SECTION 9: EFFECTIVE DATES OF THE RULE

Section 9.01 establishes the mandatory CLE program effective "beginning with the calendar year 1987." The KBA suggests that the Section should be revised as follows:

> 9.01. **The establishment of the ~~foregoing~~ program for Mandatory Continuing Legal Education for attorneys licensed in Tennessee** ~~shall be effective beginning with the calendar year 1987 and~~ **took effect on January 1, 1987.** This Rule

shall continue until such time as the Supreme Court shall determine that its program is no longer in keeping with the Court's responsibility to the legal profession in Tennessee and the public which it serves.

SECTION 10: ANNUAL CLE COMPLIANCE SUMMARY

The KBA strongly supports the proposed addition of the new Section 10 and the establishment of annual reporting requirements. However, the KBA believes that in order to provide an accurate reflection of how CLE hours are earned by lawyers in Tennessee, Section 10.01 (3) should be revised as follows:

(3) The number of **general and dual** credit hours earned by lawyers holding a Tennessee license, both in the aggregate and in the following general categories:

(i) traditional live or "in classroom" programs;
(ii) distance learning broken down by the following categories:
    (a) online computer interactive
    (b) webinars
    (c) telephone conference calls;
(iii) pro bono legal representation;
(iv) teaching;
(v) completion of a law-related course broken down by the following areas:
    (a) bar review course;
    (b) bar exam; and
    (c) postgraduate course;
(vi) service to the bar in the following areas:
    (a) bar examiner;
    (b) governmental commissions, committees, or other governmental bodies;
    (c) Board of Professional Responsibility or as a hearing committee member;
(vii) published author; and
(viii) mentoring.

The KBA Board of Governors approved this Comment on Wednesday, February 19, 2014.

The KBA appreciates consideration by the Court and the Commission of these comments and requests any additional time deemed appropriate in which to comment on any further revisions to the Rule or Regulations.

Respectfully submitted this _____ day of February, 2014.

KNOXVILLE BAR ASSOCIATION

By: _____
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President, Knoxville Bar Association

By: _____
Shelly L. Wilson, BPR No. 019935
Co-Chair KBA Committee on Continuing Legal Education

By: _____
Robert Stivers, BPR No. 000737
Co-Chair KBA Committee on Continuing Legal Education

CERTIFICATE OF SERVICE

The undersigned certifies that on the ___ day of February, 2014, a true and correct copy of the foregoing Comment has been served upon the individuals and organizations listed on Exhibit A attached hereto by regular U.S. Mail, postage prepaid.

_____

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March 3, 2014

FILED
MAR 10 2014
Clerk of the Courts
Rec'd By

Mike Catalano, Clerk
Re: Tenn. Sup. Ct. R. 21
Appellate Court Clerk's Office
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

Docket: No. ADM2013-02417

Dear Mr. Catalano:

I previously wrote to you seeking a source for specific information regarding complaints apparently asserted with regard to the conduct of attorneys over age 65 (copy enclosed) and the proposal to reinstitute mandatory continuing legal education (CLE) for all attorneys over age 65. No response having been forthcoming, the comments below necessarily are based on common sense rather than statistical analysis.

If in fact attorneys over 65 are routinely committing malpractice of one sort or another, then it is quite clear that their having been subjected to more than 30 years of prior mandatory CLE (assuming at least a 30-year career) had no significant impact upon their performance. To paraphrase an apt adage, you can lead a horse to water but you cannot make him think. A corollary conclusion may however be drawn: attorney discipline by the Board of Professional Responsibility in Tennessee is ineffective if valid complaints number in the thousands for the age 65 and over age group alone.

Despite my opposition to a renewed CLE requirement for attorneys over age 65, should some number of attorneys over 65 appear to require CLE, it seems fitting only to impose CLE requirements upon those who have shown that further education is necessary for them to serve effectively as counsel rather than to burden the majority who, of course, remain free to avail themselves of CLE should they think it necessary.

I appreciate the opportunity to comment.

Sincerely,

Peter K. Shea

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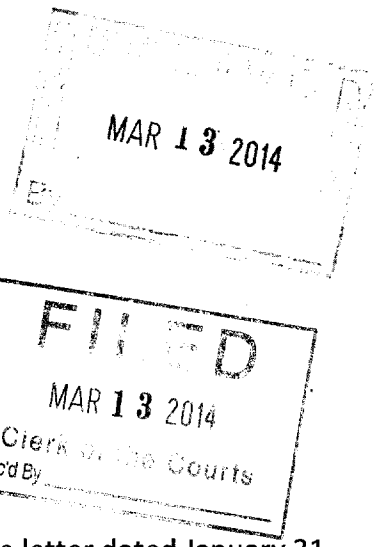
March 11, 2014



Supreme Court of Tennessee at Nashville
c/o Mike Catalano, Clerk
Re: Tenn. Sup. Ct. R. 21
Appellate Court Clerk's Office
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

Re: Docket No. ADM2013-02417

Dear Mike:

Judge Herschel Franks and I have had an opportunity to review the letter dated January 31, 2014, signed by a number of lawyers from the Chattanooga law firm of Spears, Moore, Rebman and Williams.

This letter is to advise the Court, through you, that Judge Franks and I agree with the contents of the January 31, 2014, letter and fully endorse the position taken by those attorneys. It is our firm belief that no change to Supreme Court Rule 21 is needed.

Sincerely,

William M. Barker

Herschel P. Franks

WMB/tmm

MAR 17 2014

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March 14, 2014

Mike Catalano, Clerk
Re: Tenn. Sup. Ct. R. 21
Appellate Court Clerk's Office
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401 7th Ave. North
Nashville, TN 37219-1407

Re: Petition for Adoption of Amended Tennessee Supreme Court Rule 21
No. ADM2013-02417 - current Rule 21 § 2.04(a)

Dear Mr. Catalano:

Pursuant to the Order filed in this matter on November 18, 2013, I make the following observations:

Concerning the Commission's proposal that the Court eliminate the age 65 and over CLE credit exemption currently set forth in Rule 21, § 2.04(a), I understand the Commission's concerns that the number of lawyers continuing to practice after age 65 has steadily escalated and that the number of complaints for that age group, percentage wise, is higher than the number of complaints for those in the 25-34 age group. Exhibit E to the Commission's proposal shows:

1,139 complaints for 2,827 active attorneys age 65+ = **40%**
3,206 complaints for 4,588 active attorneys age 55-64 = **69%**
4,096 complaints for 4,645 active attorneys age 45-54 = **88%**
3,453 complaints for 5,398 active attorneys age 35-44 = **63%**
1,268 complaints for 3,684 active attorneys age 25-34 = **34%**

Thus it appears that the Commission's proposal has a sound basis, but only if we ignore a number of factors that have nothing to do with continuing education, such as the number of clients each attorney in each age group personally deals with compared to each attorney in another age group, how many of the attorneys in the youngest age group function under the supervision of older or other lawyers, or the pressure of financial condition, family or social pressure in different age groups to name just a few. The Commission has not given any facts to relate the number of complaints to continuing legal education. The Commission offers no explanation as to why there is a dramatic drop in complaints after age 65 when the present requirement for continuing education has ceased. Perhaps the Commission should have consulted a statistics expert to understand how the use of statistics can be used to support a conclusion that is not related to the statistics.

That continuing legal education is beneficial to attorneys in active practice and the public as

a whole cannot be denied. No attorney can ever say the attorney knows all that an active attorney needs to know. However, the statistics cited by the Commission suggest to me that the Court may want to consider how to not only keep older lawyers as Don Paine, Ed Rayson, Bernie Bernstein, Tom Dillard, and Sid Gilreath, to name a few that I greatly admire, in active practice, but in addition, how to give them every encouragement and inducement to stay in active practice. If the Court thinks the Commission's recommendation should be pursued, I suggest that it would be helpful to obtain from the Board of Professional Responsibility the number of complaints filed in comparison to the number of practicing lawyers during 2013 for the age group between 65-70 separately from the age groups between 70-75, 75-80, and 80-90. The Court might want to consider keeping the age exemption but raising the age of exemption.

What I am suggesting to the Court is that if the Court believes the Commission's statistical approach has merit, which I think is suspect, depending on this additional statistical information, the Court might consider leaving an age exemption in place, but move it up to 70, 75, 80, or 85. We all recognize that some lawyers practice after age 65 for economic reasons which may be partly caused by deficient legal expertise which CLE might help minimize. However, some lawyers remain in practice for a number of reasons such as that they enjoy the association with their clients and/or firm members, other lawyers, and the challenge of controversy and the pleasure of being of service. Some simply want to remain active, being concerned about the deleterious effect of inactivity on their health or general brain deterioration.

It seems to me that the bar and general public would be best served by exploring why there is such a high percentage of complaints against lawyers in the 45-54 age group, and what, if anything, is in the power of the Court to bring the number down.

Sincerely,

Joseph J. Levitt, Jr.

cc: Justice Cornelia A. Clark
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March 19, 2014

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Re: No. ADM2013-02417

The undersigned Robert N. Buchanan, III, is a duly licensed attorney at law, living and engaged in active private practice in Nashville, Tennessee.

This communication is made to comment upon the proposed amendment to Tennessee Supreme Court Rule 21.

The undersigned has been licensed to practice law in Tennessee continuously since passing the Tennessee Bar Examination in the Fall of 1974. The undersigned has fulfilled the continuing legal education (herein "CLE") requirements each and every year since mandatory CLE was implemented.

The undersigned reached 65 years of age on March 27, 2013 and as of January 1, 2014 became exempt from further having to satisfy yearly CLE requirements. The undersigned's exempt status is confirmed in a letter dated from the Tennessee Commission on Continuing Legal Education and Specialization (herein the "Commission"), a copy of which is attached hereto as Exhibit I.

In recent years the undersigned has not perceived that his participation in CLE programs has been of any meaningful benefit to him or his professional development. The concern expressed by the Commission about the growing number of Tennessee attorneys who are or will soon become 65 years of age or older, must indicate that most Tennessee attorneys who are eligible do avail themselves of the age exemption in Rule 21. The undersigned suggests that this pattern of behavior is strong evidence that CLE is not highly valued by the state's most senior group of lawyers. Taking advantage of the age 65 exemption is based on those attorneys' collective experience and should not be lightly dismissed.

The undersigned believes that the proposed amendment to Section 2.04 of Tennessee Supreme Court Rule 21 is unwarranted.

In its Petition to Amend Tennessee Supreme Court Rule 21 (the "Petition"), the Commission prepared a Table 2 which is attached as Exhibit E to the Commission's Petition. For the sake of convenience, Table 2 is also attached as Exhibit II to this comment.

Table 2 shows for the 2013 year and by five specific age groupings (one composed of attorneys 65 years of age and older, the other four in 10-year age groupings), the number of licensed attorneys in each age group, the number of complaints filed in 2013 with the Board of Professional Responsibility against an attorney included within a given age grouping and corresponding percentages.

The Commission in its Petition calls attention to the number of complaints filed in 2013 with the Board of Professional Responsibility against lawyers in the "65+" age grouping compared to the number of complaints filed in the same year against attorneys in the 25-34 age grouping.

The Commission's citing that statistical difference is a poor reading of the information set forth in Table 2 as a whole.

The undersigned would urge the Court to notice that whereas the number of attorneys in the 65+ age cohort constitute 13.37% of the total attorneys in the state, that same cohort accounted for only 8.65% of the complaints filed during the period. The comparable percentages for the 25-34 age group are that such group constitutes 17.43% of the state's licensed attorneys, and gave rise to 9.93% of the complaints.

Instead of indicating a problem within the 65+ cohort, Table 2 demonstrates that compared to other age groups, the state's senior lawyers generate a lower number of complaints than lawyers in the combined 35 to 64 years of age group.

Indeed Table 2 indicates that frequency of professional and ethical complaints filed against attorneys in Tennessee is most common in the 45-54 age group. Given that lawyers in the 45-54 age group have been attending mandated CLE courses for over twenty years, one must ask if there is any positive correlation between the cumulative amount of CLE an attorney has taken and the statistical likelihood that such attorney will be the subject of a claim filed with the Board of Professional Responsibility.

The Commission's Petition offers nothing to demonstrate the truth of the assumption that CLE is effective in reducing claims made against senior attorneys.

There is nothing convincing in the Commission's Petition which supports a change in Section 2.04 of Rule 21. The undersigned rather suspects that the request to eliminate the age 65

exemption from required CLE is another example of the all too human propensity of boards and agencies: "Make our job bigger".

The undersigned urges the Court to reject the proposed modification to eliminate the age 65 exemption from continued required CLE and certainly not to apply any change retroactively to those attorneys who have already achieved exempt status.

Respectfully submitted:

Robert N. Buchanan III

Robert N. Buchanan III

RNB/btb
Attachment

CLE file

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January 7, 2014

Mr. Robert N. Buchanan, III
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Re: Robert N. Buchanan, III, 003478
Request for AGE exempt status

Dear Mr. Buchanan;

Based upon your request under Rule 21, Section 2.04 we have changed your status to AGE exempt. This change is effective January 6, 2014 and will cover the 2014 compliance year. You are not required to earn or report CLE credits. Please bear in mind that if courses are reported you will incur reporting fees of $2 per credit hour if the provider does not pay those fees.

Best wishes for the new year.

Sincerely;

Judy Bond-McKissack

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Executive Director

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Ex I

EXHIBIT E to Petition to Amend Tennessee Supreme Court Rule 21
Complaints Filed with the Board of Professional Responsibility in 2013

Complaints Filed			Active Attorneys in Tennessee as of 8/22/2013		
13,162			21,142		
Number	Age Group	Percent of Total Complaints	Number	Age Group	Percent of Total Attorneys
1,139	65+	8.65%	2,827	65+	13.37%
3,206	55-64	24.36%	4,588	55-64	21.70%
4,096	45-54	31.12%	4,645	45-54	21.97%
3,453	35-44	26.23%	5,398	35-44	25.53%
1,268	25-34	9.63%	3,684	25-34	17.43%

Table 2:

Number of Complaints filed with the Board of Professional Responsibility for Calendar Year 2013.

Source: Tennessee Board of Professional Responsibility

Ex. II

Fed Ex 3-19-14

MAR 20 2014

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March 19, 2014

By Federal Express

Mike Catalano, Clerk
Re: Tenn. Sup. Ct. R. 21
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100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

In Re: Petition for Adoption of Amended Tennessee Supreme Court Rule 21
Docket No. ADM2013-02417

Dear Mr. Catalano:

I am adamantly opposed to the proposed amendment of Tennessee Supreme Court Rule 21 to delete the CLE credit exemption available to attorneys over age 65. The information submitted by the Tennessee Commission on Continuing Legal Education and Specialization does not support the repeal of the exemption and does not justify any modification of the exemption. No change is necessary, and no change should be made.

Four points for consideration by the Court:

1. <u>The Commission relied upon insufficient and perhaps inaccurate data in making its recommendation</u>.

As noted in earlier comments, Exhibit E to the Petition indicates that 13,162 complaints were filed with the Board of Professional Responsibility in 2013. That number is totally inconsistent with statistical information reported by the Board of Professional Responsibility.

The Board compiles disciplinary statistics on a fiscal year basis –July 1 to June 30– not a calendar year basis. Attached is a copy of the Board's 32nd Annual Discipline Report for the fiscal year ended June 30, 2013, indicating a total of 2,065 complaints received or pending during the fiscal year – far less than the number the Commission says were filed.

Also attached is a copy of the Board's 5-year consolidated Annual Discipline Report for the fiscal years ended June 30, 2008 through June 30, 2012. As indicated, the June 30, 2013 report shows a significant decline in the number of complaints compared to previous years.

Thus, while the Commission says 13,162 complaints were "filed" with the Board of Professional Responsibility in 2013, the Board itself says only 1,474 complaints were "received," and only 2,065 were pending during the year. The 32nd Annual Discipline Report of the Board of Professional Responsibility would seem to be the more accurate record.

The substantial discrepancy between the number of complaints reported by the Commission and the number of complaints reported by the Board suggests the number of cases reported by the Commission for each age group may also be inaccurate.

As noted in earlier comments, the Petition does not allege and the submitted information does not show a significant increase in the number of disciplinary complaints filed generally or filed against attorneys in the 65 and older age group. Likewise, the Petition does not allege and the information submitted does not show that the number of disciplinary complaints filed against attorneys in the 65 and older age group is excessive, compared to other age groups. To the contrary, the senior attorneys compare very favorably to other age groups and have fewer complaints per attorney than all but the most junior members of the bar.

2. <u>The information presented by the Commission does not indicate that a problems exists which needs to be addressed.</u>

The Petition simply alleges that there are more lawyers over age 65 than there used to be. That hardly comes as a surprise. The Petition does not allege that the increase in the number of attorneys over age 65 has led to increased problems. As confirmed by the

Commission's Exhibit E, an attorney over age 65 is less likely to be the subject of a disciplinary complaint than an attorney between the ages of 35 and 64. Having more lawyers over age 65 may actually reduce the number of disciplinary complaints.

Of the 1,536 complaints processed by the Board in the fiscal year ended June 30, 2013, 1,300 were dismissed and only 79 were moved to formal proceedings – hardly evidence of a massive problem requiring a draconian remedy.

3. The evidence submitted by the Commission does not support the conclusion that mandatory CLE will address the perceived problem.

The Commission seems to suggest that the increase in the number of attorneys over age 65 has resulted in an increase in the number of disciplinary complaints against that group, but it offers no evidence to support that conclusion. Even if evidence of an increase existed, there is no evidence that imposing mandatory CLE on older lawyers would address the problem.

The Annual Discipline Report of the Board of Professional Responsibility provides statistical data in regard to the number of complaints and the disposition of those complaints, but the current version of the report does not address the nature of the complaints. Older annual reports of the Board of Professional Responsibility, ending with the 30th Annual Report for the fiscal year ended June 30, 2006, did address the nature of complaints, and a copy of the 30th Annual Report of the Board of Professional Responsibility is attached.

As indicated, 991 disciplinary files were opened during that fiscal year, and the nature of complaints included trust violations, conflict of interest, neglect, misrepresentation or fraud, relationship with client, fees, improper communications, criminal conviction, personal behavior and reciprocal discipline. Assuming the nature of complaints today is similar to the nature of the complaints in 2006, it is difficult to see how imposing a mandatory CLE obligation on attorneys over age 65 will reduce the number of complaints.

The CLE requirements under Section 3.01 of Rule 21 include 12 hours of general credit and 3 hours of ethics/professionalism credit. In 2006, few, if any, of the disciplinary

complaints appear to have alleged professional incompetence that could be improved by continuing legal education. To the contrary, the 30th Annual Report indicates that most of the complaints related to the attorney's behavior, not the attorney's professional ability. Making a senior attorney attend substantive CLE courses is unlikely to reduce the number of complaints. Making a senior attorney attend ethics courses would seem to violate the law of diminishing returns. If an attorney has not learned to return calls by age 65, it is unlikely that 3 hours in the basement of the Holiday Inn® will produce some miraculous change in his telephone habits. Section 5.01 of Rule 21 notes that the primary objective of CLE is to enhance the participant's professional competence as an attorney. Most attorneys age 65 or over who are actively engaged in practice are at the peak of their competence but are settled in their ways and unlikely to change their behavior.

4. <u>The costs of the proposed amendment far outweigh any benefits.</u>

Exhibit E to the Petition indicates that there are 2,827 active attorneys in Tennessee who are in the 65+ age group. Exhibit C to the Petition indicates that 648 lawyers will join that esteemed group in 2014, increasing the number of active attorneys in the 65+ age group to almost 3,500 by the end of the year. While there may be benefits to mandatory CLE, there are also substantial costs, including both the cost of CLE courses and the revenues lost during the hours devoted to CLE.

As an example of the costs, the Tennessee Law Institute's website indicates that the tuition for general admission with ethics hours (15 hours total) is $400 (based on a $100 discount for lawyers over age 65, which may or may not continue if Rule 21 is amended). If the Tennessee Law Institute charges are typical, then the 3,500 lawyers age 65+ can expect to incur $1,400,000 in CLE charges as a result of the proposed amendment.

In addition to the out-of-pocket costs, each 65+ lawyer will lose 15 hours of revenue. Using an average hourly rate of $170, the 3,500 attorneys over age 65 would lose $8,925,000 as a result of the proposed amendment. Using an average hourly rate of $200, the 3,500 attorneys over age 65 would lose $10,500,000. Thus, the true cost of the Commission's proposed amendment could exceed $12,000,000, all of which would fall on the senior attorneys.

The only ones who would benefit financially from the amendment are the CLE providers and of course, the Commission itself. Section 8.02 of Rule 21 requires CLE providers to pay the Commission a fee of $2.00 per approved credit hour for each Tennessee attorney who attends an approved program, and the proposed amendment would result in a 52,500 increase in required credit hours.

As outlined above, there is no indication that a problem exists, and there is no correlation between the perceived problem and the proposed remedy. I urge the Supreme Court of Tennessee to reject the Commission's recommendation for the deletion of the age exemption.

At 61 and counting, I remain

Sincerely yours,

THOMAS N. MCADAMS

TNM/dd
Enclosures

Board of Professional Responsibility

32nd Annual Discipline Report
Fiscal Year July 1, 2012 – June 30, 2013

1. Number of Tennessee Attorneys

- Active Attorneys	21,142
- Inactive Attorneys	3,833
- Pro Hac Vice Attorneys	833

2. Complaints

Complaints Received:	1,474
Complaints Pending at beginning of Fiscal Year:	591
Total Complaints:	2,065

Disposition:

Administrative Dismissals:	587
Investigative Dismissals:	613
Transfer to Formal Charges:	170
Diversions:	11
Private Informal Admonitions:	69
Private Reprimands:	13
Informal Public Censures:	30
Consent to Disbarment:	6
Transfer to Disability Inactive:	13
Placed on Retired Status:	17
Other:[1]	7
Total Complaints processed:	1,536

4. Formal Proceedings:

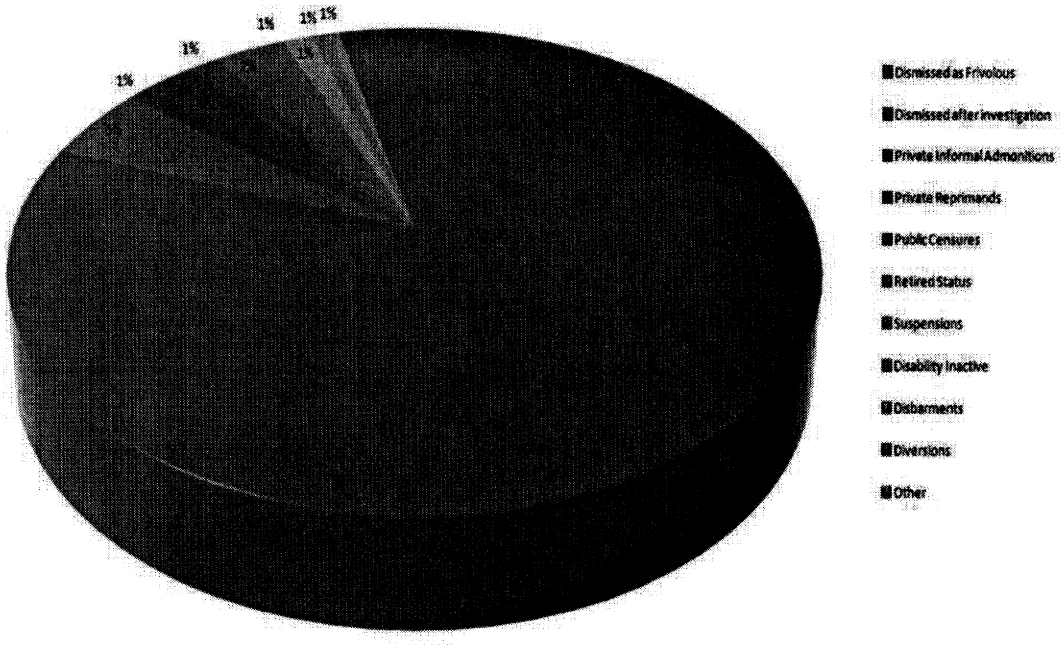
Formal cases filed:	79
Formal cases pending at beginning of Fiscal Year:	73
Total formal proceedings:	152

[1] Abated by death; complaint withdrawn; duplicate file.

5. Formal Proceedings Disposition

Dismissals	3
Public Censures	7
Suspensions	28
Disbarments	14
Transfer to Disability Inactive	7
Placed on Retired Status	2
Temporary Suspensions	15
Reinstatements:	3
Other actions[2]	7
Total:	86

Resolution of Complaints/Formal Proceedings
July 1, 2012 -- June 30, 2013



[2] Abated by death; voluntary non-suit; dismissed.

6. Non-disciplinary/Administrative Suspensions:

Non-payment of Annual Fee:	149
Continuing Legal Education non-compliance:	144
Interest on Lawyer's Trust Accounts non-compliance:	135
Professional Privilege Tax non-compliance:	41
Total:	469

7. Trust Account Overdrafts

Activity:	
Overdrafts Received:	172
Overdrafts Pending at beginning of Fiscal Year:	16
Total:	188
Disposition:	
Overdrafts Closed:	127
Overdrafts transferred to Investigation:	49
Overdrafts Pending as of end of Fiscal Year:	12
Total:	188

8. Consumer Assistance Program (CAP)

Caseload[3]

Cases Opened	1021
Cases Closed	985
Activities Opened	1820
Activities Closed	1946

Disposition

Mediate	1096	34%
Advise	1846	57%
Referrals	275	9%
Total:	3217	100%

[3] Each case number involves a client and a particular attorney, but within that case, there can be multiple activities. For example, a case is first opened and a minor communication problem is successfully mediated. Later, there may be a question about a returned file, which is mediated. These are two separate activities within the same case.

9. Education and Information

a. Ethics Opinions

1. Formal Ethics Opinions: In Fiscal Year 2012-2013, the Board issued three Formal Ethics Opinions:

- **2012-F-91(c)** concerning the ethical propriety of employment of lawyers admitted to practice in other jurisdictions but not admitted to practice in Tennessee;
- **2012-F-155** regarding whether district attorneys can ethically comply with the requirements of T.C.A. 40-32-101(a); and
- **2013-F-156** concerning whether a criminal defense lawyer alleged by a former criminal client to have rendered ineffective assistance of counsel may voluntarily provide information to the prosecutor defending the claim outside the court supervised setting.

2. Advisory Opinions: Disciplinary Counsel responded to 2,064 phone and internet inquiries from attorneys seeking ethical guidance.[4]

b. Continuing Legal Education (CLE) Presentations: Between July 1, 2012 and June 30, 2013, Disciplinary Counsel presented forty-nine (49) CLE seminars, attended by approximately 3,417 attorneys. The Board also hosted its Ethics Workshop on October 30, 2012, attended by 101 attorneys.

c. *Board Notes*: In January 2013, the Board resumed publication of *Board Notes*, the Board's bi-annual newsletter providing education and information to the bar and the public. *Board Notes* is emailed to all attorneys and judges and is published on the Board's website.

d. Website at www.tbpr.org: The Board continues to enhance its website with current rule changes, disciplinary decisions and news for the bar and the public. The Board posts disciplinary Judgments and has uploaded all Hearing Panel Judgments, Circuit, Chancery and Supreme Court decisions from 2008 to the present.

[4] Tennessee attorneys may submit ethics inquiries to the Board by calling 615-361-7500, ext. 212, or via the Board's website at www.tbpr.org.

BOARD OF PROFESSIONAL RESPONSIBILITY
of the
SUPREME COURT OF TENNESSEE

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THERESA M. COSTONIS
DISCIPLINARY COUNSEL

THIRTIETH ANNUAL REPORT
July 1, 2005 through June 30, 2006

The state of attorney discipline is healthy and robust as evidenced in an editorial by *The Tennessean* on November 30, 2005, stating, in part:

> **Supreme Court Has Effective Program to Investigate, Address Problems**
> ...Tennesseans should appreciate the seriousness that the Tennessee Supreme Court gives to professionalism and ethics... . The state is better for it. The legal profession...is much better for it. ...(C)onsumers need to know that their grievances will be heard and investigated. And lawyers need to know that frivolous complaints will not count against them.

The Board has received 36,883 complaints during the past thirty years, resulting in 162 disbarments, 398 suspensions, 479 public censures and 2,793 private reprimands or admonitions. There were 991 files opened during the past year. This is an increase of less than 1% over the same period last year. The nature of the files created and areas from which they arose during the past two years are shown on page two of this report.

The *Consumer Assistance Program*, implemented in 2002, continues to receive a large number of consumer contacts. During the year, the program handled 4,661 concerns, a decrease of 3.3% compared to last year. The decrease is likely attributable to the Board's new website which allows consumers to access information without direct contact with the program. There were 3,493 instances of informal mediation of concerns not rising to the level of serious ethical violations. Giving general information to legal consumers was the highest frequency of other activity. Areas of practice for which the most inquiries were received were criminal, domestic, general civil, personal injury and estates. There were 1,145 referrals to other entities such as fee dispute committees, lawyer referral services or to Disciplinary Counsel when informal mediation was unable to quickly resolve issues.

The Board's *Ethics Opinion Service*, implemented in 1980, continues to preemptively assist lawyers in identifying and resolving ethical dilemmas and thereby avoiding complaints being filed. This proactive program has resulted in 164 formal ethics opinions and 832 advisory ethics opinions. Disciplinary Counsel have responded to 57,887 hotline telephone inquiries from attorneys seeking guidance, including 3,145 inquiries during this reporting year. Disciplinary Counsel also participated in 93 bar-sponsored ethics seminars during the year, attended by approximately 5,581 attorneys.

Attorneys are continuing to be proficient in the appropriate maintenance of trust accounts. There were 80 overdraft notices filed this year, representing a 72% decline from 288 reported in 1995. The Board's *Overdraft Notification Program* was implemented in 1994, requiring trust accounts to be maintained in financial institutions which agree to report overdrafts to the Board. More than 300 financial institutions are participating in the program.

Tennessee attorneys have contributed $28.4 million in annual Court assessed fees to finance the Board's programs, with no contributions from public sources. The annual registration fees provided revenues in FY 05-06 of $1,904,435. Additional revenues of $167,362 were received from interest, reimbursement of costs of disciplinary proceedings and prior fees and penalties, providing total Board revenue this fiscal year of $2,071,797. Expenditures were $2,110,093. The Board also collected and remitted an additional $375,250 this year to the Supreme Court's *Lawyer Assistance Program*. In addition, $179,460, totaling $2.54 million since 1990, has been collected from attorneys and remitted to the Court's *Lawyers' Fund for Client Protection*.

REGISTRATION INFORMATION④									DISCIPLINARY DISTRICTS③	DISCIPLINARY INFORMATION④													
General Population①	Active Attorneys		Exempt Attorneys		Suspended Attorneys②		Total Attorneys			Number of Complaints		Disbarments		Suspensions		Public Censures		Private Reprimands		Private Admonitions		Disability Inactive	
	2006	2005	2006	2005	2006	2005	2006	2005		2006	2005	2006	2005	2006	2005	2006	2005	2006	2005	2006	2005	2006	2005
763,813	939	912	82	83	55	51	1,076	1,046	I	72	71	0	0	2	0	3	2	1	3	3	4	0	0
386,028	461	452	56	53	22	18	539	523	II Excluding Knox Co.	64	47	0	0	1	1	6	1	0	1	7	2	0	0
404,972	1,686	1,653	171	167	71	72	1,928	1,892	II Knox County	93	98	0	0	1	1	4	2	2	4	8	11	0	0
312,107	259	246	28	30	8	9	295	285	III Excluding Hamilton Co.	19	14	0	0	0	0	1	0	3	0	1	2	0	0
310,935	1,091	1,076	100	91	49	49	1,240	1,216	III Hamilton County	63	57	0	0	0	1	2	4	5	2	1	5	0	0
848,097	1,009	976	114	110	44	42	1,167	1,128	IV	83	85	1	0	0	0	2	1	2	2	9	7	1	0
575,261	3,996	3,876	334	333	189	195	4,519	4,404	V Davidson County	163	194	1	2	2	3	9	9	5	7	20	13	0	1
836,252	1,473	1,379	154	144	79	78	1,706	1,601	VI	87	92	0	0	4	2	3	4	1	0	1	7	0	1
339,910	476	476	42	41	23	22	541	539	VII	43	54	0	1	0	1	2	0	2	0	3	4	0	1
276,549	248	249	28	29	14	12	290	290	VIII	17	21	0	0	0	0	1	3	0	0	1	1	0	0
909,035	3,229	3,175	334	327	241	243	3,804	3,745	IX Shelby County	268	227	3	1	4	5	10	8	0	5	19	15	2	0
	3,111	2,919	941	904	834	792	4,886	4,396	Out of State	19	22	2	0	3	3	0	1	1	1	3	3	0	1
5,962,959	17,978	17,389	2,384	2,312	1,629	1,583	21,991	21,065	--- TOTALS ---	991	982	7	4	17	17	43	35	22	25	76	74	3	4

NOTES:

①U.S. Bureau of the Census, 2005 estimated County Population for Tennessee Counties.

②This total includes suspensions for: non-payment of fee (552), non-compliance with CLE (330), disciplinary actions (159) and multiple suspensions (588).

③The Disciplinary Districts contain the following counties pursuant to Rule 9(2):

District I - Johnson, Carter, Cocke, Greene, Hancock, Grainger, Jefferson, Sullivan, Washington, Unicoi, Hawkins, Claiborne, Hamblen and Sevier Counties.

District II - Campbell, Anderson, Roane, Blount, Morgan, Union, Knox, Loudon and Scott Counties.

District III - Polk, Hamilton, Sequatchie, Bledsoe, Meigs, Monroe, Bradley, Marion, Grundy, Rhea and McMinn Counties.

District IV - White, Van Buren, Pickett, Putnam, Overton, Clay, Franklin, Moore, Bedford, Rutherford, Wilson, Trousdale, Warren, Fentress, Cumberland, Smith, Jackson, Coffee, Lincoln, Marshall, Cannon, DeKalb and Macon Counties.

District V - Davidson County.

District VI - Giles, Wayne, Lewis, Maury, Humphreys, Cheatham, Houston, Montgomery, Robertson, Lawrence, Perry, Hickman, Dickson, Stewart, Sumner and Williamson Counties.

District VII - Henry, Carroll, Henderson, Hardeman, Hardin, Benton, Chester, Decatur, Fayette, McNairy and Madison Counties.

District VIII - Weakley, Lake, Gibson, Haywood, Tipton, Obion, Dyer, Crockett and Lauderdale Counties.

District IX - Shelby County.

④Period for 2006 data is July 1, 2005 through June 30, 2006.
Period for 2005 data is July 1, 2004 through June 30, 2005.

NATURE OF COMPLAINTS:

	2006	2005
TRUST VIOLATIONS: Recordkeeping, Embezzlement, Conversion, Commingling	62	91
CONFLICT OF INTEREST: Personal, As Public Official, Appearance of Impropriety, Business with Clients, Multiple Representation	48	54
NEGLECT: Preparation, Failure to Communicate, File, Appear or Perform	335	330
MISREPRESENTATION OR FRAUD: False Documents, Attestation, Statements, Failure to Clarify	67	96
RELATIONSHIP WITH CLIENT: Limiting Liability, Discussing Confidence, Improper Withdrawal, Not Releasing Documents, Extortion, Harassment, Failure to Protect Client's Interest	314	302
FEES: Overreaching, Excessive, Splitting Fee with Non-Lawyer, Improper Division, Failure to Refund, Improper Fee	32	27
IMPROPER COMMUNICATIONS: Advertising, Solicitation, Trial Publicity, Contact with Witnesses, Officials, Jury, Opposing Party	78	55
CRIMINAL CONVICTION: Felony, Misdemeanor, Other	9	3
PERSONAL BEHAVIOR: Competence, Mental Disability, Aiding Unauthorized Practice, Ineffective Assistance	43	23
OTHER: Reciprocal Discipline, not available	3	1
TOTAL FILES OPENED:	991	982

ALL ATTORNEYS ARE REQUIRED TO FILE WRITTEN NOTICE OF ANY CHANGE IN RESIDENCE ADDRESS, OFFICE ADDRESS OR STATUS WITHIN 30 DAYS OF SUCH CHANGE AS REQUIRED BY SUPREME COURT RULE 9(20.5).

FRIVOLOUS MATTERS ADMINISTRATIVELY DISMISSED PURSUANT TO RULE 9(7.2)(c): 267 286

TOTAL MATTERS RECEIVED: 1,258 1,268

MAR 2 4 2014

Harris Shelton Hanover Walsh, PLLC

ATTORNEYS AT LAW

March 20, 2014

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Mr. Mike Catalano, Clerk
Appellate Court Clerk's Office
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

RE: Petition for Adoption of Amended Tennessee Supreme Court Rule 21, No. ADM2013-02417

Dear Mr. Catalano:

I am writing in opposition to the proposal that our Supreme Court eliminate the age 65 and over CLE credit exemption. I regret to say that CLE has become a cottage industry in our State as well as other states. As attorneys, we are bombarded with e-mails and printed circulars on an almost daily basis advertising some CLE program or another, the vast majority of which have nothing whatsoever to do with my practice.

As one who has completed all CLE program requirements since 1971 up until the year after I reached age 65 on July 14, 2011, and made presentations at various CLE programs over the years, I would respectfully submit that there is no legitimate need to do away with the exemption. As evidenced by the Petition, I believe this proposal has more to do with numbers than the improvement of the practice of law in our State.

What I do find helpful in my practice is the case information received each day from the Tennessee Bar Association along with information on proposed Rule changes when these occur. With a key stroke on my computer, I am able to download opinions and Rule changes in real time.

Yours very truly,

HARRIS SHELTON HANOVER WALSH, PLLC

Bill Dunlap

William W. Dunlap, Jr.

WWDjr/gc

RECEIVED
MAR 27 2014
Clerk of the Courts
Rec'd By _____

IN THE SUPREME COURT OF TENNESSEE

IN RE: PETITION FOR ADOPTION OF AMENDED TENNESSEE SUPREME COURT RULE 21) No. ADM2013-2417

COMMENT OF THE BOARD OF PROFESSIONAL RESPONSIBILITY TO PROPOSED AMENDMENTS TO TENNESSEE SUPREME COURT RULE 21

Pursuant to this Court's Order filed November 18, 2013, the Board of Professional Responsibility of the Supreme Court of Tennessee ("the Board") respectfully comments on proposed Tennessee Supreme Court Rule 21, Section 2.04(C), which provides:

> An attorney who is not practicing law shall not be subject to the requirements of the Rule after age sixty-five (65) upon filing a request with the Commission. This exemption shall not include the calendar year in which he or she becomes sixty-five (65) years of age. Attorneys over the age of sixty-five (65) that are practicing law are not exempt from this rule.

The Tennessee Commission on Continuing Legal Education and Specialization ("the Commission"), attached to their Petition Exhibit E reflecting complaints filed with the Board by attorney's age for the last ten years.[1] The Board believes it is important to provide this Court with additional information regarding

[1] The Commission discusses on page four (4) of their Petition the number of complaints filed against attorneys by age ranges with the Board.

discipline imposed against attorneys in 2013 by age group (attached as Exhibit A). Specifically, the Board's information about attorneys disciplined in calendar year 2013, as reflected by Exhibit A shows attorneys aged 65 and older received 16% of all discipline imposed. Attorneys aged 55-64 received 21% of discipline; attorneys aged 45-54 received 32% of discipline; and attorneys aged 35-44 received 25% of discipline. Only attorneys aged 25-34 received a smaller percentage of discipline, i.e. 7%, than attorneys aged 65 and older.

RESPECTFULLY SUBMITTED

J. Russell Parkes By SG with permission

J. RUSSELL PARKES (#012453)
Chairman of the Board of Professional Responsibility of the Supreme Court of Tennessee

Hardin, Parkes, Kelley & Carter, PLLC
107 West 7th Street, Suite 100
Columbia, TN 38402
Tel: 931-388-4022

Sandy Garrett

SANDY GARRETT (#013863)
Chief Disciplinary Counsel of the Board of Professional Responsibility of the Supreme Court of Tennessee

10 Cadillac Drive, Suite 220
Brentwood, TN 37027
Tel: 615-361-7500

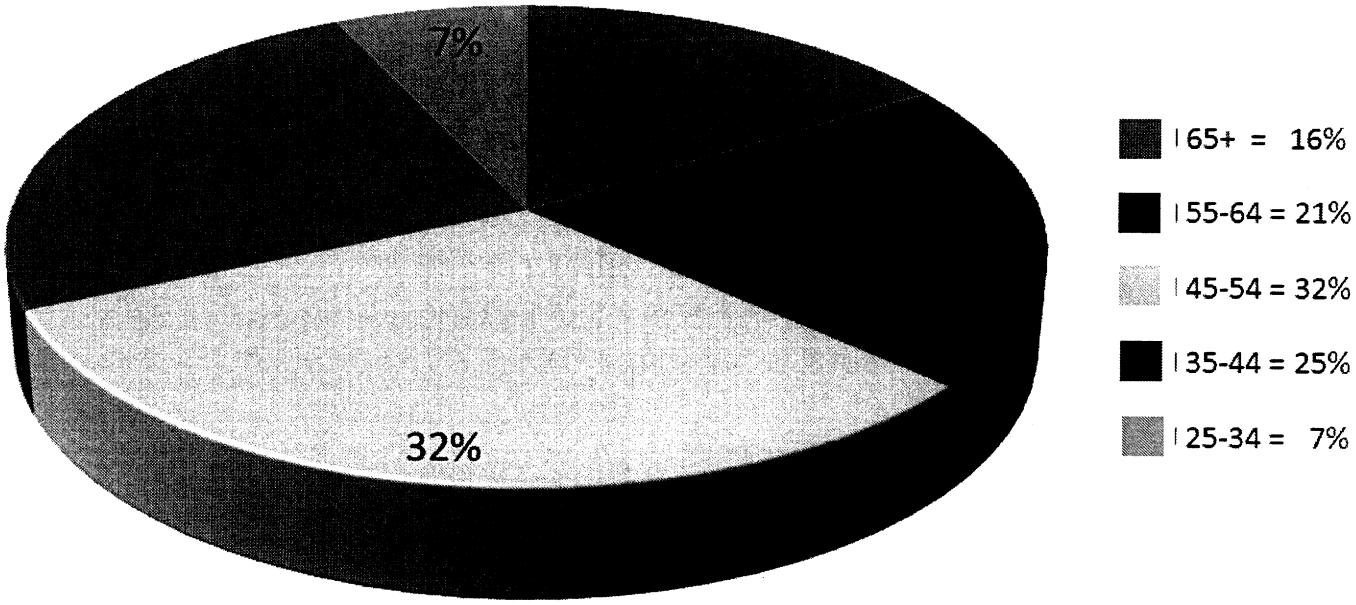
Certificate of Service

I certify that the foregoing has been mailed to Allan F. Ramsaur, Esq., Executive Director, Tennessee Bar Association, 221 4th Avenue North, Suite 400, Nashville, Tennessee by U.S. mail, on this the 27 day of March, 2014.

By: J. Russell Parkes By SG with permission
J. RUSSELL PARKES (#012453)
Chairman of the Board

By: Sandy Garrett
SANDY L. GARRETT (#013863)
Chief Disciplinary Counsel

2013 Discipline by Age Group*



***Total instances of imposed discipline in 2013: 146.**

Exhibit A