



NOV 28 2012

November 26, 2012

The Honorable Michael Catalano
Clerk, Tennessee Supreme Court
Supreme Court Building, Room 100
401 Seventh Avenue North
Nashville, TN 37219

IN RE: PETITION TO AMEND RULE 33 OF
THE RULES OF THE SUPREME COURT

Dear Mike:

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

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

Very truly yours,

Allan F. Ramsaur
Executive Director

cc: Jackie Dixon, President, Tennessee Bar Association
Brian Faughnan, Chair, TBA Standing Committee on
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Kay Caudle, Chair, TBA Attorney Well Being Committee
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IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED
2012 NOV 28 PM 1:11

IN RE: PETITION TO AMEND)
RULE 33 OF THE RULES OF) No. M2012-01897-SC-RL1-RL
THE SUPREME COURT)
)
)

APPELLATE COURT CLERK
NASHVILLE

COMMENT OF THE TENNESSEE BAR ASSOCIATION

The Tennessee Bar Association (“TBA”), by and through its President, Jacqueline B. Dixon; Chair, TBA Standing Committee on Ethics and Professional Responsibility, Brian S. Faughnan; Chair, TBA Attorney Well Being Committee, Kathryn S. Caudle; General Counsel, Paul C. Ney; and Executive Director, Allan F. Ramsaur, files this comment with the Tennessee Supreme Court generally in support of the changes detailed in the petition.

BACKGROUND

On September 6, 2012, the Commission of the Tennessee Lawyers Assistance Program ("TLAP") filed a petition asking this Honorable Court to amend Rule 33

in several respects. On October 15, 2012, the Court issued an order soliciting written comments from the bench, bar and public regarding the petition. The TBA leadership requested that the TBA Committees on Attorney Well Being and Ethics & Professional Responsibility each review the changes and make recommendations.

Based upon those recommendations, the TBA Executive Committee adopted a position generally in support of the petition with two editorial changes.

**1. THE PETITION SHOULD BE ADOPTED WITH MINOR EDITORIAL
CHANGES**

The principal purpose of the petition is to clarify the various types of monitoring agreements which TLAP may enter into and clarify the responsibilities of the contract participant and those who request the monitoring. The TBA is in full agreement with the purpose of the petition and the manner in which the petition addresses those various rights and responsibilities.

There are two editorial changes which the TBA would propose. Under the proposed amendment to TN. Sup. Ct. Rule 33.05(E)(2), the first sentence and subsequent sentences use different words to reflect the entity to which reports are made. In the first sentence, the participant may request monitoring with reporting to "a non-disciplinary authority" and in subsequent sentences, the reporting is to a "reporting designee." The TBA proposes that the first sentence of TN. Sup. Ct. Rule 33.05(E)(2) be amended to provide that "a contract participant may request monitoring with reporting to a non-disciplinary agency as the reporting designee." This would clarify that the non-disciplinary agency and reporting designee are one in the same.

The TBA's second editorial comment is to recommend that the second sentence of Rule 33.05(3) be revised to include a licensing authority as well unless the Court truly intends for only the disciplinary authority being able to make such a request in writing. If that is not the intent, then the TBA would suggest that the words "or licensing authority" be added after the word "disciplinary authority" in that second sentence to avoid any confusion.

CONCLUSION

The Tennessee Bar Association has been constant and consistent in its support of the adoption of the creation and operation of the Tennessee Lawyers Assistance Program. With two proposed edits, the TBA recommends adoption of the proposed changes.

RESPECTFULLY SUBMITTED,

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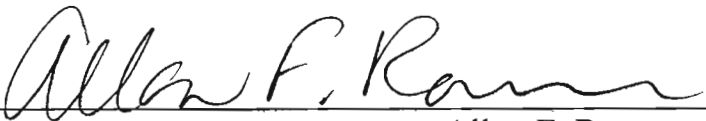
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CERTIFICATE OF SERVICE

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



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