



TENNESSEE BAR
ASSOCIATION

PRESIDENT

Jackie Dixon
424 Church Street
Suite 2260
Nashville, Tennessee 37219
(615) 986-3377
FAX (615) 635-0018
Email: jdixon@wmdlawgroup.com

PRESIDENT-ELECT

Cindy Wyrick
P.O. Box 5365
Sevierville, Tennessee 37862
(865) 453-2866
FAX (865) 429-1540
Email: cwyrick@ogrlawfirm.com

VICE PRESIDENT

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

TREASURER

Sherie Edwards
P.O. Box 1065
Brentwood, Tennessee 37024
(615) 846-8205
FAX (615) 846-6070
Email: sheriee@svmic.com

SECRETARY

Jason Pannu
424 Church Street
Suite 2500
Nashville, Tennessee 37219-8615
(615) 259-1366
Fax: (615) 259-1389
Email: jpannu@lewisking.com

IMMEDIATE PAST PRESIDENT

Danny Van Horn

BOARD OF GOVERNORS

Dan Berexa, Nashville
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Michelle Sellers, Jackson
Charles Trotter, Huntingdon
Chris Varner, Chattanooga
David Veile, Franklin
Guy Wilkinson, Camden
Randall York, Cookeville

GENERAL COUNSEL

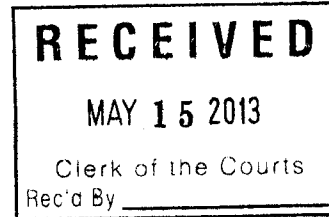
Paul Ney, Nashville

EXECUTIVE DIRECTOR

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

May 15, 2013

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



IN RE: AMENDMENT TO RULE 10B, SECTION 2
RULES OF THE TENNESSEE
SUPREME COURT
No. M2013-00911-SC-RL2-RL

Dear Mike:

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

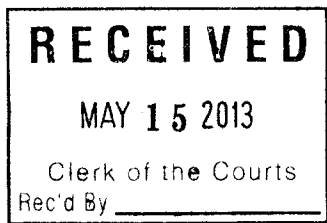
As always, thank you for your cooperation. I remain,

Very truly yours,

Allan F. Ramsaur
Executive Director

cc: Jackie Dixon, President, Tennessee Bar Association
Paul Ney, TBA General Counsel
Service List

Tennessee Bar Center
221 Fourth Avenue North, Suite 400
Nashville, Tennessee 37219-2198
(615) 383-7421 • (800) 899-6993
FAX (615) 297-8058
www.tba.org



**IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE**

IN RE: RULE 10B, SECTION 2)
RULES OF THE TENNESSEE) **No. M2013-00911-SC-RL2-RL**
SUPREME COURT)
)

COMMENT OF THE TENNESSEE BAR ASSOCIATION

The Tennessee Bar Association ("TBA"), by and through its President, Jacqueline B. Dixon, its General Counsel, Paul C. Ney, and its Executive Director, Allan F. Ramsaur, offers this comment and alternative language to the proposed Section 2.07 of Rule 10B, Rules of the Tennessee Supreme Court, concerning Supreme Court review of an intermediate appellate court's ruling on an interlocutory appeal from a trial court's denial of a motion for disqualification, recusal, or a determination of constitutional or statutory incompetence.

The TBA, having proposed a procedure on which the current Tenn. S. Ct. R. 10B ("Rule 10B") is based, is pleased to have this opportunity to comment on this proposed amendment to Rule 10B that would provide an explicit procedure for an accelerated request for a second level of appellate review. In developing its

original proposal for an accelerated appellate review from the denial of motion for disqualification, recusal, or a determination of constitutional or statutory incompetence, the TBA considered the question of Supreme Court review of those appellate court decisions that the proposed Section 2.07 addresses. We concluded that the existing mechanism for discretionary Supreme Court review under Tenn. R. App. P. 11 (“Rule 11”) should apply. Consistent with that view, the TBA proposes the following language as an alternative to the proposed amendment to Section 2.07 on which the Court invited comment:

2.07. In an accelerated interlocutory appeal pursuant to this Rule and decided by either the Court of Appeals or the Court of Criminal Appeals, a party may seek the Supreme Court’s review of the intermediate appellate court’s decision by filing an accelerated application for permission to appeal. The provisions of Tenn. R. App. P. 11 shall apply to such an application, except that the application shall be filed within ten (10) days of the filing date of the intermediate appellate court’s order or opinion. Any appeal granted in such a circumstance shall be decided by the Supreme Court on an expedited basis upon a de novo standard of review. The accelerated application

for permission to appeal is the exclusive method for seeking the Supreme Court's review of the intermediate appellate court's ruling on an accelerated interlocutory appeal filed pursuant to Section 2 of this Rule.

The TBA believes that its proposed alternative language would better accomplish the purposes of the adoption of Rule 10B in several respects. First, the initial experience with the number of decided Tenn. S. Ct. R. 10B appellate decisions suggests the number of requests for accelerated applications for permission to appeal to the Supreme Court will not be overwhelming. Intermediate courts have dealt ably with the questions presented to them under Rule 10B and have provided reasonably clear guidance to judges, lawyers and litigants alike. The Tennessee Supreme Court can fully discharge its role in overseeing the judicial system and the application of Tenn. S. Ct. R. 10B without providing every disappointed litigant an appeal to the Supreme Court. The TBA is of the view that decisions by intermediate appellate courts about such matters are of equal importance with many of the merit decisions now up for discretionary review by the Tennessee Supreme Court under Tenn. R. App. P. 11, and that those procedures are generally

as well suited to address the issues arising under Rule 10B as they are any other matter addressed under Rule 11.

Second, using Tenn. R. App. P. 11 as a vehicle for accelerated Supreme Court review of Rule 10B decisions by intermediate appellate courts would provide the Tennessee Supreme Court with ample and clear authority to accept and decide any question earlier presented to the intermediate appellate court that the court believes is vital in its supervision and administration of the justice system.

Third, the TBA believes that using Tenn. R. App. P. 11, with a limited modification to accelerate the schedule for requesting an appeal, as a mechanism for discretionary Supreme Court review of such decisions would be a simpler and clearer remedy for lawyers and litigants and more consistent with the expectations and practices of lawyers and litigants already familiar with Rule 11's appeal by permission procedure. The TBA's proposal to require that the request in this limited circumstance be made within ten (10), rather than sixty (60), days after the intermediate appellate court's order or opinion incorporates the Court's proposed Section 2.07's means of accelerating the appellate review process, but does so within an existing, familiar procedural framework. The TBA's proposal

incorporates the language that the Supreme Court will decide any appeal granted on an expedited basis, which the Court's proposed amendment includes and which the TBA agrees is appropriate to the circumstances of the Rule 10B, Section 2 interlocutory appeal procedure.

Next, the TBA's alternative proposed amendment specifies a de novo standard of review. We believe that standard of review is appropriate given the issues raised under Rule 10B, and we believe it helpful to lawyers and litigants to be provided clear notice of the applicable standard of review, similar to that provided by Section 2.06 of Rule 10B.

Additionally, the TBA's proposed Section 2.07 explicitly provides that the accelerated application for permission to appeal procedure is the exclusive method for seeking review of the intermediate appellate court's decision under Section 2 of Rule 10B. The language is consistent with the language of current Section 2.01, which provides that the trial court's determination of the issue may only be reviewed through the accelerated review process or on the direct appeal as of right. The TBA believes that when a party desires to seek review of an intermediate appellate court's decision under the accelerated interlocutory appeal procedure

provided by Section 2, the interests of judicial economy and a final determination of the issue are best served by requiring that the accelerated application for permission to appeal to the Supreme Court shall be the exclusive method of seeking further appellate review.

The Tennessee Bar Association respectfully submits that its alternative proposed amendment to Rule 10B, Section 2, with its clear reference to Tenn. R. App. P. 11, its explicit provision for the standard of review, and its provision making such review the exclusive method for review of intermediate appellate court decisions under Section 2 best provides a fair, orderly, and familiar process for a discretionary appeal to the Supreme Court consistent with the purposes of Tenn. S. Ct. R. 10B.

RESPECTFULLY SUBMITTED,

By: /s/ by permission

JACQUELINE B. DIXON (012054)
President, Tennessee Bar Association
Weatherly, McNally & Dixon PLC
424 Church Street, Suite 2260
Nashville, TN 37219
(615) 986-3377

By: /s/ by permission

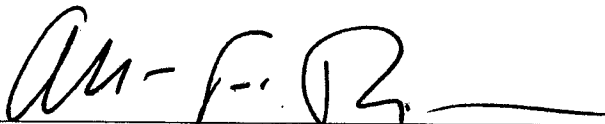
PAUL C. NEY (011625)
General Counsel,
Tennessee Bar Association
Waddey & Patterson, P.C.
1600 Division Street, Suite 500
Nashville, Tennessee 37203
(615) 242-2400

By: 

ALLAN F. RAMSAUR (5764)
Executive Director,
Tennessee Bar Association
Tennessee Bar Center
221 Fourth Avenue North, Suite 400
Nashville, Tennessee 37219-2198
(615) 383-7421

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.


Allan F. Ramsaur

Creed Daniel
Grainger County Bar Association President
Daniel & Daniel
P O Box 6
Rutledge, TN 37861

William Mitchell
White County Bar Association President
Mitchell Law Office
112 South Main Street
Sparta, TN 38583

David Myers
Union County Bar Association President
105 Monroe St Po Box 13
Maynardville, TN 37807--0013

Bratten Cook
DeKalb County Bar Association President
Bratten Hale Cook II
104 N 3rd St
Smithville, TN 37166

William Locke
Warren County Bar Association President
General Sessions Judge
Warren County Ctse PO Box 7142
Mcminnville, TN 37111--7142

David Stanifer
Claiborne County Bar Association
President
Stanifer & Stanifer
PO Box 217
Tazewell, TN 37879

Joseph Ford
Franklin County Bar Association President
McBee & Ford
17 S College St
Winchester, TN 37398

Mary Helms
Hamblen County Bar Association President
Wimberly Lawson Wright Daves & Jones,
PLLC
P. O. Box 1066
Morristown, TN 37816

Craig Brent
Williamson County Bar Association
President
Craig H. Brent, Attorney
224 1st Ave S
Franklin, TN 37064--2214

James Snyder
Blount County Bar Association President
Law Office of James H. Snyder, Jr.
345 S Hall Rd
Alcoa, TN 37701--2643

Gerald Largen
Roane County Bar Association President
PO Box 266
Kingston, TN 37763

John White
Bedford County Bar Association President
Bobo, Hunt & White & Nance
P O Box 169
Shelbyville, TN 37162

Bill Brown
Bradley County Bar Association President
William J. Brown & Associates
PO Box 1001
Cleveland, TN 37364

Carmon Hooper
Haywood County Bar Association
President
C. Thomas Hooper Iii
P O Box 55
Brownsville, TN 38012

Linda Seely
Memphis Bar Association President
Memphis Area Legal Services, Inc.
116 Tuckahoe Rd
Jackson, TN 38305

James Gass
Sevier County Bar Association President
Ogle, Gass & Richardson PC
PO Box 5365
Sevierville, TN 37864

Ben Boston
Lawrence County Bar Association
President
Boston, Holt, Sockwell & Durham PLLC
P O Box 357
Lawrenceburg, TN 38464

Tracy Moore
Maury County Bar Association President
Moore & Peden PC
PO Box 981
Columbia, TN 38402--0981

Michael Davis
Morgan County Bar Association President
364 Cumberland Mountain Cir Po Box 756
Wartburg, TN 37887--0756

Matt Maddox
Carroll County Bar Association President
Attorney at Law
P O Box 827
Huntingdon, TN 38344

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

Tom Sherrard
Nashville Bar Association President
Sherrard & Roe PLC
150 3rd Ave S #1100
Nashville, TN 37201-2011

William Douglas
Lauderdale County Bar Association
President
William Dan Douglas, Jr
109 N Main St Po Box 489
Ripley, TN 38063--0489

Andrew Frazier
Benton County Bar Association President
Whitworth Law Firm
P O Box 208
Camden, TN 38320

William Cockett
Johnson County Bar Association President
Smith & Cockett Attorneys
247 West Main Street Po Box 108
Mountain City, TN 37683--0108

William Lawson
Unicoi County Bar Association President
William B. Lawson, Attorney At Law
112 Gay St, Suite A Po Box 16
Erwin, TN 37650--0016

Randall Self
Lincoln County Bar Association President
Randall E Self, Attorney At Law
131 A Market St E Po Box 501
Fayetteville, TN 37334--0501

Timothy Naifeh
Lake County Bar Association President
227 Church St
Tiptonville, TN 38079

John Miles
Obion County Bar Association President
John Miles, Atty.
P O Box 8
Union City, TN 38281

Harriet Thompson
Hardeman County Bar Association
President
P O Box 600
Bolivar, TN 38008

Mark Blakley
Scott County Bar Association President
Stansberry, Petroff, Marcum & Blakley PC
P O Box 240
Huntsville, TN 37756

Daryl Colson
Overton County Bar Association President
Colson & Maxwell
808 North Church St
Livingston, TN 38570

Jay Ingram
Sumner County Bar Association President
Phillips & Ingram
117 E Main St
Gallatin, TN 37066

William Phillips
Hawkins County Bar Association President
Phillips & Hale
210 E Main St
Rogersville, TN 37857

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

Anne Fritz
Executive Director
Memphis Bar Association
80 Monroe Suite 220
Memphis, TN 38103

Hilary Duke
Dickson County Bar Association President
Reynolds, Potter, Ragan & Vandivort, PLC
210 East College Street
Dickson, TN 37055

Chuck Holliday
Jackson-Madison-Henderson County Bar
Association
Law Offices of Jeffrey A. Garrety
65 Stonebridge Blvd.
Jackson, TN 38305

Jennifer Porth
Fifteenth Judicial District Bar Association
President
J Stephen Brown Pc
224 W Gay St Po Box 792
Lebanon, TN 37088--0792

Robert Curtis
Giles County Bar Association President
Robert W. Curtis Iii
209 W Madison St
Pulaski, TN 38478--3222

Robin Miller
Chattanooga Bar Association President
Spears Moore Rebman & Williams PC
PO Box 1749
Chattanooga, TN 37401

Chris Varner
Robertson County Bar Association
President
Evans Harrison Hackett PLLC
835 Georgia Ave, Suite 800
Chattanooga, TN 37402

Rachel Moses
Putnam County Bar Association President
Legal Aid Society
9 S Jefferson Ave., Ste 102
Cookeville, TN 38501

Jeremy Ball
Jefferson County Bar Association President
Dist Atty OFC
P.O. Box 690
Dandridge, TN 37725

Tish Holder
Hickman County Bar Association President
Harvill & Assoc PC
820 Hwy 100
Centerville, TN 37033

Terri Crider
Gibson County Bar Association President
Flippin, Atkins & Crider PC
P.O. Box 160
Humboldt, TN 38343

Derreck Whitson
Cocke County Bar Association President
Law OFC of J Derreck Whitson
P.O. Box 1230
Newport, TN 37822

Gigi Woodruff
Executive Director
Nashville Bar Association
150 4th Avenue N; Suite 1050
Nashville, TN 37219

Amber Shaw
Tipton County Bar Association President
Law Office of J. Houston Gordon
114 W. Liberty Avenue, Suite 300
Covington, TN 38019

Russell Blair
McMinn-Meigs County Bar Association
President
Blair And Parker
Po Box 804
Etowah, TN 37331--0804

Heidi Barcus
Knoxville Bar Association President
London & Amburn, P.C.
607 Market Street, Suite 900
Knoxville, TN 37902

John Willis
Anderson County Bar Association
President
Fox & Farley
310 N. Main St.
Clinton, TN 37716-3752

Christopher Keeton
Coffee County Bar Association President
Keeton & Perry Plc
401 Murfreesboro Hwy
Manchester, TN 37355--1580

James Taylor
Rhea County Bar Association President
1374 Railroad St Ste 400
Dayton, TN 37321--2211

Lynda Hood
Executive Director
Chattanooga Bar Association
801 Broad St Suite 420 Pioneer Bldg
Chattanooga, TN 37402

Jason Holly
Carter County Bar Association President
Holly & Holly Plc
415 Hudson Dr
Elizabethton, TN 37643--2881

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

Stanley Ross
Montgomery County Bar Association
President
Harvill Ross Hogan Ragland
PO Box 925
Clarksville, TN 37041-0925

Matthew Edwards
Cumberland County Bar Association
President
Law Office of Matthew Edwards
69 E First St Ste 203
Crossville, TN 38555--4575

Ashley Shudan
Loudon County Bar Association President
Ford & Nichols
PO Box 905
Loudon, TN 37774

Beau Pemberton
Weakley County Bar Association President
Law Ofc Of James H Bradberry
109 North Poplar Street Po Box 789
Dresden, TN 38225--0789

Lindsey Lane
Greene County Bar Association President
Leonard, Kershaw & Hensley, Llp
131 S Main St Ste 102
Greeneville, TN 37743

Tyler Weiss
Monroe County Bar Association President
Worthington & Weiss, P.C.
409 College St N Ste 1
Madisonville, TN 37354--3103

Scott McGinness
Tennessee Board of Law Examiners
President
Miller & Martin PLLC
832 Georgia Ave Ste 1000
Chattanooga, TN 37402

Libby Sykes
Administrative Offices of the Courts
511 Union St Ste 600
Nashville, TN 37219--1768

Mike Spitzer
Tennessee Bar Foundation Chair
The Spitzer Firm
19 Cedar Street
Hohenwald, TN 38462

Martin Holmes
Federal Bar Association Nashville Chapter
President
Dickinson Wright, PLLC
424 Church Street, Suite 1401
Nashville, TN 37219

Sandy Garrett
Chief Counsel
The Board of Professional Responsibility
10 Cadillac Dr Ste 220
Brentwood, TN 37027--5078

Lela Hollabaugh
Board of Professional Responsibility Chair
Bradley Arant
1600 Division St. Suite 700
Nashville, TN 37203

Kristi Rezabek
Tennessee Lawyers Association for Women
President
Court Of Appeals Western Div
231 Algje Neely Rd
Jackson, TN 38301

Albert Wade
Paris-Henry County Bar Association
President
Greer & Wade, PLLC
70 Dowdy Lane
Paris, TN 38242

Lynn Newcomb
Cheatham County Bar Association
President
Balthrop, Perry, Noe, Newcomb & Morgan
102 Frey St., PO Box 82
Ashland City, TN 37015

Lesley Foglia
Bristol Bar Association President
Office of The District Attorney General
P.O. Box 526
Blountville, TN 37617

Suzanne Keith
Executive Director
Tennessee Assn for Justice
1903 Division St
Nashville, TN 37203

Barri Bernstein
Executive Director
Tennessee Bar Foundation
618 Church St Suite 120
Nashville, TN 37219

Lisa Perlen
Executive Director
TN Board of Law Examiners
66 Wyn Oak
Nashville, TN 37205

Mario Ramos
Tennessee Association of Spanish Speaking
Attorneys President
Mario Ramos PLLC
611 Commerce St Suite 3119
Nashville, TN 37203

Laura Keeton
Lawyers Fund for Client Protection Chair
Keeton Law Offices
PO Box 647
Huntingdon, TN 38344

Doug Blaze
Dean
University of Tennessee College of Law
1505 W. Cumberland Ave Rm 278
Knoxville, TN 37996

Dustin Jones
Washington County Bar Association
President
Dustin D. Jones Attorney at Law
300 East Main St #302 D
Johnson City, TN 37601

Jason Davis
Marshall County Bar Association President
Bussart Law Firm
520 North Ellington Parkway
Lewisburg, TN 37091

Joe Loser
Dean
Nashville School of Law
4013 Armory Oaks Drive
Nashville, TN 37204

Judy McKissack
Executive Director
Tennessee Commission on Continuing
Legal Education
221 Fourth Avenue North SUite 300
Nashville, TN 37219

Mark Dessauer
Federal Bar Association Northeast
Tennessee Chapter President
Hunter, Smith & Davis, LLP
PO Box 3740
Kingsport, TN 37664

Jack Burgin
Tennessee Commission on Continuing
Legal Education and Specialization Chair
Kramer Rayson LLP
PO Box 629
Knoxville, TN 37901

Katharine Gardner
Federal Bar Association Chattanooga
Chapter President
103 Stratford Way
Signal Mountain, TN 37377-2520

Ann Pruitt
Executive Director
Tennessee Alliance for Legal Services
1220 Vintage Place
Nashville, TN 37215

John Barringer
Tennessee Defense Lawyers Association
President
Manier & Herod PC
150 4th Ave N, Ste 2200
Nashville, TN 37219

Sherry Percival
National Bar Association, Ballard Taylor
Chapter President
Percival Law Office, P.C.
219 N Parkway Ste 1
Jackson, TN 38305--2717

Bryan Capps
Tennessee Association for Justice President
Adams Law Firm
7410 Broken Creek Lane
Knoxville, TN 37920

William Stover
Tennessee Alliance for Black Lawyers
President
W. Stover, Attorney at Law
500 Church St Ste 450
Nashville, TN 37219

Jeff Kinsler
Dean
Belmont University College of Law 1900
Belmont Blvd
Nashville, TN 37212

Imad Al-Deen Abdullah
National Bar Association, Ben Jones
Chapter President
Baker Donelson et al
165 Madison Ave #2000
Memphis, TN 38103

Vinh Duong
TAPABA President
Waller Lansden Dortch & Davis LLP
511 Union St #2700
Nashville, TN 37210

William Kratzke
University of Memphis Cecil C.
Humphreys School of Law
1 North Front Street
Memphis, TN 38103

Rebecca Franklin
East TN Lawyers Association for Women
President
4612 Woodbridge Lane
Knoxville, TN 37921

Mary Smith
Lawyers Association for Women Marion
Griffin Chapter President
Constangy Brooks & Smith
401 Commerce St., Ste. 700
Nashville, TN 37219-2484

Stephen Johnson
TACDL President
Ritchie, Dillard, Davies & Johnson PC
606 W Main Ave Ste 300
Knoxville, TN 37902

Amanda Dunn
SETLAW President
Luther Anderson, PLLP
P.O. Box 151
Chattanooga, TN 37401

John Manson
National Bar Association, Napier-Looby
Chapter President
Special Master 8th Circuit Ct, Davidson Co
1 Public Square
Nashville, TN 37201

Syd Beckman Beckman
Lincoln Memorial University Duncan
School of Law
601 West Summit Hill Dr.
Knoxville, TN 37902

Karol Lahrman
Executive Director
Tennessee Lawyers Association for Women
PO Box 331214
Nashville, TN 37203

Chantelle Roberson
National Bar Association, S.L. Hutchins
Chapter President
BlueCross BlueShield
1 Cameron Hill Circle
Chattanooga, TN 37402

Ursula Bailey
National Bar Association, William Henry
Hastie Chapter President
Law Office of Ursula Bailey
422 S Gay St Ste 301
Knoxville, TN 37902--1167

Frances Riley
Association for Women Attorneys
President
Us Bankruptcy Court
327 Central Cv
Memphis, TN 38111--6008

Eric Hudson
Federal Bar Association Memphis Chapter
President
Butler Snow et al
6075 Poplar Ave Ste 500
Memphis, TN 38119

Melanie Gober
Lawyers Association for Women Marion
Griffin Chapter Executive Director
Lawyers Assn for Women
P O Box 190583
Nashville, TN 37219

Chris Guthrie
Dean
Vanderbilt University School of Law
131 21st Ave. South, Room 108
Nashville, TN 37203-1181

Suanne Bone
Executive Director
TACDL
530 Church St # 300
Nashville, TN 37219