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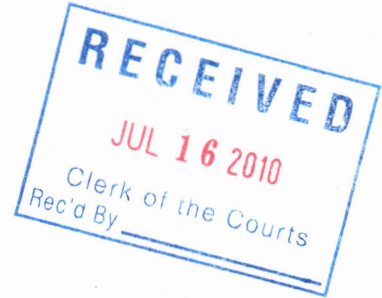
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July 16, 2010

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 21,
SECTION 4.07, RULES OF THE
TENNESSEE SUPREME COURT
(Mentoring Experiences)

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: Sam D. Elliott, President, Tennessee Bar Association
William L. Harbison, General Counsel
Charles Fisher, Chair, TBA CLE Committee
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IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED

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IN RE: PETITION TO AMEND)
RULE 21, SECTION 4.07,) No. M2010-00913-SC-RL1-RL
RULES OF THE TENNESSEE)
SUPREME COURT)
(Mentoring Experiences))
)

COMMENT OF THE TENNESSEE BAR ASSOCIATION

The Tennessee Bar Association (“TBA”), by and through its President, Sam D. Elliott; General Counsel, William L. Harbison; Chair of its Committee on Continuing Legal Education, Charles Fisher; and Executive Director, Allan F. Ramsaur, files this comment generally in support of the adoption of an amendment to Tennessee Supreme Court Rule 21, Section 4.07 by adding a new section on mentoring experiences and further to comment on proposed regulations contemporaneously filed with the petition.

BACKGROUND

In April 2010, the Tennessee Commission on Continuing Legal Education and Specialization (“Commission”) petitioned the Supreme Court to amend Rule 21, Section 4.07 to include approved mentoring experiences among eligible CLE activities. On May 17, 2010, this Honorable Court published the amendment for comment with a deadline for submitting written comments of Friday, August 13, 2010. The TBA charged its Committee on Continuing Legal Education with the responsibility of reviewing the petition and the proposed regulations contemporaneously filed with the petition. The committee developed comments and the comments were approved by the TBA Executive Committee at its July meeting.

I. THE COURT SHOULD AMEND ITS RULE 21 ON CONTINUING LEGAL EDUCATION TO PERMIT CLE CREDIT FOR APPROVED MENTORING EXPERIENCES

The Tennessee Bar Association (“TBA”) supports the concept of mentoring as a means to increase professionalism and ensure competence among novice attorneys.

Mentoring is an excellent way for experienced attorneys to teach novice attorneys the keys to success in all aspects of the profession. It has the potential to be especially beneficial for those novice attorneys who have unique needs that can best be met through a personalized training program. The TBA does not believe that mentoring will become the dominant method of teaching novice attorneys the information and skills that they need to be successful. However, mentoring should be an option. Moreover, mentoring may help protect the interests of clients in cases where a novice attorney is in need of personalized training to meet minimum professional and ethical standards. The TBA has in the past supported efforts aimed at a transitional education programs for new lawyers. Mentoring is another means of accomplishing the goals of those programs.

For these reasons, TBA supports the proposal of the Tennessee Commission on Continuing Legal Education and Specialization (“Commission”) to amend Tennessee Supreme Court Rule 21, Section 4.07, to allow CLE credit for the participation of mentor attorneys and novice attorneys in mentoring programs. TBA also supports the proposal to authorize the Commission to facilitate the establishment of mentoring programs by providing a program of training for mentor attorneys through its own initiatives and those of other organizations, such

as the TBA. Finally, the TBA supports the proposal to authorize the Commission to provide free training for mentor attorneys who are participating in a mentoring program sponsored by a public sector or non-profit organization.

**II. IN ADOPTING REGULATIONS TO IMPLEMENT THE
AMENDMENT TO RULE 21, SECTION 4.07, THE COMMISSION
SHOULD CONSIDER THE FOLLOWING:**

While TBA supports the Commission's proposal to amend Rule 21, Section 4.07, we have concerns about the proposed regulations included with the proposed amendment to the rule. In response to a similar proposal considered by the Court last year, TBA raised, among others, the following concerns:

It would be difficult to establish clear standards as to the quality and quantity of contact between the mentor and the attorney to be mentored which would qualify for credit. We have all experienced or seen mentoring programs that work or fail to a great degree because of the quality or lack thereof of the mentors in the program. There is little if any formal training for mentors. Moreover, unlike the coaching proposal, there are no defined requirements or qualifications to serve as a mentor.

Successful mentoring relationships also often depend on the interpersonal relationship between the mentor and the protégé. There is no practical way to quantify such a relationship to ensure that it will be of practical benefit to the attorneys involved.

The proposed regulations address these concerns, and we applaud the Commission for doing so. Nevertheless, we raise the following points in hopes of ensuring that mentoring programs are quickly established in the most efficient and effective manner.

A. Requirements For Mentor Training Should Be Modified To Take Into Account The Experience And Expertise Of The Mentor

The TBA agrees with the Commission that, in most circumstances, training of mentors is a necessary prerequisite for an effective mentoring program. A mentor training program may provide valuable insights into leadership and teaching for experienced attorneys, who are not experienced mentors. Additionally, some degree of training is also important to ensure that all mentors and all mentoring programs share the same basic goals. We understand that the Commission is planning to offer a training program that is two and a half days long and provides 15 hours of CLE credit. We believe, however, that some experienced attorneys, who are already qualified to be mentors through their experience and education, should be exempt from mandatory training or required to complete a less-rigorous training regimen.

There are members of the bar who, by virtue of their education and experience, are already “trained” to serve as mentors. Lawyers who are already qualified to serve as mentors should be exempt from any mandatory training requirement. We believe the proposed regulations should be amended to automatically certify those attorneys who, by virtue of their education and experience, are already qualified to mentor novice attorneys. An attorney may already be qualified to serve as a mentor by virtue of having earned an advanced degree in an area other than law, such as business administration, public administration, management, training, education, or any other discipline with an emphasis in management, training, or education. Alternatively, an attorney may already be qualified to serve as a mentor by virtue of extensive mentoring, training, teaching, or management experience, such as law firm management, business management, or college-level or higher teaching. For individuals with such qualifications, a mandatory training program may be perceived as an unnecessary and onerous burden that constitutes a disincentive to participation in a mentoring program. In light of their achievements, they should not be discouraged from mentoring.

We believe the amount of training required for non-exempt attorneys should follow a sliding scale based upon years of experience in the profession. For example, attorneys who have five to 10 years of experience—the minimum experience for serving as a mentor—should be required to attend the entire training program; attorneys who have between 10 to 15 years of experience should be required to attend only one and a half days of training; and attorneys with more than 15 years of experience should be required to attend only a half day of training. Of course, all mentors should be encouraged to attend the entire training program. We believe that relieving the more experienced attorneys from the burden of a full two-and-a-half day training program will lead to increased participation among the most experienced members of the profession.

B. The Requirement For Recertification Of Mentors Should Be Modified

The need for recertification of a qualified, trained, and experienced mentor attorney, who has actively participated in a mentoring program, is not clear. The imposition of this additional burden on mentor attorneys is inconsistent with the Commission's recognition that mentoring is largely absent from the profession

because experienced attorneys are too busy to mentor novice attorneys. Given that time is already a precious commodity for experienced attorneys, recertification will become a disincentive to continued participation in mentoring programs. If recertification is required, the interval between initial certification, recertification, and any subsequent recertification should be extended from five to seven to ten years.

C. CLE Credit For Mentoring Should Be Permitted To Carry Forward Explicitly Under TN. Sup. Ct. R. 21, Section 4.02

As we understand the training program under consideration, it will be two and a half days long and provide 15 hours of CLE credit. Upon completion of such an extensive training program, the certified mentor attorney will have satisfied the annual CLE requirement and will have no incentive to serve as a mentor in the same year as the training. This incentive paradox will repeat itself in subsequent years when retraining is required. The proposed regulations should be evaluated to ensure that incentives are designed to encourage participation as a mentor during each year of certification.

D. Training Providers

The TBA also agrees with the proposal to authorize the Commission to facilitate the establishment of mentoring programs by providing a program of training for mentor attorneys “through its own auspices or through those of other organizations.” Thus, the rule contemplates “other organizations,” such as the TBA, conducting mentor training. However, the proposed regulations indicate that the Commission will provide the initial mentor training. This is a matter that needs to be clarified. We believe that the training of mentors is a matter that, in addition to the Commission’s training program, should be entrusted to the organizations that sponsor mentoring programs. The TBA has the personnel, resources, and membership necessary to establish its own training program as part of our existing CLE operation. We are able to provide training programs at locations all over the state and we can reach the most remote locations via Webcasts. But before we undertake such a commitment, we need guidance from the Commission through the regulations.

E. Greater Flexibility Should Be Afforded Individual Mentors And Novices As To Curriculum

The TBA agrees that the subjects identified by the Commission in its proposed regulations should comprise the core offerings of any mentoring program. The comprehensive nature of these mandatory requirements, however, is inconsistent with the Commission's expressed goal of providing flexibility in developing mentoring programs. We are concerned that the mandatory nature of these subjects will hinder the ability of mentors to tailor programs to the needs of novices. Also, the mandatory nature of these subjects could provide a disincentive to participation by novice attorneys. For example, many people enter the legal profession with a deep-rooted commitment to "civic, charitable, and pro bono" activities as a result of their involvement with religious and charitable organizations. These people would be better served by mentoring if that subject was elective, not mandatory, and the mentor and the novice were granted the flexibility to address other subjects in greater depth. Likewise, depending upon the circumstances of a novice attorney's employment, the subject of "law office management" may more appropriately be an elective, instead of a requirement. As another example, according to the information provided by the Commission, the percentage of attorneys suffering from depression and substance abuse is about 20 percent. That being the case, the amount of required mentoring in the subject of

“causes of depression and substance abuse” should be varied based upon the experience of the novice and mentor.

If the core topics remain mandatory, TBA believes the proposed regulations should be amended to address the allocation of time between the core topics in the mentoring plan. As it stands, the regulations provide guidance only with respect to the length of the overall mentoring plan, which shall run from a minimum of six months up to a maximum of one year. We believe that the regulations should explicitly leave the allocation of time per topic to the discretion of the mentor to allow the mentoring plan to be shaped to suit the needs of the individual novice.

Moreover, mentoring programs should have the flexibility to include skill-based mentoring. Many of the problems and frustrations experienced by novice attorneys find their genesis in the lack of basic skills, knowledge, and information. Although many novice attorneys have the opportunity for skill-based mentoring through their employment in large firms and organizations, there are many novice attorneys in solo practice, small firms, governmental agencies, and other organizations who are not afforded that opportunity. A bar association mentoring program is an excellent

way to fill this training gap as a more intensive transitional legal education than currently offered.

Furthermore, the legal profession is sufficiently diverse in its firms, associations, organizations, and career paths that the required curriculum proposed by the Commission deprives the mentor and the novice of the flexibility needed to develop a program that will best serve the novice's individual needs as well as those of the sponsoring firm, association, or organization. Simply stated, mentoring programs need more options, especially if the goal is to avoid a one-size-fits-all approach. We acknowledge that skill-based training may be found in traditional CLE programming, but we believe that traditional CLE programming should not be the exclusive venue in which novices find skill-based training. Most traditional CLE programming is marketed to a broader audience and, consequently, is not attuned to a specific attorney or the unique needs of novices.

F. The Regulations Should Permit The Use Of Webcasts And Other Information Technology To Meet Some Of The Programming Needs Of Mentors And Novices In Less Populated Areas

The TBA has members throughout the state, including the most rural areas. The rural areas of the state do not have law schools and large firms, and their local bar associations may not have the ability to establish a mentoring program.

Consequently, our rural members may not have a local mentoring program available in their area. In recognition of the needs of these members, the TBA will consider adapting its live and archived Webcast capabilities to support a mentoring program that is capable of reaching every area of the state. We may also consider using other types of communications technology, such as TBA Connect and video conferencing, in order to make our mentoring program available to all of our members. The regulations proposed by the Commission do not address the use of advanced communications technology as part of a mentoring program. This is an issue that needs to be addressed in the regulations.

**G. The Qualifications Of Mentors Should Acknowledge Experience
Other Than In The Practice Of Law In Tennessee**

The TBA agrees with minimum qualifications established by the proposed regulations with two exceptions. The requirement that a mentor “has been licensed as an attorney *in Tennessee* for at least five years” should be reconsidered. The

TBA has members who have been practicing attorneys for more than five years but have not been licensed in Tennessee for five years. These attorneys should not be disqualified from mentoring just because the majority of their experience occurred in another state. None of the required content for mentoring programs is unique to Tennessee. Also, as noted earlier, we question the need for recertification. Requiring recertification will create a disincentive for continued participation.

H. Eligible Novice Attorneys

The TBA believes that novice attorneys should be eligible to participate in a mentoring program at any time during the first three years of practice rather than the first year of practice in Tennessee. We also believe that participation should not be limited to attorneys entering the practice of law within five years of graduating from law school. As noted previously, career tracks for attorneys are sufficiently diverse that many attorneys do not enter the practice of law for sometime after graduation from law school. Those attorneys whose entry into the profession is delayed for whatever reason should be afforded the opportunity to find individualized training through a mentoring program.

I. Partial CLE Credit Should Be Available Both For Mentors And Novices

The Commission's proposed regulations have created a framework that is amenable to awarding partial credit with ease. TBA believes that both mentor attorneys and novice attorneys should be eligible for CLE credit for whatever portion of the mentoring program is completed. We are unaware of any legitimate reason for the disparity of treatment in this regard. More importantly, the lack of partial credit may serve as a disincentive for participation by novice attorneys. For that matter, while protecting the mentor from the novice's failure to complete a mentoring program, the regulations provide no protection for novices when the failure to complete the program is attributable to the mentor. In particular, the regulations need to address the possibility that a mentor-novice relationship may be terminated and there are no mentors available for the novice to continue in a mentoring program. In these circumstances, the novice should be awarded CLE credit for the subjects completed while in the program.

J. Fee for Participation in Mentoring Program

Finally, the TBA believes that one of the elements of an Approved Mentoring Program should be provision for the payment of a fee by the novice attorney to participate in the Program.

RESPECTFULLY SUBMITTED,

By: /s/ by permission

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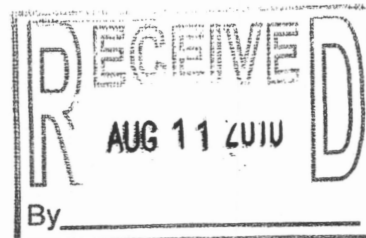
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CERTIFICATE OF SERVICE

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 on Sept 16, 2010

 _____
Allan F. Ramsaur



August 9, 2010

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Michael W. Catalano, Clerk of the Tennessee Supreme Court
Re: Proposed Amended Rule 21, Section 4.07
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

RE: Proposed Amended Rule 21, Section 4.07, Rules of the Tennessee Supreme Court, to Include Approved Mentoring Experiences Among Eligible CLE Activities

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Dear Mr. Catalano:

This letter is intended to serve as the official written comment of the Knoxville Bar Association ("KBA") in opposition to the Petition to Amend Rule 21, Section 4.07, of the Rules of the Tennessee Supreme Court, filed by the Tennessee Commission on Continuing Legal Education and Specialization ("Commission") on May 17, 2010, to allow up to 12 hours per year of dual continuing legal education credit ("CLE Credit") for participation as a mentor or mentee in a Commission approved mentoring program ("Commission's Mentoring Program"). The KBA's CLE Committee, Board of Governors and Executive Committee have convened on several occasions to discuss the Commission's Mentoring Program and after careful consideration, we have serious concerns about the proposed amendment to Rule 21, Section 4.07, and about the proposed Commission Regulations to implement such rule change ("Proposed Regulations").

The KBA wholeheartedly supports the concept of mentoring, but its representatives do not believe that mentoring should qualify for CLE Credit. The KBA further believes that the Commission's Mentoring Program, as set forth in the Proposed Regulations, lacks sufficiently defined standards, including, but not limited to, those related to:

- Training of a Mentor Attorney;
- Curriculum content of a mentoring program that will achieve the intended objectives of the Commission and be eligible for CLE Credit; and
- Initial implementation of an approved mentoring program and continued compliance monitoring.

The KBA would also respectfully suggest that the portion of the Proposed Regulations that allows the CLE Commission to create, produce and directly provide CLE training seminars for mentors creates a potential conflict of interest for the CLE Commission. The CLE Commission's primary mission would seem to be

Executive Director
Marsha S. Wilson
mwilson@knoxbar.org

advisory/regulatory/administrative in nature. By producing CLE programs, the Commission would appear to be in competition with both for-profit and not-for-profit CLE providers, while at the same time controlling the approval process for programs that compete for attendees with the programs being offered by the CLE Commission.

Commission's Mentoring Program Should Not Qualify for CLE Credit

The KBA believes that the Commission's Mentoring Program should not qualify for CLE Credit because it has the potential of weakening attorney participation in live CLE opportunities, including, but not limited to, those offered by the KBA. The Commission's Mentoring Program would allow the mentor and the mentee to satisfy the majority of their annual CLE requirements without any participation in a live CLE seminar. The KBA believes that attorneys engaged in the Commission's Mentoring Program, either as a mentor or mentee, will be less likely to be involved in local bar activities because they will not need to participate in live CLE programs in order to meet their annual CLE requirements. The KBA is particularly concerned about this consequence relative to new admittees because many new admittees are first introduced to the offerings of the local bar by attending an in-person CLE programs such as a KBA Lunch & Learn. The KBA's live programming offers attendees the ability to interact with other members of the local bar and the judiciary and the KBA believes this is important to lawyer development. The KBA is also concerned that attorneys who are serving in the role of mentor will be less likely to volunteer as speakers for live CLE programs because of their prior commitment to the Commission's Mentoring Program.

As you are aware, Rule 21, Section 3.03 of the Rules of the Tennessee Supreme Court provides, in pertinent part, that: " Each attorney must actually attend fifteen (15) instructional hours of CLE per year." The Commission's Mentoring Program would permit the mentor and mentee to each receive twelve (12) of the required fifteen (15) hours of CLE Credit as a result of participation in the Commission's Mentoring Program. Because the Commission's Mentoring Program, as proposed, qualifies all mentoring hours as "dual" credit hours, the mentors and mentees participating in these programs would not be required to obtain additional ethics credit for the year in which the mentoring occurred. In 2009, Section 4.08 was added to Tennessee Supreme Court Rule 21 to permit eight (8) hours of credit per year to be earned in a distance learning format (*i.e.*, online CLE). As a result, Rule 21, Section 4.08, coupled with the Commission's Mentoring Program, if approved, would permit all fifteen (15) hours of CLE Credit to be earned each year without requiring any participation in live CLE programming. The KBA does not believe this is in the best interest of new admittees that are mentees or attorneys that might be willing to serve as their mentors. It is also the KBA's understanding that the CLE Commission is considering a webcast option that would satisfy the requirements of the Commission's Mentoring Program. With a webcast mentoring option and additional distance learning credit, mentors and mentees could earn a full-year of CLE Credit without one face-to-face meeting. The KBA certainly does not support a webcast option for the Commission's Mentoring Program.

The KBA believes that a lawyer's participation in substantive, live CLE programs is critical to maintaining competence 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."

Comment 6 to Rule 1.1 of the Tennessee Rules of Professional Conduct states:

To maintain the requisite knowledge and skill, a lawyer should engage in regular continuing study and education that is pertinent to the lawyer's practice and should conscientiously satisfy all requirements for continuing legal education in all jurisdictions in which the lawyer is licensed to practice law. If a system of peer review has been established, the lawyer should consider making use of it in appropriate circumstances.

The proposed revision to Comment 6 that is now before this Court for consideration as part of the amendments to the Tennessee Rules of Professional Conducts states:

To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject.

If the primary role of CLE is to promote competence, the KBA believes substantive, live seminars offer the best format for achieving this objective. 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. Conversely, mentoring is typically a one-on-one learning environment that does not offer attorneys the same ability to consider multiple perspectives on a given topic. In a mentor/mentee relationship, the only perspective available to a mentee is that of the mentor.

The KBA believes that mentoring is an activity that attorneys should engage in, and do in fact engage in, without the expectation of credit or compensation. The KBA believes that the Commission's Mentoring Program may encourage law firms to forego the cost of live, substantive CLE for their new associates in order to utilize the Commission's Mentoring Program as a means of in-house "training". The KBA believes law firms should train their new associates on most, if not all, of the Commission's Mentoring Program substantive content topics without the expectation of CLE Credit. The KBA would also note that as written, the Proposed Regulations permit a lawyer who mentors a law student to receive the same amount of CLE Credit awarded for mentoring

a young lawyer. Clearly, the needs and expectations of these groups are very different (for both the mentor and the mentee).

In support of its Petition, the Commission notes that there is a “need for assistance for beginning lawyers in transitioning from law school to practice”. Many of the local and state bar organizations, including the KBA, already have in place mentoring systems that are not based on the mentor or mentee receiving CLE Credit. Specifically, the KBA offers a very effective and hands-on program called Mentor of the Moment (“MOM”). The MOM program consists of 121 KBA members who are willing to assist with practice questions within a variety of practice areas such as ADR, adoption, appeals, personal injury, banking law, civil litigation, civil procedure, corporate law, collections, domestic relations, employment law, federal court practice, and many others. The attorneys listed within each practice area are willing to take calls and answer questions to assist lawyers with less experience in those fields of practice. The Commission’s Mentoring Program will take away from the KBA’s MOM program which has served the Knoxville bar community well since the program first began in 1996. The KBA does not believe it is necessary to offer CLE Credit through the Commission’s Mentoring Program in order for new admittees to have the opportunity to build practice skills and receive mentoring from fellow bar members because these opportunities are already offered through the KBA. In addition to the formal and informal mentoring programs such as the KBA’s MOM program, CLE seminars are already available from the KBA and other CLE providers on the various topics listed in the Proposed Regulations. The live programs are often offered in smaller group settings that include question and answer sessions during and after the seminars.

Commission’s Mentoring Program Lacks Sufficiently Defined Standards

The KBA believes that the Commission’s Mentoring Program, as set forth in the Proposed Regulations, lacks sufficiently defined standards in several areas, including, but not limited to:

- Training of a Mentor Attorney;
- Curriculum content of a mentoring program that will achieve the intended objectives of the Commission and be eligible for CLE Credit; and
- Initial implementation of an approved mentoring program and continued compliance monitoring.

Training of a Mentor Attorney

One of the components of the Commission’s Mentoring Program that the KBA believes lacks sufficient clarity relates to the training of a Mentor Attorney and to how such training will assist the Mentor Attorney in meeting the Commission’s intended objectives. In the Proposed Regulations, the Commission states that in order to be an eligible “Mentor Attorney”, a mentor must have a current certification from this Court

and that the Commission will recommend a particular attorney to the Court for certification as a Mentor Attorney for a 5-year period if:

- (i) the attorney has been licensed as a Tennessee attorney for at least 5 years and is in good standing;
- (ii) has not been suspended or disbarred;
- (iii) has not been subject to any lesser disciplinary action within the last 10 years;
- (iv) has completed mentor training conducted by the Commission; and
- (v) has either completed the Commission's mentor training or recertification within the previous 2 calendar years.

The Commission in its Petition states that a driving factor behind implementing the Commission's Mentoring Program is an effort to combat high rates of depression, anxiety, substance abuse, and similar phenomena among graduating law students.

The Proposed Regulations offer no information about the content of the training that would qualify someone as a Mentor Attorney and in particular, how such training will translate into lower rates of depression, anxiety, substance abuse, and similar phenomena for a mentee of such Mentor Attorney. The KBA would suggest that psychologists and other trained medical professionals would be best suited to achieve the Commission's stated objective and not attorneys trained by the Commission. The Proposed Regulations also are unclear on: (1) who is qualified to be the trainer of a Mentor Attorney; (2) what training costs are assessed to the Mentor Attorney; and (3) who is to receive the monies paid by the attorney for such training or recertification (*i.e.*, the Commission, a third-party contractor, etc.).

Commission's Mentoring Program Curriculum

The specific curriculum of a mentoring program that would be eligible for approval by the Commission is also unclear. Section iv) of the Proposed Regulations states: "[t]he Commission intends that Sponsoring Organizations [*i.e.*, bar associations, governmental agencies, corporate law departments, or law firms] have flexibility to develop and design an overall Mentoring Program that meets the basic needs and objectives that the Sponsoring Organization views as being important." Section iv) of the Proposed Regulations includes seven (7) items that the Commission believes should be included as "basic elements" in any mentoring program eligible for approval by the Commission. Section v) of the Proposed Regulations also includes eight (8) core topics that each plan eligible for approval should include: professionalism and legal ethics; civil, charitable, and pro bono activities; client communication, advocacy, and negotiation; law office management; professional development, including work with the legal community, bar associations, and court activities; leadership training; career paths and work/life balance issues; and causes of depression and substance abuse issues, including identification of available support networks and resources.

While the basic elements and core topics set forth in the Proposed Regulations provide some general guidelines, the KBA is concerned that these guidelines are still not sufficiently defined in order for the KBA or any other potential Sponsoring Organization to adequately develop a proper mentoring program that would accomplish the Commission's intended objectives. The Commission also does not set a cost, if any, to be charged to the mentors or mentees by the Sponsoring Organization. This would permit the cost of the Commission's Mentoring Program to differ between Sponsoring Organizations even though each approved program would still qualify for twelve (12) hours of CLE Credit. It is assumed that law firms offering the Commission's Mentoring Program to its own associates would likely not charge the associate anything to participate. While Sponsoring Organizations, like the KBA, would likely be required to charge mentees in order to simply recoup the cost of marketing the programs and the significant administrative time associated with pairing mentors/mentees, monitoring compliance with the Commission's Mentoring Program approved requirements, reporting compliance to the Commission, etc.

Furthermore, if Sponsoring Organizations are going to be asked to develop and administer the Commission's Mentoring Program, and the core topics listed in the Proposed Regulations remain mandatory, the KBA believes the Proposed Regulations should at a minimum be amended to address an appropriate allocation of time between the various topics.

Initial Implementation of an Approved Mentoring Program and Continued Compliance Monitoring.

It is our understanding that the Commission wants organizations like the KBA to develop and administer the Commission's Mentoring Program. However, the Commission is asking the Sponsoring Organizations to present a mentoring program to the Commission for approval when the staff of the Sponsoring Organization has not undergone any mentor training themselves to determine what the Commission views as a curriculum that would ultimately be eligible for approval. The Proposed Regulations also do not address where financial resources will come from to market training sessions for the Commission's Mentoring Program or to market the programs themselves once approved. As a result, it is assumed that a Sponsoring Organization like the KBA would be required to bear the costs associated with these marketing efforts. While similar programs offered by corporate legal departments, law firms and governmental agencies presumably would not require any marketing if the mentees were their own employees.


The KBA believes the challenge of pairing mentors and mentees will also be extremely difficult and the Proposed Regulations provide no guidance in this area. The KBA believes it will be extremely difficult to be the intermediary between the mentor and mentee if there is a breakdown in the mentoring relationship and the mentor or mentee requests a reassignment to another attorney. Also, the KBA believes the Proposed Regulations, as written, would require the Sponsoring Organization to monitor

Michael W. Catalano
Clerk of the Tennessee Supreme Court
August 9, 2010
Page 7

compliance by the mentor and mentee with the elements of the Mentoring Program and potentially be responsible if the requirements are not satisfied. For example, is the KBA going to be responsible for monitoring compliance with the provisions prohibiting the disclosure of client or confidential information between mentors/mentees who are not in the same law firm, governmental agency or corporate law department? Is the Sponsoring Organization going to be responsible for monitoring compliance with the provision in the Proposed Regulations prohibiting romantic or business relationships between mentors and mentees? If these issues arise, what are the obligations of the Sponsoring Organizations to report these program failures to the Commission? What are the obligations of the Sponsoring Organization to intervene and/or terminate the mentor/mentee relationship? What are the responsibilities, if any, of the Sponsoring Organization to make certain that the mentor and mentee actually meet in-person at least once a month as described in Section vi) of the Proposed Regulations? Is a mentor taking the mentee to lunch once a month and discussing a core topic sufficient to obtain twelve (12) hours of mandatory CLE Credit? These are all certainly areas of concern to the KBA that do not appear to be addressed in the Proposed Regulations.

For all of the foregoing reasons, the KBA respectfully requests the Court to deny the Commission's Petition. The KBA appreciates the opportunity to comment on proposed rule changes that affect our members, the legal community and the legal services to the community at large.

Very truly yours,

A handwritten signature in black ink, appearing to read 'S. Doak', with a stylized flourish at the end.

Sam C. Doak
President
Knoxville Bar Association

cc: KBA Board of Governors
Amanda M. Busby, KBA CLE Committee Co-Chair
Shelly L. Wilson, KBA CLE Committee Co-Chair

FILED

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

2010 AUG 13 AM 11:47

APPELLATE COURT CLERK
NASHVILLE

IN RE: PETITION TO AMEND) No. M2010-00913-SC-RL1-RL
RULE 21, SECTION 4.07,)
RULES OF THE TENNESSEE)
SUPREME COURT)
(Mentoring Experiences))

COMMENT OF THE NASHVILLE BAR ASSOCIATION

The Nashville Bar Association ("NBA"), by and through its President Jonathan Cole and Edward Lanquist, Jr., Chair of its Continuing Legal Education Committee; files this comment generally against the adoption of an amendment to Tennessee Supreme Court Rule 21, Section 4.07. (Mentoring Experience)

I. While there is merit to the concept of attorney participation in mentoring programs for young lawyers, the NBA does not support a mentoring program that provides CLE credit.


The purpose of the amendment appears to be to facilitate the establishment of mentoring programs for attorneys to better prepare new attorneys for the practical aspects of the practice of law compared to the legal and theoretical training provided by law school education as well as to address actual ethical and professional issues in the practice of law.

The NBA reviewed and discussed the proposal. The following considerations support the comment:

1. Collegiality is essential to maintaining the high degree of professionalism in the Tennessee Bar and the Nashville Bar. The Nashville Bar in particular, when it was smaller and there was less pressure upon all attorneys to produce at the expense of mentoring and training, provided mentoring intra and inter firm. A mentoring or colleagues program can improve collegiality and professionalism. However, such a colleagues or mentoring program should supplement, not replace, CLE.
2. CLE is essential to ensure that attorneys are maintaining technical knowledge in their practice area(s).
3. The Tennessee Commission's proposal states that, as long as certain criteria are met, anyone can prepare a program to provide mentoring for CLE credit:
 - a. The proposal states that the mentoring programs must be certified. However, there is no funding for the programs.
 - b. The proposal fails to set forth what monitoring procedures will occur.
 - c. The proposal states no specific parameters.
 - d. The proposal provides no oversight or review of programs.
 - e. The Commission has traditionally not approved "In-house" CLE; however, this type of "in-house" mentoring may be allowed.

4. If a mentoring program is to be enacted, the program needs to be well formulated, developed, and implemented:
 - a. A single entity that is not affiliated with a continuing legal education body should create, design, and implement the program.
 - b. Appropriate staffing and funding needs to be provided.
 - c. A coherent program needs to be offered throughout the state. This type of program will likely work mostly in the larger cities and be scarce or even non-existent in the smaller counties.
 - d. From the standpoint of bar association CLE programs and revenues, the proposed amendment will siphon off CLE to larger groups or others that do not charge. As a result, there will be less reason and/or justification for local bars to have CLE programs. Currently, there is such great competition among CLE providers that bar CLE providers are under stress.
5. The proposed amendment will enable larger firms that have existing mentoring/training programs to provide CLE credit through their in-house programs further insulating the attorneys in these large firms from the rest of the bar and eroding professionalism and collegiality.

Submitted on Behalf of the Nashville Bar Association, as approved by its Board of Directors, August 3, 2010,

By: 
JONATHAN COLE (016632)
President, Nashville Bar Association
Baker, Donelson, Bearman, Caldwell
Berkowitz, PC
211 Commerce Street, Suite 800
Baker Donelson Center
Nashville, Tennessee 37201
(615) 726-7335

By: /s/ Edward Lanquist, Jr.
EDWARD LANQUIST, JR. (013303)
Chair, Nashville Bar Association
Continuing Legal Education Committee
Wadley & Patterson
1600 Division Street, Suite 500
Nashville, Tennessee 37203
(615) 242-2400

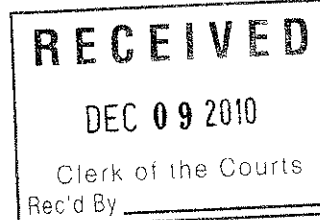
CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing has been served upon the attached list of individuals and organizations by regular U.S. Mail, postage prepaid on August 13, 2010.



THE SPITZER FIRM

Attorneys at Law
19 Cedar Street
P.O. Box 400
Hohenwald, TN 38462



Michael E. Spitzer
spitzerfirm@bellsouth.net

Phone: 931/796-7974
Fax: 931/796-7924

December 8, 2010

Hon. Michael W. Catalano
Clerk of the Supreme Court
100 Supreme Court Building
401 Seventh Avenue North
Nashville, Tennessee 37219-1407

Re: Proposed Amended Rule 21, Section 4.07
MENTOR/MENTEE TRAINING

To: Honorable Justice of the Tennessee Supreme Court

COMMENT

I would like to take a few moments to comment on the proposed amendment to Rule 21, Section 4.07 which would add a new subsection (d) allowing the Commission on Continuing Legal Education and Specialization to have discretion in allowing credit hours for participation as a mentor or mentee.

To preface, I have a Masters of Science Degree (many years ago) in Psychology with emphasis on Education Counseling. The knowledge and skills attained in earning that degree have served me well, over the years, in picking juries, working with clients and training quite a few law school graduates to become successful law practitioners.

Without setting forth statistics, it is apparent that our profession is overwhelmed with conflict, stress and a competitive spirit which, while necessary to a degree, engulfs many of our colleagues into depths of depression, anxiety, failed goals and misguided values. Many of our graduating prospective lawyers are turning to others fields, completely outside the law, when they have discovered that there was no one to assist them in actually learning how to practice and how to apply ethical principles for a bright and respected future.

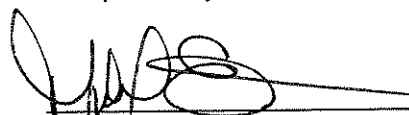
One answer to the concerns mention above could arise out of a program whereby seasoned attorneys, whose career has exemplified character and integrity, are not only available, but eager to mentor those of our fellow attorney's who are in need. This program would be developed around the mentor project that the Commission on Continuing Legal Education and Specialization provided in September of this year.

Having a background in psychology and having "mentored" numerous young lawyers, I felt that I would go to this workshop and see if my prior education and experience was incorporated into the materials available. Much to my surprise, the mentor workshop far exceeded my expectations, focused not only on helping those with significant concerns but created a format whereby young lawyers were raised to their highest potential through a series of tests, group dynamics and psychological profiling. The usefulness of such a program far exceeded being limited to new graduates or those struggling with the adversities of life but has the capabilities of changing the mindset of seasoned attorneys whose desire is waning and whose outlook on the changing profession has turned to negative thoughts.

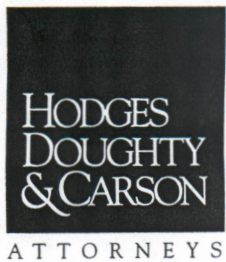
How can we as leaders in the profession of law in Tennessee turn our backs on the opportunity to develop mentoring programs that would, possibly, be required for those in assistance programs, a necessary part of the law school curriculum to reveal ones strengths to those entering the profession and simply allow older attorneys to reassess their life experiences and articulate to others the positive nature of this the greatest profession for mankind.

A mentoring program should be encouraged and is just as important within our profession as access to justice for all citizens. As we open the doors for legal assistance to all citizens of this State, would it not be incumbent upon us to insure that those to whom we send the citizenry are positive, ethical, feel good about themselves and have their priorities so well balanced that they are able to help not only with legal matters but develop relationships that speaks well of the profession. In a time when attorneys are poorly thought of, by many, this is another opportunity to turn the tide for something good.

Respectfully submitted:



Michael E. Spitzer #010624
The Spitzer Firm
19 Cedar Street
P.O. Box 400
Hohenwald, TN. 38462



DALTON L. TOWNSEND
 ROY L. AARON
 DEAN B. FARMER
 DAVID N. WEDEKIND
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 THOMAS H. DICKENSON
 J. WILLIAM COLEY
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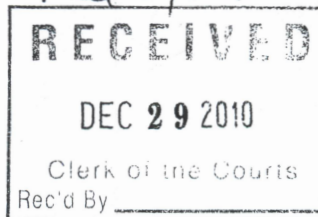
JONATHAN H. BURNETT
 DAVID E. SMITH
 DOUGLAS L. DUTTON
 WILLIAM F. ALLEY, JR

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

December 28, 2010

COPY

Fed Ex 12-28-10



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 21 Section 4.07 (Mentoring Experiences)

Dear Mr. Catalano:

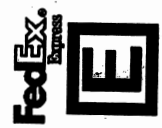
Attached please find an original and six copies of a Comment which I am submitting on behalf of the Tennessee Commission on Continuing Legal Education and Specialization.

Thank you for your assistance in this matter.

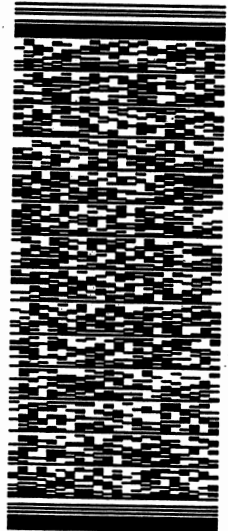
Sincerely,

Dalton W. Townsend
 Chairperson, Tennessee Commission on Continuing Legal Education and Specialization

From: Origin ID: RKWA (865) 292-2307
Dalton L. Townsend, Esq.
Hodges, Doughty & Carson
617 Main Street
Knoxville, TN 37902



SHIP TO: (615) 741-2681 BILL SENDER
The Honorable Michael Catalano
Tennesse Supreme Court
401 7TH AVE N
NORTH
NASHVILLE, TN 37219



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CAD: 8412560/NET3090

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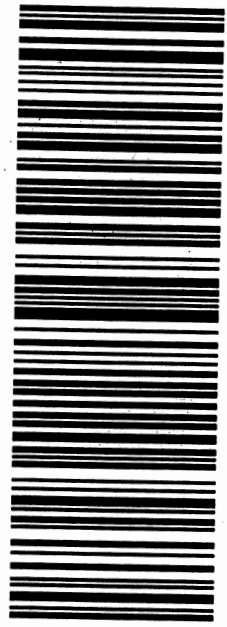
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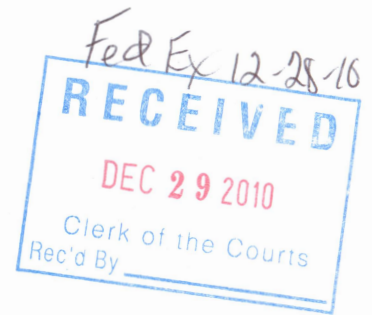
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IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE



IN RE: PETITION TO AMEND)
RULE 21, SECTION 4.07,) No. M2010-00913-SC-RL1-RL
RULES OF THE TENNESSEE)
SUPREME COURT)
(Mentoring Experiences)

Comment of the Tennessee Commission on
Continuing Legal Education and Specialization
Revised Regulations

The Tennessee Commission on Continuing Legal Education and Specialization included with the original petition filed in this matter a set of draft regulations under consideration by the Commission to implement a program for granting Continuing Legal Education credits under Rule 21 for mentoring experiences. The Commission noted that those draft regulations were under discussion with various organizations interested in conducting mentoring programs and could be amended to better accomplish the intent of this program. Those discussions have continued since the filing of the original petition and have convinced the Commission to adopt certain revisions even prior to experience with a mentoring-for-CLE-credit program. Attached hereto are the following documents:

- Executive Summary of Changes in the Regulations
- Revised Proposed Regulations for Accrediting Mentoring Programs in Tennessee
- Redline of Revised Proposed Regulations for Accrediting Mentoring Programs in Tennessee

The Commission wishes to express its appreciation to all the individuals who have contributed time and thought to this discussion and have helped to generate what the Commission believes are improvements to the proposed system.

Respectfully submitted,



Dalton Townsend, Esq.
Chairperson

Certificate of Service

I certify that a photocopy of this Petition and Attachments was mailed, first class postage paid, to the attached list of individuals and organizations, and was posted on the <http://cletn.wetpaint.com>, on or before this 28th December, 2010.



David N. Shearon, Esq.
Executive Director

Revised Mentoring Program and Regulations

Executive Summary

December 21, 2010

In response to comments filed by bar associations, law schools, and other persons and organizations, the Tennessee Commission on Continuing Legal Education and Specialization has revised its proposal to the Tennessee Supreme Court to allow CLE Credit for the approved mentoring programs. Among the Commission's proposals are the following highlights:

Changed

- **Increased flexibility in content determination.** Organizations sponsoring mentoring programs have more ability to determine appropriate content. This change is most clearly seen in the change of §5K.5.a (mentoring for beginning lawyers in plans managed by sponsoring organizations) and §5K.7.d (law school mentoring programs). These sections, which address the content of mentoring plans now offer a list of suggested topics. In the prior version these were required.
- **Increased opportunities for beginning lawyers.** The current version allows beginning lawyers in their first three (3) years of practice to participate, instead of just the first year. §5K.3.a.2. Beginning lawyers are also eligible for partial credit under some circumstances. §5K.8.b.
- **Increased opportunities for Eligible Mentors.** The proposal expands eligibility for those members of the bench and bar desiring to serve as mentors. §5K.1.b.
- **Increased opportunities for use of technology in the mentoring relationship.** §5K.5 (sponsoring organizations) and §5K.7.c (law school mentoring) now explicitly allow for interactions between mentor and beginning lawyer or law student to be by videoconferencing or other technological means.
- **Proposed number of eligible CLE credits.** The maximum number of CLE credits earned by participating in mentoring plans is changed from twelve to eight. §5K.8.a.1 and 2.

Retained

- **Mentor training.** Mentors must be approved by the Supreme Court and, to be approved, they must complete training acceptable to the Commission. Given at least ten (10) participants, the Commission will conduct such training in each grand division of the state at least once per year. The regulations now specifically allow the Commission to approve training offered by bar associations, law schools, or other providers. Recertification training is also still required, but within five (5) years instead of three (3).

Revised Proposed Regulations for Accrediting Mentoring Programs in Tennessee

5K. Mentoring Programs

The Commission will accredit participation in approved Mentoring Programs (“Approved Mentoring Program” or “Approved Law School Mentoring Programs”) operated by bar associations, governmental agencies, corporate law departments, law schools, or law firms (“Sponsoring Organization” or “Law School Sponsor”) in accordance with the provisions of this section.

1. Approved Mentors:

- a. Mentors eligible to participate in an Approved Mentoring Program shall have a current certification from the Supreme Court of Tennessee as an “Approved Mentor.”
- b. The Commission will recommend to the Supreme Court of Tennessee that any attorney or judge receive a five-year certification as an Approved Mentor, if the attorney or judge:
 1. is currently licensed to practice law in Tennessee; is in good standing with the Supreme Court; and, for the previous five (5) years, has been licensed to practice law in Tennessee, in another state, or in the District of Columbia;
 2. has not been suspended or disbarred from the practice of law in any jurisdiction;
 3. has not been subject to any lesser disciplinary action, including any public or private reprimands, within the last ten (10) years by any attorney or judicial disciplinary agency in any state or by any federal or state court;
 4. has completed initial or recertification mentor training as provided in § 2.a or § 2.b within the previous five (5) calendar years.

2. Approved Mentor Training:

- a. Initial Training: The Commission will conduct initial mentor training annually in each grand division of the state if at least ten (10) participants pre-register for such training. The Commission may also certify initial mentoring training programs conducted by bar associations, law schools, or other providers.
- b. Recertification Training: Starting five (5) years after the first year in which initial mentor training is conducted, the Commission will conduct recertification mentor training in each grand division of the state if at least ten (10) participants pre-register for such training. The Commission may also certify recertification training programs developed and conducted by bar associations, law schools, or other providers.

3. Eligible Beginning Lawyer Participants:

- a. For purposes of accreditation, any lawyer admitted to practice in Tennessee is eligible to participate in an Approved Mentoring Program as a “beginning lawyer,” if the beginning lawyer:
 1. actually practices law in Tennessee or intends to practice law in Tennessee;

2. is in the first three (3) years of his or her practice as a lawyer following graduation from law school, the participation in a judicial clerkship, or the active practice of law in another state;
 3. has graduated from law school no more than five (5) years prior to participating in an Approved Mentoring Program; and
 4. has not previously received full credit for participating in an Approved Mentoring Program.
- b. The Commission may approve an attorney for participation in an Approved Mentoring Program, notwithstanding the fact that the attorney does not meet one or more of the criteria set forth in this section, if such participation is recommended by the Tennessee Board of Professional Responsibility or by the Tennessee Lawyers Assistance Program.
4. **Approved Mentoring Programs:** The Commission intends that Sponsoring Organizations have flexibility to develop and design an overall Mentoring Program that meets the basic needs and objectives that the Sponsoring Organization views as being important. However, the structure of any Approved Mentoring Program shall contain the following basic elements, in addition to any other elements developed or required by the Sponsoring Organization:
- a. A statement of the goals and objectives to be accomplished by the Mentoring Program, identifying the core purposes sought to be advanced by the Sponsoring Organization;
 - b. A developed program in all areas of content required or recommended by the Sponsoring Organization, including any elective topics and those suggested for inclusion in § 5(a) below;
 - c. Provisions permitting beginning lawyers to change mentors to a second Approved Mentor at least once during the course of the mentoring program due to the Approved Mentor or beginning lawyer leaving a firm or other practice setting, the breakdown of the mentoring relationship, or other similar reasons;
 - d. If the Approved Mentor and beginning lawyer are not affiliated with the same law firm, governmental agency, or corporate law department,
 1. provisions prohibiting the discussion of specific legal matters during the completion of the Mentoring Plan and protecting against the risk of inadvertent disclosure of client or confidential information;
 2. provisions making clear that no attorney-client relationship is established by the Mentoring Program and that communications between the Approved Mentor and beginning lawyer are not confidential; and
 3. provisions designed to identify and prevent present and prospective conflicts of interest;
 - e. Provisions prohibiting romantic or business relationships between the Approved Mentor and beginning lawyer during the period of the mentoring relationship;
 - f. Provisions limiting an Approved Mentor from working with more than two (2) beginning lawyers during the course of any calendar year;

- g. A final certification by both the Approved Mentor and the beginning lawyer upon completion of the Mentoring Plan that all program criteria have been completed; and
 - h. The designation of at least one (1) person within each Sponsoring Organization to be responsible for overseeing the ongoing operations of the Mentoring Program and to serve as a point of contact with the Commission.
5. **Mentoring Plans**: For purposes of accrediting the Approved Mentoring Program, the Sponsoring Organization shall assist the Approved Mentor and the beginning lawyer to develop a Mentoring Plan designed to include core topics, as well as skills, activities, and experiences important for lawyers. These experiences and activities should be designed as learning activities for the beginning lawyer and should serve as a source of discussion between the Approved Mentor and beginning lawyer. The Sponsoring Organization may allow the activities and experiences to consist of the use of video conferencing and other technology to facilitate the interaction between the Approved Mentor and the beginning lawyer. The Mentoring Plan shall be approved for use by the Commission.
- a. **Substantive Content of Mentoring Plans**: A Sponsoring Organization shall include such topics in its Mentoring Plan as it believes will best accomplish the purposes and objectives of its Mentoring Program, and the Sponsoring Organization shall develop appropriate activities and materials designed to facilitate meaningful interaction and learning in the identified areas. By way of example, Sponsoring Organizations may select topics focused on substantive law topics, skill development, career development, and personal and adaptive behaviors. In addition to any elective topics designated by the Sponsoring Organization, Sponsoring Organizations are strongly encouraged to consider providing for a core topic list common to all Mentoring Plans developed by the Sponsoring Organization, including the following areas:
 - 1. Professionalism and legal ethics;
 - 2. Civic, charitable, and pro bono activities;
 - 3. Client communication, advocacy, and negotiation;
 - 4. Practice management;
 - 5. Professional development, including work with the legal community, bar associations, and court activities;
 - 6. Leadership training;
 - 7. Career paths and work/life balance issues; and
 - 8. Sources of well-being and causes of mental-health and substance abuse issues for attorneys, including identification of available support networks and resources.

Sponsoring Organizations need not require devotion of identical time to all topics contained in the Mentoring Plan, and the Sponsoring Organization may allocate time between the substantive content areas as shall best accomplish the objectives of the Approved Mentoring Program.
 - b. **Length of Mentoring Plans**: The Commission may accredit Approved Mentoring Programs whose Mentoring Plans operate for a minimum period of six (6) months and a maximum period

of one (1) year. In all Approved Mentoring Programs, the Mentoring Plan must provide for a minimum number of meetings between the Approved Mentor and beginning lawyer, whether such meetings are conducted in-person, by video conference, or otherwise.

6. **Mentoring Program Evaluation:** For purposes of accreditation, all Approved Mentoring Programs shall contain provisions by which both the Approved Mentor and beginning lawyer can evaluate the quality and effectiveness of the Mentoring Plan at the conclusion of the Mentoring Plan. Copies of all such evaluations shall be submitted to the Commission.
7. **Approved Law School Mentoring Programs:** The Commission intends that the Law School Mentoring Organization have flexibility to develop and design an overall Law School Mentoring Program that meets the basic needs and objectives that the Sponsoring Organization views as being important.” The Commission may approve Approved Mentors to receive CLE Credit for participation in a law school mentoring program (“Approved Law School Mentoring Program”) as set forth below; provided that the mentoring program has been established by a law school in Tennessee that has been approved by the Board of Law Examiners pursuant to Tennessee Supreme Court Rule 7, § 2.03 (“Law School Sponsor”) and otherwise meets the requirements of this subsection.
 - a. **Eligibility of Approved Mentor and Law Students:** Approved Mentors participating in an Approved Law School Mentoring Program shall meet the requirements of § 2 above. A Law School Sponsor may develop criteria for allowing participation by any student enrolled at that law school.
 - b. **Structure of Approved Law School Mentoring Programs:** The structure of any Approved Law School Mentoring Program shall contain the following basic elements, in addition to any other elements developed by the Law School Sponsor:
 1. A developed program of content required or recommended by the Law School Sponsor, including any elective topics and those suggested for inclusion in § 7(d) below;
 2. Provisions permitting law students to change mentors to a second Approved Mentor at least once during the course of the mentoring program due to migration of the Approved Mentor or law student, the breakdown of the mentoring relationship, or other similar reasons;
 3. Provisions prohibiting romantic or business relationships between the Approved Mentor and the law student, except that a law student may work as a law clerk for a law firm or corporate law department in which the Approved Mentor is also employed;
 4. Provisions limiting an Approved Mentor from simultaneously working with more than two (2) law students;
 5. A final certification by both the Approved Mentor and the law student upon completion of the Law School Mentoring Plan that all program criteria have been completed; and
 6. The designation of at least one (1) person within each Law School Sponsor to be responsible for overseeing the ongoing operations of the Approved Law School Mentoring Program and to serve as a point of contact with the Commission.
 - c. **Law School Mentoring Plans:** For purposes of accrediting the Approved Law School Mentoring Program, the Law School Sponsor shall assist the Approved Mentor and law student to develop a Law School Mentoring Plan designed to include core topics, as well as skills, activities, and

experiences important for lawyers and law students. These experiences and activities should be designed as learning activities for the law student and should serve as a source of discussion between the Approved Mentor and law student. The Law School Sponsor may allow the activities and experiences to consist of the use of video conferencing and other technology to facilitate the interaction between the Approved Mentor and the law student. The Law School Mentoring Plan shall be approved for use by the Commission.

- d. **Substantive Content of Law School Mentoring Plans:** A Law School Sponsor shall include such topics in its Law School Mentoring Plan as it believes will best accomplish the purposes and objectives of its Approved Law School Mentoring Program, and the Law School Sponsor shall develop appropriate activities and materials designed to facilitate meaningful interaction and learning in the identified areas. In addition to any elective topics designated by the Law School Sponsor, Law School Sponsors are strongly encouraged to consider providing for a core topic list common to all Law School Mentoring Plans developed by the Law School Sponsor, including the following areas:
1. Professionalism and legal ethics;
 2. Professional development, including work with the legal community, bar associations, and court activities;
 3. Career paths and work/life balance; and
 4. Sources of well-being and causes of mental-health and substance abuse issues for attorneys, including identification of available support networks and resources.

A Law School Sponsor need not require devotion of identical time to all topics contained in the Law School Mentoring Plan, and the Law School Sponsor may allocate time between the substantive content areas as shall best accomplish the objectives of the Law School Mentoring Program.

- e. **Length of Law School Mentoring Plans:** The Commission may accredit Law School Mentoring Plans that operate for any length of time, including the remainder of the law student's enrollment at the law school. In all Approved Law School Mentoring Programs, the Law School Mentoring Plan must provide for a minimum number of meetings between the Approved Mentor and law student, whether such meetings are conducted in-person, by video conference, or otherwise.
- f. **Law School Mentoring Program Evaluation:** All Approved Law School Mentoring Programs shall contain provisions by which both the Approved Mentor and law student can evaluate the quality and effectiveness of the Law School Mentoring Plan at the conclusion of the Law School Mentoring Plan. Copies of all such evaluations shall be submitted to the Commission.
8. **CLE Credit:**
- a. **Full Credit:** For satisfactory participation in an Mentoring Plan or Law School Mentoring Plan, and certified as such by the Sponsoring Organization or Law School Sponsor, the Commission may award dual CLE credit as follows:
1. Approved Mentors may receive CLE credit for the initial mentor training, for any mentor recertification training, and up to eight (8) hours per year for participation in an Approved Mentoring Plan or Approved Law School Mentoring Plan based upon the length of the plan.

2. Beginning lawyers participating in an Mentoring Plan may receive up to a maximum of eight (8) hours of CLE credit based upon the length of the Mentoring Plan.
 - b. **Partial Credit for Beginning Lawyer:** Where a Mentoring Plan is not completed due to a breakdown of the mentoring relationship not attributable to the beginning lawyer, and the Sponsoring Organization certifies that it is unable to arrange for a substitution of the Approved Mentor, the Commission may award to the beginning lawyer partial credit up to eight (8) hours of dual credit in recognition of the beginning lawyer's time and dedication to the mentoring relationship. Such reasons may include, but are not limited to, the following:
 - the migration of the Approved Mentor;
 - a Mentor's unjustified failure to complete the Mentoring Plan;
 - a serious illness of the Approved Mentor or the beginning lawyer; or
 - the decision by the Approved Mentor to change to inactive status in the practice of law.

In no case, however, may a beginning lawyer receive more than a total of eight (8) hours of dual credit while the beginning lawyer is licensed as a lawyer.
 - c. **Partial Credit for Approved Mentor:** Where a Mentoring Plan or Law School Mentoring Plan is not completed due to a breakdown of the mentoring relationship not attributable to the Approved Mentor, the Commission may award to the Approved Mentor partial credit up to eight (8) hours of dual credit in recognition of the Mentor's time and dedication to the mentoring relationship. Such reasons may include, but are not limited to, the following:
 - migration of the beginning lawyer;
 - a beginning lawyer's unjustified failure to complete the Mentoring Plan or Law School Mentoring Plan;
 - a serious illness of the Approved Mentor or beginning lawyer; or
 - the beginning lawyer's decision to change to inactive status in the practice of law.
 - d. **Awarding of Credit:** Where credit is awarded for participation in a Mentoring Plan, the Commission shall award the total credit hours for the year in which the Mentoring Plan is completed or justifiably ended. Where credit is awarded for completion of a Law School Mentoring Plan that lasts for more than two semesters, the Commission may award the total credit hours for the year in which the Law School Mentoring Plan is completed or, upon request by the Law School Sponsor, award partial credit at other intervals. If participation in a Mentoring Plan or Law School Mentoring Plan, when combined with other CLE-credited activities, results in a lawyer receiving hours of credit in excess of the minimum annual requirement, credits may be carried forward as permitted by Tennessee Supreme Court Rule 21, § 4.02.
9. **Confidentiality:** Pursuant to Tennessee Supreme Court Rule 21, § 6.03, all records relating to the evaluation of Approved Mentoring Programs and Approved Law School Mentoring Programs submitted to the Commission shall be deemed confidential and shall not be disclosed except in furtherance of the duties of the Commission.

**Revised Proposed Regulations
for Accrediting Mentoring Programs in Tennessee**

5K. Mentoring Programs

The Commission will accredit participation in approved Mentoring Programs (“Approved Mentoring Program” or “Approved Law School Mentoring Programs”) operated by bar associations, governmental agencies, corporate law departments, law schools, or law firms (“Sponsoring Organization” or “Law School Sponsor”) in accordance with the provisions of this section.

1. Approved Mentors: Eligible Mentor Attorneys:

- a. Mentors eligible to participate in an Approved Mentoring Program shall have a current certification from the Supreme Court of Tennessee as an Approved “Mentor.” Attorney.
- b. The Commission will recommend to the Supreme Court of Tennessee that any attorney or judge receive a five-year certification as an Approved “Mentor, Attorney,” if the attorney or judge:
 1. is currently licensed to practice law in Tennessee; is in good standing with the Supreme Court; and, for the previous five (5) years, has been licensed to practice law in Tennessee, in another state, or in the District of Columbia; has been licensed as an attorney in Tennessee for at least five (5) years and is currently in good standing;
 2. has not been suspended or disbarred from the practice of law in any jurisdiction;
 3. has not been subject to any lesser disciplinary action, including any public or private reprimands, within the last ten (10) years by any attorney or judicial disciplinary agency in any state or by any federal or state court;
 4. has completed initial or recertification mentor training conducted by the Commission as provided in § 2.a or § 2.b, below; within the previous five (5)two (2) calendar years.

2. Approved Mentor-Attorney Training:

- a. Initial Training: The Commission will conduct initial mentor training annually in each grand division of the state if at least ten (10) participantsattorneys pre-register for such training. The Commission may also certify initial mentoring training programs conducted by bar associations, law schools, or other providers.
- b. Recertification Training: Starting five (5)three (3) years after the first year in which initial mentor training is conducted, the Commission will conduct recertificationre-certification mentor training in each grand division of the state if at least ten (10) participantsattorneys pre-register for such training. The Commission may also certify recertification training programs developed and conducted by bar associations, law schools, or other providers.

3. Eligible Beginning Lawyer Participants: Mentee Attorneys:

- a. For purposes of accreditation, any lawyer admitted to practice in Tennessee is eligible to participate in an Approved Mentoring Program as a "beginning lawyer,"~~mentee~~, if the beginning lawyer:~~mentee~~:
 1. ~~actually is licensed to practice law in Tennessee, and either practices law in Tennessee or intends to practice law in Tennessee;~~
 2. is in the first three (3) years~~year~~ of his or her practice ~~in Tennessee~~ as a lawyer following graduation from law school, the participation in a judicial clerkship, or the active practice of law in another state;
 3. has graduated from law school no more than five (5) years prior to participating in an Approved Mentoring Program; and
 4. has not previously received full credit for participating in an Approved Mentoring Program.
 - b. The Commission may approve an attorney for participation ~~as a mentee~~ in an Approved Mentoring Program, notwithstanding the fact that the attorney does not meet one or more of the criteria set forth in this section, if such participation is recommended by the Tennessee Board of Professional Responsibility or by the Tennessee Lawyers Assistance Program.
4. Approved Mentoring Programs: The Commission intends that Sponsoring Organizations have flexibility to develop and design an overall Mentoring Program that meets the basic needs and objectives that the Sponsoring Organization views as being important. However, the structure of any Approved Mentoring Program shall contain the following basic elements, in addition to any other elements developed or required by the Sponsoring Organization:
- a. A statement of the goals and objectives to be accomplished by the Mentoring Program, identifying the core purposes sought to be advanced by the Sponsoring Organization;~~A developed program in all areas of content required or recommended by the Sponsoring Organization, including any content as provided in § 5.a, below, plus of any additional elective topics and those suggested for inclusion in § 5(a) below;~~required by the Sponsoring Organization;
 - b. Provisions permitting beginning lawyers~~mentees~~ to change mentors to a second Approved Mentor Attorney~~at least once during the course of the mentoring program due to the Approved Mentor Attorney or beginning lawyer~~mentee leaving a firm or other practice setting, the breakdown of the mentoring relationship, or other similar reasons;
 - c. If the Approved Mentor Attorney~~and beginning lawyer~~mentee are not affiliated with the same law firm, governmental agency, or corporate law department,
 1. provisions prohibiting the discussion of specific legal matters during the completion of the Mentoring Plan and protecting against the risk of inadvertent disclosure of client or confidential information;
 2. provisions making clear that no attorney-client relationship is established by the Mentoring Program and that communications between the Approved Mentor Attorney~~and beginning lawyer~~mentee are not confidential; and
 3. provisions designed to identify and prevent present and prospective conflicts of interest;

- d. Provisions prohibiting romantic or business relationships between the Approved Mentor Attorney and beginning lawyermentee during the period of the mentoring relationship;
 - e. Provisions limiting an Approved Mentor Attorney from working with more than two (2) beginning lawyersmentees during the course of any calendar year;
 - f. A final certification by both the Approved Mentor Attorney and the beginning lawyermentee upon completion of the Mentoring Plan that all program criteria have been completed; and
 - g. The designation of at least one (1) person within each Sponsoring Organization to be responsible for overseeing the ongoing operations of the Mentoring Program and to serve as a point of contact with the Commission.
5. Mentoring Plans: For purposes of accrediting the Approved Mentoring Program, the Sponsoring Organization shall assist the Approved Mentor Attorney and the beginning lawyermentee to develop a Mentoring Plan designed to include core topics, as well as skills, activities, and experiences important for lawyers. These experiences and activities should be designed as learning activities for the beginning lawyermentee and should serve as a source of discussion between the Approved Mentor Attorney and beginning lawyer. The Sponsoring Organization may allow the activities and experiences to consist of the use of video conferencing and other technology to facilitate the interaction between the Approved Mentor and the beginning lawyer.mentee. The Mentoring Plan shall be approved for use by the Commission.
- a. Substantive Content of Mentoring Plans: A Sponsoring Organization shall include such topics in its Mentoring Plan as it believes will best accomplish the purposes and objectives of its Mentoring Program, and the Sponsoring Organization shall develop appropriate activities and materials designed to facilitate meaningful interaction and learning in the identified areas. By way of example, Sponsoring Organizations may select topics focused on substantive law topics, skill development, career development, and personal and adaptive behaviors. In addition to any elective topics designated by the Sponsoring Organization, Sponsoring Organizations are strongly encouraged to consider providing for a core topic list common to all Mentoring Plans developed by the Sponsoring Organization, including~~In addition to any elective topics designated by the Sponsoring Organization, Mentoring Plans shall provide for a core topic list, with appropriate activities and materials to facilitate meaningful interaction and learning in the following areas:~~
 - 1. Professionalism and legal ethics;
 - 2. Civic, charitable, and pro bono activities;
 - 3. Client communication, advocacy, and negotiation;
 - 4. Practice~~Law~~-office management;
 - 5. Professional development, including work with the legal community, bar associations, and court activities;
 - 6. Leadership training;
 - 7. Career paths and work/life balance issues; and

8. Sources of well-being and causes of mental-health and substance abuse issues for attorneys, including identification of available support networks and ~~resources, resources;~~

- b. Sponsoring Organizations need not require devotion of identical time to all topics contained in the Mentoring Plan, and the Sponsoring Organization may allocate time between the substantive content areas as shall best accomplish the objectives of the Approved Mentoring Program.
Length of Mentoring Plans: The Commission ~~may will~~ accredit Approved Mentoring Programs whose Mentoring Plans operate for a minimum period of six (6) months and a maximum period of one (1) year. In all Approved Mentoring Programs, the Mentoring Plan must provide for a minimum number of ~~in-person~~ meetings between ~~the Approved Mentor Attorney and beginning lawyer,~~ whether such meetings are conducted in-person, by video conference, or ~~otherwise. mentee equivalent to one hour per month for the duration of the Mentoring Plan.~~

6. Mentoring Program Evaluation: For purposes of accreditation, all Approved Mentoring Programs shall contain provisions by which both the ~~Approved Mentor Attorney and beginning lawyer~~ ~~mentee~~ can evaluate the quality and effectiveness of the Mentoring Plan ~~during the midpoint and at the conclusion of the Mentoring Plan.~~ Copies of all such evaluations shall be submitted to the Commission.

7. Approved Law School Mentoring Programs: The Commission intends that the Law School Mentoring Organization have flexibility to develop and design an overall Law School Mentoring Program that meets the basic needs and objectives that the Sponsoring Organization views as being important. The Commission may approve ~~Approved Mentors~~ ~~Mentor Attorneys~~ to receive CLE Credit for participation in a law school mentoring program ("Approved Law School Mentoring Program") as set forth below; provided that the mentoring program has been established by a law school in Tennessee that has been approved by the Board of Law Examiners pursuant to Tennessee Supreme Court Rule 7, § 2.03 ("Law School Sponsor") and otherwise meets the requirements of this subsection.
 - a. Eligibility of Approved Mentor ~~Attorney~~ and Law Students: ~~Approved Mentors~~ ~~Mentee:~~ ~~Mentor Attorneys~~ participating in an Approved Law School Mentoring Program shall meet the requirements of § 2 above. A law school sponsoring an ~~Approved Law School Mentoring Program~~ may develop criteria for allowing participation by any student enrolled at that law school.

 - b. Structure of Approved Law School Mentoring Programs: ~~Program:~~ The structure of any approved Law School Mentoring Program shall contain the following basic elements, in addition to any other elements developed by the law school sponsor:
 1. A developed program ~~in all areas of content required or recommended by the Law School Sponsor, including content as provided in § 7(d), below, plus of any additional elective topics and those suggested for inclusion in § 7(d) below;~~ ~~required by the Sponsoring Organization;~~

 2. Provisions permitting law students ~~mentees~~ to change mentors to a second Approved Mentor Attorney at least once during the course of the mentoring program due to migration of the ~~Approved Mentor Attorney~~ or law student, ~~mentee,~~ the breakdown of the mentoring relationship, or other similar reasons;

 3. Provisions prohibiting romantic or business relationships between the Approved Mentor Attorney and the law student, ~~mentee,~~ except that a law student ~~mentee~~ may work as a law

clerk for a law firm or corporate law department in which the Approved Mentor-Attorney is also employed;

4. Provisions limiting an Approved Mentor Attorney from simultaneously working with more than two (2) law students; ~~mentees during the course of any calendar year;~~
 5. A final certification by both the Approved Mentor Attorney and the law student ~~mentee~~ upon completion of the Law School Mentoring Plan that all program criteria have been completed; and
 6. The designation of at least one (1) person within each law school sponsor to be responsible for overseeing the ongoing operations of the Approved Law School Mentoring Program and to serve as a point of contact with the Commission.
- c. Law School Mentoring Plans: For purposes of accrediting the Approved Law School Mentoring Program, the law school sponsor shall assist the Approved Mentor Attorney and law student ~~mentee~~ to develop a Law School Mentoring Plan designed to include core topics, as well as skills, activities, and experiences important for lawyers and law students. These experiences and activities should be designed as learning activities for the law studentmentee and should serve as a source of discussion between the Approved Mentor Attorney and law student. The Law School Sponsor may allow the activities and experiences to consist of the use of video conferencing and other technology to facilitate the interaction between the Approved Mentor and the law student. ~~mentee.~~ The Law School Mentoring Plan shall be approved for use by the Commission.
- d. Substantive Content of Law School Mentoring Plans: A Law School Sponsor shall include such topics in its Law School Mentoring Plan as it believes will best accomplish the purposes and objectives of its ~~In addition to any elective topics designated by the law school sponsor,~~ Approved Law School Mentoring Program, and the Law School SponsorPlans shall developprovide for a core topic list, with appropriate activities and materials designed to facilitate meaningful interaction and learning in the identified areas. In addition to any elective topics designated by the Law School Sponsor, Law School Sponsors are strongly encouraged to consider providing for a core topic list common to all Law School Mentoring Plans developed by the Law School Sponsor, including the following areas:
1. Professionalism and legal ethics;
 2. Professional development, including work with the legal community, bar associations, and court activities;
 3. Career paths and work/life balance; and
 4. Sources of well-being and causes of mental-health and substance abuse issues for attorneys, including identification of available support networks and ~~resources.~~ resources;
A Law School Sponsor need not require devotion of identical time to all topics contained in the Law School Mentoring Plan, and the Law School Sponsor may allocate time between the substantive content areas as shall best accomplish the objectives of the Law School Mentoring Program.
- e. Length of Law School Mentoring Plans: The Commission ~~may will~~ accredit Approved Law School Mentoring Programs whose Mentoring Plans that operate for any length of time, including the remainder of the law student's enrollment at the law school. ~~minimum period of one (1) semester and a maximum period of two (2) semesters.~~ In all Approved Law School Mentoring

Programs, the Law School Mentoring Plan must provide for a minimum number of ~~in-person~~ meetings between the ~~Approved Mentor Attorney~~ and law student, ~~whether such meetings are conducted in-person, by video conference, or otherwise. mentee equivalent to one hour per month for the duration of the Law School Mentoring Plan.~~

- f. Law School Mentoring Program Evaluation: All Approved Law School Mentoring Programs shall contain provisions by which both the ~~Approved Mentor Attorney~~ and law student ~~mentee~~ can evaluate the quality and effectiveness of the Law School Mentoring Plan ~~during the midpoint and at the conclusion of the Law School Mentoring Plan.~~ Copies of all such evaluations shall be submitted to the Commission.

8. CLE Credit:

- a. Full Credit: For satisfactory ~~completion of participation in an Approved Mentoring Plan or Law School Mentoring Plan, Program~~ and certified as such by the Sponsoring Organization or Law School Sponsor, the Commission may award dual CLE credit as follows:

1. Approved Mentors~~Mentor Attorneys~~ may receive CLE credit for the initial mentor training, for any mentor recertification~~re-certification~~ training, and up to eight (8)~~twelve (12)~~ hours per year for participation in an Approved Mentoring Plan~~Program~~ or Approved Law School Mentoring Plan~~Program~~ based upon the length of the ~~Mentoring Plan.~~
2. Beginning lawyers~~Mentee Attorneys~~ participating in an Approved Mentoring Plan~~Program~~ may receive up to a maximum of eight (8)~~twelve (12)~~ hours of CLE credit based upon the length of the Mentoring Plan.

- ~~b. Partial Credit for Beginning Lawyer: Where a Mentee: No mentee failing to complete a Mentoring Plan shall be eligible to receive CLE Credit under this section, whether in whole or in part.~~

- ~~e.b. Partial Credit for Mentoring Attorney: Where a Mentoring Plan or Law School Mentoring Plan is not completed due to a breakdown of the mentoring relationship not attributable to the beginning lawyer, and the Sponsoring Organization certifies that it is unable to arrange for a substitution of the Approved Mentor, Attorney, the Commission may award to the beginning lawyer~~Mentor Attorney~~ partial credit up to eight (8)~~twelve (12)~~ hours of dual credit in recognition of the beginning lawyer's~~Mentor's~~ time and dedication to the mentoring relationship. Such reasons may include, but are not limited to, the following: migration of the mentee; a mentee's unjustified failure to complete the Mentoring Plan or Law School Mentoring Plan; a serious illness of the Mentor Attorney or mentee; or the mentee's decision to change to inactive status in the practice of law.~~

- the migration of the Approved Mentor;
- a Mentor's unjustified failure to complete the Mentoring Plan;
- a serious illness of the Approved Mentor or the beginning lawyer; or
- the decision by the Approved Mentor to change to inactive status in the practice of law.

In no case, however, may a beginning lawyer receive more than a total of eight (8) hours of dual credit while the beginning lawyer is licensed as a lawyer.

c. Partial Credit for Approved Mentor: Where a Mentoring Plan or Law School Mentoring Plan is not completed due to a breakdown of the mentoring relationship not attributable to the Approved Mentor, the Commission may award to the Approved Mentor partial credit up to eight (8) hours of dual credit in recognition of the Mentor's time and dedication to the mentoring relationship. Such reasons may include, but are not limited to, the following:

- migration of the beginning lawyer;
- a beginning lawyer's unjustified failure to complete the Mentoring Plan or Law School Mentoring Plan;
- a serious illness of the Approved Mentor or beginning lawyer; or

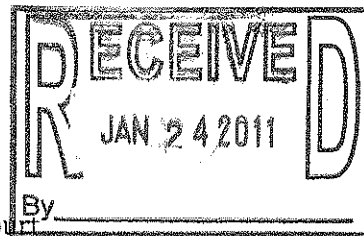
d. the beginning lawyer's decision to change to inactive status in the practice of law. Awarding of Credit: Where credit is awarded for participation in a completion of a Mentoring Plan or Law School Mentoring Plan, the Commission shall award the total credit hours for the year in which the Mentoring Plan is completed or justifiably ended. Where credit is awarded for completion of a Law School Mentoring Plan that lasts for more than two semesters, the Commission may award the total credit hours for the year in which the Law School Mentoring Plan is completed or, upon request by the Law School Sponsor, award partial credit at other intervals. If participation in a Mentoring Plan or Law School Mentoring Plan, when combined with other CLE-credited activities, results in a lawyer receiving hours of credit in excess of the minimum annual requirement, credits may be carried forward as permitted by Tennessee Supreme Court Rule 21, § 4.02.

9. Confidentiality: Pursuant to Tennessee Supreme Court Rule 21, § 6.03, all records relating to the evaluation of Approved Mentoring Programs and Approved Law School Mentoring Programs submitted to the Commission shall be deemed confidential and shall not be disclosed except in furtherance of the duties of the Commission.



Knoxville Bar Association

January 20, 2011



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P.O. Box 2027
Knoxville, TN 37901-2027
PH: (865) 522-6522
FAX: (865) 523-5662
www.knoxbar.org

Michael W. Catalano, Clerk of the Tennessee Supreme Court
Re: Proposed Amended Rule 21, Section 4.07
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

In re: Proposed Amended Rule 21, Section 4.07,
Rules of the Tennessee Supreme Court
(Mentoring Experiences)

Officers

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President

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President-Elect

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Jason H. Long

Mary Elizabeth Maddox

Debra C. Poplin

T. Lynn Tarpy

Executive Director

Marsha S. Wilson
mwilson@knoxbar.org

Dear Mike:

Attached please find an original and seven copies of the Comment of the Knoxville Bar Association in reference to the above matter. Upon entry of the comments, please send me a time stamped copy for our records. I have enclosed a self addressed envelope for that purpose.

Thank you for your assistance.

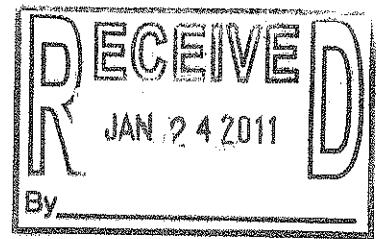
Sincerely,

Marsha S. Wilson
Executive Director

Cc: Michael J. King, President, Knoxville Bar Association
Amanda Busby, Co-Chair, KBA CLE Committee
Shelly Wilson, Co-Chair, KBA CLE Committee

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HOSPITAL

IN THE SUPREME COURT OF TENNESSEE



IN RE: PETITION TO AMEND)
RULE 21, SECTION 4.07,)
RULES OF THE TENNESSEE)
SUPREME COURT)
(CLE for Mentoring))
_____)

No. M2010-00913-SC-RL1-RL

COMMENT OF THE KNOXVILLE BAR ASSOCIATION

The Knoxville Bar Association (hereafter "KBA"), by and through its President, Michael J. King; Co-Chairs of its Committee on Continuing Legal Education, Shelly Wilson and Amanda Busby; and Executive Director, Marsha Wilson, files this comment pertaining to the amendment to Tennessee Supreme Court Rule 21, Section 4.07 by adoption of a new section which will authorize continuing legal education (hereafter "CLE") credit for participation in a mentoring program.

The KBA strongly supports mentoring as a means to increase professionalism and collegiality, but believes that it should be used to supplement, not replace, continuing legal education (CLE). The KBA believes that awarding CLE credits for participation in mentoring programs will take the place of participation in live CLE programs which are a vital aspect of the practice of law. The Tennessee Commission of Continuing Legal Education and Specialization (hereafter the "Commission") has endorsed its support of live CLE by requiring that lawyers earn seven (7) hours of live CLE credit each year [TN Rule 21, Section 4.08]. So that lawyers are required to continue earning at least seven (7) hours of live CLE credit each year, the KBA encourages the Court to award participation in the mentoring programs as distance learning CLE credit and limit the number of mentoring hours that may qualify as distance learning CLE to six (6) hours.

Accordingly, the KBA would suggest that Rule 21, Section 4.07(d) as set forth in the

Proposed Amendment be further amended to read as follows:

(d) up to six hours per year of dual credit for participation as a mentor or mentee in a program meeting standards established by the Commission, including programs sponsored by bar associations, law schools, law firms, or other appropriate governmental or organizational sponsors. To help facilitate establishment of mentoring programs, the Commission is authorized to provide for a program of training for mentors, whether through its own auspices or through those of other organizations, and to charge a reasonable fee for such training. With regard to mentors participating in a mentoring program sponsored by a governmental or non-profit organization, the Commission is authorized to provide such training at no charge. The six hours per year of dual credit authorized by this Rule 21, Section 4.07(d) will be counted toward the maximum of eight (8) hours of credit per year earned in a distance learning format under Rule 21, Section 4.08.

BACKGROUND

The Commission petitioned the Supreme Court in April, 2010 to amend Rule 21, Section 4.07 to award CLE credit for participation in mentoring programs. The Supreme Court published the proposed amendment to Rule 21, Section 4.07 (hereafter "Proposed Amendment") on May 17, 2010 and provided a deadline of Friday, August 13, 2010 for submission of written comments to the Proposed Amendment. The Proposed Amendment added subsection (d) to Rule 21, Section 4.07, allowing up to twelve (12) hours of dual CLE credit per year for participation in mentoring programs. The Commission also filed proposed regulations ("Proposed Regulations") with the Court as to how it would implement the Proposed Amendment.

The KBA submitted its written comments to the Proposed Amendment and Proposed Regulations in a letter dated August 9, 2010 addressed to Michael W. Catalano, Clerk of the Tennessee Supreme Court, generally supporting the concept of mentoring for attorneys, but opposing an award of CLE credit for participation in mentoring programs. The KBA's opposition, at least in part, was based upon the fact that the Proposed Amendment when coupled

with Tennessee Supreme Court Rule 21, Section 4.08 that permits eight (8) hours of CLE credit per year to be earned in a distance learning format (*ie.* online CLE), allowed attorneys to obtain all fifteen (15) hours of annual CLE credit without any participation in live CLE programming. On September 21, 2010 the deadline for the comment period on the Proposed Amendment was extended by the Court to December 31, 2010.

On Thursday, December 23, 2010 the Executive Director of the Commission sent the KBA a copy of a Revised Mentoring Program and Regulations Executive Summary dated December 21, 2010. On December 29, the Commission filed its comments with the Court. Among the Commission's comments was a change to the Proposed Amendment [Rule 21, Section 4.07(d)] to allow only eight (8) CLE credits for participation in mentoring programs instead of twelve (12) as stated in the Proposed Amendment. Procedurally, it does not appear that the Commission filed a formal revision to the Proposed Amendment with the Court, but instead suggested this change by way of comment to its own Proposed Amendment and Proposed Regulation.

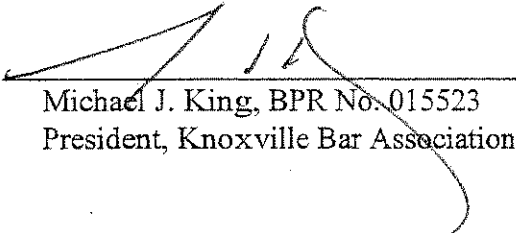
The KBA President, Co-Chairs of the CLE Committee and Executive Director met on Friday, January 14, 2011 for the purpose of discussing the revision of the Proposed Amendment. It was agreed that although the KBA has not changed its position with respect to the comments previously sent in response to the Proposed Amendment, with the change in the number of CLE hours, the KBA will support the Proposed Amendment that provided the CLE hours awarded for participation in mentoring programs is included within the limitations of CLE hours for distance learning under Rule 21, Section 4.08 and the number of mentoring hours that qualify as distance learning credit is capped at six (6) hours. This will assist in ensuring that at a minimum, attorneys will be required to participate in at least seven (7) hours of live, substantive CLE per

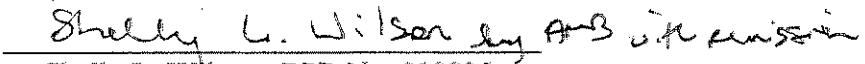
year. The KBA Board of Governors approved this Comment on Wednesday, January 19, 2011.


The KBA appreciates consideration by the Court and 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 19th day of January, 2011.

KNOXVILLE BAR ASSOCIATION

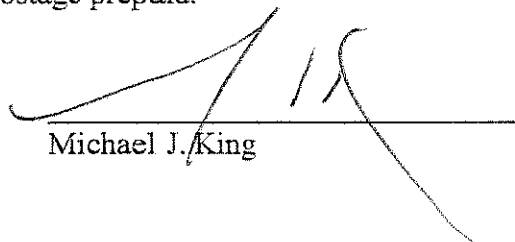
By: 
Michael J. King, BPR No. 015523
President, Knoxville Bar Association

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

By: 
Amanda Busby, BPR No. 019297
Co-Chair KBA Committee on Continuing Legal Education

CERTIFICATE OF SERVICE

The undersigned certifies that on the 19th day of January, 2011, 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.


Michael J. King