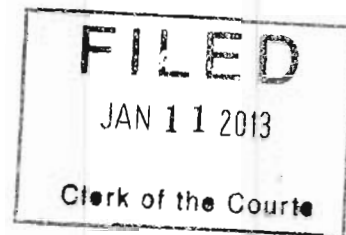


IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

**IN RE: PETITION TO AMEND RULE 21, SECTION 4.07  
(MENTORING EXPERIENCES)**

\_\_\_\_\_  
No. M2010-00913-SC-RL1-RL  
\_\_\_\_\_



**ORDER**

In April 2010, the Tennessee Commission on Continuing Legal Education and Specialization (“Commission”) filed a petition asking the Court to amend Rule 21, Section 4.07 to authorize the Commission to award continuing legal education credits to lawyers participating as a mentor or mentee in a mentoring program meeting the standards that would be established by the Commission. An appendix to the petition set out the Commission’s proposed regulations that would govern the awarding of CLE credits for participating in mentoring programs.

On May 17, 2010, the Court published the Commission’s proposed amendment to Rule 21, Section 4.07 and solicited public comments on the proposal. The Court received a number of written comments from various bar organizations and other interested parties. The Commission thereafter filed a written response to the public comments and also filed revisions to the Commission’s proposed regulations; the revised proposed regulations included a number of changes made in light of comments received during the public-comment period. Several bar organizations then filed supplemental comments in light of the Commission’s revised proposals, and the Commission then filed a written response to the supplemental comments.

After the filing of the supplemental comments and the Commission’s response thereto, the Commission engaged a consultant “to develop a market research driven model mentoring plan for beginning lawyers.” The Commission then invited representatives of various bar associations and other legal organizations to participate in the Commission’s discussion of the consultant’s proposed model plan. Considering suggestions made to the Commission by the various bar representatives, the Commission subsequently drafted a revised set of proposed regulations.

On August 27, 2012, the Commission filed a motion asking the Court to rule on the Commission’s previously filed petition. The Commission attached to its motion the

Commission's "Final Draft Regulations" that would govern the award of CLE credits for participation in approved mentoring programs.

On October 12, 2012, the Court filed an order publishing the proposed amendment to Tenn. Sup. Ct. R. 21, § 4.07 and a *modified* version of the Commission's Final Draft Regulations. (The two modifications, made for discussion purposes, were: (1) to reduce the maximum number of credit hours that can be awarded from eight (8) to six (6); and (2) to make participation in a law firm's or other entity's "in house" mentoring programs ineligible for an award of CLE credit under the regulations.) The Court solicited public comments on the proposed amendment and the modified Final Draft Regulations. The comment period expired on January 2, 2013.

After due consideration of the various filings in this proceeding, including the written public comments received by the Court over the course of this proceeding, and subject to the following time limitation, the Court hereby amends Tenn. Sup. Ct. R. 21, § 4.07 by adding the new paragraph (d) set out in Appendix A to this order and hereby approves the Final Regulations set out in Appendix B to this order. The new section 4.07(d) and the Final Regulations shall take effect on July 1, 2013, and shall expire on December 31, 2014. The ability to receive CLE credit for participating in mentoring programs therefore will end on December 31, 2014, unless the Court affirmatively readopts section 4.07(d).

The Clerk shall provide a copy of this order to the Commission on Continuing Legal Education and Specialization, which shall promptly disseminate copies of this order to the persons and organizations set out in the List of Individuals and Organizations Receiving Notice of the Foregoing by Mail, which was appended to the Commission's Petition. The Clerk also shall provide a copy of this order to LexisNexis and to Thomson Reuters. This order, including the Appendix, shall be posted on the Court's website.

It is so ORDERED.

PER CURIAM

*APPENDIX A*

[Tenn. Sup. Ct. R. 21, § 4.07 is amended to add the following new paragraph (d):]

**4.07.** The Commission may, in its discretion, award:

\* \* \* \*

(d) up to 6 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. This paragraph (d) shall take effect on July 1, 2013, and shall expire on December 31, 2014, unless affirmatively readopted by the Supreme Court.

## ***APPENDIX B***

### ***REGULATIONS OF THE COMMISSION ON CONTINUING LEGAL EDUCATION & SPECIALIZATION***

[New Section 5K, governing mentoring programs:]

#### **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 seven-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; and

4. has completed initial or recertification mentor training as provided in § 2.a or § 2.c within the previous seven (7) calendar years.

c. Mentors eligible to participate in an Approved Law School Mentoring Program shall have a current certification from the Supreme Court of Tennessee as an “Approved Law School Mentor.”

d. The Commission will recommend to the Supreme Court of Tennessee that any attorney or judge receive a seven-year certification as an Approved Law School 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 three (3) 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; and

4. has completed initial or recertification mentor training as provided in § 2.a, § 2.b or § 2.c within the previous seven (7) calendar years.

## 2. Approved Mentor Training:

a. Initial Training for Approved Mentors: The Commission will conduct initial mentor training annually in each grand division of the state if at least ten (10) participants preregister for such training. The Commission may also certify initial mentoring training programs developed and conducted by bar associations, law schools, or other providers.

b. Initial Training for Approved Law School Mentors: The Commission will certify initial mentoring training programs developed and conducted by law schools so long as the training developed and conducted by the law schools is conducted at least annually and is designed to effectively inform and educate prospective law school mentors on the contents of §§ 7, 8 and 9 below. Prospective Approved Law School Mentors may also attend the Initial Training conducted by the Commission as described in § 2.a above.

c. Recertification Training: Starting seven (7) calendar 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 Commission will not approve a Mentoring Program designed to provide mentoring between an Approved Mentor and a beginning lawyer who are both affiliated with the same law firm, governmental agency, or corporate law department. 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. Because the Approved Mentor and beginning lawyer are not permitted to be 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 method chosen by the Sponsoring Organization to assist the Approved Mentor and the beginning lawyer to develop a Mentoring Plan shall be approved for use by the Commission, and shall be set forth in the Mentoring Program.

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. In addition to any evaluation performed by the Sponsoring Organization, the Commission shall require that the beginning lawyer also complete an online Standardized Program Evaluation Form.

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 Law School Mentoring 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 that meets the basic needs and objectives that the Law School Sponsor views as being important;

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 the Approved Mentor or as a law firm or corporate law department in which the Approved Mentor is also employed;

4. 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

5. 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 method chosen by the Law School Sponsor to assist the Approved

Mentor and the law student to develop a Mentoring Plan shall be approved for use by the Commission, and shall be set forth in the Law School Mentoring Program.

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 both the Law School Mentoring Program and the Law School Mentoring Plan at the conclusion of the Law School Mentoring Plan. Copies of all such evaluations shall be reviewed and summarized by the contact

person(s) designated by the Law School Sponsor pursuant to 7.b.5 above. The evaluations and summaries that are created pursuant to this Section shall be maintained by the Law School Sponsor for internal use and assessment, and the evaluations of the Law School Mentoring Program shall be available for review by the Commission upon request of the Commission.

8. CLE Credit:

a. Full Credit: For satisfactory participation in a 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 six (6) 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 a Mentoring Plan may receive up to a maximum of six (6) 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 four (4) 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 six (6) 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 four (4) 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.

10. Effective Dates of Section 5K: This Section 5K shall take effect on July 1, 2013, and shall expire on December 31, 2014, unless the Supreme Court readopts Tenn. Sup. Ct. R. 21, § 4.07(d).