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December 17, 2012

The Honorable Michael Catalano
Clerk, Tennessee Supreme Court
Supreme Court Building, Room 100
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Nashville, TN 37219

IN RE: PROPOSED AMENDMENT TO
SUPREME COURT RULE 19

Dear Mike:

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

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

Very truly yours,

Allan F. Ramsaur
Executive Director

cc: Jackie Dixon, President, Tennessee Bar Association
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Tom Stovall, Co-Chair, TBA Administrative Law Section
Brian Faughnan, Chair, TBA Standing Committee on
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**IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE**

IN RE: PROPOSED AMENDMENT)	
TO SUPREME COURT)	No. M2012-01587-SC-RL1-RL
RULE 19)	
)	

COMMENT OF THE TENNESSEE BAR ASSOCIATION

The Tennessee Bar Association (“TBA”), by and through its President, Jacqueline B. Dixon; Chair, TBA Administrative Law Section, Christy A. Allen; Chair, TBA Standing Committee on Ethics & Professional Responsibility, Brian S. Faughnan; General Counsel, Paul C. Ney; and Executive Director, Allan F. Ramsaur, strongly supports the amendment to the rule to require lawyers residing and licensed in states other than Tennessee who appear as counsel of record in contested case administrative proceedings to comply with all of the requirements of TN. Sup. Ct. R. 19 on *pro hac vice* admission.

BACKGROUND

On July 31, 2012, the Board of Professional Responsibility and the Judges in the Administrative Procedures Division of the Office of the Tennessee Secretary of State jointly filed a petition asking the Court to amend TN. Sup. Ct. R. 19. On October 17, 2012, this Honorable Court published for comment a modified proposed revision to TN. Sup. Ct. R. 19.

The TBA requested that its Administrative Law Section and its Standing Committee on Ethics & Professional Responsibility review the original proposal and the proposal as modified by the Court for discussion purposes. Based upon the recommendations of both of these entities, the TBA Executive Committee adopted as its recommendation that the TBA strongly support the proposal as revised.

1. THE TBA HAS CONSISTENTLY SUPPORTED ADEQUATE AND BALANCED RULES FOR *PRO HAC VICE* ADMISSION

The present structure and many of the particulars of the current TN. Sup. Ct. R. 19 on *pro hac vice* admission were derived from a proposal made by the TBA in February 2004. The proposal from the TBA was in response to some revisions to the rule which had been published by the Court in October 2003. In its proposal, the TBA suggested that the primary concern in adopting the rule should be client interest in the right to be represented by a lawyer of his or her choice, even if that lawyer is not licensed in Tennessee; that assuring competency and integrity of counsel and maintaining the effectiveness of disciplinary function for lawyers practicing in Tennessee should also be a goal; that retaining the limitation of Rule 19's availability to lawyers not resident in Tennessee was proper; that retaining the limitation of *pro hac vice* admission to exclude regular practice in Tennessee was correct; that setting a standard for the exercise of the Court's discretion to admit a lawyer to a matter *pro hac vice* was necessary; that establishing a central registration system was important; and, that continuing a requirement for local counsel was needed.

**2. THE TBA STRONGLY SUPPORTS THE PROPOSED REVISION TO
TN. SUP. CT. R. 19**

One of the issues discussed at the time of the 2004 proposal was whether the rule should be extended to cover *pro hac vice* appearances before administrative agencies. Because of the complexity of that issue, as well as the pendency of amendments to Model Rule of Professional Conduct 5.5 with respect to temporary practice, the TBA concluded that it would not propose any changes in the scope of Rule 19 at that time.

Since that time, and based upon the TBA's advocacy, this Court has adopted amendments to RPC 5.5 more clearly delineating the line between temporary practice and *pro hac vice* admission.

The proposal as offered by the Court addresses the complexity and definitional concerns by limiting the application of the *pro hac vice* rule to contested case proceedings. In so doing, the amendments to TN. Sup. Ct. R. 19 would be consistent with rules of the Administrative Procedures Division APD Rule 1360-4-1-.08(8) which require out-of-state attorneys to comply with Rule 19. By

explicitly providing in Rule 19 for disciplinary registration and fees, this amendment to Rule 19 will bring greater regularity and consistency to the process.

RESPECTFULLY SUBMITTED,

By: /s/ by permission

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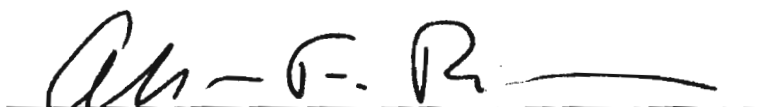
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CERTIFICATE OF SERVICE

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 within seven (7) days of filing with the Court.


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