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2011 APR -7 PM 12:13

APPELLATE COURT CLERK  
NASHVILLE

April 7, 2011

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

IN RE: AMENDMENT TO RULE 7, SECTION 14.01 -  
RULES OF THE TENNESSEE SUPREME COURT  
No. M2011-00526-SC-RL2-RL

AND

AMENDMENTS TO RULE 9, SECTIONS 1.3, 8.3,  
13.7 AND 16.1 - RULES OF THE TENNESSEE  
SUPREME COURT  
No. M2011-00527-SC-RL2-RL

Dear Mike:

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

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

Very truly yours,

Allan F. Ramsaur  
Executive Director

cc: Sam D. Elliott  
William L. Harbison  
Brian S. Faughnan  
Service List

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

PRESIDENT

Sam D. Elliott  
320 McCallie Avenue  
Chattanooga, Tennessee 37402  
(423) 756-5171  
FAX (423) 266-1605  
Email: selliot@gearhiserpeters.com

PRESIDENT-ELECT

Danny Van Horn  
6075 Poplar Avenue  
Suite 500  
Memphis, Tennessee 38119  
(901) 680-7331  
FAX (901) 680-7201  
Email: danny.vanhorn@butlersnow.com

VICE PRESIDENT

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

TREASURER

Richard Johnson  
511 Union Street  
Suite 2700  
Nashville, Tennessee 37219  
(615) 850-8151  
FAX (615) 244-6804  
Email: rjohnson@wallerlaw.com

SECRETARY

Jason Pannu  
201 Fourth Ave North  
Suite 1500  
Nashville, Tennessee 37219-8615  
(615) 259-1366  
Fax: (615) 259-1389  
Email: jpannu@lewisking.com

IMMEDIATE PAST PRESIDENT

Gail Vaughn Ashworth

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Mason Wilson, Memphis  
Cynthia Wyrick, Sevierville

GENERAL COUNSEL

William L. Harbison, Nashville

EXECUTIVE DIRECTOR

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

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

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IN RE: AMENDMENTS TO RULE 7, SECTION 14.01 AND TO  
RULE 9, SECTIONS 1.3, 8.3, 13.7, AND 16.1,  
RULES OF THE TENNESSEE SUPREME COURT

APPELLATE COURT CLERK  
NASHVILLE

Nos. M2011-00526-SC-RL2-RL and  
M2011-00527-SC-RL2-RL

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COMMENT OF THE TENNESSEE BAR ASSOCIATION

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The Tennessee Bar Association (“TBA”) submits this Comment in response to the Court’s invitation extended to the bench, the bar, and the public to submit comments concerning proposed amendments to Tenn. Sup. Ct. R. 7 and Tenn. Sup. Ct. R. 9. Those proposed amendments address the requirements for seeking the Court’s review of any action of the Board of Law Examiners and concerning judicial review of the judgment of a hearing panel respectively.

Although the proposed revisions are not limited to Rule 9, it appears to the TBA in light of the Court’s recent decision in Board v. Cawood, 330 S.W.3d 608 (Tenn. 2010), that the proposed revisions are motivated by a desire to address and remove confusion regarding what is necessary to perfect an appeal from administrative proceedings regarding issues involving the licensure of lawyers.

While the proposed revisions to Rule 9 would eliminate any reference to Tenn. Code Ann. § 27-9-101 and any reference to “certiorari,” and the proposed revision to Rule 7 would delete the reference to review “under the common law writ of certiorari,” the TBA has some concern that the proposed revisions, as currently drafted, may create even further confusion by being construed as offering no real guidance as to what constitutes a “petition for review”

sufficient to trigger appellate jurisdiction. The TBA's concern is that the proposed revised rules could be read to impose no specific requirements at all, save for the title of the pleading having to be "Petition for Review." While the proposed revised Rule 9, Section 1.3 would read "filing a petition for review in accordance with Section 1.4," Section 1.4 currently only addresses where a filing must take place, Circuit or Chancery Court where the respondent's office was located when charges were filed by the BPR, and not what the filing must contain by way of content. The proposed revised Rule 7, Section 14.01 offers no cross-reference of any sort and appears to indicate only what a petition for review is not—it is not a common law writ of certiorari—as opposed to what it is.

Unless the Court's intention is for the only requirement for perfecting an appeal in these instances be captioning the filing as a "Petition for Review," the TBA respectfully suggests that the Court identify any such specific additional requirements in the language of the revised rules themselves. In light of the importance both of proceedings seeking review of decisions of the Board of Law Examiners and judicial proceedings seeking review of judgments of hearing panels in disciplinary matters, the TBA believes that including any such specific requirements contemplated by the Court in the language of the rules would assist parties in such proceedings and minimize the potential for future problems such as the one addressed in Cawood.

The TBA appreciates the opportunity to provide comment to this Court on these important issues and stands ready, should the Court desire any drafting assistance, to offer further assistance or a further proposal for how any specific requirements identified by the Court would be best incorporated into the proposed revisions under consideration.

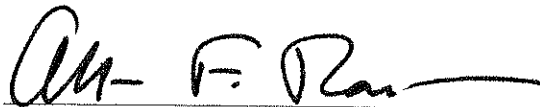
Respectfully Submitted,

By: /s/ by permission

Sam D. Elliott (9431), President  
Tennessee Bar Association  
Gearhiser, Peters, Cavett, Elliott &  
Cannon, PLLC  
320 McCallie Avenue  
Chattanooga, TN 37402  
(423) 756-5171

By: /s/ by permission

William L. Harbison (7012), General Counsel  
Tennessee Bar Association  
Sherrard & Roe, PLC  
424 Church Street, Suite 2000  
Nashville, TN 37219  
(615) 742-4200



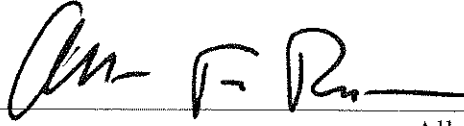
Allan F. Ramsaur (5764), Executive Director  
Tennessee Bar Association  
Tennessee Bar Center  
221 Fourth Avenue, North, Suite 400  
Nashville, TN 37219  
(615) 383-7421

By: /s/ by permission

Brian S. Faughnan (19379), Chair  
Committee on Ethics & Professional Responsibility  
Tennessee Bar Association  
Thomason, Hendrix, Harvey, Johnson  
& Mitchell, PLLC  
2900 One Commerce Square  
40 South Main Street  
Memphis, TN 38103  
(901) 525-8721

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 April 7, 2011.

A handwritten signature in black ink, appearing to read "Allan F. Ramsaur", written over a horizontal line.

Allan F. Ramsaur