



BOARD OF PROFESSIONAL RESPONSIBILITY
of the
SUPREME COURT OF TENNESSEE

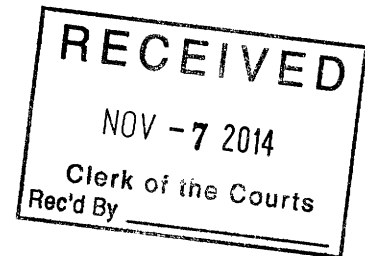
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November 6, 2014

Honorable James M. Hivner
Chief Clerk, Supreme Court of Tennessee
401 Seventh Avenue North, Suite 100
Nashville, TN 37219-1407



Dear Mr. Hivner:

Enclosed please find the original and one copy of the Comment of the Board of Professional Responsibility to the Petition for the Adoption of an Amended Comment to Tenn. Sup. Ct. R. 8, RPC 3.5(c).

Respectfully,

A handwritten signature in cursive script that reads "Sandy L. Garrett".

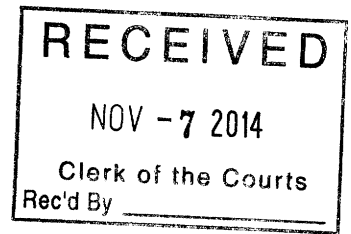
Sandy L. Garrett, Esq.
Chief Disciplinary Counsel

SG:jt

Enclosures

cc w/encl: Honorable Jeffrey S. Bivins, Justice, Supreme Court of Tennessee
J. Russell Parkes, Chair, Board of Professional Responsibility
Allan Ramsaur, TBA Executive Director

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE



**IN RE: PETITION FOR THE ADOPTION OF AN AMENDED
COMMENT TO TENN. SUP. CT. R. 8, RPC 3.5(c)**

No. ADM 2014-01440

**COMMENTS OF THE BOARD OF PROFESSIONAL
RESPONSIBILITY TO PETITION FOR THE ADOPTION OF AN
AMENDED COMMENT TO TENN. SUP. CT. R. 8, RPC 3.5(c)**

Comes now the Board of Professional Responsibility (Board), pursuant to Order filed October 10, 2014, and submits the following comments to proposed amended Comment [4] to Tenn. Sup. Ct. R. 8, PRC 3.5(c).

The Board receives ethics questions from attorneys on this topic and supports clarifying this issue with the Board's proposed Comment [4] which adds language acknowledging restrictions by federal local rules and quoting *State v. Thomas*:

[4] A lawyer may on occasion want to communicate with a juror or prospective juror after the jury has been discharged. The lawyer may do so unless the communication is prohibited by law or a court order entered in the case or by a federal court rule, but must respect the desire of the juror not to talk with the lawyer. The lawyer may not engage in improper conduct during the communication. "Rule 8 therefore allows post-trial interviews by Counsel with jurors on these matters without the prior approval of the trial court." *State v. Thomas*, 813 S.W. 2d. 395, 396 (Tenn. 1991). "After the trial, communication by a lawyer with jurors is permitted so long as he refrains from asking questions or making comments that tend to harass or embarrass the juror or to influence actions of the juror in future cases. Were a lawyer to be prohibited from communicating

after trial with a juror, he could not ascertain if the verdict might be subject to legal challenge, in which event the invalidity of a verdict might go undetected. "When an extra-judicial communication by a lawyer with a juror is permitted by law, it should be made considerately and with deference to the personal feelings of the juror." State v. Thomas, 813 S.W. 2d 395 (Tenn. 1991) (quoting Tenn. Sup. Ct. R. 8 EC 7-29).

RESPECTFULLY SUBMITTED

J. Russell Parkes By SG w/ permission

J. RUSSELL PARKES (#012453)
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Certificate of Service

I certify that the foregoing has been mailed to Allan F. Ramsaur, Esq., Executive Director, Tennessee Bar Association, 221 4th Avenue North, Suite 400, Nashville, Tennessee by U.S. mail, on this the 6th day of November, 2014.

By: J. Russell Parkes By JG w/ permission
J. RUSSELL PARKES (#012453)
Chairman of the Board

By: Sandy Garrett
SANDY L. GARRETT (#013863)
Chief Disciplinary Counsel