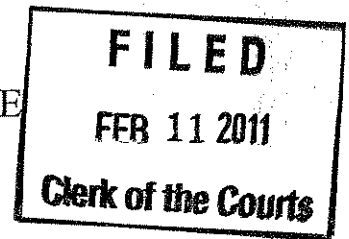


IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE



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

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**NO. M2010-00913-SC-RL1-RL – Filed: February 11, 2011**

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**ORDER**

On February 2, 2011, the Tennessee Bar Association filed a Motion for Permission to File a Supplemental Comment with the Court. The Court finds that the motion is well-taken.

IT IS THEREFORE ORDERED that the motion be granted and the supplemental comment of the Tennessee Bar Association be filed in this matter.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

**FILED**  
FEB 11 2011  
Clerk of the Courts

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

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SUPPLEMENTAL COMMENT OF THE  
TENNESSEE BAR ASSOCIATION

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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, offers this supplemental comment on the proposed amendment to Tn. Sup. Ct. R. 21 and the draft regulations which the Tennessee Commission on Continuing Legal Education and Specialization (“Commission”) has under consideration.

Throughout the informal and formal consideration of this proposal to grant continuing legal education credit for mentoring, the TBA, consistent with its long-

held view and policy that new lawyers and the public are both well served by formal and additional training for lawyers when they first begin practice, has supported this effort. This support was first documented in the July 16, 2010 Comment filed by the TBA in this matter. In that comment, the TBA expressed its support of an amendment to Rule 21 to permit up to twelve (12) hours of continuing legal education credit for participation in a certified mentoring program proffered by the CLE Commission. Our comment did request more flexibility in the regulations. The continuing discussions with the Commission led to some fine-tuning of the regulations to enable the flexibility needed to administer such programming. The TBA has continued to express its interest in offering a mentoring program to lawyers in every jurisdiction, but with a particular focus on lawyers in areas where neither local bar associations nor law firms have the institutional where-with-all to offer such programs. Indeed, this was much of the focus of the need for flexibility expressed by the TBA.

Only after the TBA filed its December 30, 2010 comment did the TBA discover that the Commission's proposal, filed at the deadline, would scale back the number of hours to be credited by participation in the program to eight (8). We believe that this change could significantly compromise the incentives for lawyers to act as

mentors and for beginning lawyers to participate in the program. The number of hours to be granted is not a high/low negotiation. The professional judgment of the CLE professionals at the Commission, the considered judgment of the members of the Commission and the professional judgment of the continuing legal education administrators at the TBA are unanimous in recommending twelve (12) hours. The recruitment of the best mentors, the greatest opportunity for success in recruiting new lawyers, and the number of hours to be devoted to the effort is twelve (12) hours of CLE credit.

As provided in proposed Commission Regulation 5K2, a lawyer must participate in no fewer than twenty (20) classroom hours of mentorship training to be certified as a mentor. Thereafter, the mentor must prepare for the sessions and then devote at least ten (10) hours with the beginning lawyer and participate in specific joint activities associated with the mentoring program. These will include participation in live, video or webcast programs about the topics that make up the certified mentoring program. Conservatively, a lawyer participating as a mentor in this program will spend more than forty (40) hours of otherwise billable time in the first year becoming certified and mentoring the beginning lawyer.

The beginning lawyer is also being asked to spend more time engaged in a mentoring experience than other lawyers who do not participate in the mentoring program. We do promise the experience to be a better experience. However, the new lawyer may satisfy their continuing legal education requirements by attendance at fifteen (15) hours of any kind of programming available. The high quality mentoring program, which this rule and these regulations contemplate, will occupy the individual no less than thirty (30) hours in one-on-one time with the mentor, study of the topics and joint participation in other activities.

When the Commission petitioned for amendment to Tn. Sup. Ct. R. 21, the amendment to the Court was simply to permit the Commission to grant up to twelve (12) hours under its regulations. In this matter, as in others, the Court is authorizing its agency to act in this regard. The Commission is not required to submit its regulations nor should the Court adopt a rule which incorporates such regulations. The Court has traditionally delegated the details like those found in these regulations to its properly-constituted agencies. The Commission, wisely, did provide a copy of its draft regulations so that those who were commenting could know the Commission's thinking regarding the parameters of such a program. Indeed, the TBA has addressed specific provisions in those revised

regulations and has commented to the Court that the Court should adopt the rule. The Commission should be given the authority and flexibility to adopt regulations under the rule which are consistent with the Court's mandate.

Finally, the TBA would like to comment on the proposal which may be made to the Court to further reduce the number of hours credit that a mentor or beginning lawyer could serve and to subsume those under the distance learning cap. First, the TBA would point out that this mentoring program is a one-time experience for the beginning lawyer. It will allow the lawyer to satisfy a large portion of the continuing legal education requirements in that one year, but it does not continue beyond that initial experience. Second, there is no rational basis on which to include an intense one-on-one engagement between a mentor lawyer and a beginning lawyer for any restriction related to distance learning. The experience to be offered through a mentoring program far and away offers more guidance, individual attention and opportunity for learning than sitting in the back of a classroom listening to a lecture. The TBA remains committed to delivering high-quality classroom experiences, distance learning, gaming and other opportunities for lawyers to learn through the channels that best suit them. Our experience

remains that most lawyers come not for the hours, but for the learning and the subject matter.

We urge the Court and the Commission to reject out-of-hand any further compromise in the number of hours and any restriction on the type of hours to be offered.

In conclusion, the TBA urges the Court to adopt the recommendation of its Commission that the rule be amended to permit up to twelve (12) hours of CLE credit for the mentor lawyer and beginning lawyer; delegate to the Commission the authority to act in its professional judgment as to the best manner to approach continuing legal education; and, reject any further attempts to compromise the promise of the program by limiting the number of hours or subsuming them under the distance learning cap.

RESPECTFULLY SUBMITTED,

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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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