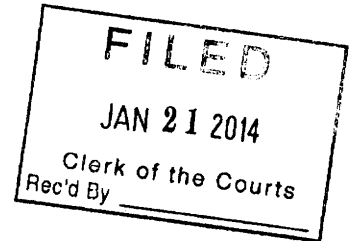


**IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE**

**IN RE: PETITION FOR ADOPTION OF AMENDED
TENNESSEE SUPREME COURT RULE 21, SECTIONS 1.01 AND 10
AND TENNESSEE SUPREME COURT RULE 8, RPC 7.4(d) AND
COMMENT [3] GOVERNING SPECIALIZATION**

No. ADM2014-00012



ORDER

On January 3, 2014, the Tennessee Commission on Continuing Legal Education and Specialization (“Commission”) filed a petition asking this Court to amend section 10 of Tennessee Supreme Court Rule 21 by deleting the current language of section 10 in its entirety and by substituting the proposed new language for section 10 set out in Commission’s January 3, 2014 petition.¹ The proposed amendment of section 10 would remove the Commission from the process of certifying Tennessee lawyers as specialists but would require the Commission to maintain and publish a roster of Tennessee lawyers who have obtained certification from an organization accredited by the American Bar Association’s House of Delegates and registered such certification with the Commission.

To achieve consistency with its proposed amendment of Rule 21, section 10, the Commission also proposes to amend Rule 21, section 1.01, by eliminating the words “and Specialization” from the Commission’s formal title, and to amend Tennessee Supreme Court Rule 8, RPC 7.4(d) and Comment [3] to RPC 7.4, by revising the language of RPC 7.4 and Comment [3] to reflect the certification and registration process prescribed in the proposed amendment of Rule 21, section 10.

This Court hereby publishes the Commission’s January 3, 2014 petition containing the proposed amendments to Rule 21, sections 1.01 and 10 and Rule 8, RPC 7.4(d) and

¹ On October 30, 2013, the Commission filed a separate petition requesting various amendments to Tennessee Supreme Court Rule 21, one of which was to re-designate current section 10 as new section 11. On November 18, 2013, this Court published the October 30, 2013 petition for public comment and set the comment deadline for March 20, 2014. The amendments proposed by the January 3, 2014 petition relate to current Rule 21, section 10, not to the re-designated section 10 proposed by the Commission in its October 30, 2013 petition. Comments regarding the October 30, 2013 petition should reference docket number ADM2013-02417.

Comment [3] to RPC 7.4 and solicits written comments from the bench, the bar, and the public. The petition is attached as Appendix A to this Order. The deadline for submitting written comments is May 21, 2014. Written comments should be addressed to:

Mike Catalano, Clerk
Re: Tenn. Sup. Ct. R. 21
Appellate Court Clerk's Office
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

and should reference the docket number set out above.

The Clerk shall provide a copy of this Order, including Appendix A, to LexisNexis and to Thomson Reuters. In addition, this Order and Appendix A shall be posted on the Tennessee Supreme Court's website.

PER CURIAM

APPENDIX A

***PETITION TO AMEND TENNESSEE SUPREME COURT RULE 21, SECTIONS
1.01 AND 10 AND RULE 8, RPC 7.4(d) AND COMMENT [3] TO RPC 7.4***

PUBLISHED FOR PUBLIC COMMENT

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED
2014 JAN -3 PM 4:13

IN RE: PETITION TO AMEND)
TENNESSEE SUPREME COURT)
RULES 21 and 8, RPC 7.4)

APPELLATE COURT CLERK
NASHVILLE
No: ADM 2014-00012

**PETITION TO AMEND TENNESSEE SUPREME COURT
RULES 21 and 8 (RPC 7.4) GOVERNING SPECIALIZATION**

The Tennessee Commission on Continuing Legal Education and Specialization (the “Commission”) hereby respectfully petitions this Honorable Court to amend Tennessee Supreme Court Rule 21, § 10, and Tennessee Supreme Court Rule 8, RPC 7.4, to refocus the Commission’s role in certifying specialists in particular areas of law. In support of its Petition, the Commission would respectfully show as follows:

1. **Background and Specialization Currently:** Since June 1994, this Honorable Court has authorized the Commission to certify legal specialists in various fields, and the general outline of the program for certifying legal specialists is presently set forth in Section 10 of Tennessee Supreme Court Rule 21.¹ This authority was requested by the Commission in 1993 as part of a program to enhance the ability of citizens of Tennessee to identify attorneys with special competence in particular areas of the law and to create standards by which the Commission could identify those attorneys who possessed special competence. *See also* Tenn. Sup. Ct. R. 21, § 10.02(a); Tenn. Sup. Ct. R. 8, RPC 7.4, cmt. [3] (“The certification procedures are designed to require that the lawyer demonstrate higher degree of specialized ability and experience than is suggested by general licensure to practice law.”).

¹ On October 30, 2013, the Commission filed a petition with this Honorable Court requesting various amendments to Tennessee Supreme Court Rule 21. One amendment has requested that the Court re-designate current Section 10 addressing specialization to form a new Section 11.

2. Originally, this Court recognized certification in the fields of Civil Trial Specialists, Criminal Trial Specialists, Business Bankruptcy Specialists, Consumer Bankruptcy Specialists and Creditors Rights Specialists. Over the years, and most recently in 2005, the Court recognized additional fields of legal specialization, including Accounting Malpractice, Legal Malpractice, Medical Malpractice, Estate Planning, Elder Law, Family Law, Juvenile Law, DUI Defense, and Social Security Disability.

3. **Commission's Role in Specialization:** The process presently followed by the Commission to certify specialists includes two steps. First, the attorney must be certified in a recognized field by an entity that certifies lawyers as specialists. Second, the attorney must apply to be recognized as a specialist by the Commission. Upon approval by the Commission, the attorney may communicate that the lawyer "is certified as a specialist in [field of law] by the Tennessee Commission on C.L.E. and Specialization." *See* Tenn. Sup. Ct. R. 8, RPC 7.4(d). In addition, a lawyer certified as a specialist by the Commission may omit reference to the Commission entirely and state only that the lawyer is "is certified as a specialist in [field of law] by [organization]." *See id.*

4. Part of the Commission's mandate in administering the specialization program has been to do so in a manner that minimizes the costs associated with the program. *See* Tenn. Sup. Ct. R. 21, § 10.02(b). Historically, the Commission has complied with this mandate by relying greatly on the certifying organizations such as the National Board of Trial Advocacy and other national organizations to prepare and administer examinations in specialty areas as a precondition to Tennessee certification.

5. Although this Court and the Commission have only recognized certifying organizations that have been approved by the American Bar Association to issue legal

certifications, the Commission has not typically looked far beyond the processes employed by these certifying organizations to determine whether lawyers possess special competence in particular fields. For example, while the Commission reviews the disciplinary history of each applicant, letters of recommendation, and how the applicant manages the applicant's law practice, the Commission has not undertaken an independent review of the applicant's experience and knowledge in the applicant's specialty area. Rather, the Commission has worked to ensure that the procedures of the certifying organization require examination of an applicant's experience, knowledge, and fitness, and then has relied upon the certifying organization's findings. On rare occasion, the Commission has made inquiry to the certifying organization to ensure that certain facts, typically consisting of disciplinary history, were disclosed and considered by the certifying organization. However, a review of the Commission's records shows that the Commission has never rejected an applicant for specialization based upon the Commission's own review apart from that of the certifying organization.

6. **Issues Present:** When the Commission first petitioned the Court in 1993 to begin a program of certification of specialists, the Commission believed that the best and most competent attorneys in the state would seek certification as specialists. The Commission set an initial goal of obtaining 500 certified specialists. Despite the seeming benefits of specialization and efforts by the Commission to encourage lawyers to seek specialization, no more than 325 specialists have maintained certification at any time since the Commission began the certification process. At present, there are approximately 20,000 lawyers licensed in Tennessee, with only 320 lawyers being certified as a specialist in any area. At present, the Commission has recognized specialty certifications in the following areas:

- a. Civil Trial (143 lawyers);
- b. Criminal Trial (23 lawyers);
- c. Consumer Bankruptcy (33 lawyers);
- d. Business Bankruptcy (10 lawyers);
- e. Creditors Rights (5 lawyers);
- f. Accounting Malpractice (no lawyers);
- g. Legal Malpractice (2 lawyers);
- h. Medical Malpractice (13 lawyers);
- i. Estate Planning (21 lawyers);
- j. Elder Law (14 lawyers);
- k. Family Law (10 lawyers);
- l. Juvenile Law (36 lawyers);
- m. DUI Defense (1 lawyer); and
- n. Social Security Disability (9 lawyers).

7. For the past several years, the Commission has admittedly struggled with the specialty program and with its own role in the process of certifying legal specialists. On the one hand, the program of specialization has succeeded, in some cases, in highlighting those outstanding members of the bar who exhibit the highest degree of capability and skill that one would expect to see in a lawyer certified as a legal specialist. For these lawyers, the certification as a legal specialist does fulfill its role in helping to inform and educate consumers of legal services.

8. On the other hand, the small number of lawyers maintaining certification shows that the vast majority of lawyers across the state that *could* receive such recognition have not, for

whatever reason, actually sought certification as a legal specialist. In this way, the program has not been successful in highlighting lawyers possessing a demonstrated higher degree of specialized competence, ability and experience than is suggested by general licensure to practice law. Rather, the Commission's experience has shown that specialty certification has been increasingly used as an advertising vehicle for lawyers who may not necessarily fall within this category. While all lawyers who have been certified as specialists have been properly qualified and certified by appropriate certifying organizations, the trends in legal specialization demonstrate that the process of certification should be refocused in Tennessee

9. **Proposal for Change:** The Commission firmly believes that a consumer of legal services should look to the certifying organization---and not to the imprimatur of the Commission or of this Court---when evaluating whether the advertised specialty is material to the consumer's decision to retain a particular lawyer. Notably, every national certifying organization that the Commission has recognized as one that may certify specialists has also been accredited by the American Bar Association's Standing Committee on Specialization and the House of Delegates. Currently, there are seven (7) organizations that have been accredited by the ABA's House of Delegates to award specialist certifications for lawyers:

- a. American Board of Certification;
- b. American Board of Professional Liability Attorneys;
- c. National Association of Counsel for Children;
- d. National Association of Estate Planners & Councils Estate Law Specialist Board, Inc.;
- e. National Board of Legal Specialty Certification (formerly the National Board of Trial Advocacy);

- f. National College for DUI Defense, Inc.; and
- g. National Elder Law Foundation.

10. In the process of accrediting certifying organizations, the ABA first reviews the organizational capabilities, operational methods and certification standards of each organization. This review is accomplished by persons with special knowledge of the substantive specialty and of the ABA's certification process itself. If appropriate, the ABA's Standing Committee on Specialization recommends accreditation of the organization to the ABA's House of Delegates, which may approve or disapprove the application. The accreditation period is for five (5) years, and each organization must be reaccredited if the organization is to retain its status.

11. It is no accident that, with the exception of Accounting Malpractice---an area that the Commission has never received an application for certification---every approved certification in Tennessee has been issued from an organization accredited and approved by the ABA's House of Delegates. In fact, the Commission has never certified a specialist who had not first received a certification from an organization accredited by the ABA's House of Delegates.

12. Thus, with these organizations, a Tennessee lawyer may obtain specialty certification in the following areas, each one presently available in Tennessee for certification:

- a. Civil Trial, from the Advocacy National Board of Trial Advocacy
- b. Criminal Trial Advocacy, from the National Board of Trial Advocacy
- c. Business Bankruptcy, from the American Board of Certification
- d. Consumer Bankruptcy, from the American Board of Certification
- e. Creditors' Rights, from the American Board of Certification
- f. Legal Professional Liability, from the American Board of Professional Liability Attorneys

- g. Medical Professional Liability, from the American Board of Professional Liability Attorneys
- h. Elder Law, from the National Elder Law Foundation
- i. Estate Planning Law, from the National Association of Estate Planners & Councils Estate Law Specialist Board
- j. Family Law Trial Advocacy, from the National Board of Trial Advocacy
- k. Juvenile Law – Child Welfare, from the National Association of Counsel for Children
- l. DUI Defense Law, from the National College for DUI Defense
- m. Social Security Disability Law, from the National Board of Trial Advocacy

13. In this way, the Commission proposes that Rule 21 be amended to remove the Commission from the process of formally certifying specialists in Tennessee. However, to ensure that those lawyers who seek specialization and hold themselves out as specialists are actually certified by approved organizations, the Commission proposes a mechanism whereby legal specialists register the certification with the Commission. The Commission would then maintain and publish a roll of certified specialists, along with the identity of the certifying organization, so that consumers of legal services can make their own evaluation as to the merits of the certification.

14. Proposed Amendments to Tennessee Supreme Court Rule 21, § 10: Accordingly, the Commission proposes that the Court repeal Section 10 of Rule 21 in its entirety and substitute the following language instead:

Section 10. Identification of Specialists.

10.01. Lawyers licensed to practice law in Tennessee may be certified as being a legal specialist by any organization that has been accredited by the American Bar Association's House of Delegates to award specialist certifications to lawyers.

10.02. Each lawyer who has received a certification as a specialist shall register the certification with the Commission. The Commission shall confirm that the certification presented by the specialist has been issued from an organization that has been accredited by the American Bar Association's House of Delegates to award specialist certifications to lawyers. However, the Commission shall have no authority to certify any lawyer practicing in this State as being a specialist in any area of law.

10.03. Upon confirmation that a lawyer has received a specialist certification from an appropriate certifying organization, the Commission shall record the following information in the form of a Roll of Certified Specialists:

- the lawyer's name;
- the lawyer's Board of Professional Responsibility registration number;
- the state and county in which the lawyer maintains the lawyer's principal office;
- the name, address, and current website of the certifying organization;

- the area or areas of law in which the lawyer has obtained a specialty certification; and
- the date on which the lawyer obtained the specialty certification.

10.04. Each lawyer shall renew the lawyer's registration annually with the Commission, and in so doing, shall represent that the specialty certification remains valid. If a lawyer's certification of specialty has expired, or is withdrawn or revoked for any reason, the lawyer must report such fact to the Commission within fifteen (15) days of the expiration, withdrawal or revocation. If a lawyer fails to renew the specialty certification, or if the lawyer notifies the Commission of the expiration, withdrawal or revocation of a specialty certification, the Commission shall immediately remove the lawyer's information from the Roll of Certified Specialists.

10.05. No lawyer shall at any time represent that the lawyer is a specialist in any area of law without first having a current registration of a valid certification on file with the Commission.

10.06. The Commission shall maintain the Roll of Certified Specialists, taking special care to ensure the accuracy and timeliness of information contained therein. The Commission shall also make the Roll of Certified Specialists available for public inspection and shall publish the Roll from time to time. The Commission may satisfy the obligation to publish the Roll of Certified Specialists by maintaining the Roll on the Commission's website.

10.07. The Commission may establish and collect reasonable fees from lawyers seeking to register, or re-register, any specialty certification to offset the costs of administering the procedures set forth in this Section.

15. Proposed Amendments to Tennessee Supreme Court Rule 8: Similarly, the Commission further proposes to amend Tennessee Supreme Court Rule 8, RPC 7.4(d), which is related to communication of fields of practice and specialization, to provide as follows:

Subject to the requirements of RPCs 7.1, 7.2, and 7.3,

....

(d) A lawyer who has been certified as a specialist in a field of law by an organization accredited by the American Bar Association’s House of Delegates, and who has registered such certification with the Tennessee Commission on Continuing Legal Education, may state that the lawyer “is certified as a specialist in [field of law] by [accredited organization].”

16. The Commission also proposes to amend Comment [3] to RPC 7.4 to read as follows:

[3] Paragraph (d) permits a lawyer to communicate that the lawyer is a specialist or has been certified or recognized as a specialist when the lawyer has been so certified or recognized by an organization accredited by the American Bar Association’s House of Delegates. However, before a lawyer may communicate that the lawyer is a specialist, the lawyer must first register the specialty certification with the Tennessee Commission on Continuing Legal Education in accordance with Tennessee Supreme Court

Rule 21. A lawyer shall not state or imply that the lawyer has received any certification of specialty from the Tennessee Commission on Continuing Legal Education.


17. Finally, the Commission respectfully requests that, if this Honorable Court grants this Petition, the Court amend Tennessee Supreme Court Rule 21, § 1.01 to remove the words “and Specialization” from the Commission’s name, so as to read as follows:

There is hereby established the Tennessee Commission on Continuing Legal Education consisting of 11 members, to be appointed by the Supreme Court of Tennessee. Nine members shall be attorneys who are resident members of the Bar of this State (three of whom shall reside in each of the Grand Divisions of the State) and two shall be non-attorneys.

WHEREFORE, for the foregoing reasons, the Commission petitions this Honorable Court to enter an Order repealing and replacing Tennessee Supreme Court Rule 21, § 10, and by amending Tennessee Supreme Court Rule 8, RPC 7.4, both as set forth herein.

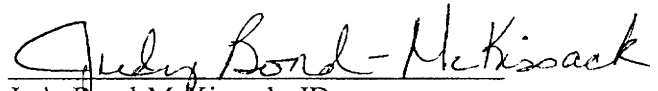
Respectfully Submitted,

**TENNESSEE COMMISSION ON CONTINUING
LEGAL EDUCATION AND SPECIALIZATION**

By: 
*Chairperson, Tennessee Commission on
Continuing Legal Education and Specialization*

CERTIFICATE OF SERVICE

I certify that a photocopy of this Petition was mailed, first class postage paid, to the attached list of individuals and organizations, and was posted on the Commission's web site, www.cletn.com, this 3rd day of January, 2014.



Judy Bond-McKissack, JD

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