

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

**IN RE: PETITION TO AMEND RULE 21,  
RULES OF THE TENNESSEE SUPREME COURT**

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**No. M2005-01292-SC-CLE-RL - Filed July 8, 2005**

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**ORDER**

On June 3, 2005, the Tennessee Commission on Continuing Legal Education and Specialization has petitioned this Court to amend Rule 21 of the Rules of the Supreme Court. The petition and proposed amendments are attached hereto as [Exhibit A](#).

On July 1, 2005, the Tennessee Bar Association filed a motion requesting the Court to publish the proposed amendments for comment. In the interest of providing prompt and fair consideration of the amendments raised in the petition, the Court hereby GRANTS the motion of the Tennessee Bar Association and solicits written comments on the proposed amendments from the bench, the bar, and the public. The deadline for submitting written comments is October 6, 2005. Written comments should be addressed to:

Michael W. Catalano, Clerk  
Re: Rule 21 Housekeeping Amendments  
100 Supreme Court Building  
401 Seventh Avenue North  
Nashville, TN 37219-1407

A copy of any written comments should also be provided to the Commission on Continuing Legal Education and Specialization, 221 Fourth Avenue North, Suite 300, Nashville, TN 37219.

The Clerk shall provide a copy of this order and the petition to the media and to the petitioner. In addition, this order and the petition to amend Rule 21 shall be posted on the Tennessee Supreme Court's website.

It is so ORDERED.

PER CURIAM

**EXHIBIT A**

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

IN RE: AMENDMENTS TO RULE 21      )  
  )      No. \_\_\_\_\_  
  )  
  )

Petition for Amendment of Supreme Court Rule 21

The Tennessee Commission on Continuing Legal Education and Specialization (the “Commission”) hereby petitions the Supreme Court of Tennessee to amend Supreme Court Rule 21 as follows:

- To establish the name of the governing body for MCLE purposes as the “Tennessee Commission on Continuing Legal Education” (dropping “and Specialization”)
  
- To establish the name of the governing body for purposes of certification of specialists as the “Tennessee Board of Legal Specialization”
  
- To delete the requirement of §1.10 to include “an annual financial report reviewed by a Certified Public Accountant.”
  
- To amend §6.02 so as not to require any attorney to sign and return an Annual Report Statement (ARS) if the ARS reflects sufficient hours to meet all requirements and no fee is due.

In support of this Petition, the Commission asserts that adopting separate names for the different roles under the rule will allow the governing body to better distinguish those roles and will assist in meeting the obligation under §10.02 to “enhance the ability of the citizens of Tennessee to identify attorneys with special competence in particular areas of practice” by allowing the use of the widely-recognized phrase “Board Certified” in communications both by the Board and by certified attorneys.

The deletion of the requirement for an annual financial report reviewed by a Certified Public Accountant reflects the operation of the Commission as an agency of the State of Tennessee since July 1, 2001. State agencies are audited under standards established by the Department of Finance and Administration and are not permitted to hire independent accountants.

The recommendation not to require an ARS to be signed and returned is made to reflect the reality that many attorneys wrongly assume when receiving the ARS showing no unfulfilled requirements that they do not need to sign and return it. This is reasonable because attorneys would have already signed and submitted a Certificate of Attendance either to the course sponsor (for in-state courses) or to the Commission (for out-of-state courses), would have received an e-mail confirming the recording of this attendance, might have seen the credits listed on a Progress Report from the Commission mailed in the Fall, and would have been able to view these credits in their personal information area on the Commission's web site, [www.cletn.com](http://www.cletn.com). They would have had the opportunity to note any errors and make any corrections from any of these communications.

In other words, the increased availability of electronic communications coupled with the fact that the overwhelming portion of CLE credits are accurately reported by CLE providers for the attorneys who attend their programs, suggests that it would improve our program to require only those attorneys with a shortage, who need to claim an exemption, or who owe a fee to sign and return an ARS. Further, in view of the fact that failure to return an ARS by March 1 now triggers the \$100 Non-Completion Fee, it is important to make sure that all requirements make a substantial contribution to the reliable functioning of the program. In the Commission's judgment, the requirement that attorneys whose compliance with all requirements sign and return the ARS that shows such compliance does not make such a contribution.

To assist the Court and any entities wishing to comment on this petition, a copy of Rule 21 showing all proposed changes is attached.

Respectfully submitted,  
Tennessee Commission on Continuing  
Legal Education and Specialization

A handwritten signature in cursive script that reads "Jill Steinberg".

Jill Steinberg, Chairperson

Certification of Publication

I certify that a copy of this Petition has been published by mailing to the individuals listed on the attached pages this \_\_\_ day of June, 2005, and will be posted on the Commission's web site, [www.cletn.com](http://www.cletn.com), on or before June 6, 2005.

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David N. Shearon  
Executive Director  
Tennessee Commission on Continuing  
Legal Education and Specialization.

# Rule 21. Rule for Mandatory Continuing Legal Education and Certification of Specialists

Updated ~~December 2, 2002~~ June \_\_ , 2005

## Section 1. Commission on Continuing Legal Education

**1.01** There is hereby established the governing body under this rule ~~Tennessee Commission on Continuing Legal Education and Specialization~~, consisting of 11 members, to be appointed by the ~~Supreme Court of Tennessee. The governing body shall be known as "Tennessee Commission on Continuing Legal Education" for purposes of Sections 1-9 of this Rule and the "Tennessee Board of Legal Specialization" for purposes of Section 10.~~ ~~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. [As amended by order filed July 1, 1993 and June \_\_ , 2005].~~

**1.02** The Commission shall have the following duties:

- (a) To exercise general supervisory authority over the administration of this Rule.
- (b) To adopt regulations consistent with this Rule.
- (c) To monitor developments in the operation of this rule, and to design, promulgate for discussion, test and recommend to this Court modifications to the Continuing Legal Education program in Tennessee as deemed appropriate by the Commission. In furtherance of this particular responsibility, the Commission may, with prior Court approval, from time to time, adopt by regulation, after notice and an opportunity to comment to the bar and CLE providers in Tennessee, new accreditation standards, evaluation programs, and other similar programs for trial periods not to exceed 42 months in duration. [Amended by order filed December 10, 1998.]

**1.03** With the exception of initial appointees, all Commission members shall hold office for three years and, until their successors are appointed, to staggered terms of office. The initial appointees shall serve as follows:

Three members for one year  
Three members for two years  
Three members for three years

One of the initial non-attorney appointees shall serve for one year and the other for two years. [As amended by order entered July 1, 1993.]

**1.04** Any Commission vacancy shall be filled by the Supreme Court to serve until the expiration of the term in which the vacancy occurred. All members shall be eligible for reappointment for no more than one additional term.

**1.05** Officers of the Commission shall consist of the Chairperson, Vice Chairperson, Secretary and Treasurer. The Chairperson shall be appointed by the Supreme Court. Each of the other officers shall be elected by members of the Commission during their first meeting of each calendar year.

**1.06** Meetings of the Commission may be held at any time upon notification by any officer to the entire Commission. Votes may be cast concerning any action before the Commission by registering an affirmative or negative vote during a physical meeting, or by electronic or telephonic means, or mail.

**1.07** A quorum of six members shall be required for any Commission action. A majority of the members in attendance at any Commission meeting having a quorum, but no less than four affirmative votes, shall be necessary to approve any action. [As amended by order filed July 1, 1993.]

**1.08** Members of the Commission shall receive no compensation for their services but may be reimbursed by the Commission for their incidental travel and other expenses in accordance with the allowances approved by the Administrative Office of the Courts. [As amended by order filed February 17, 2000.]

**1.09** The Commission may engage such staff as may be necessary and may delegate to such staff authority to conduct the business of the Commission within the scope of this Rule, subject at all times, however, to continual review by the Commission.

**1.10** The Commission shall submit an annual report to the Supreme Court, which will include the number of attorneys who have complied with this Rule, the number of attorneys who have filed Annual Report Statements but who have not completed the CLE requirements of this Rule, the number of attorneys who have not filed an Annual Report Statement ~~and an annual financial report reviewed by a Certified Public Accountant.~~ [As amended by Order filed June \_\_, 2005.]

**1.11** Communications to the Commission, any subcommittee thereof, or to the Commission's staff relating to the failure of any lawyer to comply with this rule, or of any fraud upon the Commission shall be absolutely privileged, and no civil suit predicated thereon may be instituted against any complainant or a witness. Members of the Commission and its staff shall be immune from civil suit for any conduct in the course of their official duties. [Adopted June 22, 1988.]

## **Section 2. Scope and Exemptions**

**2.01** This Rule shall apply to every person whose qualifications to practice law are subject to the Rules of Professional Conduct of the Supreme Court of Tennessee. The exemptions contained herein shall apply only to the mandatory continuing legal education requirements of this Rule. [As amended by order filed July 1, 1993.] [Amended by order filed August 27, 2002.]

**2.02** Nonresident attorneys from other jurisdictions who are temporarily admitted to practice for a case or proceeding shall not be subject to this Rule.

**2.03** Members of the Armed Forces on active duty shall not be subject to this Rule.

**2.04** (a) An attorney shall be exempt from the requirements of the Rule after age sixty-five (65) upon filing a request with the Commission. This exemption shall not include the calendar year in which he or she becomes sixty-five (65) years of age.

(b) An attorney who is licensed to practice law in Tennessee but who resides outside of the State and does not practice law in Tennessee may petition the Commission for Exceptional Relief of this Rule, as described below.

(c) An attorney may petition the Commission for an "Exceptional Relief?" from this Rule, and may be granted Exceptional Relief upon majority vote of the Commission. An attorney applying for Exceptional Relief, including appropriate waivers, extensions of time, hardship and extenuating circumstances, shall file with the Commission a brief showing cause why that individual should be considered for Exceptional Relief. [As amended by order entered June 22, 1988.]

**2.05** An attorney may receive 12 hours of general continuing legal education credit, and three hours of ethics and professionalism credit, for passing the bar examination of any state, any examination required by a certification program approved under this Rule, or the examination for admission to practice before the United States Patent and Trademark Office. In addition, an attorney may receive three hours of ethics and professionalism credit for passing either the ethics portion of a bar examination of any state

or the Multi-state Professional Responsibility Examination. The maximum to be earned by passing any and all bar examinations in a given year is 12 hours of general credit and 3 hours of ethics/professionalism credit. [Amended by order filed December 10, 1998.]

**2.06** An attorney holding an elective office in the Executive or Legislative branches of government who is prohibited by law from practicing law is exempt while holding such office.

**2.07** All Justices, Judges and Magistrates of the federal system shall be exempt from the requirements of this Rule in view of their required comparable continuing legal education programs.

### **Section 3. Continuing Legal Education Requirement**

**3.01** Each attorney admitted to practice law in the State of Tennessee shall attend, or complete an approved substitute for attendance, a minimum of twelve (12) actual hours of approved continuing legal education each calendar year, beginning January 1, 1987. In addition, beginning January 1, 1993, attorneys shall complete three (3) additional hours per year of approved continuing education in courses dealing with ethics and professionalism ("EP credits"). All hours of continuing legal education for each calendar year shall be earned by December 31 of that calendar year.[As amended by order filed April 7, 1992 & order filed March 21, 2002.]

**3.02** Attorneys who have a permanent physical disability which makes attendance of CLE programs inordinately difficult may file a request for a substitute program in lieu of attendance and shall therein set out continuing legal education plans tailored to their specific interests and physical abilities. The Commission shall review and approve or disapprove such plans on an individual basis. Denial of any requested substitute for attendance will be accompanied by reasons for the denial of the application and suggestions how the attorney might improve his or her application for an approved substitute for attendance.

**3.03** Each attorney must actually attend fifteen (15) instructional hours of CLE per year. An instructional hour shall be determined by the Commission.

### **Section 4. Continuing Legal Education Credits**

**4.01** Credit shall be given only for continuing legal education activities approved by the Commission.

**4.02** Hours of credit in excess of the minimum annual requirement may be carried forward for credit in the succeeding calendar year, but only for the succeeding calendar year. EP credits in excess of the annual requirement will, to a maximum of three (3) hours, be carried forward to the subsequent year's EP requirement, but will not be used to satisfy any deficiency in the twelve (12) hour general requirement. Such hours must, however, be reported and paid for when the Annual Report Statement for the year in which the hours were earned is filed. [As amended by orders filed June 22, 1988 and April 7, 1992.]

**4.03** Credit may be earned through teaching in an approved continuing legal education activity. Presentations accompanied by thorough, high quality, readable and carefully prepared written materials will qualify for CLE credit on the basis of four (4) hours of credit for each hour of presentation. Presentations accompanied by less than five pages of outlines, or not accompanied by written materials, will qualify for CLE credit on the basis of two (2) credits per hour of presentation. Repeat presentations qualify for one-half of the credits awarded for the initial presentation.

Credit may also be earned through teaching in an approved law school, or teaching law-related courses at the undergraduate or graduate level in an approved college or university. The Commission will award four (4) hours of CLE credit for each hour of academic credit awarded by the law school for the course taught. [As amended by order filed December 10, 1998.]

**4.04** Credit may be earned through formal enrollment and education of a postgraduate nature, either for credit or by audit, in an approved law school. The Commission will award one (1) credit hour for each hours of class attendance.

**4.05** Credit may be earned through service as a bar examiner in Tennessee or in any of the sister states. The Commission will award twelve (12) hours of general CLE credit and three (3) hours of EP credit annually for the preparation and grading of one or more bar examination questions during a given year.

**4.06** The Commission will award three (3) hours of EP credit annually for service on the Board of Professional Responsibility or any of its hearing committees.

**4.07** The Commission may, in its discretion, award:

- (a) Up to one-half of the annual requirement to attorneys for participation as members of governmental commissions, committees, or other governmental bodies, at either the state or national level, involved in formal sessions for review of proposed legislation, rules or regulations,
- (b) Up to the full annual requirement for writing articles concerning substantive law, the practice of law, or the ethical and professional responsibilities of attorneys if the articles are published in approved publications intended primarily for attorneys; credit shall not be awarded to a named author when the actual principal authority was another person acting under the direction or supervision of the named author. In requesting credit under this subsection, the attorney shall provide the Commission with an affidavit stating the facts of authorship.
- (c) Ethics and professionalism credit at the rate of one hour of credit for every eight billable hours of pro bono legal representation provided through court appointment, an organized bar association program or legal services organization, or of pro bono mediation services as required by Tennessee Supreme Court Rule 31 or the Federal Court Mediation Programs established by the United States District courts in Tennessee. [Amended by order filed December 10, 1998.]

**4.08** A maximum of six (6) hours of credit per year earned in a distance learning format approved by the Commission pursuant to section 5.01(f) may be applied to the annual requirements. [Added by order effective January 7, 2000.]

## **Section 5. Continuing Legal Education Providers**

**5.01** The Following standards will govern the approval by the Commission of continuing legal education activities.

- (a) The activity must have significant intellectual or practical content and its primary objective must be to enhance the participant's professional competence as an attorney.
- (b) The activity must deal primarily with matters related to substantive law, the practice of law, professional responsibility or ethical obligations of attorneys.
- (c) The activity must be offered by a provider having substantial recent experience in offering continuing legal education or demonstrated ability to organize and present effectively continuing legal education. Demonstrated ability arises partly from the extent to which individuals with legal training or educational experience are involved in the planning, instruction and supervision of the activity.
- (d) The activity itself must be conducted by an individual or group qualified by practical or academic legal experience. The program, including the named advertised instructors, must be conducted substantially as planned, subject to emergency withdrawals and alterations.
- (e) Thorough, high quality, readable, and carefully prepared written materials must be made available to all participants at or before the time the course is presented, unless the absence of such materials is recognized as reasonable and approved by the Commission. A mere outline without citations or explanatory notations will not be sufficient.
- (f) The activity must be conducted in a comfortable physical setting, which is conducive to learning or in a



distance learning format approved by the Commission.

(g) No activity consisting solely of the viewing or hearing of pre-recorded material may be awarded credit.

(h) Activities that cross academic lines, such as accounting-tax seminars, may be considered for approval. [Amended by order effective January 7, 2000.]

**5.02** Continuing legal education activities of worthy providers may be presumptively approved by the Commission, provided such provider demonstrates to the Commission that the provider has, over a substantial period of time, conducted CLE activities meeting the standards for approval.

**5.03** Each provider approved for credit will be held responsible for including ethics education in its overall annual program.

**5.04** The Commission may at any time re-evaluate a program and revoke specific approval of any particular seminar or presumptive approval of a provider.

**5.05** Any provider (not presumptively approved) desiring to advertise Commission approval of a course, program, or other activity, may submit application for such permission and supporting documentation on forms provided by the Commission at least forty-five (45) days prior to the date on which the course or program is scheduled. Documentation shall include a statement of the provider's intention to comply with the accreditation standards of this Rule, copies of programs and written materials distributed to participants at the two most recently produced programs, if available, or an outline of the proposed program and list of instructors if the provider has not produced previous programs, and such further information as the Commission shall request. The staff of the Commission will advise the provider whether the activity is approved or disapproved in writing by mail within thirty (30) days of the receipt of the completed application.

Providers denied approval of a program or activity may appeal such a decision by submitting a letter of appeal to the Commission Chair within fifteen (15) days of the receipt of the notice of disapproval and the Commission shall consider the appeal within thirty (30) days of the receipt of the appeal, whereupon the decision of the Commission shall be promptly delivered to the provider.

Any provider or Tennessee attorney who has attended a CLE activity not approved in advance by the Commission may submit to the Commission similar material on forms provided by the Commission and receive approval of a program after the program is conducted.

**5.06** The provider of a continuing legal education activity approved in advance or a presumptively approved provider may advertise or indicate approval of an activity as follows: "This course has been approved by the Tennessee Commission on Continuing Legal Education for a maximum of \_\_\_\_\_ hours of credit."

## **Section 6. Annual Report**

**6.01** On or before January 31 of each year, the Commission shall prepare and mail an Annual Report Statement to each attorney covered by this Rule requesting information concerning the attorney's compliance with Section 3 of this Rule in the preceding calendar year. The Annual Report Statement shall be mailed to the attorney's address as shown in the most recent registration statement filed by the attorney pursuant to Supreme Court Rule 9, Section 20.5, or to the attorney's last known address. [As amended by order filed March, 21 2002.]

**6.02** On or before March 1, each attorney whose Annual Report statement shows a shortage of hours or a fee due, or who needs to claim an exemption, or whose Annual Report Statement is inaccurate shall complete the Annual Report Statement with all additions or corrections and documentation thereof acceptable to the Commission, include any fee due, ~~indicating his or her completion of, exemption from, or approved substitute for accredited continuing legal education during the preceding calendar year,~~ and deliver the completed Annual Report Statement to the Commission.

The completed Annual Report Statement shall disclose all CLE hours earned during the preceding calendar year, including any hours to be carried forward to the following year. [As amended by order filed March, 21 2002 and June \_\_ , 2005.]

**6.03** The files and records of the Commission are deemed confidential and shall not be disclosed except in furtherance of the duties of the Commission; statistical abstracts may, however, be drawn therefrom in an anonymous fashion.

## **Section 7. Noncompliance and Sanctions**

**7.01** By March 31 of each year, the Commission shall compile:

- (a) A list of those attorneys who did not timely file an Annual Report Statement for the preceding calendar year; and
- (b) A list of those attorneys who timely filed an Annual Report Statement indicating lack of compliance with the requirements of Section 3 of this Rule for the preceding calendar year; and
- (c) A list of those attorneys who timely filed an Annual Report Statement indicating compliance with the requirements of Section 3 of this Rule for the preceding calendar year but who did not pay any and all fees due under Section 8.03 of this Rule.

**7.02** On March 31 of each year, the Commission shall serve each attorney listed on any of the three foregoing lists a Notice of Non-completion requiring the attorney to remedy his/her deficiencies on or before May 31 of that year. The notice shall be served upon the attorney by registered or certified mail, return receipt requested, at the address shown in the most recent registration statement filed by the attorney pursuant to Supreme Court Rule 9, Section 20.5 or other last known address.

**7.03** Each attorney to whom a Notice of Non-completion is issued shall pay to the Commission a non-completion fee of One Hundred Dollars (\$100.00). Such non-completion fee shall be paid on or before May 31 of that year unless the attorney shows to the satisfaction of the Executive Director of the Commission that the Notice of Non-completion was erroneously issued, in which case no such fee is due.

**7.04** Each attorney to whom a Notice of Non-completion is issued shall file an affidavit with the Commission on or before May 31 of that year showing that he or she has remedied his/her deficiencies. In the event an attorney fails to timely remedy his/her deficiencies or fails to timely file such affidavit, the attorney shall pay to the Commission, in addition to the non-completion fee, a delinquent compliance fee of Two Hundred Dollars (\$200.00).

**7.05** On July 1 of each year, the Commission shall prepare a draft Suspension Order listing all attorneys who were issued Notices of Non-completion and who failed to remedy their deficiencies by May 31. The Commission shall submit the draft Suspension Order to the Supreme Court for informational purposes. The Commission also shall mail a copy of the draft Suspension Order to each attorney named in the draft Order by registered or certified mail, return receipt requested, to the address shown in the most recent registration statement filed by the attorney pursuant to Supreme Court Rule 9, Section 20.5 or other last known address.

**7.06** On or before August 10, each attorney listed in the draft Suspension Order may file an affidavit in a form acceptable to the Commission showing compliance with Section 3 of this Rule for the preceding calendar year. Upon the Commission's approval of such affidavit and upon the attorney's payment of all outstanding fees, the Commission shall remove the attorney's name from the list of potential suspensions contained in the draft Suspension Order.

**7.07** On August 15, the Commission shall submit to the Supreme Court a final Suspension Order listing all attorneys with active Tennessee law licenses who failed to comply with this Rule for the preceding calendar year. Also on August 15, the Commission shall notify the Board of Professional Responsibility of the names of all licensed attorneys who have retired, taken inactive status, been

suspended, or whose license to practice law in this state is otherwise inactive, and who failed to comply with the requirements of this Rule. The Supreme Court will review the final Suspension Order and, upon the Court's approval, shall enter the Suspension Order suspending the law license of each attorney listed in the order. The Board of Professional Responsibility shall not reactivate the license of any attorney whose license is suspended pursuant to this Rule until the Commission certifies completion of a program of remedial continuing legal education satisfactory to the Commission.

**7.08** Each attorney named in the final Suspension Order entered by the Court or whose name is submitted to the Board of Professional Responsibility as ineligible for reactivation for failure to meet the requirements of this rule shall pay to the Commission a Five Hundred Dollar (\$500) Suspension Fee as a condition of reinstatement of his or her law license. The suspension fee shall be paid in addition to the non-completion fee and the delinquent compliance fee.

**7.09** Payment of all fees imposed in this section shall be a requirement for compliance with this Rule.

**7.10** An attorney suspended or made ineligible for reactivation by the Commission pursuant to this Rule may file with the Commission an application for reinstatement demonstrating compliance with Section 3 of this Rule. If the application is satisfactory to the Commission, if the attorney is otherwise eligible for reinstatement, and if the attorney has paid in full all fees due under this Rule, the Commission will recommend to the Supreme Court that the Court reinstate the attorney's law license.

**7.11** An attorney may request a hearing before the Commission in regard to a recommendation of suspension or a recommendation against reinstatement. Additionally, any attorney not finding suitable relief before the Commission may petition the Supreme Court for modification or reversal of actions of the Commission.

These amendments shall apply to continuing legal education requirements for the 2002 calendar year (which will be reported in 2003) and for subsequent years. These amendments shall not be applied to continuing legal education requirements for the year 2001 (currently being reported) or for previous years.

## **Section 8. Financing**

**8.01** The Commission shall be adequately funded to enable it to perform its duties in a financially independent and responsible manner. For the first year that this Rule is in effect, however, it is expected that Petitioner Tennessee Bar Association, and perhaps the Tennessee Bar Foundation, upon financial arrangements suitable to the Commission, will furnish housing, fiscal and planning assistance and other management details for the program set forth in this Rule.

**8.02** Information contained in the report required by this section, or by section 5.05, or any Commission requirement under this Rule, or obtained by the Commission through analysis or comparison of such reports or information shall be deemed confidential and shall not be disclosed by the Commission to any party other than the sponsor providing the original information. This requirement of confidentiality extends but is not limited to information or analyses based on number of attendees, hours of credit earned, and evaluations of programs. Statistical information not identifying particular sponsors may be disclosed by the Commission in its discretion. [As amended by order filed April 7, 1992.]

**8.03** Attorneys attending approved out of state CLE programs shall be responsible for remitting their individual fees at the rate of \$1.25 per approved credit hour. This fee shall be paid at the time of, and along with, the Annual Report Statement.

**8.04** The Commission will review the level of the fees at least annually and adjust the levels as necessary to maintain adequate finances for prudent operation of the Commission.

**8.05** The Commission shall deposit all funds collected hereunder with the State Treasurer; all such funds including earnings on investments and all interest and proceeds from said funds, if any, are deemed to be, and shall be designated as, funds belonging solely to the Commission. Withdrawals from those funds shall only be made by the Commission for the purposes set forth in this rule, and for such other purposes as this Court may from time to time authorize or direct. [Amended by order filed June 28, 2002.]

### **Section 9. Effective Dates of the Rule**

**9.01** The establishment of the foregoing program for Mandatory Continuing Legal Education for Tennessee attorneys shall be effective beginning with the calendar year 1987 and shall continue until such time as the Supreme Court shall determine that its program is no longer in keeping with the Court's responsibility to the legal profession in Tennessee and the public which it serves. [As amended by orders filed October 5, 1988 and October 29, 1991.]

### **Section 10. Certification of Specialists**

**10.01** The ~~Commission~~ Tennessee Board of Legal Specialization is authorized to establish programs to certify as specialists attorneys practicing in this state in such areas of practice as the ~~Commission Board~~ may deem appropriate. [As amended by Order filed June \_\_, 2005.]

**10.02** The ~~Commission~~ Board shall implement this program in a manner which will:

- (a) Best enhance the ability of the citizens of Tennessee to identify attorneys with special competence in particular areas of practice;
- (b) Minimize the administrative costs associated with this program by contracting with private agencies to perform any or all portions of a certification procedure for particular specialties subject to standards established by the ~~Commission~~ Board;
- (c) Insure that the administrative costs of this program are covered by fees assessed to Tennessee attorneys applying for certification as specialists, or certified or recertified as specialists, or from annual fees assessed specialists, or from fees generated under section 8.02 of this Rule from credits earned by certified specialists in excess of the minimum requirements of this Rule. [As amended by Order filed June \_\_, 2005.]

**10.03** At a minimum, any certification standards established by the ~~Commission~~ Board must provide a reasonable basis for the determination that the lawyer possesses special competence in a particular field of law, as demonstrated by the following means:

- (a) Experience: Experience may be established either by a showing by the lawyer that he or she has completed a list of specific tasks, or that he or she has spent at least 25% of his or her practice in the specialty area during the preceding three years.
- (b) Knowledge: Knowledge of the specialty area shall be established by a written or oral examination, a portion of which must be devoted to professional responsibility and ethics as it relates to the specialty.
- (c) Practice Management: Any certification standard established by the ~~Commission~~ Board must include a self-evaluation checklist for completion by the attorney to ascertain that he or she has and maintains appropriate substantive law systems, office procedures, staff training programs, and accounting controls to assist in meeting the client's substantive legal needs, communicating adequately with the client concerning his or her legal matters, and appropriately receiving, holding, disbursing, and accounting for funds received from clients in accordance with all applicable disciplinary rules. The appropriate checklist for each specialty certification must be filed by each certified specialist with the ~~Commission Board~~ annually.
- (d) Quality Review: Any certification program approved by the ~~Commission~~ Board must include a provision for investigation of references from attorneys or judges, and clients concerning the knowledge, skills, ethics, diligence and client relations of the attorney seeking certification and (with a release from

the applicant) the history of ethical complaints and disciplinary actions about the applicant with the Board of Professional Responsibility. In no event shall any certification program require that references be obtained from specialists certified by that program.

(e) Continuing Expertise: Recertification based on standards approved by the ~~Commission~~ Board shall be required at least every six years.

(f) Malpractice Insurance: Any specialist certified under this rule must annually file with the ~~Commission~~ Board proof of the existence of adequate malpractice insurance coverage, unless the specialist is practicing exclusively as an employee of a governmental agency or agencies. [As amended by Order filed June \_\_, 2005.]

**10.04** Prior to implementation of any certification program, the ~~Commission~~ Board shall file with the Supreme Court and publish to the attorneys of Tennessee the complete certification standards proposed for that program. For 90 days after such publication, any person or entity desiring to do so may file comments on the proposed certification program with the Supreme Court and a copy with the ~~Commission~~ Board. The proposed certification program shall be effective upon entry by the Supreme Court of an Order approving the program either as submitted by the ~~Commission~~ Board or with any modifications set forth in the Order. [As amended by Order filed June \_\_, 2005.]

**10.05** Nothing in this plan shall in any way limit the right of any lawyer to practice in any field of law.

**10.06** For any certification program established by the ~~Commission~~ Board, the ~~Commission~~ Board shall specifically consider whether the program contains adequate safeguards to prevent cultural biases in examinations or other matters from unfairly preventing or inhibiting minority or women attorneys from becoming certified. Such safeguards may include, but are not limited to, a policy of including minority and women attorneys in decision-making groups designing and grading examinations, reviewing references, and other similar matters by any private agency performing any portion of a certification procedure. [As amended by Order filed June \_\_, 2005.]

**10.07** The ~~Commission~~ Board may establish and collect reasonable fees from attorneys applying for certification or recertification, and annual fees from certified specialists. [As amended by Order filed June \_\_, 2005.]

**10.08** The ~~Commission~~ Board shall approve or deny applications for certification and recertification. The ~~Commission~~ Board in the exercise of its discretion to approve or deny such application shall consider the requirements of this Rule, the certification standards approved by this Court, and any history of disciplinary complaints. The ~~Commission~~ Board shall revoke the certification of any attorney whose qualifications and disciplinary record no longer meet the requirements of this Rule and any applicable certification standards. [As amended by Order filed June \_\_, 2005.]