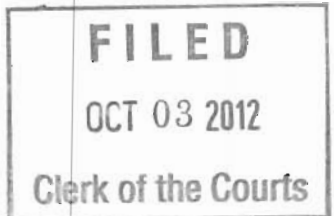


IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE



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

No. M2010-00913-SC-RL1-RL - Filed: October 3, 2012

ORDER

In April 2010, the Tennessee Commission on Continuing Legal Education and Specialization (“Commission”) filed a petition asking the Court to amend Rule 21, Section 4.07 to authorize the Commission to award continuing legal education credits to lawyers participating as a mentor or mentee in a mentoring program meeting the standards that would be established by the Commission. An appendix to the petition set out the Commission’s proposed regulations that would govern the awarding of CLE credits for participating in mentoring programs.

On May 17, 2010, the Court published the Commission’s proposed amendment to Rule 21, Section 4.07 and solicited public comments on the proposal. The Court received a number of written comments from various bar organizations and other interested parties. The Commission thereafter filed a written response to the public comments and also filed revisions to the Commission’s proposed regulations; the revised proposed regulations included a number of changes made in light of comments received during the public-comment period. Several bar organizations then filed supplemental comments in light of the Commission’s revised proposals, and the Commission then filed a written response to the supplemental comments.

After the filing of the supplemental comments and the Commission’s response thereto, the Commission engaged a consultant “to develop a market research driven model mentoring plan for beginning lawyers.” The Commission then invited representatives of various bar associations and other legal organizations to participate in the Commission’s discussion of the consultant’s proposed model plan. Considering suggestions made to the Commission by the various bar representatives, the Commission subsequently drafted a revised set of proposed regulations.

On August 27, 2012, the Commission filed a motion asking the Court to rule on the Commission’s previously filed petition. The Commission attached to its motion the

Commission's "Final Draft Regulations" that would govern the award of CLE credits for participation in approved mentoring programs.

The Court has made no decision as to whether to adopt the Commission's mentoring-program proposal, but in reviewing the Commission's Final Draft Regulations, the Court discussed two issues concerning the regulations: (1) whether the maximum number of credit hours that can be awarded for participating in a mentoring program should be reduced from eight (8) to six (6) hours; and (2) whether participation in a law firm's, governmental agency's, or corporate law department's "in house" mentoring program should be eligible for an award of CLE credit under the regulations. Solely for the purpose of soliciting public comments concerning those two issues, the Court has modified the Commission's Final Draft Regulations to address the issues.

The Court hereby solicits written comments on the Commission's proposed amendment to Tenn. Sup. Ct. R. 21, § 4.07 and the Commission's Final Draft Regulations, as modified by the Court for discussion purposes, from the bench, the bar, and the public. The Commission's proposed amendment to Tenn. Sup. Ct. R. 21, § 4.07 and the Commission's Final Draft Regulations, as modified, are set out in the Appendix to this order. The deadline for submitting written comments is January 2, 2013. Written comments should be addressed to

Michael W. Catalano, Clerk
Re: Proposed Amended Rule 21, Section 4.07
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

and should reference the docket number set out above.

The Clerk shall provide a copy of this order to the Commission on Continuing Legal Education and Specialization, which shall promptly disseminate copies of this order to the persons and organizations set out in the List of Individuals and Organizations Receiving Notice of the Foregoing by Mail, which was appended to the Commission's Petition. The Clerk also shall provide a copy of this order to LexisNexis and to Thomson Reuters. This order, including the Appendix, shall be posted on the Court's website.

It is so ORDERED.

PER CURIAM

APPENDIX

1 As proposed in its original petition, the Commission asks the Court to amend Tenn.
2 Sup. Ct. R. 21, § 4.07 by adding the following new subsection (d):

3 The Commission may, in its discretion, award:

4 * * * *

5 (d) up to 12 hours per year of dual credit for participation
6 as a mentor or mentee in a program meeting standards
7 established by the Commission, including programs sponsored
8 by bar associations, law schools, law firms, or other appropriate
9 governmental or organizational sponsors. To help facilitate
10 establishment of mentoring programs, the Commission is
11 authorized to provide for a program of training for mentors,
12 whether through its own auspices or through those of other
13 organizations, and to charge a reasonable fee for such training.
14 With regard to mentors participating in a mentoring program
15 sponsored by a governmental or non-profit organization, the
16 Commission is authorized to provide such training at no charge.

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18 The Commission also asks the Court to approve the Commission’s adoption of the
19 following “Final Draft Regulations” (as modified by the Court for discussion purposes):

20 **5K. Mentoring Programs**

21 The Commission will accredit participation in approved Mentoring Programs
22 (“Approved Mentoring Program” or “Approved Law School Mentoring Programs”) operated
23 by bar associations, governmental agencies, corporate law departments, law schools, or law
24 firms (“Sponsoring Organization” or “Law School Sponsor”) in accordance with the
25 provisions of this section.

26 1. Approved Mentors:

27 a. Mentors eligible to participate in an Approved Mentoring Program shall have
28 a current certification from the Supreme Court of Tennessee as an “Approved Mentor.”

29 b. The Commission will recommend to the Supreme Court of Tennessee that any
30 attorney or judge receive a seven-year certification as an Approved Mentor, if the attorney
31 or judge:

32 1. is currently licensed to practice law in Tennessee;
33 is in good standing with the Supreme Court; and, for the
34 previous five (5) years, has been licensed to practice law in
35 Tennessee, in another state, or in the District of Columbia;

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37 2. has not been suspended or disbarred from the
38 practice of law in any jurisdiction;

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40 3. has not been subject to any lesser disciplinary
41 action, including any public or private reprimands, within the
42 last ten (10) years by any attorney or judicial disciplinary agency
43 in any state or by any federal or state court; and

44 4. has completed initial or recertification mentor
45 training as provided in § 2.a or § 2.c within the previous seven
46 (7) calendar years.

47 c. Mentors eligible to participate in an Approved Law School Mentoring Program
48 shall have a current certification from the Supreme Court of Tennessee as an “Approved Law
49 School Mentor.”

50 d. The Commission will recommend to the Supreme Court of Tennessee that any
51 attorney or judge receive a seven-year certification as an Approved Law School Mentor, if
52 the attorney or judge:

53 1. is currently licensed to practice law in Tennessee;
54 is in good standing with the Supreme Court; and, for the
55 previous three (3) years, has been licensed to practice law in
56 Tennessee, in another state, or in the District of Columbia;

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58 2. has not been suspended or disbarred from the
59 practice of law in any jurisdiction;

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61 3. has not been subject to any lesser disciplinary
62 action, including any public or private reprimands, within the
63 last ten (10) years by any attorney or judicial disciplinary agency
64 in any state or by any federal or state court; and
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66 4. has completed initial or recertification mentor
67 training as provided in § 2.a, § 2.b or § 2.c within the previous
68 seven (7) calendar years.

69 2. Approved Mentor Training:

70 a. Initial Training for Approved Mentors: The Commission will conduct initial
71 mentor training annually in each grand division of the state if at least ten (10) participants
72 preregister for such training. The Commission may also certify initial mentoring training
73 programs developed and conducted by bar associations, law schools, or other providers.

74 b. Initial Training for Approved Law School Mentors: The Commission will
75 certify initial mentoring training programs developed and conducted by law schools so long
76 as the training developed and conducted by the law schools is conducted at least annually and
77 is designed to effectively inform and educate prospective law school mentors on the contents
78 of §§ 7, 8 and 9 below. Prospective Approved Law School Mentors may also attend the
79 Initial Training conducted by the Commission as described in § 2.a. above.

80 c. Recertification Training: Starting seven (7) calendar years after the first year
81 in which initial mentor training is conducted, the Commission will conduct recertification
82 mentor training in each grand division of the state if at least ten (10) participants pre-register
83 for such training. The Commission may also certify recertification training programs
84 developed and conducted by bar associations, law schools, or other providers.

85 3. Eligible Beginning Lawyer Participants:

86 a. For purposes of accreditation, any lawyer admitted to practice in Tennessee is
87 eligible to participate in an Approved Mentoring Program as a “beginning lawyer,” if the
88 beginning lawyer:

89 1. actually practices law in Tennessee or intends to
90 practice law in Tennessee;

91 2. is in the first three (3) years of his or her practice
92 as a lawyer following graduation from law school, the
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94 participation in a judicial clerkship, or the active practice of law
95 in another state;

96 3. has graduated from law school no more than five
97 (5) years prior to participating in an Approved Mentoring
98 Program; and

99 4. has not previously received full credit for
100 participating in an Approved Mentoring Program.

101 b. The Commission may approve an attorney for participation in an Approved
102 Mentoring Program, notwithstanding the fact that the attorney does not meet one or more of
103 the criteria set forth in this section, if such participation is recommended by the Tennessee
104 Board of Professional Responsibility or by the Tennessee Lawyers Assistance Program.

105 4. Approved Mentoring Programs: The Commission intends that Sponsoring
106 Organizations have flexibility to develop and design an overall Mentoring Program that
107 meets the basic needs and objectives that the Sponsoring Organization views as being
108 important. However, the Commission will not approve a Mentoring Program designed to
109 provide mentoring between an Approved Mentor and a beginning lawyer who are both
110 affiliated with the same law firm, governmental agency, or corporate law department. ~~the~~ The
111 structure of any Approved Mentoring Program shall contain the following basic elements,
112 in addition to any other elements developed or required by the Sponsoring Organization:

113 a. A statement of the goals and objectives to be accomplished by the Mentoring
114 Program, identifying the core purposes sought to be advanced by the Sponsoring
115 Organization;

116 b. A developed program in all areas of content required or recommended by the
117 Sponsoring Organization, including any elective topics and those suggested for inclusion in
118 § 5.a. below;

119 c. Provisions permitting beginning lawyers to change mentors to a second
120 Approved Mentor at least once during the course of the mentoring program due to the
121 Approved Mentor or beginning lawyer leaving a firm or other practice setting, the breakdown
122 of the mentoring relationship, or other similar reasons;

123 d. ~~If~~ Because the Approved Mentor and beginning lawyer are not permitted to be
124 affiliated with the same law firm, governmental agency, or corporate law department,

125 1. provisions prohibiting the discussion of specific
126 legal matters during the completion of the Mentoring Plan and
127 protecting against the risk of inadvertent disclosure of client or
128 confidential information;

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130 2. provisions making clear that no attorney-client
131 relationship is established by the Mentoring Program and that
132 communications between the Approved Mentor and beginning
133 lawyer are not confidential; and

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135 3. provisions designed to identify and prevent
136 present and prospective conflicts of interest;

137 e. Provisions prohibiting romantic or business relationships between the
138 Approved Mentor and beginning lawyer during the period of the mentoring relationship;

139 f. Provisions limiting an Approved Mentor from working with more than two (2)
140 beginning lawyers during the course of any calendar year;

141 g. A final certification by both the Approved Mentor and the beginning lawyer
142 upon completion of the Mentoring Plan that all program criteria have been completed; and

143 h. The designation of at least one (1) person within each Sponsoring Organization
144 to be responsible for overseeing the ongoing operations of the Mentoring Program and to
145 serve as a point of contact with the Commission.

146 5. Mentoring Plans: For purposes of accrediting the Approved Mentoring Program,
147 the Sponsoring Organization shall assist the Approved Mentor and the beginning lawyer to
148 develop a Mentoring Plan designed to include core topics, as well as skills, activities, and
149 experiences important for lawyers. These experiences and activities should be designed as
150 learning activities for the beginning lawyer and should serve as a source of discussion
151 between the Approved Mentor and beginning lawyer. The Sponsoring Organization may
152 allow the activities and experiences to consist of the use of video conferencing and other
153 technology to facilitate the interaction between the Approved Mentor and the beginning
154 lawyer. The method chosen by the Sponsoring Organization to assist the Approved Mentor
155 and the beginning lawyer to develop a Mentoring Plan shall be approved for use by the
156 Commission, and shall be set forth in the Mentoring Program.

157 a. Substantive Content of Mentoring Plans: A Sponsoring Organization shall
158 include such topics in its Mentoring Plan as it believes will best accomplish the purposes and

159 objectives of its Mentoring Program, and the Sponsoring Organization shall develop
160 appropriate activities and materials designed to facilitate meaningful interaction and learning
161 in the identified areas. By way of example, Sponsoring Organizations may select topics
162 focused on substantive law topics, skill development, career development, and personal and
163 adaptive behaviors. In addition to any elective topics designated by the Sponsoring
164 Organization, Sponsoring Organizations are strongly encouraged to consider providing for
165 a core topic list common to all Mentoring Plans developed by the Sponsoring Organization,
166 including the following areas:

- 167 1. Professionalism and legal ethics;
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- 169 2. Civic, charitable, and pro bono activities;
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- 171 3. Client communication, advocacy, and negotiation;
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- 173 4. Practice management;
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- 175 5. Professional development, including work with
176 the legal community, bar associations, and court activities;
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- 178 6. Leadership training;
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- 180 7. Career paths and work/life balance issues; and
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- 182 8. Sources of well-being and causes of mental-health
183 and substance abuse issues for attorneys, including identification
184 of available support networks and resources.

185 Sponsoring Organizations need not require devotion of identical time to all topics
186 contained in the Mentoring Plan, and the Sponsoring Organization may allocate time between
187 the substantive content areas as shall best accomplish the objectives of the Approved
188 Mentoring Program.

189 b. Length of Mentoring Plans: The Commission may accredit Approved
190 Mentoring Programs whose Mentoring Plans operate for a minimum period of six (6) months
191 and a maximum period of one (1) year. In all Approved Mentoring Programs, the Mentoring
192 Plan must provide for a minimum number of meetings between the Approved Mentor and
193 beginning lawyer, whether such meetings are conducted in-person, by video conference, or
194 otherwise.

195 6. Mentoring Program Evaluation: For purposes of accreditation, all Approved
196 Mentoring Programs shall contain provisions by which both the Approved Mentor and
197 beginning lawyer can evaluate the quality and effectiveness of the Mentoring Plan at the
198 conclusion of the Mentoring Plan. In addition to any evaluation performed by the Sponsoring
199 Organization, the Commission shall require that the beginning lawyer also complete an
200 online Standardized Program Evaluation Form.

201 7. Approved Law School Mentoring Programs: The Commission intends that the Law
202 School Mentoring Organization have flexibility to develop and design an overall Law School
203 Mentoring Program that meets the basic needs and objectives that the Law School Mentoring
204 Organization views as being important. The Commission may approve Approved Mentors
205 to receive CLE Credit for participation in a law school mentoring program (“Approved Law
206 School Mentoring Program”) as set forth below; provided that the mentoring program has
207 been established by a law school in Tennessee that has been approved by the Board of Law
208 Examiners pursuant to Tennessee Supreme Court Rule 7, § 2.03 (“Law School Sponsor”) and
209 otherwise meets the requirements of this subsection.

210 a. Eligibility of Approved Mentor and Law Students: Approved Mentors
211 participating in an Approved Law School Mentoring Program shall meet the requirements
212 of § 2 above. A Law School Sponsor may develop criteria for allowing participation by any
213 student enrolled at that law school.

214 b. Structure of Approved Law School Mentoring Programs: The structure of any
215 Approved Law School Mentoring Program shall contain the following basic elements, in
216 addition to any other elements developed by the Law School Sponsor:

217 1. A developed program of content required or
218 recommended by the Law School Sponsor that meets the basic
219 needs and objectives that the Law School Sponsor views as
220 being important;

221 2. Provisions permitting law students to change
222 mentors to a second Approved Mentor at least once during the
223 course of the mentoring program due to migration of the
224 Approved Mentor or law student, the breakdown of the
225 mentoring relationship, or other similar reasons;

226 3. Provisions prohibiting romantic or business
227 relationships between the Approved Mentor and the law student,
228 except that a law student may work as a law clerk for the
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231 Approved Mentor or as a law firm or corporate law department
232 in which the Approved Mentor is also employed;

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234 4. A final certification by both the Approved Mentor
235 and the law student upon completion of the Law School
236 Mentoring Plan that all program criteria have been completed;
237 and

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239 5. The designation of at least one (1) person within
240 each Law School Sponsor to be responsible for overseeing the
241 ongoing operations of the Approved Law School Mentoring
242 Program and to serve as a point of contact with the Commission.

243 c. Law School Mentoring Plans: For purposes of accrediting the Approved Law
244 School Mentoring Program, the Law School Sponsor shall assist the Approved Mentor and
245 law student to develop a Law School Mentoring Plan designed to include core topics, as well
246 as skills, activities, and experiences important for lawyers and law students. These
247 experiences and activities should be designed as learning activities for the law student and
248 should serve as a source of discussion between the Approved Mentor and law student. The
249 Law School Sponsor may allow the activities and experiences to consist of the use of video
250 conferencing and other technology to facilitate the interaction between the Approved Mentor
251 and the law student. The method chosen by the Law School Sponsor to assist the Approved
252 Mentor and the law student to develop a Mentoring Plan shall be approved for use by the
253 Commission, and shall be set forth in the Law School Mentoring Program.

254 d. Substantive Content of Law School Mentoring Plans: A Law School Sponsor
255 shall include such topics in its Law School Mentoring Plan as it believes will best accomplish
256 the purposes and objectives of its Approved Law School Mentoring Program, and the Law
257 School Sponsor shall develop appropriate activities and materials designed to facilitate
258 meaningful interaction and learning in the identified areas. In addition to any elective topics
259 designated by the Law School Sponsor, Law School Sponsors are strongly encouraged to
260 consider providing for a core topic list common to all Law School Mentoring Plans
261 developed by the Law School Sponsor, including the following areas:

- 262 1. Professionalism and legal ethics;
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264 2. Professional development, including work with
265 the legal community, bar associations, and court activities;
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267 3. Career paths and work/life balance; and

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4. Sources of well-being and causes of mental-health and substance abuse issues for attorneys, including identification of available support networks and resources.

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A Law School Sponsor need not require devotion of identical time to all topics contained in the Law School Mentoring Plan, and the Law School Sponsor may allocate time between the substantive content areas as shall best accomplish the objectives of the Law School Mentoring Program.

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e. Length of Law School Mentoring Plans: The Commission may accredit Law School Mentoring Plans that operate for any length of time, including the remainder of the law student's enrollment at the law school. In all Approved Law School Mentoring Programs, the Law School Mentoring Plan must provide for a minimum number of meetings between the Approved Mentor and law student, whether such meetings are conducted in-person, by video conference, or otherwise.

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f. Law School Mentoring Program Evaluation: All Approved Law School Mentoring Programs shall contain provisions by which both the Approved Mentor and law student can evaluate the quality and effectiveness of both the Law School Mentoring Program and the Law School Mentoring Plan at the conclusion of the Law School Mentoring Plan. Copies of all such evaluations shall be reviewed and summarized by the contact person(s) designated by the Law School Sponsor pursuant to 7.b.5 above. The evaluations and summaries that are created pursuant to this Section shall be maintained by the Law School Sponsor for internal use and assessment, and the evaluations of the Law School Mentoring Program shall be available for review by the Commission upon request of the Commission.

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8. CLE Credit:

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a. Full Credit: For satisfactory participation in a Mentoring Plan or Law School Mentoring Plan, and certified as such by the Sponsoring Organization or Law School Sponsor, the Commission may award dual CLE credit as follows:

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1. Approved Mentors may receive CLE credit for the initial mentor training, for any mentor recertification training, and up to ~~eight (8)~~ six (6) hours per year for participation in an Approved Mentoring Plan or Approved Law School Mentoring Plan based upon the length of the plan.

301 2. Beginning lawyers participating in a Mentoring
302 Plan may receive up to a maximum of ~~eight (8)~~ six (6) hours of
303 CLE credit based upon the length of the Mentoring Plan.

304 b. Partial Credit for Beginning Lawyer: Where a Mentoring Plan is not completed
305 due to a breakdown of the mentoring relationship not attributable to the beginning lawyer,
306 and the Sponsoring Organization certifies that it is unable to arrange for a substitution of the
307 Approved Mentor, the Commission may award to the beginning lawyer partial credit up to
308 ~~eight (8)~~ six (6) hours of dual credit in recognition of the beginning lawyer's time and
309 dedication to the mentoring relationship. Such reasons may include, but are not limited to,
310 the following:

- 311 • the migration of the Approved Mentor;
- 312 • a Mentor's unjustified failure to complete the Mentoring Plan;
- 313 • a serious illness of the Approved Mentor or the beginning
314 lawyer; or
- 315 • the decision by the Approved Mentor to change to inactive
316 status in the practice of law.

317 In no case, however, may a beginning lawyer receive more than a total of ~~eight (8)~~ six
318 (6) hours of dual credit while the beginning lawyer is licensed as a lawyer.

319 c. Partial Credit for Approved Mentor: Where a Mentoring Plan or Law School
320 Mentoring Plan is not completed due to a breakdown of the mentoring relationship not
321 attributable to the Approved Mentor, the Commission may award to the Approved Mentor
322 partial credit up to ~~eight (8)~~ six (6) hours of dual credit in recognition of the Mentor's time
323 and dedication to the mentoring relationship. Such, reasons may include, but are not limited
324 to, the following:

- 325 • migration of the beginning lawyer;
- 326 • a beginning lawyer's unjustified failure to complete the
327 Mentoring Plan or Law School Mentoring Plan;
- 328 • a serious illness of the Approved Mentor or beginning lawyer;
329 or

330 • the beginning lawyer’s decision to change to inactive status in
331 the practice of law.

332 d. Awarding of Credit: Where credit is awarded for participation in a Mentoring
333 Plan, the Commission shall award the total credit hours for the year in which the Mentoring
334 Plan is completed or justifiably ended. Where credit is awarded for completion of a Law
335 School Mentoring Plan that lasts for more than two semesters, the Commission may award
336 the total credit hours for the year in which the Law School Mentoring Plan is completed or,
337 upon request by the Law School Sponsor, award partial credit at other intervals. If
338 participation in a Mentoring Plan or Law School Mentoring Plan, when combined with other
339 CLE-credited activities, results in a lawyer receiving hours of credit in excess of the
340 minimum annual requirement, credits may be carried forward as permitted by Tennessee
341 Supreme Court Rule 21, § 4.02.

342 9. Confidentiality: Pursuant to Tennessee Supreme Court Rule 21, § 6.03, all records
343 relating to the evaluation of Approved Mentoring Programs and Approved Law School
344 Mentoring Programs submitted to the Commission shall be deemed confidential and shall not
345 be disclosed except in furtherance of the duties of the Commission.

proposed