

IN THE SUPREME COURT OF TENNESSEE

IN RE:)
)
PETITION FOR THE ADOPTION OF) No. _____
AMENDED TENNESSEE RULES OF)
PROFESSIONAL CONDUCT)

**PETITION OF THE TENNESSEE BAR ASSOCIATION
FOR THE ADOPTION OF
AMENDED TENNESSEE RULES OF PROFESSIONAL CONDUCT**

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The Tennessee Bar Association (“TBA”) petitions the Court to adopt an amended Rule 8 of the Rules of the Tennessee Supreme Court, comprised of the Tennessee Rules of Professional Conduct, as set forth in Exhibit A, and as described more fully in this Petition, to govern the conduct of lawyers licensed or practicing in Tennessee. In support of the adoption of these amended rules, the TBA states as follows:

BACKGROUND

On August 27, 2002, after two years of study by this Court and after almost seven years of work by the TBA, this Court adopted Tennessee’s current lawyer ethics rules. The new Tennessee Rules of Professional Conduct, now in effect for almost six years, were a clean break with our then three-decades-old Code of Professional Responsibility. The new Rules hewed reasonably close to the format and substance of the ABA Model Rules of Professional Conduct.

But the Court and the TBA knew at that time that Tennessee’s long effort to bring its lawyer ethics rules closer to national norms was incomplete. This Petition, if adopted by the Court, would complete this process.

In an eight-year effort that substantially overlapped in time the process that led to the 2002 adoption of Tennessee’s current rules, the ABA undertook and completed the first substantial revision of the ABA Model Rules of Professional Conduct since their adoption and publication in 1983. Led by the ABA “Ethics 2000” Commission,¹ the ABA House of Delegates in 2002 and 2003 completed work on the revised ABA Model Rules and review and consideration of those revisions by the various jurisdictions began almost immediately.

As proposed by the TBA, and as adopted by this Court, the 2002 Tennessee Rules of

¹ Tennessee is fortunate that three Tennessee lawyers served in the ABA Ethics 2000 effort – Albert C. Harvey and Lucian T. Pera of Memphis were members of the 13-member Commission, and Professor Carl A. Pierce of the University of Tennessee College of Law was one of its three Reporters.

Professional Conduct borrowed a few key provisions from the forthcoming ABA Model Rules. For its part, the TBA anticipated that these few important provisions would not be controversial and that they would thus likely be adopted by the ABA House and by many jurisdictions. Still, the TBA expressly urged this Court not to then adopt the Ethics 2000 revisions across the board, but to press on promptly with the proposed move to the format and substance of the pre-Ethics 2000 ABA Model Rules. The TBA understood the magnitude of the move from the Code to the Rules for Tennessee lawyers and courts. The TBA was also aware that, in some sense, the various jurisdictions would soon pass judgment on the wisdom of the Ethics 2000 revisions, and that this judgment, as well as simple concerns about uniformity, might better guide the TBA – and, ultimately, this Court – in deciding how closely the remaining Ethics 2000 revisions should be followed.

With the benefit of several more years' experience and much further, detailed consideration, the TBA has now firmly concluded that the time has now come for the Court to adopt ethics rules for Tennessee lawyers that more closely follow the ABA's most recent revisions to the Model Rules and the adoptions of the majority of American jurisdictions. Several observations and conclusions have led the TBA to this recommendation.

First, a review of the substance and language of the revised ABA Model Rules leads the TBA to believe that these rules are generally better drafted, clearer, and better reflect the advances and developments in the nation's case law. Based on the careful review by its Standing Committee on Ethics and Professional Responsibility ("Ethics Committee"), the TBA believes that, by and large, these are simply better rules, clearly meriting serious considerations, particularly where many other jurisdictions have already adopted versions closely patterned after them.

Second, the most recent revisions to the ABA Model Rules have met with a remarkable level of approval among the high courts of American jurisdictions. Over the last few years, 40 states and the District of Columbia have adopted revised lawyer ethics rules based on the new ABA Model Rules; of the remaining 9 states (excluding Tennessee) proposed revised rules based on the ABA revisions have been circulated in 6 and committees are still at work in 6.² The broadly favorable judgment reflected in the adopting jurisdictions has created a greater level of uniformity in ethics rules among American jurisdictions than at any time since the ABA Model Code of Professional Responsibility was adopted by the ABA in 1969.³ Perhaps as remarkably, two of the largest jurisdictions that had clung to the format of the old Code of Professional Responsibility for years longer than Tennessee – New York and Ohio – have both now adopted ethics rules in the format of the ABA Model Rules that are also reasonably close to them in substance.⁴ Indeed, even California, which has long held to its own idiosyncratic format and content for its ethics rules has a rules revision process well underway that is aimed at moving to at least the format of the ABA Model Rules.⁵

² For the most complete and current information on the status of consideration by the jurisdictions, see the ABA Center for Professional Responsibility's website, at <http://www.abanet.org/cpr/jclr/home.html>. Many charts and comparisons of these adoptions are posted at the site, and other helpful documents and summaries are available from the Center.

³ The ABA Center for Professional Responsibility has compiled and posted comparisons of state adoptions of individual rules at its website at <http://www.abanet.org/cpr/jclr/home.html>. In addition, there have been only two broader analyses of the adoption patterns. See Charlotte K. Stretch and Susan M. Campbell, "State Committees Review and Respond to Model Rules Amendments," 15 No. 1 PROF. LAW. 14 (2004) (updated through Nov. 30, 2007), available at http://www.abanet.org/cpr/jclr/review_art.pdf; Lucian T. Pera, "Grading ABA Leadership on Legal Ethics Leadership: State Adoption of the Revised ABA Model Rules of Professional Conduct," 30 OKLA. CITY UNIV. L. REV. 637, 804-13 (2005; published Jan. 2007), available at <http://www.adamsandrese.com/pdf/ABAEthics2000StateAdoptionsArticle.pdf> (including detailed analysis of adoptions of MJP reforms for 24 jurisdictions completed through July 2006).

⁴ See "In Switch to Model Rules, Ohio Adopts MJP But Keeps Unique Standards From Prior Code," 22 Law. Man. Prof. Conduct 389 (Aug. 9, 2006); "New York Adopts Format of Model Rules, But Keeps Much From Code and Omits MJP," 24 Law. Man. Prof. Conduct 666 (Dec. 24, 2008).

⁵ "California State Bar Releases Third Batch of Proposed Rules," 24 Law. Man. Prof. Conduct

In this era of vastly increased practice by lawyers across state lines, this unmistakable drive by the nation's highest courts toward more uniform lawyer ethics rules is of greater importance than ever before to American lawyers and, more importantly, to their clients. The TBA believes that it would clearly benefit Tennessee – a smaller state, with an economy as much or more influenced as much or more by cross-border legal transactions as any other American jurisdiction – to follow the approach already adopted in a majority of American jurisdictions.

At the same time, the attached proposal for revised Tennessee lawyer ethics rules certainly does not slavishly follow the ABA Model Rules. The TBA's proposal departs from the ABA approach in a number of areas where the TBA decided that clarification, or even a different substantive rule was needed, such as where established Tennessee policies are, in the TBA's opinion, worthy of preservation. The rigor of the TBA's detailed analysis and consideration will be clear to anyone who reviews the document attached to this Petition as Exhibit C, which is comprised of a careful redline comparing the TBA proposal to the current ABA Model Rules.

Finally, the Court should have no concern that the TBA has attempted through this process to "re-invent the wheel" of Tennessee's lawyer ethics rules or of its rules revision process. Working through its Ethics Committee, this most recent effort at ethics rules revision, culminating in this Petition, has been a virtually seamless continuation of the effort that led to the 2002 adoption of present Rules. The Ethics Committee has had a strong continuity of leadership and membership,⁶ allowing it to build directly on its prior work and recommendations, on the

173 (April 2, 2008).

⁶ The current membership of the committee includes the following lawyers, from diverse practice settings, and with diverse experience and training:

Lucian T Pera, Memphis, Chair
Brian S. Faughnan, Memphis, Vice Chair and Reporter
Professor Carl A. Pierce, Knoxville, Reporter

Court's prior policy judgments, on Tennessee case law and statutory enactments, and on the less formal reactions of the Tennessee bench, bar, and public to the rules over time. Starting from the fine work already done by the Court and others on bringing Tennessee's lawyer ethics rules into the 21st Century, the TBA now seeks to complete this work by bringing Tennessee's rules as fully up-to-date as possible.

THE TBA'S PROPOSAL

Specifically, the TBA proposes that the Court replace current Tennessee Supreme Court Rule 8 with the proposed version of Rule 8 attached to this Petition as Exhibit A.

As the Court knows, the TBA presently has two other petitions pending before the Court that, if granted, would result in amendments to the Tennessee Rules of Professional Conduct.⁷

Professor Ernest F. Lidge, Memphis, Reporter

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George W. Bishop, III, Nashville	Nancy S. Jones, Nashville
John T. Blankenship, Murfreesboro	Susan L. Kay, Nashville
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Paul Campbell III, Chattanooga	Henry A. Martin, Nashville
John L. Chambers, Nashville	Jimmie Lynn Ramsaur, Nashville
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John W. Gill, Jr., Knoxville	Charles L. Trotter, Jr., Huntingdon
R. Mark Glover, Memphis	Ellen B. Vergos, Memphis
Frank Grace, Jr., Nashville	Mark Vorder-Bruegge, Jr., Memphis
Albert C. Harvey, Memphis	David C. Wade, Memphis
Charles Allen High, Jr., Nashville	Sheree C. Wright, Nashville
Barbara D. Holmes, Nashville	

Over the last several years of work that led to this Petition, other members of the Ethics Committee have included:

Bret Steven Alexander, Chattanooga	Barbara J. Moss, Nashville
Lance B. Bracy, Nashville	Frank P. Pinchak, Chattanooga
Mark A.B. Carlson, Memphis	Frank J. Runyon, II, Clarksville
Steven H. Cook, Knoxville	Irma Stephens Russell, Memphis
Robert E. Cooper, Jr., Nashville	Anthony A. Seaton, Johnson City
Samuel P. Funk, Nashville	Matthew J. Sweeney, III, Nashville
F. Evans Harvill, Clarksville	Frankie E. Wade, Jackson
Kathy Laughter Laizure, Memphis	

⁷ The two pending TBA petitions before this Court that propose amendments to the Tennessee

Specifically, granting these other petitions would lead to significant amendments in Rules 1.15, 5.5, and 8.5. For ease of consideration of this, more extensive proposal for revision to the Rules, Exhibit A includes, in one document, an integrated set of the Rules as they would appear if this Court were to approve each of the pending TBA petitions in their present form.⁸

While the TBA would be pleased to provide the Court with other aids to understanding any aspect of its proposal, or the drafting of particular proposed rules,⁹ attached to this Petition are two complete redlines that compare the TBA's proposed Rules to, respectively, the current Tennessee Rules of Professional Conduct (Exhibit B) and the current ABA Model Rules of Professional Conduct (Exhibit C).

Rules of Professional Conduct are the following:

- In Re: Petition for the Adoption of Rules Governing the Multijurisdictional Practice of Law, No. M2008-01404-SC-RL1-RL (filed June 27, 2008) (including proposed amendments to Rules 5.5 and 8.5); and
- In Re: Petition to Amend Rule 8, RPC 1.15 and Rule 43, Rules of the Tennessee Supreme Court, No. M2008-02603-SC-RL1-RL (filed Nov. 24, 2008) (including proposed amendments to Rule 1.15).

On April 3, 2009, this Court largely granted the TBA's petition seeking a number of rule changes related to the delivery of *pro bono* legal services, but deferred action on one aspect of that petition – an amendment to Rule 5.5 concerning delivery of *pro bono* legal services by corporate counsel. *See In Re: Amendments to Sections 5.5 and 6.1 and Addition of Section 6.5 to Rule 8 of the Rules of the Supreme Court of Tennessee*, No. M2008-01403-SC-RL1-RL (filed June 27, 2008) (including proposed amendments to Rules 5.5, 6.1, and 6.5). Although not all of the revisions approved by the Court went into effect immediately, this Petition treats those revisions approved by the Court as being the current rules. As discussed elsewhere in this Petition, the draft rules proposed in this Petition also include the proposed amendment to Rule 5.5 that was deferred by the Court. *See infra* at n. 15.

⁸ *See infra* at 13-15 (discussion of inter-relationship of pending TBA petitions).

⁹ For example, the Reporters for the Ethics Committee have prepared and maintained a fairly extensive set of the drafts of each proposed rule, sometimes including other alternatives considered or research on the underlying law or other jurisdictions' adoptions. If these would be helpful, the TBA would be happy to provide them to the Court.

Extensive materials concerning the legislative history of the ABA Model Rules of Professional Conduct and concerning state adoptions and variations in adoptions of many of individual rules are available from the ABA's Center for Professional Responsibility, both on its website and by contacting the Center directly. The TBA would be happy to facilitate contact with the Center for this purpose.

THE TBA PROCESS FOR DEVELOPING THIS PROPOSAL

In keeping with the recent tradition of the TBA and its Ethics Committee, this proposal is the result of thousands of hours of volunteer and staff time, spent in in-person committee meetings, conference call committee meetings, email exchanges, research, drafting, and revision, stretching over more than three years. The TBA is particularly grateful for the efforts of its three Reporters for this project: Professor Carl A. Pierce of Knoxville, Brian S. Faughnan of Memphis, and Professor Ernest F. Lidge of Memphis.¹⁰

Throughout, the process was open to all who expressed an interest in the issues, and the TBA and its Ethics Committee repeatedly sought guidance and comment from many sources. Drafts of particular rules were shared outside the Ethics Committee for comment from the beginning of the process, but, beginning specifically in the spring of 2008, as a complete and coherent draft approached completion, this draft was published more widely. Comments were received from many quarters, including the staff of the ABA Center for Professional Responsibility, ethics experts from across the country, and Tennessee lawyers and judges.

Along the way, as the Court is aware, several elements of these proposed Rules have been approved separately by the TBA for submission to the Court as part of other proposals. Each of those sets of amendments affecting the Tennessee Rules of Professional Conduct were also considered by the Ethics Committee and carefully integrated into the Rules as a whole.

After evaluating each and every comment received, especially those received during the comment period running from Spring 2008 through Fall 2008, the Ethics Committee, the TBA House of Delegates, and the TBA Board of Governors approved the final proposal appended to

¹⁰ For a part of the Ethics Committee's work leading to this Petition, Professor Irma Stephens Russell, then of Memphis, also served as a Reporter, until she relocated to teach law in another state. The TBA is also grateful for her contributions to the early stages of the rules revision effort.

this Petition, making several changes sparked by these comments.¹¹

KEY SUBSTANTIVE POINTS OF THE TBA'S PROPOSAL

In contrast to the changes made by the adoption of the 2002 Tennessee Rules of Professional Conduct, the changes that would be made by the Court's adoption of this Petition are less far-reaching, and fewer of them are likely to cause dramatic changes in the way in which Tennessee lawyers practice or interact with their clients.

All of the revisions proposed by the TBA are clearly visible in the attached draft that is redlined to show all changes to the current Rules (Exhibit B). Nevertheless, the TBA would highlight certain proposed changes in an effort to aid the Court in identifying and considering what may be the more significant changes included in the TBA's proposal:

- A move throughout the Rules from the concept of “consents after consultation” to “informed consent,” consistent with ABA’s recent amendment. (Rule 1.0(e)).¹²
- An amendment of the division-of-fees rule, adding a writing requirement. (Rule 1.5(e)).
- Amendments to the confidentiality rule to add two additional exceptions to confidentiality regarding preventing fraud linked to the use of a lawyer’s services (patterned after recent ABA amendments) and an amendment to permit some additional harmless disclosures of client confidential information otherwise made public. (Rule 1.6(a) and (b)).
- Reformulation of the black letter of the basic conflict of interest rule closely tracking the ABA model and with no substantive change in meaning (Rule 1.7), along with additional or reformulated Comments to this Rule that address “thrust-upon” conflicts (Comment [5]), sexual relations between lawyers and clients (Comments [12] – [12b]), client revocation of consent to conflicts (Comment [21]), advance waiver of conflicts (Comment [22]), conflicts in class actions (Comment [25]), special considerations for conflicts in joint representation (Comments [29] – [32]), corporate family conflicts (Comment [33]), and lawyers serving as directors of clients (Comment [34]).

¹¹ These changes included a clarification of Rule 1.8(g) and (h) to conform them both to the usage of the phrase, “independent legal counsel” in Rule 1.8(a) and an amendment of Comment [5] to Rule 3.8(f) to clarify that the prohibition concerning certain prosecutor speech applies only during the pendency of a criminal proceeding.

¹² References are to the numbering of the Rules as proposed in Exhibit A.

- An amendment to the basic conflict rule to explicitly deal with joint representation in juvenile delinquency proceedings in the same manner as criminal proceedings. (Rule 1.7(c)).
- An extension of the existing prohibition on substantial gifts from clients to also bar solicitation of such gifts. (Rule 1.8(c)).
- A new requirement for a signed writing regarding aggregate settlements. (Rule 1.8(g)(2)).
- An amendment to remove the absolute requirement of independent counsel regarding lawyers settling claims of clients and former clients. (Rule 1.8(h)(2)).
- An amendment to the rule concerning confidentiality of former clients' information to permit disclosure of such information that has become generally known just like the rules currently permit use of such information and guidance regarding what "generally known" means. (Rule 1.9(c) and Comment [8a]).
- New treatment of the imputation of personal-interest conflicts within law firms and law departments. (Rule 1.10(a)).
- A revision of Rule 1.10(d) to more broadly allow screening of lawyers who move from one private practice setting to another to avoid disqualification, removing the "substantial involvement" exception from the present rule;¹³
- A revision clarifying the rule concerning the required response of a lawyer to illegality

¹³ In February 2009, the ABA House of Delegates voted 267-182 to reverse its longstanding position opposing screening, and adopted a revision to Model Rule 1.10 that now would permit screening of a lawyer moving between private practice settings to avoid the disqualification of the firm to which the lawyer has moved. The ABA specifically rejected the type of exception to screening present in current Tennessee Rule 1.10(d), which forbids screening to avoid disqualification where the moving lawyer was substantially involved in a particular, pending litigation matter in which the moving lawyer's new law firm is involved. This significant policy departure for the ABA, and the accompanying national debate on this issue that surrounded it, led the TBA to reconsider proposing that this Court revisit the issue of screening in Tennessee.

As this Court is doubtless aware, Tennessee has a lengthy – and successful – history of screening, dating back more than twenty years to *Manning v. Waring, Cox, James, Sklar and Allen*, 849 F.2d 222, 225 (6th Cir. 1988), and Tennessee Formal Ethics Opinion 89-F-118 (1989). Notwithstanding the fact that this Court codified the outcome of *Clinard v. Blackwood*, 46 S.W.3d 177 (Tenn. 2001), by adopting current Tennessee Rule 1.10(d), the TBA believes that the time has come to reconsider whether to follow the ABA's lead, as well as the lead of the eleven states that have adopted rules permitting screening since the decision in *Clinard*, and eliminate the "substantially-involved" exception to screening contained in Tennessee Rule 1.10(d).

The TBA's proposal would adopt the same substantive rule for screening as recently adopted by the ABA and would effectively return Tennessee to the screening approach successfully in place in Tennessee for more than a decade from the late 1980s through 2001 when *Clinard* was decided.

within an organizational client. (Rule 1.13(b) and (c)).

- An amendment clarifying lawyers' handling of advance payment of fees and nonrefundable fees. (Rule 1.15(c) and Comment [8]).
- An amendment, following the ABA model, somewhat liberalizing the rule on the sale of a law practice. (Rule 1.17).
- A new rule, following the ABA model, on the obligations of a lawyer to a prospective client who does not become a client, including a provision permitting other lawyers in the lawyer's firm to be adverse to that prospective client in the same matter, under limited circumstances. (Rule 1.18).
- A proposed new rule addressing lawyer obligations concerning client file materials (Rule 1.19), as well as related revisions to existing rules concerning the obligation to return client file materials upon a lawyer's discharge or withdrawal (Rule 1.16(d)) and an new provision regarding returning materials to prospective clients (Rule 1.18(e)).
- Amendments to the rule concerning the special responsibilities of a prosecutor somewhat heightening the obligations of a prosecutor concerning public statements and imposing new obligations on prosecutors who learn of possible wrongful convictions, with both new provisions being patterned upon ABA model language. (Rule 3.8(f), (g) and (h)).
- An amendment to the rule prohibiting contact with represented persons that authorizes Tennessee courts to create exceptions to the rule in exigent circumstances. (Rule 4.2).
- Amendments to the rule prohibiting threatening criminal charges to protect legitimate practices by somewhat trimming back the overall prohibition, and adding language confirming the current understanding in Tennessee that lawyer disciplinary charges are included within the types of charges that a lawyer may not threaten for the purpose of gaining advantage in a civil matter. (Rule 4.4(a)).
- A new provision in the rules addressing, in a systematic way, the obligations of a lawyer upon receiving inadvertently disclosed confidential or privileged information. (Rule 4.4(b)).
- Minor amendments to the lawyer advertising rules that, among other things, replace the requirement that lawyers file ads with the Board of Professional Responsibility with a requirement that lawyers merely retain these ads for a period of time (Rules 7.2(b), 7.3(c)(7)); a new rule (patterned after the ABA model) allowing lawyers to directly solicit business from lawyers (Rule 7.3(a)(1)); and a slight amendment to the disclaimer required on certain ads (Rule 7.3(c)(1)).

Also of particular note are several instances where the TBA recommends that the Court depart from the ABA Model Rules or adopt a rule in an area not reached by the ABA Model Rules. Here are a few examples:

- The TBA recommends that Tennessee retain its existing Rule 2.2, which establishes an exclusive and mandatory regime for addressing representation of multiple clients attempting to achieve a common objective in certain limited situations. In 2002, this Court followed the TBA's recommendation that a revised, improved version of ABA Model Rule 2.2 be adopted. Since this Court's action in 2002, the ABA has abandoned this rule altogether, folding much of its content into the Comments to ABA Model Rule 1.7. (Since 2002, one state has adopted a rule patterned after Tennessee's.) The TBA believes the current non-ABA version of this Rule works and should be retained.
- Neither the ABA Model Rules nor Tennessee's rules have ever had much to say that is helpful, either to courts or to lawyers and clients, about the issue of ownership of, and access to, client file materials. As this Court is doubtless aware, this is an issue that vexes lawyers and clients on a daily basis and causes a regular stream of disciplinary complaints. Working from the existing and varying positions on this question that have been staked out by the existing handful of state ethics opinions and at least one state ethics rule, but without any guidance from the ABA Model Rules, the TBA proposes in this Petition a new Rule 1.19 to address this issue, as well as conforming amendments to new Rules 1.18 and existing Rule 1.16.
- The TBA proposes to retain the substance of Tennessee's treatment of client confidential information, which is a departure from the approach of the ABA Model Rules. Further, the TBA proposes in Rule 1.6(a) to clarify the propriety of certain harmless, appropriate disclosures that currently would appear to constitute a violation of Rule 1.6, in a way that also departs from the ABA Model Rules. This proposed approach largely preserves Tennessee's 2002 approach to client confidentiality, which the TBA believes has worked well, while removing any concern that the Rule can be violated by things that Tennessee lawyers do – the TBA believes appropriately – on a near-daily basis.
- The TBA proposes to preserve the existing approach to lawyer ethics for lawyer-mediators set out in Tennessee Rule 2.4, notwithstanding that this approach differs significantly from the ABA Model Rules.
- Rather than treat and prohibit certain lawyer-client sexual relations in the black letter of the rules, as does ABA Model Rule 1.8(j), the TBA proposes in this Petition that Tennessee adopt a standard that both reaches problematic conduct not reached by the ABA approach and appropriately situates the prohibition as a form of conflict of interest between the personal interest of the lawyer and the client's interests. To accomplish this, the TBA proposes language in Comments [12], [12a], and

[12b] to Rule 1.7 that addresses the proper interpretation of the Rule to address these issues. This language is drawn from the approach of the District of Columbia, but is consistent with the approach of several other jurisdictions.

- The TBA proposes to treat the issue of the appropriate and ethical response to inadvertent disclosure of confidential information in proposed Rule 4.4(b) in a way largely consistent with the Board of Professional Responsibility's existing guidance on this issue, giving Tennessee lawyers far more definite guidance on this issue than would the corresponding ABA Model Rule.

Of course, Exhibit C to this Petition provides the Court with a complete picture of the TBA's reliance upon, and departure from, the particular language of the ABA Model Rules.

RELATIONSHIP OF THE PETITION TO OTHER PENDING TBA PROPOSALS

As the Court knows, the TBA presently has two other petitions pending before the Court that, if granted, would also result in amendments to the Tennessee Rules of Professional Conduct. These other pending petitions are:

- In Re: Petition for the Adoption of Rules Governing the Multijurisdictional Practice of Law, No. M2008-01404-SC-RL1-RL (filed June 27, 2008) (including proposed amendments to Rules 5.5 and 8.5); and
- In Re: Petition to Amend Rule 8, RPC 1.15 and Rule 43, Rules of the Tennessee Supreme Court, No. M2008-02603-SC-RL1-RL (filed Nov. 24, 2008) (including proposed amendments to Rule 1.15).

Specifically, granting these other petitions would lead to significant amendments in Rules 1.15, 5.5, and 8.5.¹⁴ Thus, a few words are in order about the relationship between these various petitions and how the TBA has approached the formulation of the attached Exhibits.

¹⁴ This Court recently largely granted the TBA's petition seeking a number of rule changes related to the delivery of *pro bono publico* legal services, referred the issue of whether Tennessee should adopt a rule requiring lawyers to report information concerning their *pro bono* services to the Court's new Access to Justice Commission, and deferred action on one aspect of that petition relation to an amendment to Rule 5.5 concerning delivery of *pro bono* legal services by corporate counsel. *See* In Re: Amendments to Sections 5.5 and 6.1 and Addition of Section 6.5 to Rule 8 of the Rules of the Supreme Court of Tennessee, No. M2008-01403-SC-RL1-RL (filed June 27, 2008) (including proposed amendments to Rules 5.5, 6.1, and 6.5). Although not all of the revisions approved by the Court went into effect immediately, this Petition treats those revisions approved by the Court as being the current rules. The draft rules proposed in this Petition also include the proposed amendment to Rule 5.5 regarding *pro bono* legal services that was deferred by the Court on April 3, 2009.

First and most importantly, the specific language proposed for adoption in this Petition, and specifically reflected in the Exhibits, includes the language proposed by the TBA for adoption in all these petitions. In other words, if the Court simply wished to approve all the changes to the lawyer ethics rules reflected in the two other pending petitions *and* this Petition, the Court would merely need to adopt Exhibit A in its present form. If this Court were to decide, for whatever reason, not to grant one of these other petitions, whether in whole or in part, adjustments would obviously need to be made to the language included in Exhibit A. The TBA would be happy to provide technical assistance in implementing any such changes or adjustments, upon request.

Second, with respect to one of the other two pending petitions, *In Re: Petition to Amend Rule 8, RPC 1.15 and Rule 43, Rules of the Tennessee Supreme Court*, No. M2008-02603-SC-RL1-RL (filed Nov. 24, 2008), the TBA and Tennessee Bar Foundation discovered certain inconsistencies between the draft of Rule 1.15 proposed in the November 2008 petition and the TBA's then-current draft of Rule 1.15. Following this discovery, the TBA and the TBF agreed on a resolution of these inconsistencies and these are reflected in this Exhibit A to this Petition. These late changes to this proposal are not substantive, but, in the view of the TBA and the TBA, they are needed to produce a version of Rule 1.15 appropriate for adoption by this Court.

CONCLUSION

For these reasons, the TBA petitions this Court to adopt the rule amendments set out above.

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing will be served by electronic mail notification and by mailing an electronic version of the entire proposal, within seven days of the filing of this document, upon the individuals and organizations identified in Exhibit D to the petition by regular U.S. Mail, postage prepaid.

/s/ Allan F. Ramsaur by permission by Lucian T. Pera
ALLAN F. RAMSAUR