

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

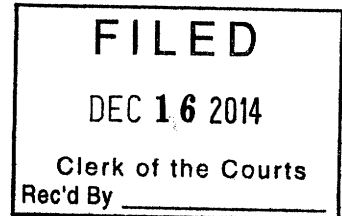
IN RE PETITION FOR ADOPTION OF AMENDED  
TENNESSEE SUPREME COURT RULE 21

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No. ADM2013-02417

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and



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

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No. ADM2014-00012

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**ORDER**

On October 30, 2013, the Tennessee Commission on Continuing Legal Education and Specialization (“Commission”) filed a petition to adopt a comprehensive revision of Tennessee Supreme Court Rule 21 and submitted a proposed revision as an exhibit to the petition. On November 18, 2013, the Court filed an order soliciting public comments on the Commission’s proposed revision of the rule. The order stated that the deadline for submitting written comments was March 20, 2014.

On January 3, 2014, the Commission filed a separate petition (“second petition”) asking the Court to amend section 10 of Tennessee Supreme Court Rule 21 by deleting the current text of section 10, in its entirety, and by replacing it with the proposed new section 10 set out in an exhibit to the Commission’s second petition. The second petition also requested that the Court amend Rule 21, section 1.01, by eliminating the words “and Specialization” from the Commission’s formal title. And lastly, the second petition asked the Court to amend Tennessee Supreme Court Rule 8, RPC 7.4(d) and Comment [3] to RPC 7.4, by revising those provisions to correspond to the requested amendments to Rule 21, section 10. On January 21, 2014, the Court filed an order soliciting public comments on the Commission’s proposed amendments to Rule 21, sections 1.01 and 10, and the related amendments to Rule 8, RPC 7.4; the order set May 21, 2014 as the deadline for submitting written comments on those proposals.

On February 21, 2014, the Tennessee Bar Association (“TBA”) filed a motion asking the Court to extend to May 21, 2014 the public comment period relating to the first petition. The TBA stated that the extension was necessary for it to address the broad and complex revision of Rule 21, and the TBA also pointed out that the extended deadline would coincide with the public comment deadline set for the Commission’s second petition. On March 5, 2014, the Court granted the TBA’s motion and extended the comment period in the first proceeding to May 21, 2014.

After due consideration of both petitions, as well as the written comments received by the Court, the Court hereby grants both petitions and adopts the amendments set out in the three Appendixes to this order. Appendixes A and B set out the Court’s modified version of the Commission’s proposed revision of Rule 21, which includes a new section 11 pertaining to specialization. (The new section 11 is a revision of section 10 of the current rule, as requested in the Commission’s second petition.) Appendix C sets out the related amendments to Tennessee Supreme Court Rule 8, RPC 7.4 and Comment [3] to that RPC, as well as an amendment to Supreme Court Rule 31, Section 18(a)(3). (The latter merely updates a cross-reference to revised Rule 21).

The amended rules adopted herein are intended to apply to the year beginning on January 1, 2015 and to succeeding years. For that reason, and at the request of the Commission, the Court hereby sets the following effective dates for the amendments. The amendments set out in Appendix A (revised Sections 1, 2, 3, 4, 5, 8, 9, 10, and 11) shall take effect on January 1, 2015 and shall apply prospectively. The amendments set out in Appendix B (revised Sections 6 and 7) shall take effect on January 1, 2016. The amendments set out in Appendix C (the related amendments to Rule 8, RPC 7.4, Comment [3] to that RPC, and Rule 31, Section 18(a)(3)) shall take effect on January 1, 2015 and shall apply prospectively. All matters pertaining to compliance with Rule 21 on or before the foregoing effective dates shall continue to be governed by the version of Rule 21 in effect during the pertinent compliance year.

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

PER CURIAM

## *APPENDIX A*

**Tennessee Supreme Court Rule 21 is amended by replacing all Sections of the Rule, except Sections 6 and 7, with the following new Sections 1, 2, 3, 4, 5, 8, 9, 10, and 11, effective January 1, 2015. [The versions of Section 6 and 7 in effect on December 31, 2014 shall remain in effect through December 31, 2015; the revised Sections 6 and 7 set out in Appendix B to this Order will then take effect on January 1, 2016.)]**

### **Rule 21: Rule for Mandatory Continuing Legal Education.**

#### **Section 1. Commission on Continuing Legal Education.**

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

**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.

**1.03.** All Commission members shall hold office for three (3) years and, until their successors are appointed, to staggered terms of office.

**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 by mail.

**1.07.** A quorum of six (6) 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 (4) affirmative votes, shall be necessary to approve any action.

**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.

**1.09.** The Court shall appoint an executive director of the Commission, who shall serve at the pleasure of the Court. Following his or her appointment by the Court, the executive director shall report to the Commission, which shall conduct regular performance evaluations of the executive director and report such evaluations to the Court. The executive director may engage such staff as may be necessary to conduct the business of the Commission within the scope of this Rule.

**1.10.** 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.

## **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.

**2.02.** The practice of law shall be defined as described in Rule 9, Section 10.3(e).

**2.03.** An attorney may receive twelve (12) hours of general continuing legal education credit, and three (3) 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 credit to be

earned by passing any and all bar examinations in a given compliance year is twelve (12) hours of general credit and three (3) hours of ethics/professionalism credit.

**2.04.** The Commission shall recognize the following exemptions:

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

(b) Members of the Armed Forces on active duty shall not be subject to this Rule.

(c) An attorney shall not be subject to the requirements of the Rule after age seventy (70) upon filing a request with the Commission. This exemption shall not include the calendar year in which he or she becomes seventy (70) years of age. However, any attorney who reached age sixty-five (65) on or before December 31, 2014, but who was less than age seventy (70) on that date, shall continue to be exempt from the requirements of this Rule pursuant to the age-related exemption granted by the previous version of Rule 21.

(d) An attorney who is licensed to practice law in Tennessee but who resided outside of the State and did not practice law in Tennessee during the compliance year may request an annual exemption from this Rule.

(e) Full time law school professors who are not practicing law shall not be subject to this Rule.

(f) 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.

(g) All Justices, Judges, and Magistrate Judges of the federal system shall not be subject to the requirements of this Rule in view of their required comparable continuing legal education programs.

**2.05.** An attorney may petition the Commission for “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 written statement showing cause why that individual should be considered for Exceptional Relief and shall specify in detail the particular relief being sought.

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

**3.01.** Unless otherwise exempted, each attorney admitted to practice law in the State of Tennessee shall obtain by December 31 of that calendar year a minimum of fifteen (15) hours of continuing legal education. Of those fifteen hours, three (3) hours shall be approved for ethics/professionalism credit (“EP credits”) and twelve (12) hours shall be approved for

general credit. The combined fifteen (15) hours shall include a minimum of five (5) in-classroom hours of CLE credit.

### **3.02.**

(a) An attorney that has a disability that prevents compliance with Section 3.01 may file a Petition for Exceptional Relief with the Commission. The request must include a statement from a medical provider in support of the relief requested. An attorney shall provide an updated statement of disability when filing his or her Annual Report Statement.

(b) Attorneys who have a 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.

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

**4.01.** Credit will 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. Any attorney required to earn CLE credits that receives an Annual Report Statement showing less than twelve (12) general credits and three (3) EP credits or that a fee is due shall sign and return the Annual Report Statement as directed in the statement.

### **4.03.**

(a) 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. CLE credit is earned as of the date the CLE presentation occurs.

(b) Credit may also be earned through teaching in an approved law school, or teaching law-related courses offered for credit toward a degree at the undergraduate or graduate level

in an approved college, university or community college. The Commission will award four (4) hours of CLE credit for each hour of academic credit awarded by the law school, college, university or community college for the course(s) taught.

**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 hour 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 compliance 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 one-half of the annual requirement (six (6) general hours and one and one-half (1.5) EP hours) for published writings concerning substantive law, the practice of law, or the ethical and professional responsibilities of attorneys if the writing is published in approved publications intended primarily for attorneys. Credit shall be awarded in the amount of one (1) hour for every 1,000 words, not including footnotes, endnotes or citations of authority. Credit shall not be awarded to a named author when the actual principal author 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) An annual maximum of three (3) dual hours of CLE credits earned at the rate of one hour of credit for every five billable hours of pro bono legal representation provided through court appointment, an organized bar association program or an approved legal assistance 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. Credits awarded pursuant to this paragraph shall be exempt from the per-hour fee imposed by Section 8 of this Rule.

An “approved legal assistance organization” for the purposes of this section is an organization or professional association that provides pro bono legal services and that is approved by the Tennessee Supreme Court. An organization which receives funding from the Legal Services Corporation is presumptively approved under this section. Organizations

or groups which do not provide legal assistance as their primary service or business but wish to develop an initiative or project designed specifically to provide pro bono legal services may apply to be approved by the Supreme Court under this section. Any organization seeking approval under this section must file a petition with the clerk of the Tennessee Supreme Court.

(d) Up to six (6) hours per year of dual credit for participation as a mentor or mentee in a program meeting standards established by the Commission, including programs sponsored by bar associations, law schools, law firms, or other appropriate governmental or organizational sponsors. To help facilitate establishment of mentoring programs, the Commission is authorized to provide for a program of training for mentors, whether through its own auspices or through those of other organizations, and to charge a reasonable fee for such training. With regard to mentors participating in a mentoring program sponsored by a governmental or non-profit organization, the Commission is authorized to provide such training at no charge. This subparagraph (d) shall take effect on July 1, 2013, and shall expire on December 31, 2016, unless affirmatively readopted by the Supreme Court.

(e) Up to one (1) year of CLE credit may be awarded for completion of a bar review course. An attorney shall not receive bar review credit and bar exam credit in the same compliance year.

**4.08.** A maximum of eight (8) 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.

## **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) Textual materials should be made available in written or electronic form to all participants at or before the time the course is presented, unless the absence of such materials is recognized as reasonable.

(f) The activity must be conducted in a physical setting that 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.

**5.02.** Tennessee does not recognize presumptive approval status for providers.

**5.03.** Tennessee does not recognize presumptive approval for any activity or program.

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

**5.05.**

(a) Any provider desiring to advertise Commission approval of a course, program, or other activity, shall submit application for such permission and supporting documentation electronically or on the Uniform Application for Accreditation 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 or by electronic means within thirty (30) days of the receipt of the completed application.

(b) Providers denied approval of a program or activity may appeal such a decision by submitting a letter of appeal to the Executive Director within fifteen (15) days of the receipt of the notice of disapproval. Within thirty (30) days of the receipt of the appeal, the Executive Director shall make a new decision which shall be promptly delivered to the provider. Any adverse decision may be appealed to the full Commission for final decision.

(c) Any provider may submit to the Commission the Uniform Application for Accreditation seeking approval of a program after the program is conducted.

(d) An attorney licensed to practice in Tennessee who has attended an out-of-state CLE activity not approved in advance by the Commission may submit a detailed agenda and speaker biographies for the purpose of obtaining accreditation of the course after the program is conducted. All rules pertaining to course accreditation shall apply.

#### **5.06.**

(a) The provider of a continuing legal education activity approved in advance 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.”

(b) Any out-of-state provider that holds a program in Tennessee and does not obtain program accreditation shall include a statement on any program advertisement:

(1) “This program is not accredited in Tennessee”; or

(2) “We intend to seek accreditation for this program in Tennessee”; or

(3) “This program is not being submitted for accreditation in Tennessee”.

**[Section 6. Annual Report.** — The version of Section 6 in effect on December 31, 2014 will remain in effect through December 31, 2015; the revised Section 6 set out in Appendix B to this Order will then take effect on January 1, 2016.)]

**[Section 7. Noncompliance and Sanctions.** — The version of Section 7 in effect on December 31, 2014 will remain in effect through December 31, 2015; the revised Section 7 set out in Appendix B to this Order will then take effect on January 1, 2016.)]

### **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.

#### **8.02.**

(a) Providers of CLE programs held within the State of Tennessee as a condition of accreditation shall agree to remit to the Commission an alphabetical list of attendees and to pay a fee of \$2.00 per approved credit hour for paper filings and a fee of \$1.00 per approved credit hour for electronic filings for each attorney licensed in Tennessee who attends the program. This provider’s fee, along with the list of attendees, shall be submitted within thirty (30) days after the program is held.

(b) Information contained in the attendance report required by this section 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.

**8.03.** Attorneys attending approved out-of-state CLE programs, or other programs for which the sponsor does not report and pay the per-hour fee, shall be responsible for remitting their individual fees at the rate set under Section 8.04. This fee shall be paid at the time of, and along with, the report of such hours.

**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.

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

**9.01.** The establishment of the program for Mandatory Continuing Legal Education for attorneys licensed in Tennessee took effect on January 1, 1987. This Rule 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.

## **Section 10. Annual CLE Compliance Summary**

**10.01.** Notwithstanding any other provision of this Rule to the contrary, the Commission shall publish an *Annual CLE Compliance Summary* of the activities of the Commission and the CLE reports and requests for exemption received by the Commission during the preceding compliance year. As part of this summary, the Commission shall report on the following topics:

(a) The number of courses approved and rejected for accreditation;

(b) The number of providers from whom lawyers holding a Tennessee license have received CLE credit;

(c) The number of general and dual credit hours earned by lawyers holding a Tennessee license, both in the aggregate and in the following general categories:

(1) traditional live or in-classroom programs;

(2) distance learning broken down by the following categories:

(i) online computer interactive;

(ii) webinars; and

(iii) telephone conference calls;

(3) pro bono legal representation;

(4) teaching;

(5) completion of a law-related course broken down by the following areas:

(i) bar review course;

(ii) bar exam; and

(iii) postgraduate course;

(6) service to the bar in the following areas:

(i) bar examiner;

(ii) governmental commissions, committees, or other governmental bodies;

(iii) Board of Professional Responsibility or as a hearing committee member;

(7) published author; and

(8) mentoring.

(d) The number of courses offered per provider and the attendance figures based on the categories above;

(e) The number of lawyers holding a Tennessee license who have been granted an exemption for the previous compliance year; and

(f) The number of requests for exceptional relief granted by the Commission during the previous compliance year.

The Commission shall also report generally on the substantive content areas in which CLE credits are being earned and reported. The Commission's report relating to the preceding compliance year shall be published on its website by September 1.

### **Section 11. Identification of Specialists.**

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

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

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

- (a) the lawyer's name;
  - (b) the lawyer's Board of Professional Responsibility registration number;
  - (c) the state and county in which the lawyer maintains the lawyer's principal office;
  - (d) the name, address, and current website of the certifying organization;
  - (e) the area or areas of law in which the lawyer has obtained a specialty certification;
- and
- (f) the date on which the lawyer obtained the specialty certification.

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

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

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

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

*[end of Appendix A]*

## ***APPENDIX B***

**Tennessee Supreme Court Rule 21 is amended by replacing the current Sections 6 and 7, in their entireties, with the following revised Sections 6 and 7, effective January 1, 2016.**

### **Section 6. Annual Report.**

**6.01.** On or before February 28 of each year, the Commission shall prepare and send an Annual Report Statement to each attorney covered by this Rule requesting information concerning the attorney's compliance with Section 3.01 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 10.1, or to the attorney's last known address.

**6.02.** On or before March 31, each attorney shall complete the Annual Report Statement, indicating his or her completion of, exemption from, or approved substitute for accredited continuing legal education during the preceding calendar year, and shall 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. Any attorney whose Annual Report Statement demonstrates compliance with Section 3.01 of this Rule, and whose Annual Report Statement demonstrates that all fees due the Commission for the preceding calendar year have been paid, shall be exempt from the requirement to sign and deliver to the Commission the Annual Report Statement described herein.

**6.03.** The Annual Report Statement shall reflect any non-compliance fee assessed pursuant to Section 7.03 along with a schedule of additional penalties which will result from continued non-compliance.

**6.04.** 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 April 30 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;

(b) A list of those attorneys who have not complied with the requirements of Section 3.01 of this Rule for the preceding calendar year; and

(c) A list of those attorneys who have not paid all fees due under Section 8.03 of this Rule.

**7.02.** By April 30 of each year, the Commission shall serve each attorney listed on any of the three foregoing lists a Notice of Non-Compliance 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 10.1 or other last known address.

**7.03.** Each attorney who is subject to the Tennessee CLE requirements who does not satisfy the full number of required hours by December 31 of the previous compliance year shall be assessed an Initial Non-Compliance Fee of One Hundred Dollars (\$100) on January 1 immediately following the end of the compliance year. Any Initial Non-Compliance 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-Compliance was erroneously issued, in which case no Initial Non-Compliance Fee shall be due.

**7.04.** Each attorney to whom a Notice of Non-Compliance is issued shall file an Affidavit of Compliance 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, fails to pay any fee owing under Section 8.03, or fails to timely file an Affidavit of Compliance, the attorney shall pay to the Commission an additional Continuing Non-Compliance Fee of Two Hundred Dollars (\$200).

**7.05.** On or before July 1 of each year, the Commission shall prepare a draft Suspension Order listing all attorneys who were issued Notices of Non-Compliance 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 Suspension 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 10.1 or other last known address.

**7.06.** On or before August 10 of each year, each attorney listed in the draft Suspension Order may file an Affidavit of Compliance 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 the Affidavit of Compliance 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 of each year, 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 by 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 Initial Non-Compliance Fee (\$100) and in addition to the Continuing Non-Compliance Fee (\$200).

**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 3.01 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.

**7.12.** No attorney suspended under this Rule 21 may resume practice until reinstated by Order of the Supreme Court.

***[end of Appendix B]***

## *APPENDIX C*

### *Related Amendments to Tenn. Sup. Ct. R. 8, RPC 7.4 and Tenn. Sup. Ct. R. 31, Section 18(a)(3)*

**Tennessee Supreme Court Rule 8, RPC 7.4(d) is amended to read as follows:**

**Rule 7.4. Communication of Fields of Practice and Specialization.** —  
Subject to the requirements of RPCs 7.1, 7.2, and 7.3,

(a) . . . .

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

**Comment [3] to RPC 7.4 is amended to read as follows:**

[3] Paragraph (d) permits a lawyer to communicate that the lawyer is a specialist or has been certified or recognized as a specialist when the lawyer has been so certified or recognized by an organization accredited by the American Bar Association’s House of Delegates. However, before a lawyer may communicate that the lawyer is a specialist, the lawyer must first register the specialty certification with the Tennessee Commission on Continuing Legal Education in accordance with Tennessee Supreme Court Rule 21. A lawyer shall not state or imply that the lawyer has received any certification of specialty from the Tennessee Commission on Continuing Legal Education.

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**Supreme Court Rule 31, Section 18(a)(3)<sup>1</sup> is amended to read as follows:**

(3) Rule 31 Mediators who are attorneys are not exempt from the continuing mediation education requirements of Rule 31 Section 18(a) as a result of the age exemption for continuing legal education pursuant to Supreme Court Rule 21, Section 2.04(c).

*[end of Appendix C]*

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<sup>1</sup> The only amendment to Tenn. Sup. Ct. R. 31, § 18(a)(3) is a change in the reference to Supreme Court Rule 21 from “Section 2.04(a)” to “Section 2.04(c).”