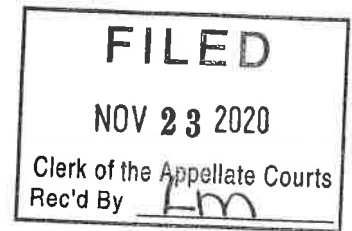


Saturday, November 28, 2020

James M. Hivner, Clerk
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407
appellatecourtclerk@tncourts.gov



RE: Tenn. Sup. Ct. R. 21, section 3.01, Docket No. ADM2020-01159

I am writing to you today to request that you deny the Nashville Bar Association's petition to modify Rule 21, Section 3.01(a) to require each attorney to complete two hours of diversity, inclusion, equity, and elimination of bias training.

To put it bluntly, this endeavor is an attempt at forced indoctrination. Diversity, inclusion, equity, and elimination of bias are political doctrines based on the moral values of those who adhere to them. Though those people may be well-intentioned, their belief in the rightfulness of their cause does not entitle them to force those values on others. Additionally, it is not the place of government to decide that bias, like any other idea, shall be eliminated. Though I believe that people ought not to be biased, it is a violation of the First Amendment for government to obligate anyone to be trained to stop holding any particular idea. There is no exception in the First Amendment for the elimination of bad ideas. Moreover, there is no exception in the First Amendment for the forced promotion of good ideas. Thus, even if their views are morally righteous, the First Amendment still prohibits ideological indoctrination like what is proposed here. The adherents to this ideology seek a captive audience for promoting their beliefs. If the Tennessee Supreme Court grants them such a captive audience by modifying Rule 21 as proposed, then the Court will have deprived us of our First Amendment rights.

I anticipate that arguments will be made that the proposed modification imposes no greater violation upon our First Amendment rights than the requirement that we receive three hours of ethics courses. However, though the concept of ethics in general does involve moral values, the purpose of ethics courses is to provide instruction regarding the rules of professional conduct to avoid violation. It is not the purpose of ethics courses to provide instruction as to what the providers of the course view as right and moral. Likewise, it is not the purpose of ethics courses to eliminate any particular ideas held by the attorneys attending them. Providing instruction regarding the content and interpretation of the law is not a violation of the First Amendment, but compelling instruction in the tenants of a political ideology is.

Furthermore, the ideology sought to be promoted by the Nashville Bar Association is wrong and un-American. The term “equity” refers to people receiving the same outcome.¹ Adherents of this ideology use the term “equity” to distinguish their endeavor from the American concept of “equality,” which refers to treating people the same way. Adherents of the equity ideology, which is sought to be promoted by force through the Nashville Bar Association’s petition, believe that equality is morally inferior to equity because equality allows for people to have different outcomes. Some people become more successful than others in an equal system. By contrast, in an equitable system, no one is more successful than anyone else. Success in an equal system is often attributed by these adherents to privilege, the accusation of which is then used both to denigrate successful individuals and to attack the notions of individual responsibility and the value of hard work.

An extreme example of the diversity, inclusion, and equity ideology in action can be found in the training materials used by Sandia National Laboratories in its mandatory training called “White Men’s Caucus on Eliminating Racism, Sexism, and Homophobia in Organizations.” These materials were leaked by whistleblowers at Sandia National Laboratories to Christopher Rufo, the director of the Discovery Institute’s Center on Wealth & Poverty, who brought national attention to the content of this training.² This training involved racially and sexually targeted criticisms of its participants, obligated that those participants acknowledge and apologize for racist and sexist stereotypes of themselves, and claimed that concepts like “rugged individualism” and “hard work” are racist and sexist.

Another example of this ideology can be found in materials provided to employees of the Department of Homeland Security in a document titled “Diversity and Inclusion Certificate Program.”³ These materials, like the Sandia National Laboratories materials, were provided by whistleblowers to Christopher Rufo, who keeps a record of them at the website provided in the footnote below. This particular training in diversity, inclusivity, and equity sought to provide instruction regarding the concepts of “microinequities” and “microaggressions.” The materials claim that statements such as “America is a melting pot,” “I believe the most qualified person should get the job,” and “America is the land of opportunity” are racist and sexist.

By providing these examples, I do not intend to suggest that completely identical trainings would necessarily be mandated for Tennessee attorneys. However, the ideology that led to these trainings is the same as that which the Nashville Bar Association now petitions for this Court to force upon the attorneys of the State of Tennessee. Regardless of what form such trainings take, the courses created by the adherents to this ideology will seek to indoctrinate

¹ A brief description of this concept was provided by Senator Kamala Harris in a video that she promoted, which can be found here: <https://twitter.com/KamalaHarris/status/1322963321994289154>.

² <https://christopherrufo.com/national-nuclear-laboratory-training-on-white-privilege-and-white-male-culture/>

³ <https://christopherrufo.com/department-of-homeland-security-training-on-microinequities/>

these values into Tennessee attorneys, and granting the Nashville Bar Association's petition will enable them to do so with the force of law.

Finally, in the Nashville Bar Association's petition, it lists five jurisdictions that it claims have implemented CLE requirements around bias elimination and diversity. Of those five jurisdictions, only one appears to share Tennessee's long history of embracing the freedoms enshrined in the First Amendment: West Virginia. However, here the Nashville Bar Association engages in deception. The Rule 6 revisions that the Nashville Bar Association cites do not require any training in diversity, inclusion, equity, or the elimination of bias. Rather, the Rule 6 revisions merely allow attorneys to take elimination of bias courses instead of taking ethics, office management, or attorney well-being courses. West Virginia does not appear to require any particular instruction in diversity, inclusion, equity, or elimination of bias. I have attached a copy of West Virginia's Rule 6 revisions to this letter.

Tennesseans are a free people who enjoy living in a free country, and the rules governing the practice of law in Tennessee should reflect our enjoyment of our freedoms. Courses promoting the diversity, inclusion, and equity ideology should continue to be permitted so long as participation is voluntary. Though I personally disapprove of the ideology of equity, as explained above, I believe that a free Tennessee requires tolerance of all ideologies but compelled indoctrination of none. Therefore, I respectfully request that this Court deny the petition to modify Rule 21.

Sincerely,



Anthony Berry
Attorney at Law

5.05 Canvassing of ballots.

(a) The results of the electronic ballots shall be canvassed by the committee on elections. On March 21st of each year, or within five days thereafter, not counting weekends and holidays, the committee shall meet and review the electronic ballot results.

(b) The nominee who receives the plurality of the votes cast in their district shall be declared to be elected from that district. If for any district two or more nominees are found to have received an equal and the highest number of votes, the committee shall, cause a run-off election to be conducted by electronic ballot, in such manner as it may select, and the one so determined shall be certified as elected.

(c) The committee shall certify to the Executive Director of the State Bar the results of the election.

(d) The Executive Director shall forthwith publicly announce the results of the canvass and notify each candidate of the results of the election. At the Board's quarterly meeting following the election the Executive Director shall present the certificate of the committee on elections and the President shall officially declare the result.

5.06 Other elections and referenda.

Unless otherwise provided by order of the Supreme Court of Appeals, the applicable provisions of this Rule shall apply to any election on the adoption of proposed amendments to the Constitution and Bylaws and to any referendum on any proposal submitted to the membership under the applicable provisions of Article 11 of the Bylaws.

[CLERK'S COMMENTS: This Rule is derived from Chapter I of the State Bar Rules and Regulations. In addition to formatting and consistency changes, the Rule now provides flexibility with regard to certain types of notice and eliminates archaic provisions that have not been followed. The electronic voting procedures have been in use for several years under a Supreme Court Administrative Order. In addition, inserted language would allow the Court to issue an order modifying deadlines and procedures.]

Rule 6 Mandatory continuing legal education

6.01 Definitions

(a) "Active non-practicing lawyers" — An active non-practicing member of the West Virginia State Bar as defined in Bylaw 2.04.

(b) "Approved activity" — A continuing legal education activity that is offered by a presumptively-accredited provider under Rule 6.08, or an individual continuing legal

education activity that has been approved by the Mandatory Continuing Legal Education Commission (“Commission”).

(c) “Commission” — The Mandatory Continuing Legal Education (“MCLE”) Commission established in Bylaw 15.02.

(d) “Credit hour” — Each period of fifty minutes of instruction actually attended in an approved activity.

(e) “Inactive lawyers” — An inactive member of the West Virginia State Bar as defined in Bylaw 2.05.

(f) “In-house activity” — Activities offered by law firms, corporate legal departments, governmental legal agencies, or similar entities for the education of lawyers who are members of the firm, department, or entity.

(g) “Lawyer” or “active member” — An active member of the West Virginia State Bar as defined in Bylaw 2.03.

(h) “Reporting period” — A time period during which a certain number of credit hours must be obtained.

(i) “Provider” — An entity that offers a continuing legal education program.

(j) “Written materials” — Any materials, whether in writing or electronic digital format, required to be provided as part of the approval of a continuing legal education activity.

6.02 Minimum continuing legal education requirements; required reporting; carry-over credits

(a) *Obligation.* As a condition of maintaining a license to practice law in the State of West Virginia, every active member shall satisfy the minimum continuing legal education and reporting requirements in this Rule.

(b) *MCLE requirements.* Each active member shall complete a minimum of twenty-four hours of continuing legal education, as approved by this Rule or accredited by the Commission, every two fiscal years. At least three of such twenty-four hours shall be taken in courses on legal ethics, office management, attorney well-being, or elimination of bias in the legal profession.

(c) *Reporting.* On or before the first day of July of every even year, each active member must file a report of completion of continuing legal education activities. The reporting is to be completed electronically using the web-based membership portal maintained by the State Bar. Any lawyer who submits a paper-based report must include a \$25 fee with the report or it will not be processed.

(d) *Carryover credits.* Members who exceed the minimum requirements in this Rule may carry a maximum of six credit-hours forward to only the next reporting period, except

that no carryover credits can be applied to the three-hour minimum requirement for courses on legal ethics, office management, attorney well-being, or elimination of bias in the legal profession.

6.03 Bridge-the-Gap Program

(a) *Obligation.* Newly admitted members are required to complete a mandatory Bridge-the-Gap Program sponsored by the State Bar within twenty-four months after admission to the West Virginia State Bar. The mandatory Bridge-the-Gap Program shall be provided by the State Bar at least twice per year at locations within West Virginia. The Bridge-the-Gap Program will be provided free of charge to newly admitted members. Continuing legal education credit shall be available for completing the mandatory Bridge-the-Gap Program.

(b) *Suspension.* Any lawyer subject to this requirement who fails to complete the mandatory Bridge-the-Gap Program within six months after written notice of noncompliance from the Commission shall have their license to practice law in the State of West Virginia automatically suspended until such lawyer has complied with this requirement. Any member of the West Virginia State Bar otherwise in good standing who is suspended for failure to complete the mandatory Bridge-the-Gap Program shall be reinstated as a member of the West Virginia State Bar upon completion of the mandatory course, payment of a reinstatement fee of \$200, and fulfillment of any other administrative requirements.

(c) *Exemption.* A member required to complete the Bridge-the-Gap Program may, upon application to and approval by the Executive Director, be exempted from the requirement if: (1) the member can certify having been admitted to practice in another jurisdiction for a minimum of five years; or (2) the Commission can certify that the member has completed a comparable mandatory new lawyer training program offered by the state bar of another jurisdiction of at least seven credits, including two credits of legal ethics, office management, attorney well-being, or elimination of bias in the legal profession. The request for an exemption must be filed no later than twenty-four months after admission to the West Virginia State Bar and no extensions of time are permitted.

(d) *Extension of time.* The time for completion of the Program may, upon application to and approval by the Commission, be extended. Written applications for an extension must be received by the Commission no later than thirty days after the deadline to complete the Program or obtain an exemption. If the written application includes supporting documentation that demonstrates hardship or other good cause for an extension, the member will be permitted to complete the Program at the next regularly scheduled opportunity. If the application for extension does not demonstrate hardship or good cause warranting an

extension, the member must pay a late fee of \$200 and complete the Program at the next regularly scheduled opportunity.

6.04 Exemptions from mandatory continuing legal education requirements

(a) Any lawyer not previously admitted to practice in West Virginia who is admitted during the first twelve months of any 24-month reporting period is required to complete twelve hours in approved MCLE activities including at least three hours in legal ethics, office management, attorney well-being, or elimination of bias in the legal profession before the end of the reporting period. Any lawyer not previously admitted who is admitted during the second twelve months of any 24-month reporting period is exempt for that entire reporting period.

(b) Any lawyer previously admitted to the State Bar who is restored to active status pursuant to Rule 6.07 during the first twelve months of any 24-month reporting period is required to complete twelve hours in approved MCLE activities including at least three hours in legal ethics, office management, attorney well-being, or elimination of bias in the legal profession before the end of the reporting period. Any lawyer who is restored to active status under Rule 6.07 during the second twelve months of any 24-month reporting period is exempt for that entire reporting period.

(c) For good cause shown, the Commission may, in individual cases involving extreme hardship or extenuating circumstances, grant conditional, partial or complete exemptions of these minimum continuing legal education requirements. Any such exemption shall be reviewed by the Commission at least once during each reporting period unless a lifetime conditional exemption has been granted.

(d) Active non-practicing and inactive members, judicial members as specified in Bylaw 2.07(d), the Clerk of the Supreme Court of Appeals, Deputy Clerks of the Supreme Court of Appeals, and any other individuals as may hereafter, from time to time, be designated by the Supreme Court of Appeals, are not required to comply with these requirements.

6.05 Obtaining credits to satisfy mandatory continuing legal education requirements

Members of the State Bar may obtain credit for purposes of the mandatory continuing legal education requirements as follows:

(a) One hour of credit may be obtained for each period of fifty minutes of instruction attended in an accredited course.

(b) One hour of credit may be obtained for each period of fifty minutes of digital or electronically presented instruction provided that such digital or electronic presentation is accredited by the Commission.

(c) No more than half of the total required mandatory continuing legal education requirements may be satisfied by pre-recorded presentations that do not offer an interactive component.

(d) A maximum of six hours of mandatory continuing legal education credit may be obtained for the teaching of each individual accredited course when the period of teaching lasts for at least fifty minutes. If the teacher participates in a panel discussion or teaches for a period of less than fifty minutes, three hours of credit may be obtained. No more than half of the total required mandatory continuing legal education credit for any reporting period may be satisfied by teaching credits.

(e) The Commission may give credit for publication, including, but not limited to, publishing an article in the law review of an ABA-accredited law school; publishing an article in the official publication of the State Bar; authorship or co-authorship of a book; contribution of a paper published in a legal society's annual, hardbound collection; publication of an article in a bar journal in another state; and contribution through either editing or authorship to periodic newsletters designed to serve the interests of specialists. The Commission has authority to allocate the amount of credits to be given for publication.

(f) A lawyer may obtain one credit hour for every three completed hours of pro bono legal service which satisfies Rule 6.1 of the West Virginia Rules of Professional Conduct and is performed during the reporting period through one or more of the following approved pro bono organizations: (1) Legal Aid of West Virginia; (2) the State Bar's West Virginia Free Legal Answers Program; (3) the State Bar's Tuesday Legal Connect Program; and (4) the West Virginia University College of Law Center for Law and Public Service. The approved pro bono organizations shall report each lawyer's pro bono service hours by June 1 of each year in the format required by the Commission. Credits obtained under this subsection are subject to the limitation set forth in Rule 6.05(c) and are not credited as live instruction under Rule 6.05(a). A maximum of six hours of mandatory continuing legal education credit for approved pro bono service hours may be obtained for any two-year reporting period, and no additional service or credit hours may be carried over to the next reporting period. The Commission has the authority to review a lawyer's pro bono service hours to ensure compliance with this rule.

6.06 Noncompliance and sanctions

(a) Noncompliance with the reporting or minimum continuing education requirements of this Rule may result in the suspension of a lawyer's license to practice law until such lawyer has complied with these requirements.

(b) As soon as practicable after July 1, the Commission shall notify all active members of the State Bar who are not in compliance with the reporting or minimum continuing education requirements of this Rule of the specific manner in which such member has failed, or appears to have failed, to comply with this Rule. Any member of the State Bar shall have until October 1 to correct such noncompliance or provide the Commission with proper and adequate information to establish that such member is in compliance with this Rule. A delinquency fee of \$200.00 shall be imposed upon any lawyer who does not submit a report of MCLE activity by July 31, including a request for teaching or publication credit.

(c) An additional fee of \$200.00 shall be paid upon application for reinstatement by those attorneys whose licenses have been suspended for failure to comply with the MCLE requirement. This fee is in addition to the reinstatement fee charged for suspension for non-payment of membership fees. The attorney will not be reinstated unless all outstanding fees have been paid. MCLE credits, if reported late, will not be entered until all outstanding fees have been paid.

(d) As soon as practicable after October 1, the Commission shall give notice, by certified or registered mail to the mailing address of record with the State Bar, to any active member who has still not established that they are in compliance with this Rule for the preceding two-year reporting period that after thirty days, the Commission will notify the Supreme Court of Appeals of such this fact and request the Court to suspend such lawyer's license to practice law until the lawyer has established that they have complied with the requirements of this Rule for the preceding two-year reporting period.

(e) During such thirty-day period, any lawyer having received a thirty-day notice may demand a hearing before the Commission. Any such hearing shall be conducted within a reasonable period of time after receipt of the demand. At such hearing the lawyer shall have the burden of establishing either (1) that they are in fact in compliance with the requirements of this Rule or (2) that they are entitled to an exemption. In the event such burden is not carried, the Commission shall by appropriate petition notify the Supreme Court of Appeals that the lawyer has failed to comply with the reporting or education requirements for the preceding two-year reporting period and request the Court to enter an appropriate order suspending such lawyer's license to practice law in the State of West Virginia until the lawyer has complied with such requirements. Any adverse decision by the Commission may be appealed to the Supreme Court of Appeals. In the event such lawyer does not prevail at such hearing or appeal, they shall be assessed the costs thereof.

(f) In the event no demand for a hearing is received within the thirty-day period, the Commission shall by appropriate petition notify the Supreme Court of Appeals of the names of any members of the State Bar who have failed to comply with the reporting or education requirements of this Rule for the preceding two-year reporting period and request the Court to enter an appropriate order suspending each such lawyer's license to practice law in the State of West Virginia until the lawyer has complied with such requirements.

(g) A lawyer who has not complied with the mandatory continuing legal education requirements by June 30 may thereafter obtain credits to be carried back to meet the requirements of the preceding two-year reporting period. However, any credit obtained may only be used to satisfy the mandatory continuing legal education requirements for one reporting period.

(h) No lawyer shall be permitted to make use of a transfer from active to inactive or active non-practicing membership in the State Bar as a means to circumvent the mandatory continuing legal education requirements.

6.07 Change to active status

(a) Any person previously enrolled as an active member of the State Bar who is an active non-practicing or an inactive member of the State Bar, administratively suspended by the State Bar, or suspended or disbarred by the Supreme Court of Appeals, shall demonstrate that they have complied with a minimum of twelve hours of continuing legal education, as approved by this Rule or accredited by the Commission, at least three hours of which shall be taken in courses in legal ethics, office management, attorney well-being, or elimination of bias in the legal profession within twelve months immediately preceding the application to change to active status. Any person previously enrolled as an active member of the State Bar who has served as a Justice of the Supreme Court of Appeals, Circuit Court Judge, or Family Court Judge immediately preceding the change to active status shall be exempt from this requirement but shall be subject to the mandatory continuing legal education requirements upon change to active status.

(b) Any lawyer who was administratively suspended by the State Bar for any reason under Bylaw 2.09(a) and who is returned to active status within six months of the date of suspension will not be required to submit any additional information regarding mandatory continuing legal education provided that the attorney has otherwise been in compliance with the continuing legal education requirements.

6.08 Accreditation of providers and approval of courses, generally

(a) The Commission has sole authority to accredit providers and approve courses and programs for purposes of the mandatory continuing legal education requirements established by this Rule.

(b) The Commission may establish a list of presumptively accredited providers whose courses—including those provided through digital and electronic mediums—are approved activities. The Commission shall publish the list of providers that are presumptively accredited on the State Bar website and update the list periodically.

(c) Courses offered by organizations that are not on the list described in Rule 6.08(b) may be approved by the Commission upon the request of an individual lawyer or organization on a case-by-case basis in accordance with this Rule.

(d) To be approved, a course shall have significant intellectual or practical content; it shall deal primarily with matter directly related to the practice of law (which includes professional responsibility and office practice); it shall be taught by persons who are qualified by practical or academic experience in the subjects covered and must include the distribution of high quality written materials pertaining to the subjects covered. One-hour courses presented by local bar associations shall be exempt from the written materials requirement. In rare instances, providers other than local bar associations may exhibit good cause for waiver of the written materials requirement. A provider seeking a waiver of the written materials requirement shall present a written request of such waiver to the Commission, explaining why the provider believes that written materials should not be provided. The Commission will consider each request for a written waiver on a case-by-case basis.

(e) One hour of continuing legal education credit shall be given for each period of fifty minutes of instruction in an accredited course. Based upon this standard, providers of approved activities given in West Virginia shall include with their course materials a statement that, "This course or program has been approved for ____ hours of continuing legal education credit in West Virginia."

(f) The Commission may refuse to accredit a course change or may revoke the accredited status of any provider that misrepresents the extent to which any information relating to course approval under this Rule.

(g) In cases where approval could not be reasonably obtained in advance for a given course, an individual lawyer may request approval after attendance in accordance with this Rule.

(h) All decisions of the Commission concerning accreditation of providers and approval of courses shall be final.

6.09 Standards for approval of continuing legal education activities

(a) A continuing legal education activity qualifies for approval if the Commission determines that: (1) it is an organized program of learning (including a workshop, symposium or lecture) which contributes directly to the professional competency of a lawyer; (2) it deals primarily with matter directly related to the practice of law or to the professional responsibility or ethical obligations of the member, and may include activities that involve the crossing of disciplinary lines, such as a medicolegal symposium or an accounting tax law seminar; (3) each activity is taught by a person qualified by practical or academic experience to teach the activity the person covers; (4) high quality, readable, carefully prepared written materials pertaining to the subjects covered shall be distributed to attendees at or before the time the course is offered in accordance with Rule 6.08(d); and (5) the provider must keep digital records of all attendees for a minimum of three years following the activity, and those attendee records must be made available to the Commission upon request.

(b) No credit shall be given for any activity attended before being admitted to the West Virginia State Bar, including preparation for admission to the West Virginia State Bar.

(c) Credit may be earned through teaching or participating as a panelist in a panel discussion in an approved continuing legal or judicial education activity. In awarding credit for teaching or participating as a panelist in an approved program, the Commission will be controlled by Rule 6.05(d). A lawyer may receive credit for teaching or participating as a panelist in a panel discussion in an approved continuing legal or judicial education activity by submitting an application to the Commission that furnishes the appropriate information using the web-based membership portal maintained by the State Bar. Any lawyer who submits a paper-based request must include a \$25 fee with the request or it will not be processed.

(d) Credit hours for writing an article published in the law review of an ABA-accredited law school or for other approved publication activity shall be allocated in the year of publication and limited as provided in Rule 6.05(e).

(e) An in-house activity may be approved for continuing legal education credit under the rules applicable to any other provider, plus the following additional requirements: (1) the courses shall be submitted through electronic format for approval on a course-by-course basis, rather than an accredited-provider basis; (2) the courses shall be submitted for approval at least thirty days in advance; (3) an outline or written materials must be presented to the Commission through the appropriate West Virginia State Bar electronic interface at the time of submission for approval and written, digital, or electronic copies of the outline and/or materials must be distributed to all attendees at the course; (4) the courses must be open to observation by the Justices of the Supreme Court of Appeals of West Virginia, the officers or staff of the State Bar, the members of the Board, and members or staff of the Commission;

(5) the courses must be scheduled and arranged at a time and location so as to be free of interruptions from telephone calls and other office matters; (6) No more than half of the mandatory continuing legal education requirements may be satisfied by in-house teaching or attendance at in-house activities; and (7) an in-house activity on legal ethics may not be taught by a member of the firm or entity offering such activity.

(f) Client-oriented seminars shall not be approved for CLE credit.

(g) The total credit for digital or electronic training courses and in-house instruction shall not exceed half of the mandatory continuing legal education requirements.

(h) A lawyer attending a digital or electronic presentation or training course is entitled to credit hours under the following circumstances: (1) if a course is an approved activity, digital or electronic distribution of that course is also an approved activity; (2) Any digital or electronically distributed presentation produced by a provider that is not presumptively accredited must meet the requirements for approval set forth in Rules 6.08(c) and 6.09(a); (3) Unless the entire digital or electronically distributed presentation has been produced by a presumptively accredited provider, the person or organization offering the program or the attorney seeking credit must receive advance approval from the Commission by submitting the appropriate information using the web-based membership portal maintained by the State Bar. Any lawyer who submits a paper-based request must include a \$25 fee with the request or it will not be processed.

(i) The Commission may permit an active member to meet the full mandatory continuing legal education requirements by attending or participating in a seminar that includes a digital or electronic presentation as part of a live program.

(j) Simultaneous electronic synchronous broadcasts will be approved for the full mandatory continuing legal education requirements if the following criteria are met: (1) the broadcast is designed and organized for interaction among a group of attorneys; (2) the broadcast is merely a distribution of a live program with the same qualified speakers which would address a seminar with live attendees; and (3) attendees are able to have questions answered through synchronous or asynchronous digital media.

(k) The mandatory continuing legal education requirements may not be satisfied by receiving credit for teaching the same activity more than once during a two-year reporting period.

(l) A lawyer may receive credit for authorship and publication of legal materials by submitting an application to the Commission using the web-based membership portal maintained by the State Bar. Any lawyer who submits a paper-based request must include a \$25 fee with the application or it will not be processed. The application must include: (1) a copy of the work and a statement by the applicant that the material is an original work; and (2) the name and address of any other person participating in the authorship of the published

material, and a statement with respect to the extent to which the applicant contributed to the authorship of the material; and (3) a statement that the authored material has been published in a publication having distribution to at least 300 attorneys; and (4) the name and address of the publisher. Credit hours shall be allocated for the authorship and publication of the material in the year in which the publication actually occurs. The Commission will determine the number of credits to be allocated to the authorship and publication of the work. Credits will be awarded for scholarly pieces involving legal research as indicated by citation to authority. A lawyer may not receive more than half of their credit hours for authorship and publication of any materials in any two-year reporting period except as set forth in Rule 6.04(a).

(m) An attorney may not earn double credit for either (1) attending the same seminar held in different locations or (2) attending a seminar and completing a digital or electronically distributed presentation of the same seminar.

(n) To earn continuing legal education credit for attendance at any Bar Committee meeting, the Committee must submit an approved agenda at least thirty days in advance, which lists the topics covered and a brief biographical sketch of each speaker. Presentations at Bar Committee meetings must include at least fifty minutes of actual instruction. No audio or video taped presentations of Bar Committee meetings will be approved. If the meeting is approved by the Commission, only those members of the Bar Committee may earn continuing legal education credit. Committee meeting attendance credit may not be earned by attorneys that are not members of that Committee. The maximum number of continuing legal education credits that may be earned from attendance at Bar Committee meetings during any two-year reporting period is three credits.

(o) Any person employed on a full-time or part-time basis as a professor of law or other instructor of courses in a law school or other academic institution shall not receive CLE credit for teaching those courses.

(p) Digital or electronic training courses may be approved for continuing legal education credit under the rules applicable to any other course or program, plus the following additional requirements: (1) the digital or electronic training course must be part of a structured course of study; (2) a written outline or written materials fully describing the course must be presented to the Commission at the time of submission for approval; (3) in awarding credit for digital or electronic training courses, the Commission shall consider the extent to which the lawyer's educational effort in the course is evaluated by the provider; (4) The provider shall provide the number of credits possible for completion of the course; and (5) credit reported shall not exceed the maximum number of credits as designated by the provider.

6.10 Procedures for accreditation of providers, activities

(a) *Presumptive accreditation of providers.* A provider not presumptively accredited by the Commission may apply for presumptive accreditation by submitting an application in the form required by the Commission. Presumptively accredited providers shall provide to the Commission, upon request, a list of all courses offered in the preceding year by August 30 of each year. A list of all lawyers in attendance at any presumptively accredited program shall be maintained by the provider for not less than three years and made available to the Commission upon request. Presumptively accredited providers shall allow the West Virginia State Bar or MCLE Commission members and staff to audit, free of charge, any of its accredited continuing legal education programs. Failure to comply with MCLE rules shall result in the revocation of presumptively accredited status.

(b) *Prior approval of individual activities of providers who are not presumptively accredited.* A provider desiring prior approval of an activity shall apply for approval by submitting an application in the form required by the Commission at least 30 days in advance of the commencement of the activity. A lawyer desiring prior approval of an activity shall apply for approval to the Commission using the web-based membership portal maintained by the State Bar at least 30 days in advance of the commencement of the activity. Any lawyer who submits a paper-based request must include a \$25 fee with the request or it will not be processed.

(c) *Post-approval of activities of providers that are not presumptively accredited.* A lawyer seeking approval of an activity that was not conducted by a presumptively accredited provider and was not otherwise approved shall request credit within 30 days after completion of such activity using the web-based membership portal maintained by the State Bar. Any lawyer who submits a paper-based request must include a \$25 fee with the request or it will not be processed.

(d) *Multiple providers.* Courses offered by more than one provider are presumptively accredited if at least one of the providers is presumptively accredited.

6.11 Ethics in reporting continuing legal education activities

The filing of a false report, form, or statement, or any other misrepresentation may result in the initiation of a disciplinary proceeding for engaging in unethical conduct.

6.12 Time limits

For good cause shown, any time limitations or requirements imposed by this Rule may be modified by the Commission.

6.13 Confidentiality

The files, records, and proceedings of the Commission, as they relate to or arise out of the compliance or noncompliance of an active member of the State Bar with the requirements of this Rule, shall be deemed confidential and shall not be disclosed, except in furtherance of the Commission's duties, or upon written request of the lawyer affected, or as directed by the Supreme Court of Appeals.

[CLERK'S COMMENTS: Rule 6 integrates and reconciles three different governance documents. The first was previously reviewed and approved by the Court: Chapter VII of the Rules and Regulations of the State Bar, entitled "Rules to Govern Mandatory Continuing Legal Education." The second is a stand-alone document that was posted on the State Bar's website, entitled: "Regulations, WV Mandatory Continuing Legal Education Commission." The third source for this rule is the October 25, 2017 Supreme Court Administrative Order relating to changes in the Bridge-the-Gap Program. This Rule incorporates those documents, with some modifications to be consistent with changes already made in other areas. The major governance provisions relating to a lawyer's basic obligation to maintain CLE credits, the existence of the Commission, and its powers and duties, are now all contained in Article 15 of the Bylaws. Rule 6 sets forth the specifics of the process. When combining the disparate parts, a number of inconsistencies in terminology (accredited vs. approved, provider vs. sponsor) needed to be addressed on a uniform basis. In Bylaw Article 15 and this Rule, the term "accredited" is used to apply to a provider; while the term "approved" applies to an individual course. All of the courses offered by a "presumptively accredited" provider are approved, whereas an unaccredited provider must apply for approval on a course-by-course basis. The provisions set forth in Rule 6.03 relating to the Bridge-the-Gap Program are a revised version of amendments that were drafted by the Young Lawyer Section, approved by the Board of Governors, and by the Supreme Court in October 2017. The changes set forth in Rule 6 are not effective until the July 1, 2020 – June 30, 2022 reporting period, with two exceptions: changes to the Bridge-the-Gap Program set forth in Rule 6.03 are effective July 1, 2019, and Rule 6.05(f), which allows lawyers to obtain MCLE credits for pro bono service in certain circumstances, is also effective July 1, 2019.]

Rule 7 Procedure for Unlawful Practice Committee matters

7.01 Origin of cases

A case before the Unlawful Practice Committee may originate upon a request for investigation from the Unlawful Practice Committee, upon a request from a grievance committee, upon the request of the Board, the president, the president-elect or vice president,



John Griffith, Franklin, President
Suzanne Keith, Executive Director
skeith@tla.org

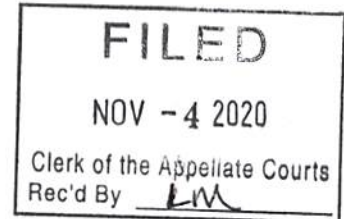
629 Woodland Street | Nashville, TN 37206 | 615.329.3000 | fax 615.329.8131

WRITTEN COMMENT ON BEHALF OF TTLA
AMENDMENT OF RULE 21, RULES OF THE TENNESSEE SUPREME
COURT

No. ADM2020-01159

November 2, 2020

James M. Hivner, Clerk
RE: Tenn. Sup. Ct. R. 21, section 3.01
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407
appellatecourtclerk@tncourts.gov



Dear Mr. Hivner:

The Tennessee Trial Lawyers Association appreciates the opportunity to comment regarding Supreme Court Rule 21 regarding diversity. Our association's comments are set out below.

Understanding and addressing issues of diversity, inclusion, equity, and elimination of bias are consistent with TTLA's mission. The Tennessee Supreme Court noted, "it is our moral obligation and our sworn duty to ensure that the people of Tennessee receive equal protection of its law." As attorneys, we share that obligation to uphold the guarantees of rights in the United States and Tennessee constitutions. Discrimination, implicit or otherwise, threatens the constitutional rights of Tennesseans. Moreover, discrimination threatens access to our civil justice system.

As the Tennessee Supreme Court stated, "racism still exists and has no place in our society." Discrimination continues to exist in other forms, as well. As attorneys and as members of the TTLA, our sworn obligations do not permit us to sit passively by as our sisters and brothers suffer discrimination in our state.

Accordingly, the TTLA supports the Nashville Bar Association's petition regarding education for attorneys licensed to practice law in Tennessee to increase the awareness and understanding of issues of diversity, inclusion, equity, and elimination of bias. We defer to the wisdom of the Tennessee Supreme Court and the CLE Commission to determine the scope of the educational requirement that most effectively and fairly accomplishes this imperative.



OFFICERS: Tony Seaton, *President Elect*; Matt Hardin, *Immediate Past President*; Danny Ellis, *Vice-President East*; Mark Chalos, *Vice-President Middle*; Carey Acerra, *Vice-President West*; Brandon Bass, *Secretary*; Troy Jones, *Treasurer*; Caroline Ramsey Taylor, *Parliamentarian* AT LARGE REPRESENTATIVES: Audrey Dolmovich, Jim Higgins, George Spanos



John Griffith, Franklin, President
Suzanne Keith, Executive Director
skeith@tla.org

629 Woodland Street | Nashville, TN 37206 | 615.329.3000 | fax 615.329.8131

Page 2

November 2, 2020

Please don't hesitate to contact us if you have questions or we can assist you in any way. Thank you for your service to our legal community and the citizens of Tennessee.

Respectfully submitted,

John Griffith, President of the Tennessee Trial Lawyers Association

And Suzanne G. Keith, Executive Director



OFFICERS: Tony Seaton, *President Elect*; Matt Hardin, *Immediate Past President*; Danny Ellis, *Vice-President East*; Mark Chalos, *Vice-President Middle*; Carey Acerra, *Vice-President West*; Brandon Bass, *Secretary*; Troy Jones, *Treasurer*; Caroline Ramsey Taylor, *Parliamentarian* AT LARGE REPRESENTATIVES: Audrey Dolmovich, Jim Higgins, George Spanos



DISABILITY RIGHTS TN

800.342.1660 | www.disabilityrightstn.org | gethelp@disabilityrightstn.org

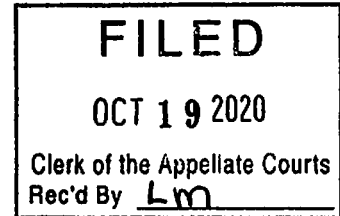
Middle Tennessee Regional Office
Administration & Legal Department
2 International Plaza, Suite 825
Nashville, TN 37217
615.298.1080 phone
615.298.2046 fax

Appellate Court Clerk, State of Tennessee

RE: Docket # No. ADM2020-01159

VIA EMAIL: appellatecourtclerk@tncourts.gov

Dear Appellate Court Clerk:



Disability Rights Tennessee (DRT) is Tennessee's Protection & Advocacy organization. We are a legally-based organization which protects the rights of individuals with disabilities across the state. DRT believes that Docket # No. ADM2020-01159, which proposes to update the state's mandatory 15 continuing legal education credits to require "each attorney to complete two hours of the required fifteen in diversity, inclusion, equity, and elimination of bias," will have a positive impact on Tennesseans with disabilities. As an organization, DRT's primary goal is to ensure individuals with disabilities, who include people from diverse racial and ethnic groups, have freedom from harm and discrimination and are afforded equal access to services and programs in their communities. DRT openly condemns discrimination of any kind, including systemic racism, and is prioritizing its own efforts to ensure a bias-free, diverse, and inclusive workplace. Members of the Tennessee Bar should also prioritize diversity, inclusion, and equity in their own practices, whether that be in the people they hire, work alongside, or the clients they serve. Diversity, equity, and inclusion allow all individuals, regardless of disability or race, to access the legal profession, allow the best ideas to flourish, connect talented individuals from underrepresented backgrounds with opportunities that those in the majority often have unfair access to, and empower lawyers, firms, and other organizations to thrive. Therefore, DRT believes that requiring lawyers to take two continuing legal education credits a year regarding diversity, inclusion, equity, and the elimination of bias will positively impact Tennesseans with disabilities.

We would be happy to speak further with you about the positive impact we think this proposed update will have for Tennesseans with disabilities. My contact information is below.

Sincerely,

Jack W. Derrybery, Jr., Legal Director
Disability Rights Tennessee
2 International Plaza, Suite 825
Nashville, TN 37217
(615) 298-1080
Email: jackd@disabilityrightstn.org

Lisa Marsh - Comments re: ADM2020-01016; Inclusion of Diversity in CLE Requirements

From: Darla Walker <darlawalkerlaw@gmail.com>
To: <appellatecourtclerk@tncourts.gov>
Date: 10/16/2020 9:49 AM
Subject: Comments re: ADM2020-01016; Inclusion of Diversity in CLE Requirements

Just my thoughts on this: If you require any type of CLE, this takes away hours the attorney could use for a CLE that focuses on his/her specific law practice, which would be much more beneficial to the attorney than requiring a CLE he/she may not want to take.

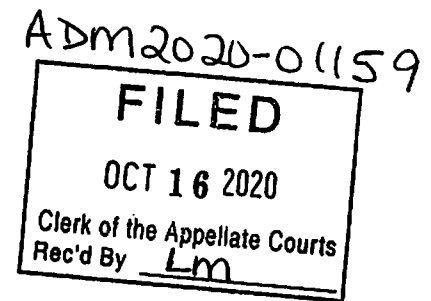
Also, I have found that most times when someone takes a class or performs a task only because it is required, it is of little to no benefit to the person. He/she does not make an effort to learn, and he/she takes the class/completes the task to get it finished and out of the way.

Just my thoughts. Thanks!

Darla Walker

--

Darla M. Walker, Esq.
2125 Middlebrook Pike
Knoxville, TN 37921
865-546-2141



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Kim Meador - AMENDMENT OF RULE 21, RULES OF THE TENNESSEE SUPREME

ADM2020-01159

From: Steve Newton <sdnewton50@outlook.com>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 10/7/2020 5:57 AM
Subject: AMENDMENT OF RULE 21, RULES OF THE TENNESSEE SUPREME

FILED

OCT 07 2020

Clerk of the Appellate Courts
Rec'd By RJM

I believe that there is no empirical evidence to show that this is need for our attorneys in Nashville. This is simply a political stunt by parties that want to subvert our legal system.

Sincerely
Steve Newton

Kim Meador - CLE on diversity, inclusion

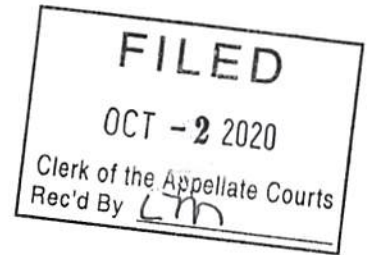
ADM2020-01159

From: Melody Bock <melodybock@yahoo.com>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 10/6/2020 10:02 AM
Subject: CLE on diversity, inclusion

FILED
OCT 06 2020
Clerk of the Appellate Courts
Rec'd By <u>KJM</u>

There are too many CLE hour requirements already. If you want to do this, require it once every 3 years, offer it for free and don't increase the minimum number of required hours of CLE each year. It is hard to ask working female attorneys with children to comply with so many CLE hours and then the Supreme Court is always asking them to do pro bono work on top of CLE. The Bar has never understood the difficulty of working parents.

As a female attorney, I found more discrimination within the firms I worked for dealing with pregnancy and partnership issues than I did while actually practicing law. I did have one Judge, now retired, give the opposing attorney a new trial based on the argument that I was pregnant while trying the case; and the jury must have felt sorry for me as the reason my client prevailed.



September 28, 2020

James M. Hivner, Clerk
RE: Tenn. Sup. Ct. R. 21, section 3.01
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

**RE: Memphis Bar Association's Letter in Support of Nashville Bar Association's
Petition to Modify Tennessee Supreme Court Rule 21
Docket No. ADM2020-0115**

Dear Clerk Hivner,

Please accept this letter on behalf of the Memphis Bar Association ("MBA") in support of the Petition to Modify Rule 21 of the Tennessee Supreme Court ("Petition") filed by the Nashville Bar Association on August 28, 2020.

The MBA was established in 1874, four years before the founding of the American Bar Association. The MBA is a professional organization for attorneys in Memphis and the surrounding Mid-South area that seeks to provide a place for lawyers to grow, connect and serve. The MBA stands committed to ensuring diversity, equity, and inclusion in the practice of law, and recently created a Diversity and Outreach Committee that will focus on raising awareness and educating the membership around the issues of systemic racism, implicit bias, and diversity and inclusion within the legal profession.

In June, the MBA proudly participated in the Bar Unity March organized by the Ben F. Jones Chapter of the National Bar Association. Along with local judges, lawyers, and law students, MBA members proudly participated in a peaceful march to show that our local bar organizations stand unified in recognizing that because racism reaches every facet of our lives, it must be addressed within the legal community and legal system. Now we stand united with the Nashville Bar Association in support of its Petition requiring that all Tennessee lawyers educate themselves on topics related to diversity, inclusion, equity, and the elimination of bias every year.

For many years, the MBA has sought out speakers on issues related to these topics and encouraged its members to attend these sessions. For example, the MBA sought out nationally known speaker, Kimberly Pappillion, to speak at the 2017 Bench Bar Conference in St. Louis about the neuroscience of decision-making, which focused on the implicit biases we all have. Following



her presentation in St. Louis, Ms. Pappillion spoke to a number of different groups of legal professionals as part of a series presented by the MBA and the Center for Excellence in Decision Making ("CEDM"). Since that time, the MBA has continued to partner with the CEDM to present CLE sessions focused on diversity, inclusion, equity, and the elimination of bias.

As an organization, the MBA has been and remains committed to these important issues and proudly supports the Nashville Bar Association's Petition. To require all Tennessee attorneys to take two (2) hours of continuing legal education focused on diversity, inclusion, equity, and elimination of bias is but a small step toward ensuring that the legal profession can move past issues of systemic racism that have plagued our state and our nation for far too long.

Sincerely,

A handwritten signature in blue ink that reads "Lucie Brackin". The signature is written in a cursive style.

Lucie Brackin
President, Memphis Bar Association

appellatecourtclerk - ADM2020-01159 Comments

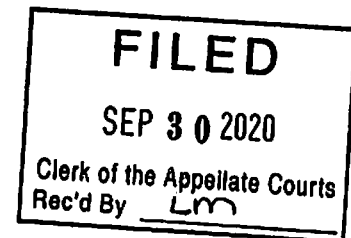
From: John Harris <jharris@slblawfirm.com>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 9/30/2020 11:57 AM
Subject: ADM2020-01159 Comments

Dear Sirs

As a practicing attorney in Tennessee, I oppose the petition of the Nashville Bar Association for many of the same reasons that President Trump has issued an Executive Order on September 22, 2020, regarding Combating Race and Sex Stereotyping training.

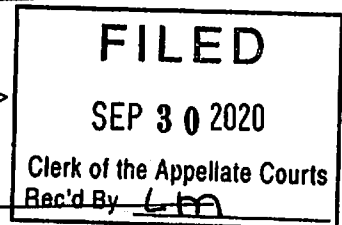
I urge the Court not to modify the existing CLE requirements by requiring annual hours devoted to diversity or sensitivity training. If individual attorneys, law firms, or employers want to provide this training as part of either the existing 3 hours of ethics requirements or as part of the required 12 hours of general credits, that can be done now. However, for many of Tennessee's practicing attorneys there is no need for a requirement of 2 hours of training on diversity or sensitivity annually.

John I. Harris III
TBPR - 012099
3310 West End Avenue, Suite 460
Nashville, Tennessee 37203
(615) 244 6670 Ext. 111
Fax (615) 254-5407
www.johniharris.com
www.slblawfirm.com



appellatecourtclerk - Re petition regarding docket No. ADM2020-01159

From: Richard Archie <RArchie@hmcompany.com>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 9/30/2020 3:27 PM
Subject: Re petition regarding docket No. ADM2020-01159



Per the NBA's request No. ADM2020-01159 that all Tennessee attorneys be required to take at least two hours of their yearly fifteen (15) hour requirement in continuing education to specifically include "diversity, inclusion, equity, and elimination of bias", I purport a far better use of their time, (and of benefit to the People of Tennessee), would be a requirement that each attorney take that two (2) hour course in the Tennessee Constitution.

Should the powers that be decide on this course of action, the aforementioned qualifiers would be addressed.

As a disproportionate number of attorneys wind up as legislators, I think it would be prudent to have all their continuing education consist of the study of said document (Constitution) with emphasis on Article one (1) Sections one (1) and two (2) and Article eleven (11) Section sixteen (16) where the Power to govern is explained.

Should such action be taken, the learned of jurisprudence could then temper their more base brothers and sisters in service to the People with good instruction.

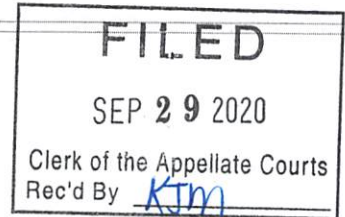
I oppose the mandating of the course matter included in the petition, as it is too narrowly focused and generally inconsiderate of the Rights of all the People of Tennessee.

Disclaimer

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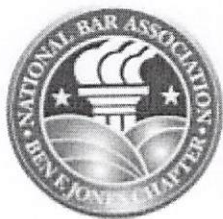
From: Ward Huddleston <ward.huddleston@gmail.com>
To: <appellatecourtclerk@tncourts.gov>
Date: 9/29/2020 1:48 PM
Subject: No. ADM2020-01159



I respectfully opposed the Petition of the Nashville Bar Association and even though I fear retribution in the form of being called a "racist," and otherwise demeaned for my opposition, I submit my reasons. I have been a supporter of Civil Rights legislation and court rulings for more than the 44 years I have been licensed as an attorney in Tennessee. However, I adhere to our legal tradition of requiring proof before a thing is accepted as established fact. The NBA relies upon "systemic racism" as a basis for its position. The anecdotal evidence of police misconduct and apparent criminal behavior in the instances cited by Petitioner has not been adjudicated in a court of law as proof of "systemic racism." I observed the De Jure and De Facto discrimination against minorities that existed during my lifetime. Legislation followed by judicial enforcement addressed that head on with specific detail describing prohibited activity such as racial discrimination in employment, housing and access to public services. I was taught to be "color blind" as was the goal of the Civil Rights Acts and court rulings.

My concern is sloppy thinking confuses insulting or insensitive actions and/or language with unlawful racist activity or behavior. Diversity is a current catch-phrase that seems to be targeted toward an undefined objective or specific goal. My question is, does the Petitioner seek to educate lawyers about the area of law called diversity or is it an attempt at indoctrination to a social movement? As I understand the Tennessee Supreme Court Rules regarding CLE, attendance is mandatory subject to certain exceptions and time frames but may result in loss of license to practice law. This is a heavy weapon for a social movement that has not been codified into law. I have personally observed the fantastic good our system of laws and norms have produced over the last 60 years for everyone especially minorities. "Social Justice" and elimination of "systemic racism" appear to be logically admirable but are too vague and unproven to be a subject matter for CLE. Thank you for allowing me this opportunity to address the petition.

Ward Huddleston Jr
1687 Shelby Oaks Dr Ste 6
Memphis, TN 38134
BPR 004281



National Bar Association
BEN F. JONES CHAPTER
 P.O. Box 3493
 Memphis, Tennessee, 38173

ADM2020-01159

FILED
 SEP 29 2020
 Clerk of the Appellate Courts
 Rec'd By *KJM*

2020 EXECUTIVE OFFICERS

Judicial Commissioner,
Shayla Purifoy-ABSTAIN
President

Quinton E. Thompson
Vice President (President-Elect)

Edd L. Peyton
Immediate Past President

Gabrielle A. Lewis
Treasurer

Judicial Commissioner,
Taylor Eskridge
Bachelor-ABSTAIN
Corresponding Secretary

Laquita Stokes
*Recording Secretary (2021 BFJ
 NBA Convention Committee
 Co-Chair)*

Ashley Finch
Parliamentarian

Board Members
Asia Diggs-Meador
Hon. Earnestine Dorse
Amber Floyd
Latrena Ingram
Mozella Ross
LaTanya Walker
Zayid Saleem

September 29, 2020

Via Electronic Mail Only (Due to COVID-19 and Other USPS Concerns)

Chief Justice Bivins
 Supreme Court of Tennessee
 401 Seventh Avenue North
 Nashville, TN 37219
Via Email: justice.jeff.bivins@tncourts.gov

Justice Cornelia Clark
 Liaison Justice to Tennessee Commission on Continuing Legal Education
 401 Seventh Avenue North
 Supreme Court of Tennessee
 401 Seventh Avenue North Nashville, TN 37219
Via Email: cclark@tncourts.gov

Re: Ben F. Jones Chapter of the National Bar Association's Letter of Support for the Nashville Bar Association's Petition to Modify Rule 21 of the Rules of the Tennessee Supreme Court, Docket No. ADM2020-01159

Dear Justices of the Tennessee Supreme Court:
 On behalf of the Ben F. Jones Chapter of the National Bar Association, we join the Tennessee Employment Lawyers Association and the Center for Excellence in Decision-Making, among multiple other groups, in strongly supporting the Nashville Bar Association's Petition to Modify Rule 21 of the Tennessee Supreme Court requiring two hours of continuing legal education annually in diversity, inclusion, equity and the elimination of bias.

The Ben F. Jones Chapter of the National Bar Association was officially founded in 1966 to address the unique needs of African-American lawyers and to enhance performance and professionalism at a time when they were systemically excluded by the majority bar. One of the purposes of our Chapter is to proactively and visibly advocate causes that protect and advance the rights and privileges of its members, families and communities. More specifically, we strongly promote diversity within the bar.

Over the last several years, it has become more evident than ever that systemic racism continues to subvert the basic constitutional promises of equal protection by the justice system.

As attorneys, it is our job to denounce racism and acts of racial injustice to

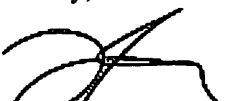
accomplish constructive change in the justice system and the legal profession—but members of the Tennessee bar cannot do that if they cannot recognize it.

The effects of systemic racism have only recently begun to be studied in earnest, but recent findings are instructive. A report¹ released earlier this month by researchers with the Criminal Justice Policy Program at Harvard Law School illuminates how an examination of the disproportionate amount of criminal cases involving African-American and Latino suspects and defendants reveals that institutional racism permeates the Massachusetts criminal justice system. The researchers point to the creation of legislation that results in racially disparate impacts and the fostering of racially disparate treatment by police, prosecutors, and judges as the reasoning behind this disproportionality. Like Massachusetts, the Tennessee criminal justice system experiences similar disproportionalities with regard to African-American suspects and defendants in relation to the African-American population as a whole, and the possibility that systemic racism similarly permeates the criminal justice system—from legislation to policing—in our state deserves the legal community’s attention.

Systemic racism not only affects the legal system, but also impacts every other facet of society. Indeed, yet another report² released this month by researchers with Citigroup found that since 2000 alone, systemic inequities and racism has resulted in the loss of \$16 trillion from the gross domestic product through discrimination in housing, lending, employment, education, and elsewhere. It is overly simplistic to conclude that an entire segment of society is held down due solely to its own shortcomings; instead, outside forces at play should regularly be identified, explored, and discussed to make this imperfect Union more perfect.

It is vital for members of the bar, their families, and communities that we have more lawyers who are competent and willing to advocate for citizens who are supposed to enjoy equal protection under the law. We cannot continue to live in a society in which some are more equal than others. We believe that mandatory training will nurture better understanding within the legal profession of the impact of racism, discrimination, and implicit bias in our legal system and, in doing so, will produce more culturally competent attorneys. In order to steward a system that fosters justice for all we must root out and dismantle systemic racism and other forms of discrimination that deny this basic right. It is the collective opinion of our Board that requiring those charged with upholding and promoting the law to regularly complete training in diversity, inclusion, equity and the elimination of bias is the first and necessary step in doing so.

Sincerely,



Quinton E. Thompson

National Bar Association, Ben F. Jones Chapter
2020 Vice President and President-Elect 2021

¹ Bishop, Elizabeth Tsai, et al. “Racial Disparities in the Massachusetts Criminal System.” *Criminal Justice Police Program*, Harvard Law School, Sept. 2020, cjpp.law.harvard.edu/assets/Massachusetts-Racial-Disparity-Report-FINAL.pdf.

² Peterson, Dana, et al. “Closing the Racial Inequality Gaps.” *Citi GPS: Global Perspectives and Solutions*, Citigroup, Sept. 2020, ir.citi.com/NvIUklHPilz14Hwd3oxqZBLMn1_XPqo5FrxsZD0x6hhil84ZxaxEuJUWmak51UHvYk75VKeHCMI%3D.

TENNELA

Tennessee Employment Lawyers Association

September 16, 2020

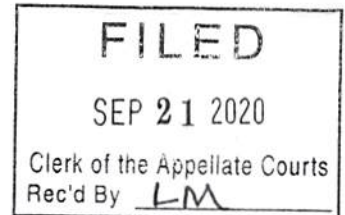
Chief Justice Bivins
Supreme Court of Tennessee
401 Seventh Avenue North
Nashville, TN 37219

Via U.S. Mail and Email:
justice.jeff.bivins@tncourts.gov



Justice Cornelia Clark
Liaison Justice to Tennessee Commission
on Continuing Legal Education
401 Seventh Avenue North

Via U.S. Mail and Email:
cclark@tncourts.gov



Supreme Court of Tennessee
401 Seventh Avenue North
Nashville, TN 37219

Re: Nashville Bar Association's Petition to Modify Rule 21 of the Rules of the Tennessee Supreme Court, Docket No. ADM2020-0115⁹

Dear Justices of the Tennessee Supreme Court:

On behalf of the Tennessee Employment Lawyers Association (TENNELA), I submit this letter to strongly support the Nashville Bar Association's August 28, 2020, Petition to Modify Rule 21 of the Tennessee Supreme Court to require two hours of continuing legal education annually in diversity, inclusion, equity and the elimination of bias. It is the collective opinion of our members that such a requirement is long overdue and necessary to ensure that Tennessee attorneys can meet their oath to practice with fairness, integrity, and civility.

TENNELA is an affiliate chapter of the National Employment Lawyers Association (NELA), the largest group of plaintiffs' employment lawyers in the country and the only professional membership organization comprised of lawyers who represent employees in labor, employment, and civil rights disputes. Specifically, TENNELA consists of lawyers dedicated to eradicating employment discrimination in all forms from the workplace.

Over the last several years, a movement has been building that has created a consensus that we as a society and especially as attorneys must forcefully and actively address the

TENNELA

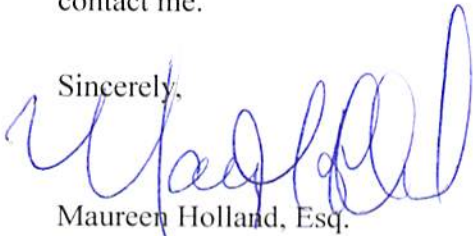
Tennessee Employment Lawyers Association

engrained factors that have allowed systemic racism to undermine the fundamental constitutional promises of equal justice and treatment within our legal system. It is incumbent upon us as attorneys to insist that our profession meets those highest ideals.

Critically, it is not simply the headline-grabbing instances of discrimination and bias that we must address. In fact, implicit biases begin before an attorney-client relationship is even formed. A number of recent studies in California, for example, found that white-sounding names from potential clients received 50% more replies from attorneys than potential clients with black-sounding names. Because of the pervasiveness and depth of bias within our system and within all of us as individuals, we believe that our profession should lead the effort to face and overcome these challenges.

Accordingly, we believe that the Nashville Bar Association's petition to include two hours of diversity, inclusion, equity, and elimination of bias training is a proper and appropriate step toward reaching the goal of eliminating bias in our profession. If TENNELA can provide any other information to assist you in your consideration of this important proposal, please contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Maureen Holland', written over the word 'Sincerely,'.

Maureen Holland, Esq.
TENNELA President

cc: Jim Hivner, Clerk of Court (jim.hivner@tncourts.gov)

TENNELA

Tennessee Employment Lawyers Association

% Maureen Holland, Esq., TENNELA President

1429 MADISON AVENUE

MEMPHIS, TENNESSEE 38104

MEMPHIS TN 380

18 SEP 2020 PM 3 L



Supreme Court of Tennessee
401 Seventh Avenue North
Nashville, TN 37219



37219-140001



ADM2020-01159

FILED

SEP-15 2020

Clerk of the Appellate Courts
Rec'd By KJM



September 15, 2020

Chief Justice Bivins
Supreme Court of Tennessee
401 Seventh Avenue North
Nashville, TN 37219
Via U.S. Mail and Email: justice.jeff.bivins@tncourts.gov

Justice Cornelia Clark
Liaison Justice to Tennessee Commission
401 Seventh Avenue North
Liaison Justice to the Tennessee Commission on Continuing Legal Education
Supreme Court of Tennessee
401 Seventh Avenue North
Nashville, TN 37219
Via U.S. Mail and Email: cclark@tncourts.gov

Re: Center for Excellence in Decision-Making's Letter of Support for the Nashville Bar Association's Petition to Modify Tennessee Supreme Court Rule 21 Docket Number ADM2020-0115

Justices of the Tennessee Supreme Court:

The Center for Excellence in Decision-Making (CEDM) unequivocally supports the Nashville Bar Associations' (NBA) Petition to modify Tennessee Supreme Court Rule 21 to require, on an annual basis, two hours of continuing legal education on the topics of diversity, inclusion, equity, and the elimination of bias.

The CEDM is a judge-led initiative that began in 2018 in response to a recognized need in Shelby County to address systemic institutional racism and combat detrimental unconscious bias in decisions made by community leaders and stakeholders. The CEDM's Board of Directors includes U.S. Sixth Circuit Court of Appeals Judge Bernice Donald, U.S. District Court Judge

Tommy Parker, Shelby County Circuit Court Judge Gina Higgins, and Shelby County Chancellor JoeDae Jenkins.

Since its inception, the CEDM has provided intensive interactive training and education in the areas of diversity, inclusion, cultural competence, and unconscious bias to judges, attorneys in the district attorney's and U.S. attorney's offices, federal public defenders, and key decision-makers in law firms and corporate legal departments. This training includes workshops facilitated by world-renowned experts in the fields of neuroscience and psychology and authors who have studied and written extensively on implicit bias. The CEDM's initiatives have also included dual credit CLE webinars addressing these topics.

The proposed modification to Rule 21 emulates the CEDM's mission and is a tangible step toward addressing certain obstacles that have plagued the Tennessee justice system for generations. Evidence of these obstacles can be found in a multitude of areas. For instance, in the criminal justice system, the U.S. Justice Department's Civil Rights Division, under the Obama administration, investigated Memphis's juvenile justice system and found that "African-American children [were] treated differently and more harshly" than white children. And, black juveniles arrested in Shelby County were twice as likely as white juveniles to be detained in jail and twice as likely to be recommended for transfer to adult court, where a conviction generally brings harsher punishment. The adult population suffers from similar institutional inequity in the Shelby County criminal justice system. Despite making up 60.2% of Shelby County's population, blacks and Hispanics, on average, make up 86% of the total jail population.

In the civil justice system, evidence of racial inequity can be found in the ethnic composition of large Memphis-based civil law firms. In 2018, only 5.2% of attorneys employed by the 22 largest Memphis law firms identified as minorities, with only 8.9% classified as associates and 4.3% classified as partners. This low percentage must be considered in context; from 2008 through 2020, an average of 21.4% of students enrolled in the University of Memphis law school were minorities, with little attrition from a corollary graduation rate.

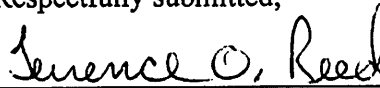
The CEDM strongly suspects that Memphis is a microcosm for many other communities in Tennessee, and we cite these statistics to exemplify the need for increased education and training on diversity, inclusion, equity, and the elimination of bias that perpetuate the above-referenced obstacles. The Tennessee Bar should not ignore the renewed call for social justice sparked by the civil unrest following the repeated high-profile mistreatment of members of our minority communities. On the contrary, the Tennessee Bar should proactively meet this moment with bold action and lead the charge to eradicate inequality and injustice, and a good start would be the proposed modification to Rule 21. Indeed, our beloved profession has a special duty to lead in this initiative since we are guardians of justice, help develop the law, practice within the criminal justice system, and help clients navigate the legal system.

It was encouraging that the Tennessee Supreme Court issued a statement on its commitment to equal justice on June 25, 2020 and set forth a plan to combat racism in our society.

The CEDM respectfully asks that the proposed amendment to Rule 21 be incorporated in that plan. It is time for Tennessee to join the other states, as identified in the NBA's Petition, that require such annual CLE credit.

For the foregoing reasons, and infinite others, the CEDM proudly joins the NBA's Petition to modify Rule 21.

Respectfully submitted,



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