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July 13, 2006

Hon. Michael Catalano, Esq., Clerk
Tennessee Supreme Court
100 S. Ct. Bldg.
401 Seventh Avenue North
Nashville, Tennessee 37219-1407



Re: Proposed Rule for Arbitrating Counsel Fees

Dear Mike:

Invited to comment upon the proposed rule for arbitrating counsel fee disputes, my sentiment is that this is a very bad proposed rule. Impairing contracts between counsel and clients which call for disputes to be resolved by mediation and/or suit is contraindicated by public policy and the constitutional prohibition against such. Open courts are a fundamental right which should not be sacrificed upon the altar of political correctness.

I know many public citizens believe lawyers charge too much. While I have not sued a client in a couple decades, I don't think a proscription of that is appropriate. The majority of the public did not incur debts to get a license to practice law, nor do they concern themselves with making the nut each month. I don't think counsel fees should be required arbitrated lest no remedy for a bad decision be available and lest another bite be taken from the right to trials.

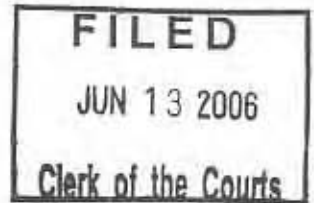
Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive that reads "Bill".

William C. Cremins

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE



**In Re: PROPOSED ADOPTION OF SUPREME COURT RULE 47 –
FEE DISPUTE RESOLUTION**

No. M2005-00197-SC-RL1-RL - Filed: June 13, 2006

ORDER

The Court, pursuant to its supervisory role over the judicial system of this State, proposes to adopt a new Supreme Court Rule establishing a program and procedure for fee dispute resolution. The new proposed Rule 47 is attached hereto as Exhibit 1.

In the interest of providing prompt and fair consideration of this important public policy issue, the Court solicits written responses from the bench, the bar, the court clerks, and the public. Comments should be addressed to:

Michael W. Catalano, Clerk
Re: Proposed Rule 47 Comments
Tennessee Supreme Court
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

The deadline for written comments is July 31, 2006.

The Clerk is directed to provide a copy of this order to the media, the president of the Tennessee Judicial Conference, the Tennessee Trial Judges Association, the Tennessee General Sessions Judges Conference, the Tennessee Council of Juvenile and Family Court Judges, the Tennessee Clerks of Court, and the bar associations of this State.

IT IS SO ORDERED.

PER CURIUM

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED
2005 JUL 26 PM 2:12
NASHVILLE

IN RE:

PROPOSED RULE 47

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No. M2005-00197-SC-RL1-RL

FEE DISPUTE RESOLUTION

COMMENT OF THE NASHVILLE BAR ASSOCIATION CONCERNING
PROPOSED RULE 47, RULES OF THE TENNESSEE SUPREME COURT

The Nashville Bar Association ("NBA"), by and through the Chair of its Fee Disputes Committee, Elaine M. Youngblood, submits the following comment concerning the Proposed Rule 47, Rules of the Supreme Court:

The NBA Board of Directors, after consultation with the Fee Disputes Committee, and having considered Proposed Rule 47, Rules of the Supreme Court, believes that while the implementation of a State-wide procedure for the resolution of fee disputes between clients and lawyers is appropriate and beneficial, and recommends generally the content of the proposed Rule 47, there are nonetheless some concerns, as follows:

A review of the proposed Rule has been reviewed by available members (limited due to summer vacations) of the Nashville Bar Fee Dispute Committee, including the Committee Chair, with the following responses:

1. The Fee Dispute welcomes a state-wide program to afford not only members of the public at large, but attorneys as well, a coherent and effective method of dealing with fee

disputes, particularly in those areas where heretofore no process was in place to provide such procedure. The Committee, however, feels that the program currently in place in Nashville is an effective one. We are pleased that the proposed Rule acknowledges that there are "local" Fee Dispute Resolution programs which can be used in lieu of the proposed Rule if the local program meets the standards of this rule. Unfortunately, there does not seem to be any reference to how a local program would receive approval by the Commission. We would like to see some implementation of process here to preserve our program and at the same time be approved as meeting the State Rule requirements.

2. We were pleased to see that the process currently being used by the NBA has more or less been incorporated in the proposed Rule; however, we are troubled by the fee requirement. The Nashville Bar set up its program for the purpose of providing Davidson County "clients" and their attorneys an inexpensive and relatively simple process of resolving fee differences and problems, without the need for the payment of filing fees, hiring attorneys (although some do) and eliminating a court-like process. The imposition of fees in our view may defeat such a purpose (if indeed that is a purpose), and may serve to discourage clients from pursuing a claim altogether.

The NBA would request that if Proposed Rule 47, Rules of the Supreme Court, is adopted, the Court provide for a formal review of and opportunity to comment on the Rule and its impact on the Bar of Tennessee within a year of its effective date.

Respectfully submitted,

NASHVILLE BAR ASSOCIATION

By: Elaine M. Youngblood
Elaine M. Youngblood, BPR # 5731
Chair
NBA Fee Dispute Committee
200 Fourth Avenue North
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(615) 256-9999 / Fax: (615) 726-1494
*by Sheri Wright
by permission
11195*

CERTIFICATE OF SERVICE

I certify that a true and exact copy of the foregoing Review of Proposed Adoption of Supreme Court Rule 47 has been placed in the United States mail, postage prepaid to the Hon. Michael W. Catalano, Clerk of the Supreme Court of Tennessee, 200 Supreme Court Building, 401 Seventh Avenue North, Nashville, TN 37219-1407, on this 26 day of July, 2006.

Elaine M. Youngblood
Elaine M. Youngblood
*by permission by
Sheri Wright*

cc: Susan Sowards, Executive Director
Nashville Bar Association
315 Union Street, Suite 800
Nashville, TN 37201

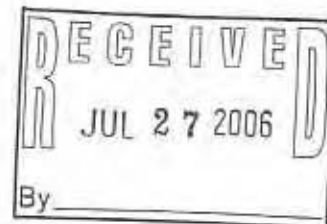
Allan Ramsaur, Executive Director
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July 12, 2006



Michael W. Catalano, Clerk
TENNESSEE SUPREME COURT
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

In re: The CBA Response to the Proposed Supreme Court Rule 47 (Fee Dispute Resolution)

Dear Mr. Catalano:

At the June 21st Board of Governors' meeting of the Chattanooga Bar Association, the Board was presented with recommendations from the CBA Fee Dispute Resolution/Arbitration Committee to "opt out" of participating in the statewide fee dispute resolution program with some provisions. After discussion on the recommendations, the CBA Board voted unanimously to accept the recommendations and to submit this letter representing the Association's comments relative to the above-referenced proposed rule.

Alternatively, we seek to be "grandfathered" into the proposed program, pursuant to Section 2(D) of the proposed rule, as a local program of long historical standing fully compliant with the letter and spirit of the standards and guidelines of the statewide program as set forth in the proposed rule.

While we find that the proposed rule contains features of significant merit, the following provisions concern us:

1. Apparent potential cumbersomeness and costliness of the proposed statewide program.
2. Inequitable provision that the client can COMPEL the lawyer to participate (Section 1(C)(1)) while the lawyer can only compel the client to participate after the client CONSENTS in writing in a fee agreement or otherwise (Section 4(F)). While we seek to encourage attorneys to amicably resolve fee disputes with their clients through non-litigation means which preserve a relationship between those attorneys and their clients as well as an overall public perception of fairness, we believe that attorneys should continue to enjoy the opportunity to participate in litigation for collection of fees, just as persons in other non-legal lines of work can opt to do.
3. Client petitioner participants being required to pay fees to file their petition (Section 4(A)). The CBA does not charge anyone to participate in our program; but conducts it at the expense of our association capital funds as a public service to our dues-paying members, non-member community attorneys, and to the lay public at large. We believe that incorporating participation fees into the program removes the "public service" perception of the program.

EXECUTIVE DIRECTOR
Lynda Minks Hood

OFFICERS

JOSEPH R. WHITE
President

JAMES M. HALEY, IV
President-Elect

CYNTHIA D. HALL
Secretary-Treasurer

BOARD OF GOVERNORS

MICHAEL K. ALSTON
Immediate Past President

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COURTNEY N. HOSS
President, Young Lawyers Division

EX-OFFICIO MEMBERS

HONORABLE SAMUEL H. PAYNE
Judicial Representative

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Chair, Past Presidents Committee

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CHATTANOOGA BAR ASSOCIATION

4. While a 30-day turn around for rendering of the decision is reasonable in light of similar court requirements, our local program generally follows a much more timely schedule in rendering our decisions in order that the parties may have closure and fulfillment of their respective rights. (Section 6(B)).

The CBA Fee Dispute Resolution/Arbitration Program has successfully existed for over 37 years (since 1969). Our Program has well-defined rules and procedures. We have developed effective written forms to obtain the consent of both parties for participating in the program and for disclosure of conflicts of interest by selected arbitrators. While participation in the program is voluntary by both clients and attorneys, our decisions are binding and final and may be submitted to any court of competent jurisdiction for judgment incorporation and enforcement.

We believe that the voluntary nature of our program in combination with the binding nature of the final award has engendered goodwill with client and attorney participants. The CBA office sends out approximately 30 packets of information annually, of which approximately 15-20 fee disputes are submitted into our existing program for final, binding arbitration.

While we concur that the Proposed Statewide Program may have significant merit for rural areas of the state lacking an established fee dispute resolution mechanism, we believe that our current program in its present form sufficiently serves the needs of our community's attorneys and public. We contend that it is not necessary to impose the constraints of the proposed rule on our existing program, given its historical and present success rate and acclaimed reception by both attorney and lay members of our community.

We appreciate the opportunity to provide comments on the proposed rule. We trust that our comments will be given serious, studied consideration. Should there be any questions about this letter or our comments, contact may be made with Lynda Minks Hood, Executive Director of the Chattanooga Bar Association, at 423/756-3222 or by e-mail at lhood@chattbar.org.

With kindest regards, we are

Sincerely,



JOSEPH R. WHITE
CBA President



PATRICIA BEST VITAL
*Chair, CBA Fee Dispute
Resolution/Arbitration Committee*

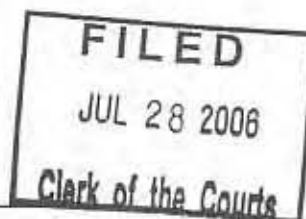
- C. Lynda Minks Hood, *CBA Executive Director*
Members, CBA Fee Dispute Resolution/Arbitration Committee

ORIGINAL

IN THE SUPREME COURT OF TENNESSEE AT NASHVILLE

IN RE: PROPOSED ADOPTION OF)
SUPREME COURT RULE 47-)
FEE DISPUTE RESOLUTION)
)

No. M2005-00197-SC-RL1-RL



COMMENT OF THE TENNESSEE BAR ASSOCIATION

INTRODUCTION

The Tennessee Bar Association ("TBA"), by and through its President, Larry D. Wilks; General Counsel, Gail Vaughn Ashworth; Chair, Special Committee on Fee Dispute Resolution, Charles W. Swanson; and Executive Director, Allan F. Ramsaur, files this comment in support of adoption of proposed Tennessee Supreme Court Rule 47 with certain modifications as set forth in this comment.

BACKGROUND

In April 2004, then-TBA President-Elect, Charles W. Swanson established a Special Committee on Fee Dispute Resolution. The committee was charged with

determining whether the TBA should recommend that Tennessee should join the more than thirty (30) jurisdictions that have a statewide mechanism for fee dispute resolution between lawyers and their clients.

In the summer of 2004, this honorable Court released the Report of the American Bar Association Standing Committee on Professional Discipline on the lawyer regulatory system in Tennessee (“ABA Report”) and a report of the Court’s own Board of Professional Responsibility Advisory Commission (“BPR Advisory Report”). The ABA Report recommended that the court study whether to institute a program of mandatory arbitration of lawyer-client fee disputes. Chief Disciplinary Counsel and the BPR Advisory Commission agreed with this recommendation.

On January 21, 2005, the TBA filed the original petition in this matter. That petition set forth the TBA view that Tennessee lawyers and clients of Tennessee lawyers would benefit from the establishment of a fee dispute resolution program; that lawyers should be required to participate in the program; that clients should be able to elect to participate in the program; and, that a detailed proposed rule for fee dispute resolution should be adopted.

On April 28, 2005, this honorable Court issued an order establishing a Task Force to Study Attorney Fee Dispute Arbitration. That task force was to study the issue of mandatory fee arbitration and the feasibility, effectiveness, inherent fairness and method of implementation, if indicated, of such a program. Under the order, the task force was to complete its work and the terms of the task force members were set to expire on December 31, 2005.

On June 13, 2006, this court entered the order proposing adoption of a new Tennessee Supreme Court Rule 47 establishing a program and procedure for fee dispute resolution and soliciting written comments from the bench and bar. The following are specific comments of the TBA:

- 1. LAWYERS IN TENNESSEE AND CLIENTS OF TENNESSEE
LAWYERS WOULD BENEFIT FROM THE ESTABLISHMENT
OF A FEE DISPUTE RESOLUTION PROGRAM.**

As is indicated in the original petition in this matter, many disputes between lawyers and their clients over fees are characterized as ethical disputes, but really are contract disputes about the value or agreed-upon fee for legal services.

A careful examination of the Tennessee Rules of Professional Conduct (Tenn. Sup. Ct. R. 8) demonstrates that fee disputes occupy a special place within the lawyer regulatory scheme. Fees must be reasonable; lawyers are encouraged to use appropriate methods short of formal court proceedings to resolve disputes over fee matters; and, courts are seen as somewhat reluctant to impose harsh results on clients.

Among the many benefits to Tennessee lawyers, this program would provide for speedy resolution of fee disputes by an arbitration panel made up principally of peers, preservation of attorney client privilege, and a reduction in frivolous disciplinary complaints.

Clients of Tennessee lawyers will benefit by having access to a mechanism that is inexpensive, less formal, and more accessible to lay clients.

**2. THE RULE SHOULD PERMIT LIMITED CONSIDERATION OF
EVIDENCE OF PROFESSIONAL NEGLIGENCE
OR PROFESSIONAL MISCONDUCT WHEN
ADDRESSING FEE DISPUTES.**

One provision of the original TBA petition and of the new proposed Tenn. Sup. Ct. R. 47, § (2)(B) is that the Fee Dispute Resolution scheme does not apply to “disputes where the client seeks affirmative relief for damages against the lawyer based upon alleged malpractice or professional misconduct.” This provision assures that the fee arbitration panel will not become a substitute for courts in addressing professional misconduct or professional negligence. While the evidence regarding fee dispute resolution supports the position that such matters should be handled in a fee dispute resolution process, there is no such evidence with respect to professional negligence or professional misconduct matters.

However, the quality of services and the conduct of the lawyer in providing those services may be relevant to a determination of the amount of the fee or recovery of the costs. To address this situation, the TBA recommends that a provision, drawn

from the California statute on attorney fee dispute arbitration, be incorporated as a new provision of Tenn. Sup. Ct. R. 47, § 5 which would read as follows:

“Evidence relating to claims of malpractice and professional misconduct, shall be admissible only to the extent that those claims bear upon the fees, costs, or both, to which the attorney is entitled. The arbitrators shall not award affirmative relief, in the form of damages or offset or otherwise, for injuries underlying any such claim. Nothing in this section shall be construed to prevent the arbitrators from awarding the client a refund of unearned fees, costs, or both previously paid to the attorney.”

**3. CLIENT AGREEMENT IN ADVANCE TO PARTICIPATE IN
FEE DISPUTE RESOLUTION SHOULD BE IN WRITING
SIGNED BY THE CLIENT.**

Both the original petition of the TBA and proposed Tenn. Sup. Ct. R. 47 provide in Section (4)(F) that client consent to Fee Dispute Resolution is required. More specifically, Subsection (b) provides that the client may agree as part of their client fee agreement to participate in fee dispute resolution. Tenn. Sup. Ct. R. 8, RPC 1.5 requires only that client fee agreements be communicated to the client in writing. This rule of professional conduct does not require that fee agreements be signed by

the client except in the case of contingency fee agreements. In order to avoid any potential argument with respect to conflict between these two provisions, the TBA recommends that proposed Tenn. Sup. Ct. R. 47, § (4)(F)(b) be amended to provide (in blackline):

“(b) the client has otherwise agreed in writing, **signed by the client**, to participate in fee dispute resolution, including but not limited to the Client’s Fee Agreement with the lawyer.”

**4. THE FEE DISPUTE RESOLUTION COMMISSION SHOULD BE
AUTHORIZED TO ADDRESS SEVERAL ISSUES WITH
REGARD TO THE HEARING PROCESS**

Both the original petition from the TBA and proposed Tenn. Sup. Ct. R. 47 lay out several provisions on hearings in Section 5. This section of the rule does not make provision for several issues, which should be addressed. In addition, the Commission should have some discretion based upon its experience to use its rule-making authority to adopt procedures.

The TBA recommends that Tenn. Sup. Ct. R. 47, § 5 be amended to provide a new section as follows:

“The Fee Dispute Resolution Commission shall adopt further reasonable regulations, as it deems necessary, to address (a) a provision for proceeding *in forma pauperous* by indigent clients (b) court reporter transcription or other recording of hearings, (c) process for enforcement of subpoenas, (d) administrative authority for summary dismissal of fee dispute complaints, subject to appeal to the commission, and (e) permitting, but not requiring, appointment of one trained non-lawyer arbitrator among the three arbitrator panel of arbitrators under section 3 B.”

**5. THE CONFIDENTIALITY PROVISION OF PROPOSED
TENN. SUP. CT. R. 47, § 8 (A) SHOULD BE CONSIDERED
IN LIGHT OF DOE V. DOE NO. M2003-01142-SC-S25-BP**

Both the original petition and the proposed Tenn. Sup. Ct. R. 47 provide that all records, documents, and files for proceedings and hearings are confidential and closed to the public. This provision is similar to the provision in Tenn. Sup. Ct. R. 9, § 25, which was stricken as unconstitutional in Doe v. Doe No. M2003-01142-SC-S25-BP. The TBA takes no position with respect to the constitutionality of this

provision, but it does recommend that this honorable Court consider this provision before promulgating the rule.

**6. TENN. SUP. CT. R. 8, TENNESSEE RULES OF PROFESSIONAL
CONDUCT SHOULD BE AMENDED TO CONFORM TO
RULE 47, FEE DISPUTE RESOLUTION.**

In adopting the Tenn. Sup. Ct. R. 47, various provisions of Tenn. Sup. Ct. R. 8, the Tennessee Rules of Professional Conduct are implicated. The TBA recommends that the Court amend Rule 8 to clearly signal to lawyers researching a fee issue that the new rule should be consulted.

Tenn. Sup. Ct. R. 8, RPC 1.5 contains the principal provisions with respect to fees. The TBA recommends that both the black letter rule be amended by providing a new subsection of the rule explicitly requiring compliance with the Tenn. Sup. Ct. R. 47 and that necessary changes be made to comment 6.

(a) Tenn. Sup. Ct. R. 8, RPC 1.5 should be amended to read as follows:

“(f) A lawyer shall comply with Tenn. Sup. Ct. R. 47 with respect to Fee Dispute Resolution.”

RPC 1.5, Comment [6] should be amended as follows (shown in black line):

[6] **The Tennessee Supreme Court has established a procedure for fee dispute resolution** ~~If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the bar, the lawyer should conscientiously consider submitting to it.~~ **and the lawyer should comply with the procedures set forth in Tenn. Sup. Ct. R. 47, as applicable.** Law may prescribe a procedure for determining a lawyer’s fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

(b) Like other lawyer-administered regulatory mechanisms of the Court, the Fee Dispute Resolution Commission will rely heavily upon lawyer volunteers as members of the Commission and as arbitrators. Lawyers fulfilling these roles may learn of misconduct by other lawyers, which could expose the volunteers to professional misconduct charges for failure to report under Tenn. Sup. Ct. R. 8, RPC 8.3. The Board of Professional Responsibility addressed this situation under the former Code of Professional Responsibility when it issued Formal Ethics

Opinion 89-F-119 which held, “fee arbitration committee members of the various bar associations are excused from their ethical obligation to report ethical misconduct discovered during the course of their service as a fee arbitration committee member.” When adopting the Rules of Professional Conduct, the TBA proposed and this honorable Court adopted provisions in RPC 8.3 (c) excusing lawyers from the duty to report when they are involved in lawyer assistance or professional discipline matters. The TBA recommends that this provision and its comments be amended to excuse lawyers who participate in the Fee Dispute Resolution program from reporting misconduct in a similar manner by amending Tenn. Sup. Ct. R. 8, RPC 8.3 (c) as follows (shown in blackline):

“This rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while serving as a member of lawyer assistance program approved by the Supreme Court of Tennessee, **serving as an arbitrator, commission member, or staff under the Fee Dispute Resolution Program established under Tenn. Sup. Ct. R. 47,** or by the Board of Professional Responsibility to the extent that such information would be confidential if it were communicated subject to the attorney-client privilege.”

The TBA also recommends that Comment [5] to TRPC 8.3 be amended as follows

(shown in blackline):

[5] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers' or judges' assistance program. In that circumstance, providing for the confidentiality of such information encourages lawyers and judges to seek treatment through such programs. Conversely, without such confidentiality, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public. The Rule therefore exempts the lawyer from the reporting requirements of paragraphs (a) and (b) with respect to information that would be privileged if the relationship between the impaired lawyer or judge and the recipient of the information were that of a client and a lawyer. **Likewise, information about a lawyer's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in a Fee Dispute Resolution Program. In this circumstance, providing for confidentiality of such information encourages lawyers to participate in the Fee Dispute Resolution Program. The rule therefore also exempts lawyers who serve as arbitrators, commission members or staff from reporting the requirements of paragraphs (a) and (b) with respect to information that would be privileged if the relationship between the lawyers subject to arbitration were that of a client and a lawyer.** On the other hand, a lawyer who receives such information would nevertheless be required to comply with the Rule 8.3 reporting provisions to report misconduct if the impaired lawyer or judge indicates an intent to engage in illegal activity, for example, the conversion of client funds to his or her use.

CONCLUSION

Tennessee lawyers and clients of Tennessee lawyers will be benefited by the adoption of the proposed Tenn. Sup. Ct. R. 47. Modifications to address the relevant considerations in hearings, client consent, authority to adopt regulations with respect to hearings, confidentiality, and amendments to Tenn. Sup. Ct. R., 8 make the proposed rule more clear and more workable and should be adopted.

RESPECTFULLY SUBMITTED,

By: /s/ by permission

LARRY D. WILKS (009284)
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By: /s/ by permission

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By: /s/ by permission

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By: 

ALLAN F. RAMSAUR (5764)
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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing has been served upon the individuals and organizations identified in Exhibit "A" by regular U.S. Mail, postage prepaid on July 28, 2006.


Allan F. Ramsaur

EXHIBIT "A"

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Mario Ramos
TN Assn of Spanish Speaking Attnys
611 Commerce St Suite 3119
Nashville, TN 37203

Gina Higgins
Ben Jones Chapter - National Bar Associatio
Memphis, TN 38104

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

In Re: Proposed Rule on Fee) M2005-00197-SC-RL1-RL
 Dispute Resolution)

Statement in Support of a State-Wide, Client-Option
Fee Dispute Resolution Process

The Tennessee Lawyers' Fund for Client Protection was created under Supreme Court Rule 25 in 1989 to reimburse clients when an attorney steals money from them. Since the Fund began taking claims on July 1, 1991, we have closed more than 100 files on the basis that there was no theft, but merely a "fee dispute." We have seen other cases close for other reasons. We nevertheless believe a prompt, fair, and efficient fee dispute resolution process would have substantially improved the client's circumstances.

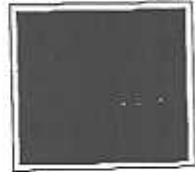
This Fund supported the work of the Court's Task Force on Fee Dispute Resolution, both through the participation of its Executive Director, David N. Shearon on the Task Force, and through funding for a Task Force workshop with participation by the fee dispute resolution coordinators for the State of California and the District of Columbia.

Based on the Fund's experience and its support of efforts to improve the performance of attorneys in the service of clients and the remedies available when that performance goes awry, the Board of the Tennessee Lawyer's Fund for Client Protection voted in our May 9, 2006, teleconference to express this organization's support for the creation of a state-wide, client-option fee dispute resolution process for Tennessee.

Respectfully submitted,

Jack M. Vaughn, Chair
Tennessee Lawyer's Fund for Client
Protection

August 24, 2006



**Knoxville
Bar
Association**

505 Main Street, Suite 50
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EXECUTIVE DIRECTOR

Marsha S. Pace
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Lawrence P. Leibowitz

VIA FACSIMILE & U.S. MAIL

Mr. Michael W. Catalano, Clerk
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

Re: Proposed Supreme Court Rule 47 - Fee Dispute Program

Dear Mr. Catalano:

Pursuant to the Tennessee Supreme Court's Order soliciting comments on the proposal of Supreme Court Rule 47, the Knoxville Bar Association submitted the proposed rule to our Fee Dispute Resolution Committee for review. Following the committee's report to the KBA Board of Governors at their meeting on August 16, 2006, the Knoxville Bar Association adopted the recommendations of the Committee.

The Knoxville Bar Association respectfully submits the comments for the Court's further consideration and possible revision. As always, we appreciate the opportunity to comment on proposed rules promulgated by the Tennessee Supreme Court.

With kind regards,

Sincerely yours,

Marsha S. Wilson
KBA Executive Director

cc: J. Steven Collins, KBA President
Wade M. Boswell, Co-Chair, KBA Fee Dispute Resolution Committee
Tracy Jackson Smith, Co-Chair, KBA Fee Dispute Resolution Committee



**COMMENT TO PROPOSED ADOPTION
OF
SUPREME COURT RULE 47 - FEE DISPUTE RESOLUTION**

INTRODUCTION

The Tennessee Supreme Court, by Order entered June 13, 2006, proposes to adopt a new Supreme Court rule establishing a statewide program for fee dispute resolution. The original deadline for comments was July 31, 2006, however, by Motion filed July 31, 2006, the comment period was extended until August 31, 2006.

The Motion for Extension was filed by the KBA Fee Dispute Resolution Committee ("Committee") in order to allow the Committee sufficient time to submit a written report to the KBA Board of Governors.

POSITION

The members of the KBA Fee Dispute Resolution Committee (including the two non-lawyer members) unanimously oppose the establishment of a statewide program for fee dispute resolution. The Committee believes that there is no need for a statewide program and that fee disputes can easily be addressed within the current framework of Rule 8 of the Rules of the Tennessee Supreme Court, utilizing existing Fee Dispute Resolution Committees.

RATIONALE

Proposed Rule 47 is clearly intended to address the fact that the current process is not available in every county of the state and some lawyers decline to participate in the current process.

I

With regard to the concern that the current process is not available in every county, according to the latest report from the Board of Professional Responsibility, 2/3 of the lawyers in this state (9,780 out of 14,470) live in Davidson, Hamilton, Knox or Shelby County. Presumably, the majority of fee disputes involve attorneys in those four counties. Davidson, Hamilton, Knox, and Shelby counties, as well as Bradley and Washington counties, have active Fee Dispute Resolution Committees.

Information compiled by the Special Committee on Fee Dispute Resolution, Keith Burroughs, Chair, indicates that in 2003 and the first half of 2004, the Fee Dispute Resolutions Committees in those six (6) counties received a total of 149 complaints and opened 53 new cases.¹ These numbers simply do not justify the creation of a statewide program.

¹ By comparison, the Board of Professional Responsibility received 982 complaints in 2003 (of which 27 were fee disputes) and 929 complaints in 2004 (of which 24 were fee disputes).

Within the last year, the Committee has accepted complaints from individuals in Anderson, Blount, Sevier and Cumberland Counties. The Committee submits that if the five (5) other Fee Dispute Resolution Committees likewise agreed to accept complaints from individuals in adjoining counties, the current process would be available in almost every county in the state.

II

With regard to the lawyers who decline to participate in the current process, the Committee submits that there are two categories of attorneys who decline to participate - those who decline because a complaint has been filed against them with the Board of Professional Responsibility and those who fail to acknowledge the receipt of the complaint.

Rule 1.5 of the Rules of Professional Responsibility provides that a lawyer's fees and charges must be reasonable and outlines the factors to be considered in determining the reasonableness of a fee. With regard to fee disputes, Comment 6 to Rule 1.5 provides that:

If a procedure has been established for resolution of fee disputes such as an arbitration or mediation procedure established by the Bar, the lawyer should conscientiously consider submitting to it.

The Committee submits that Comment 6 should be amended to delete the words "conscientiously consider." The Comment would then read as follows:

If a procedure has been established for resolution of fee disputes such as an arbitration or mediation procedure established by the Bar, the lawyer should submit to it.

The Comment should also be amended to include a statement to the effect that if the lawyer refuses to submit to an arbitration or mediation procedure established by the Bar, the matter will be referred to the Board of Professional Responsibility for resolution as a possible ethics violation. In the past, the Board of Professional Responsibility has taken the position that a fee dispute does not necessarily involve an ethics violation. It is more in the nature of a contractual dispute. The Committee submits, however, that to the extent that a complaint alleges that a lawyer has charged an excessive or unreasonable fee, the complaint alleges an ethics violation (particularly if a lawyer receives multiple complaints and refuses to submit to an arbitration or medication procedure). The Committee anticipates that the majority of complaints will still be resolved at the local level, so that the additional burden on the Board of Professional Responsibility would be nominal.

III

The Committee opposes Proposed Rule 47 for the following additional reasons:

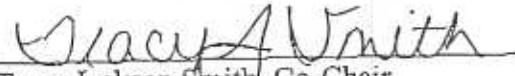
1. The lawyer is required to participate, but the client is not.
2. At a time when consumer groups throughout the nation are complaining about mandatory arbitration provisions in credit card and installment loan contracts, the Supreme Court seems to be taking a step backwards by suggesting that lawyers include an arbitration clause in their Fee Agreements.
3. The proposed Rule creates a process similar to that used by the Board of Professional Responsibility in disciplinary proceedings. The Committee would urge the Court to consult the Board regarding the cost of setting up a Commission to provide information, including forms, coordinate, implement, receive and review complaints, schedule hearings, deal with the arbitrators and their qualifications, and prepare annual reports.
4. The Rule does not appear to provide for non-lawyer participants. It provides for "specially trained arbitrators" (as opposed to the lawyer's peers). The Committee would urge the Court to train arbitrators from big firms, as well as solo practitioners, and lawyers from various areas of the law, including commercial law, civil litigation, criminal defense and domestic relations.
4. The Committee opposes the use of arbitration rather than mediation. Mediation, as shown by voluntary use of Alternative Dispute Resolution under Rule 31, has proven its value in eliminating litigation and would leave the parties free to pursue their remedies at law if mediation is unsuccessful (as opposed to an appeal under the administrative law provisions of Tennessee Code Annotated).
5. The Committee opposes any sort of a filing fee. The idea of taking money to assist petitioners would seem to destroy any good will that might accrue as a result of a statewide fee dispute program.
6. The Rule provides that the Lawyer must provide the client with written notice of the client's right to participate in fee dispute resolution with the service of the summons in a fee collection action, which would seem to necessitate a change in the Rules of Civil Procedure.
7. The Committee would urge the Court to consult the Board of Professional Responsibility regarding the feasibility of the proposed time line.
8. The proposed procedure is more formal and much more adversarial than our current system, e.g., clients can subpoena witnesses and documents and cross-examine the lawyers. The purpose of fee dispute resolution is to avoid conflict.

9. The Rule does not appear to provide for pre-screening of complaints except to determine if the complaint is properly completed and the Committee has jurisdiction.
10. The proposed procedure contemplates a hearing in every case. The vast majority of fee disputes involve less than \$2,500.00 and can be decided on the basis of written submissions. Hearings should be the exception and not the rule.

Respectfully submitted this 15th day of August 2006.



Wade M. Boswell, Co-Chair
Knoxville Bar Association
Fee Dispute Committee



Tracy Jackson Smith, Co-Chair
Knoxville Bar Association
Fee Dispute Committee

**IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE**

**IN RE: PROPOSED ADOPTION OF)
SUPREME COURT RULE 47-) No. M2005-00197-SC-RL1-RL
FEE DISPUTE RESOLUTION)
)**

**SUPPLEMENTAL COMMENT OF THE TENNESSEE BAR
ASSOCIATION**

INTRODUCTION

The Tennessee Bar Association (“TBA”), by and through its President, Larry D. Wilks; General Counsel, Gail Vaughn Ashworth; Chair, Special Committee on Fee Dispute Resolution, Charles W. Swanson; and Executive Director, Allan F. Ramsaur, files this supplemental comment in the above styled matter.

BACKGROUND

This honorable Court granted an extension of time until August 31 to comment in the above matter. The TBA then obtained copies of the comments filed by the various bar associations or entities. This supplemental comment responds to one concern raised by the Memphis Bar Association comment relative to the constitutionality of any mandatory fee dispute arbitration rule.

PROPOSED SUPREME COURT RULE 47 IS CONSTITUTIONAL

Without the citation to any authority, the Memphis Bar Association comment in this matter raises a concern about the constitutionality of a court rule mandating that lawyers participate in a fee dispute resolution program.

The issue of the constitutionality of a Tennessee rule on mandatory fee dispute arbitration has never been addressed by a Tennessee court. However, the plenary and inherent power of this honorable Court to regulate the practice of law is well established. In re: Burson, 909 S.W.2d 768 (Tenn. 1995).

The constitutionality of similar rules has been sustained when challenged on state and federal Due Process, Equal Protection, jury trial right, and right to contract grounds in four state appellate courts and in two federal courts. In re: LiVolsi ,428 A.2d 1268 (N.J. 1981); Anderson v. Elliott, 555 A.2d 1042 (Me. 1989); Shimko v. Lobe, 706 N.E.2d 354 (Ohio App. 1997); Nodvin v. State Bar of Georgia, 544 S.E.2d 142 (Ga. 2001); Guralnick v. Supreme Court of New Jersey, 747 F.Supp. 1109 (D. New Jersey 1990), aff'd, 961 F.2d 209 (3d cir. 1992); and Kelley Drye & Warren v. Murray Industries , 623 F.Supp. 522 (D. New Jersey 1985).

The TBA is not aware of any contrary authority.

CONCLUSION

As stated in the TBA's original petition, the comment of the TBA, and this supplemental comment of the TBA, the proposed rule with modifications is proper, is constitutional and should be adopted.

RESPECTFULLY SUBMITTED,

By: /s/ by permission _____

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing has been served upon the individuals and organizations identified in Exhibit "A" by regular U.S. Mail, postage prepaid on July 28, 2006.

Allan F. Ramsaur



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Association**

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August 24, 2006

AUG 28 2006

VIA FACSIMILE & U.S. MAIL

Mr. Michael W. Catalano, Clerk
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

Re: Proposed Supreme Court Rule 47 - Fee Dispute Program

Dear Mr. Catalano:

Pursuant to the Tennessee Supreme Court's Order soliciting comments on the proposal of Supreme Court Rule 47, the Knoxville Bar Association submitted the proposed rule to our Fee Dispute Resolution Committee for review. Following the committee's report to the KBA Board of Governors at their meeting on August 16, 2006, the Knoxville Bar Association adopted the recommendations of the Committee.

The Knoxville Bar Association respectfully submits the comments for the Court's further consideration and possible revision. As always, we appreciate the opportunity to comment on proposed rules promulgated by the Tennessee Supreme Court.

With kind regards,

Sincerely yours,

Marsha S. Wilson
KBA Executive Director

cc: J. Steven Collins, KBA President
Wade M. Boswell, Co-Chair, KBA Fee Dispute Resolution Committee
Tracy Jackson Smith, Co-Chair, KBA Fee Dispute Resolution Committee

**COMMENT TO PROPOSED ADOPTION
OF
SUPREME COURT RULE 47 - FEE DISPUTE RESOLUTION**

INTRODUCTION

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RATIONALE

Proposed Rule 47 is clearly intended to address the fact that the current process is not available in every county of the state and some lawyers decline to participate in the current process.

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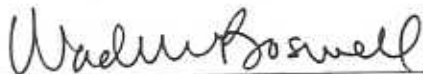
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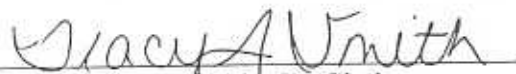
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Respectfully submitted this 15th day of August 2006.



Wade M. Boswell, Co-Chair
Knoxville Bar Association
Fee Dispute Committee



Tracy Jackson Smith, Co-Chair
Knoxville Bar Association
Fee Dispute Committee

M 2005-00197-SC-RLI-RL

Tennessee Lawyers' Association for Women

P.O. Box 331214
Nashville, TN 37203
(615) 385-5300

FILED
AUG 31 2006
Clerk of the Courts

August 31, 2006

Mr. Michael W. Catalano, Clerk
Re: Proposed Rule 47 Comments
Tennessee Supreme Court
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

VIA FACSIMILE (615-532-8757)

Re: Proposed Tennessee Supreme Court Rule 47 Comments

Dear Mr. Catalano:

Please accept the comments of the Tennessee Lawyers' Association for Women ("TLAW") relative to the proposed Tennessee Supreme Court Rule 47 regarding fee dispute resolution between clients and lawyers.

TLAW supports the Comment submitted on behalf of the Tennessee Bar Association as well as any supplements thereto.

Sincerely,



Heather G. Anderson
Recording Secretary, TLAW

cc: Jackie Dixon, Esq.
President, TLAW

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED

2006 JUL 31 PM 4:19

IN RE:

APPELLATE COURT CLERK
NASHVILLE

PROPOSED RULE 47)
)
)
)
)
)
FEE DISPUTE RESOLUTION)

No. M2005-00197-SC-RL1-RL

COMMENTS OF THE MEMPHIS BAR ASSOCIATION CONCERNING
PROPOSED RULE 47, RULES OF THE TENNESSEE SUPREME COURT

After consideration and review by its Fee Dispute Committee, House of Delegates, Executive Committee, and Board of Directors, the Memphis Bar Association (MBA) submits the following comments concerning Proposed Rule 47, Rules of the Tennessee Supreme Court:

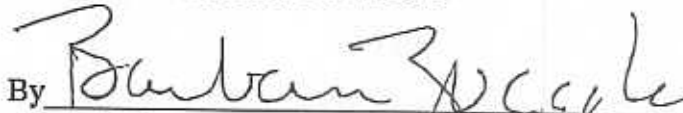
1. Attorneys should not be compelled to participate in a fee dispute resolution program, because of concerns about the constitutionality of mandatory participation and because such participation would convert the fee dispute process from an informal proceeding into a quasi-judicial one, with volunteer panel members acting as judicial officers. There also is concern that if attorney participation is mandatory, clients will use the fee dispute process as a stalling tactic to avoid paying attorney fees.
2. In the alternative, if the Court chooses to make participation in the fee dispute resolution program mandatory for attorneys, the MBA recommends that it be mandatory only if the amount in dispute is less than \$5,000. For disputes over that amount, participation by the attorney would be voluntary on his/her part.
3. The MBA's Fee Dispute Resolution program currently requires three panel members to hear a dispute, regardless of the amount in controversy. While recognizing that the requirement of three panel members may be onerous in rural areas of the state, the MBA recommends that local programs in metropolitan areas be given the option of continuing with three-member panels, regardless of the amount in dispute.
4. The MBA's current Fee Dispute Regulations require that at least one of the three panel members has some expertise in the area of law underlying the dispute. The MBA recommends that a similar requirement be incorporated into Proposed Rule 47. In addition, the MBA suggests that ethical standards or guidelines be established for panel members, to avoid conflicts of interest and/or the appearance of impropriety.

5. The MBA is concerned about the burden imposed on clients by the \$35 filing fee, since its program is free. The MBA suggests that the fee dispute panel be given the discretion to award costs to the respondent if he/she prevails in the fee dispute. In addition, the MBA requests that a portion of the filing fee be shared with a local program that continues to operate in accordance with Proposed Rule 47, to cover its administrative costs.
6. The MBA requests clarification that local fee dispute programs can continue to operate autonomously as long as they meet the standards of Proposed Rule 47 and any guidelines promulgated by the Fee Dispute Commission.
7. In Section 2(C) of Proposed Rule 47, Shelby County should be listed under District 1.
8. The MBA discussed whether to propose a minimum amount in dispute, such as \$250, before a fee dispute petition can be filed, but ultimately decided to make no comment regarding that proposal.

Having operated a successful and effective fee dispute resolution program for over 30 years, the MBA is willing to share its practical advice and knowledge with the Court and the Fee Dispute Commission in the establishment of a statewide program.

Respectfully submitted,

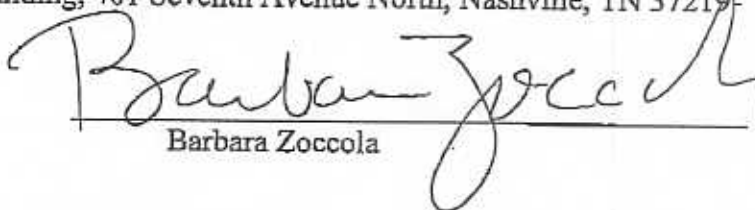
MEMPHIS BAR ASSOCIATION

By 

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CERTIFICATE OF SERVICE

I certify that a true and exact copy of the foregoing Comments of the Memphis Bar Association Concerning Proposed Rule 47, Rules of the Tennessee Supreme Court, has been placed in the United States mail, postage prepaid to Michael W. Catalano, Clerk, Tennessee Supreme Court, 100 Supreme Court Building, 401 Seventh Avenue North, Nashville, TN 37219-1407, on this 28th day of July, 2006.


Barbara Zoccola

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