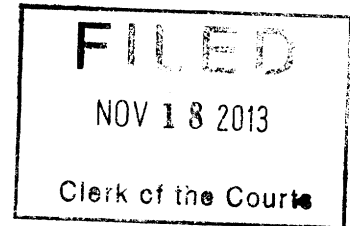


IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

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

No. ADM2013-02417



ORDER

On October 30, 2013, the Tennessee Commission on Continuing Legal Education and Specialization ("Commission") filed a petition asking this Court to amend Tennessee Supreme Court Rule 21. The Commission's petition, along with its five accompanying exhibits A through F, are attached as Appendix 1 to this Order. The proposed amendments and modification of Rule 21 appear in exhibit A. Exhibit B includes a comparison of the Commission's proposed amendments with current Rule 21.

This Court hereby publishes the proposed amendments to Rule 21 for public comment and solicits written comments from the bench, the bar, and the public. The deadline for submitting written comments is Thursday, March 20, 2014. Written comments should be addressed to:

Mike Catalano, Clerk
Re: Tenn. Sup. Ct. R. 21
Appellate Court Clerk's Office
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

and should reference the docket number set out above.

The Clerk shall provide a copy of this order, including the Appendix, to LexisNexis and to Thomson Reuters. In addition, the order and Appendix shall be posted on the Tennessee Supreme Court's website.

PER CURIAM

APPENDIX 1

***PETITION TO AMEND TENNESSEE SUPREME COURT RULE 21
PUBLISHED FOR PUBLIC COMMENT***

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED
2013 OCT 30 PM 3:34

IN RE: PETITION TO AMEND
TENNESSEE SUPREME COURT
RULE 21

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APPELLATE COURT CLERK
NASHVILLE
No: ADM 2013-02417

PETITION TO AMEND TENNESSEE SUPREME COURT RULE 21
GOVERNING THE REQUIREMENTS OF
CONTINUING LEGAL EDUCATION

The Tennessee Commission on Continuing Legal Education and Specialization (the "Commission") hereby respectfully petitions this Honorable Court to amend Tennessee Supreme Court Rule 21. These proposed amendments are more fully described in this Petition and in attached **Exhibit A**, and they are each intended to improve the administration of Continuing Legal Education ("CLE") for lawyers licensed to practice law in Tennessee. In support of its Petition, the Commission would respectfully show as follows:

1. The Commission and its staff are privileged to serve this Honorable Court in administering the CLE system set forth in Rule 21 of this Court's Rules. The Commission has been tasked with several responsibilities, including to "monitor developments in the operation of [Rule 21], and to design, promulgate for discussion, test and recommend to this Court modifications to the Continuing Legal Education program in Tennessee as deemed appropriate by the Commission." *See* Tenn. Sup. Ct. R. 21 § 1.02(c).

2. During this previous year, the Commission has undertaken a systemic review of Rule 21 with an eye to suggesting various modifications designed to enhance and improve the CLE program in this state. To that end, the Commission formed a committee to work with staff to review all of the provisions of Rule 21, as well as the Commission's internal regulations, and

to make suggestions and recommendations for any changes. In July of this year, the Commission met over the course of two days to discuss, consider, and debate various substantive and procedural recommendations for the Court's consideration. The undersigned is personally very appreciative of the time, work, and effort displayed by the CLE Commissioners and their dedicated Executive Director and staff in the conscientious performance of these duties.

3. The Commission has the honor to present for the Court's consideration several proposed revisions to Rule 21. Some of the proposed revisions are procedural in nature, designed to remedy various inefficiencies that years of practice have helped to highlight. Other revisions, however, are more substantive, and stem from a reexamination of the purposes of CLE requirements and why CLE is important to the profession and practice of law in this State.

4. Despite the Commission's vigorous consideration and debate of these issues, the vast majority of the recommendations made herein for this Court's consideration come with the Commission's unanimous approval. Of course, not every proposal received the unanimous recommendation of the Commission. However, all of the proposals made herein are the result of a clear and strong consensus by the Commission that the proposals are worthy of consideration and adoption by this Honorable Court.

5. Attached to this Petition are the Commission's proposals. **Exhibit A** to this Petition consists of a "clean" copy of the full proposals the Commission recommends to amend Rule 21. For ease of consideration, however, the Commission also attaches an **Exhibit B** that provides for a comparison of the Commission's proposals to Rule 21 as it presently reads.

6. Many of the proposed revisions are self-explanatory and require little explication beyond the mention of the proposal itself. Other proposals by the Commission, however, perhaps warrant additional explanation of the Commission's thoughts and concerns as to why a

particular modification may be needed. As such, the Commission respectfully requests leave to provide additional reasons for its requests in the following areas:

PROPOSED REVISIONS TO TENN. SUP. CT. R. 21, § 1
COMMISSION ON CONTINUING LEGAL EDUCATION

In Section 1.03, the Commission recommends the elimination of language that, while necessary during the Commission's infancy, is now perhaps outdated. Thus, the Commission would recommend that Section 1.03 only provide for the terms of individual Commissioners.

PROPOSED REVISIONS TO TENN. SUP. CT. R. 21, § 2
SCOPE AND EXEMPTIONS

The Commission recommends that the Court change the formatting of Section 2. Currently, the various exemptions from the Rule are scattered throughout this Section, and the Commission believes that some benefit could come from organizing and consolidating all exemptions under Section 2.04. The provisions by "exceptional relief" may be sought from the requirements of Rule 21 and would then be placed in its own section, new Section 2.05.

Substantively, the Commission proposes that the Court eliminate the age 65 and over CLE credit exemption currently set forth in Rule 21, § 2.04(a). This proposal was met with substantial consideration and discussion by the members of the Commission, but the proposal ultimately received the unanimous recommendation of the Commission.

Since 2004, the number of attorneys who turn 65 every year in Tennessee is increasing, and this number has nearly tripled from 218 to 584. In 2014, another 648 lawyers are expected to turn 65, and another 687 lawyers will turn 65 in 2016. See **Exhibit C** (using data obtained from the Tennessee Board of Professional Responsibility). With the increase in the "full

retirement age” for Social Security benefit purposes, the “Great Recession” of 2007, and a sour outlook on the future economy, there does not appear to be an end to this trend anytime in the near future. *See Exhibit D*, Stephen Greenhouse, “Working Late, by Choice or Not,” New York Times, May 9, 2012.

As more attorneys continue to practice later in life, more Tennesseans will be relying on these “veterans of the bar” to provide legal services, some even paying a premium for the attorney’s years of experience and expertise. The practice of law, however, is an ever-evolving profession that requires constant study and diligent review of changes in the statutory and case law. If CLE credits are truly intended to keep attorneys up to date and knowledgeable on changes in the law, changes in the profession, life skills, practice management, and the like, one’s age should not and do not diminish or reduce these lofty goals and designed purposes.

Nowhere is this more evident than in a review of Board of Professional Responsibility complaints for the calendar year 2013. *See Exhibit E*. There are currently 2,827 attorneys over the age of 65 practicing in Tennessee. *See id.* Without attempting to pass on the merits of any complaint, some 1,139 complaints were filed with the BPR in this age bracket as of August 22, 2013. *See id.* By comparison, there are 3,684 attorneys between the ages of 25-34, and the number of complaints filed in this age bracket is 1,268. *Id.*

The Commission emphasizes that our lawyers who are 65 and older are among the best and the brightest lawyers who serve this Court and the public. However, the Commission does not believe that a continued exemption from CLE is necessary or even desirable, particularly if the goals of CLE are recognized as being worthwhile for all lawyers. As attorneys in all age brackets are licensed by this Court, and as attorneys in all age brackets have the same minimum

professional obligations and client expectations, then so should all age brackets enjoy the benefits that Rule 21 was designed to achieve.

PROPOSED REVISIONS TO TENN. SUP. CT. R. 21, § 3
CONTINUING LEGAL EDUCATION REQUIREMENT

The Commission recommends several changes to Section 3.01. First, the Commission recommends that the introductory sentence to this Section set forth the basic CLE obligations, rather than having the requirements spread throughout the Section.

More importantly, the Commission recommends a new substantive provision that would require a minimum attendance of five (5) hours in a “classroom” setting or in other types of live, in-person CLE activity.

The background for this proposal arises from feedback the Commission received while meeting with individuals and organizations relating to its mentoring initiatives. As this Court knows well, the Commission and its staff spent the better part of four years meeting with people across the state to help develop and implement a program that could award CLE credit for participation in mentoring programs. Throughout this time, the Commission received substantial feedback about the initiative in ways that was both positive and constructive.

However, one consistent source of concern expressed by both CLE providers and members of the bar related to the lack of any requirement to obtain “live CLE.” Those expressing such a concern noted that, with the possible addition of CLE credit for mentoring activity, it would be possible to obtain the yearly minimum number of hours without ever meeting or interacting with other lawyers in a group setting.

The Commission as a whole agrees that much value comes from lawyers interacting with each other in the context of in-person, live CLE events. Such events often help increase

professionalism in local communities and across the bar. The Commission believes that attending in-person sessions can also serve as one way for lawyers to be introduced to, and get to know, other members of the bar. When friendship and familiarity are developed and maintained among the members of the bar, the likelihood of unprofessional conduct may decrease.

This belief appears to be supported by the structure of Rule 21. Since the adoption of Rule 21 in 1987, this Court has greatly expanded the opportunities for lawyers to obtain CLE credit hours in a variety of contexts. For example, the Court has permitted lawyers to earn CLE credit through distance learning, pro bono work, and, lately, through participating in mentoring programs. However, in each case, the Court has placed a limit on the maximum number of hours that could be earned through such activity, even when the Commission has urged that the Court consider allowing additional hours to be awarded.

Implicit in these maximum-credit restrictions is the recognition that live, in-person CLE can have real and substantial value for both the individual lawyer and for the profession as a whole. The Commission recommends here that Rule 21 be amended to make expressed what is now only implied: a clear minimum requirement for live, in-person CLE activity.

After much consideration and debate, the Commission proposes that the minimum-hour requirement for live, in-person CLE be set initially at five (5) credit hours. Reasonable minds can argue for a greater minimum number of such hours, but a lesser minimum requirement seems unlikely to help bring about any of the benefits that in-person CLE activities would provide. As such, the Commission has recommended five (5) credit hours as being the minimum benchmark consistent with the goals, while also allowing lawyers the maximum flexibility to obtain CLE.

Tennessee would not be alone in adopting a minimum requirement for live, in-person CLE activity. Indeed, other states also have minimum requirements for “in-person” CLE. *See*

New Jersey Board of Continuing Legal Education Regulation § 201:8 (providing that no more than one-half of CLE hours may be obtained through “alternative verifiable learning formats, including distance learning, teleconference, internet presentations and others”). Other states also require that a minimum number of hours must include “simultaneous, live interaction with the presenter,” though this requirement may be satisfied by live web-cast or telephone seminars. *See* Virginia State Bar Regulation 102(a) (providing that no more than eight (8) hours may be obtained through a “prerecorded class,” or a class that “that does not include simultaneous, live interaction with the presenter”).

For these reasons, the Commission does not believe that a minimum-hour requirement for live, in-person CLE is inconsistent with Rule 21 or with the practice in other states, and the Commission requests that this Court make the requirement clear in Rule 21.

Finally, the Commission recommends removal of Section 3.03. This Section is arguably redundant of Section 3.01, and, with the addition of the new introductory language proposed for Section 3.01, this Section is no longer needed. Accordingly, the Commission recommends that the Court remove current Section 3.03 in its entirety.

PROPOSED REVISIONS TO TENN. SUP. CT. R. 21, § 4
CONTINUING LEGAL EDUCATION CREDITS

The Commission recommends several modifications to Section 4 addressing how attorneys obtain and report CLE credit hours. As part of Section 4.02, the Commission proposes adding language to make clear that return of the Annual Report Statement (“ARS”) is part of a lawyer’s minimum reporting obligations when a deficiency occurs. The Commission’s recent experience, in particular, has shown that a substantial number of lawyers simply fail to return the ARS, particularly when payment of a fee may be the only outstanding obligation. The added

language in this Section is intended only to further emphasize and clarify the responsibility to return the ARS to assist the Commission fulfill its compliance duties.

In Section 4.03, the Commission recommends dividing the discrete portions of this Section into two separate subsections, though both sections relate to the award of CLE credit in an academic setting. The proposal for Section 4.03(a) addresses credit that may be obtained in participating in approved CLE activities. The Commission's only substantive recommendation is to clarify that the credit for such activities is awarded at the time of the presentation.

In its proposal for Section 4.03(b), the Commission recommends that the provision allowing CLE credit for teaching law-related courses be clarified. Although one would hope that such a provision would not need clarification, the Commission's experience has regrettably shown otherwise. In particular, the Commission recommends that the Section clarify that full-time teachers and professors may not obtain CLE credit for teaching as part of their ordinary teaching assignments.

In Section 4.04, the Commission recommends clarification of the provision allowing CLE credit for enrollment in a law school course. Currently, the Section seems to provide one hour of credit for each hour the student attends class, rather than upon the academic credit hours available for the course. The consensus of the Commission is that any award of credit for enrollment in a law school course should be credited only on par with the academic credit hours available for the course.

In Section 4.07(b), the Commission proposes to modify the award for credit for published writing in several respects. First, the Commission recommends that CLE credit be awarded at the time of *publication*, not authorship, of the article. Second, the Commission proposes that the Court, consistent with other provisions of Section 4, clarify the manner in which credit is

awarded. After considering several different approaches, the Commission recommends awarding credit based upon a word count methodology, excluding footnotes, endnotes, or citations.

In Section 4.07(c), the Commission recommends replacement of the current language with that proposed by the Court's Access to Justice Commission. The principal change requested by the Access to Justice Commission is to reflect that pro bono activity performed through a legal services organization must be approved by this Court to offer such services.

The CLE Commission has no objection to this amendment and would urge its approval. However, the Commission proposes two further refinements. First, the Commission recommends that the credit awarded be on the basis of dual hours, and not merely ethics and professionalism. The Commission does not view pro bono work as being tied to ethics and professionalism exclusively, or even largely, and, as such, the limitation does not seem needed.

Second, and with that change, the Commission proposes placing a three-hour cap on the number of dual credit hours that may be awarded pursuant to this Section. Currently, the number of credit hours is functionally limited to three hours because the credit is limited to EP credit. *See* Tenn. Sup. Ct. R. 4.02. Thus, with a change in the nature of the credit to be awarded, the Commission believes that the same limitation should similarly apply.

Finally, the Commission urges the Court to adopt a new Section 4.07(e) to permit credit for the completion of a bar review course. In a manner similar to enrollment in an academic class, some of the purposes of continuing education can be served by taking a bar review class, and the Commission believes that credit should be awarded in such instances. However, the Commission does not believe that a lawyer should receive credit both for having taken a bar examination and for having enrolled in a bar review class in the same compliance year.

PROPOSED REVISIONS TO TENN. SUP. CT. R. 21, § 5
CONTINUING LEGAL EDUCATION PROVIDERS

The Commission recommends changes to Section 5 to modernize this Section and to reflect the experience of the Commission since the Rules have been in effect.

In Section 5.01(e), the Commission proposes that the requirement for written materials be modified. The Commission believes that the current standard of “thorough, high quality, readable, and carefully prepared” written materials is too subjective to be consistently applied, and the Commission recommends deletion of what may be unnecessary language. Similarly, the Commission believes that at least some presentations may qualify for credit even if the presentation is not accompanied by written materials. As such, the Commission instead proposes that this Section establish a clear preference for written materials, but not otherwise condition approval of a course on this requirement.

In Section 5.02, the Commission proposes that CLE activities not be given presumptive credit merely based upon the provider’s previous history. Although a provider’s history and conduct could arguably be relevant to whether an activity should be approved for credit, this information is not entitled to any significant weight. Instead, an activity should be considered on the merits of the activity using the criteria set forth in Section 5.01. As a matter of practice, the Commission does not grant “presumptive approval” to proposed CLE activities, and would respectfully request that the Court remove this reference in Section 5.02.

In Section 5.05, the Commission proposes to add structure to this Section with section designations. In new Section 5.05(a), the Commission proposes to add electronic communications as an accepted form of communication. In Section (b), the Commission recommends that the appeal process be modified to allow a first level of review with the

Executive Director, and a second level of review, if necessary, to the Commission as a whole. Additionally, in Section (c), the Commission proposes to require use of the Uniform Application for Accreditation that many states presently use.

The Commission also proposes adding a new Section 5.05(d) to address how out-of-state activities are reviewed and approved. This new section is designed to make clear that the obligation to seek approval rests with the lawyer requesting credit.

Finally, in Section 5.06, the Commission proposes specific language to be used by providers when advertising a CLE activity. In reviewing such advertisements from around the State, the Commission notes that advertisements are often not clear, or even misleading, as to whether the prospective CLE activity has been approved for credit, or, if not, whether such approval will be sought. By clarifying these simple statements placed by providers in their advertising, the Commission hopes that lawyers will be in a better position to make informed choices about how, and from whom, they obtain CLE.

**PROPOSED REVISIONS TO TENN. SUP. CT. R. 21, § 6
ANNUAL REPORT STATEMENT**

The requested modifications to Sections 6 and 7 will clarify the deadlines for CLE compliance, as well as the fees resulting from non-compliance and when each fee is triggered. The requested modifications would also, hopefully, alleviate the significant administrative resources required to address non-compliance, both from legitimate delinquencies and confusion of the practicing attorneys. The Commission also requests some renumbering/lettering of subsections for consistency, but the Commission does not consider these modifications to be substantive in nature.

The Commission currently sends out a Status Report to all attorneys in October of each year, indicating the hours earned and reported thus far for that calendar year, and further indicating whether and how many additional hours are necessary for compliance. Accordingly, in addition to every attorney's individual responsibility for tracking their own compliance with the mandatory CLE provisions, the Commission provides a reminder as a service to the bar as each calendar year comes to a close. The Commission intends to continue providing this service unchanged.

For summary and reference purposes, the Commission has attached as **Exhibit F** to this Petition a chart identifying the current timeline, the requested modifications, and the triggering of associated fees. The reasons for these requests are addressed in more detail below.

In Sections 6.01 and 6.02, the Commission is requesting that the dates for the Annual Report statements be delayed by thirty (30) days. Under the current Rule, the Annual Report Statements must be mailed by the Commission no later than January 31 of each year. However, a large number of attorneys obtain CLE in December, up to and including on December 31. Those hours may not be—and some usually are not—reported until January. It is very difficult for the Commission to process and record all of those December hours before sending out the Annual Report Statements.

In 2013, for example, the Commission received reports for 45,459 hours of requested CLE credit for 13,510 attorneys in the month of January, and it was still receiving reports of December hours as late as the date of this summary. As a result, some of the Annual Report Statements that go out at the end of January are not complete, which creates confusion for the attorney, and additional work for the Commission in correcting and resending these reports. The new timeline would allow the Commission to send out those reports by the end of February, thus

ensuring that the Reports received by attorneys are correct. The attorneys would then have the same amount of time as before, one (1) month, to return the Annual Report Statement to the Commission, if necessary.

A new Section 6.03 is requested which would explicitly require the Commission to include with the Annual Report Statement information regarding any fees assessed, and a schedule of additional fees resulting from continued non-compliance. This memorializes and mandates the Commission's current practice. Because some attorneys profess lack of knowledge regarding hour and/or fee delinquencies, in addition to confusion regarding the current deadlines and fee structure, the Commission believes it is paramount for it to continue to provide this information. The only other requested change to Section 6 is the renumbering of current Section 6.03 as 6.04 to accommodate the addition of the new section.

**PROPOSED REVISIONS TO TENN. SUP. CT. R. 21, § 7
NONCOMPLIANCE AND SANCTIONS**

In Section 7, consistent with the deadline adjustments requested in Section 6, the non-compliance list would now be compiled by the Commission, and an additional Notice of non-compliance would be provided to attorneys by registered mail, no later than April 30, rather than March 31. *See* Tenn. Sup. Ct. R. §§ 7.01, 7.02. This revised timeline gives the Commission the same thirty (30) days to compile the list as the previous version. Attorneys would then have until May 31 to prove compliance by way of Affidavit to avoid incurring an additional/new fee.

The requested revisions address the fee structure in Sections 7.03 and 7.04. Previously, although the deadline for compliance is December 31, the Rule did not direct the assessment of a late penalty until March 31. This led to a perception by some attorneys that the actual compliance deadline was March 31, and those attorneys thus felt encouraged to delay

compliance with the mandatory CLE requirements for a given year until March of the following year. This delay in compliance has resulted in an increased administrative burden for the Commission's staff, as well as additional costs in mailing regular and/or registered Notices to those lawyers who obtained late hours.

The new language in 7.03 clarifies that the actual and practical compliance deadline for obtaining CLE hours is December 31, and directs the assessment of a late fee on January 1 of the following year. The new Annual Report guidelines direct that this fee, if assessed, be included on the Annual Report Statement sent at the end of February. The Commission believes this to be appropriate, in light of an attorney's individual responsibility for obtaining their CLE hours, and especially in light of the fact that every attorney in Tennessee is provided with a Status Report in October of each year regarding the number of hours they have earned and/or have been reported.

Of note, this initial non-completion fee applies only to attorneys who do not obtain the necessary hours. Recognizing that some attorneys wait to see which hours they need before paying for the CLE credit, no penalty will be assessed for an unpaid fee until May 31 of the following year, as addressed in Section 7.04. These fees are also delineated as an initial non-completion fee and an additional continuing non-compliance fee, since some attorneys have reported being confused by the previous language and mistakenly believed there was only one (1) fee rather than two (2). The assessment of a second fee, the continuing non-compliance fee, for those attorneys who still do not have their previous year's hours as of May 31, remains unchanged.

Finally, the previous Rule assessed the first fee of \$100 on March 31 for both those attorneys who did not complete their hours, and for those who might have an outstanding fee. The requested revisions assess the first fee for attorneys who do not obtain the required hours on

January 1, but waive it altogether for those who may simply have an outstanding fee to pay. The Commission believes this reflects our current policy preference to allow attorneys sufficient time to navigate the reporting system, decide on hours to report, and complete administrative tasks, while not encouraging attorneys to delay compliance with the substantive requirements regarding mandatory CLE hours.

The only other requested changes in Section 7 deal with grammatical issues, except for revised language in Section 7.08 referencing the initial non-completion fee and the continuing non-compliance fee.

PROPOSED REVISIONS TO TENN. SUP. CT. R. 21, § 8
FINANCING

The recommended changes to Section 8 are minor. For Section 8.01, the Commission proposes to remove language that was necessary in the initial year, but is no longer needed.

In Section 8.02, the Commission recommends organizing the Section by subparts for ease of reference. In new subpart (a), the Commission also requests that the Commission be permitted to collect a fee of \$2.00 per credit hour reported by mail and collect a discounted fee of \$1.00 per credit hour reported electronically. The Commission believes that the dual fee structure will encourage electronic reporting of hours, and thereby increase efficiencies in the Commission's tracking and reporting of CLE activities and hours. Presently, Rule 21 sets the required fee at \$1.25 for all credit hours irrespective of reporting.

In new Section 8.02(b), the Commission proposes revising the first sentence to make clear that the "report" referenced in this Section is the attendance report required to be filed by CLE providers. The Commission also proposes modifying the disclosure prohibition so as to allow CLE providers to obtain marketplace information regarding CLE that is generally being

provided in the marketplace. The Commission believes that this information will assist CLE providers in planning, developing, and marketing new CLE courses, and thereby offer additional opportunities for Tennessee lawyers to obtain CLE relevant to their respective practices.

**PROPOSED REVISIONS TO TENN. SUP. CT. R. 21, § 9
EFFECTIVE DATES OF THE RULE**

The Commission recommends no changes with respect to Section 9.

**PROPOSED REDESIGNATION OF TENN. SUP. CT. R. 21, § 10 AS NEW § 11
CERTIFICATION OF SPECIALISTS**

The Commission has given much consideration as whether it can best continue to serve this Honorable Court in the certification of specialists, and, if so, of what role it should play. However, the Commission believes that this topic warrants special consideration apart from the other proposals recommended in this Petition. Accordingly, with leave of the Court, the Commission will respectfully present its recommendations as to specialization by way of a separate petition. For present purposes, however, the Commission would propose to redesignate this Section as a new Section 11.

**PROPOSED NEW TENN. SUP. CT. R. 21, § 10
ANNUAL REPORTING OBLIGATION**

The Commission has often considered how it can best meet the goal established by this Court to be responsible to the legal profession in Tennessee and to the public that is served by the profession. As part of this consideration, the Commission believes that one way in which it can be of service is to be more open and transparent in its conduct and activities.

- **Exhibit C** – Number of Tennessee Attorneys Turning 65 in Each Year;
- **Exhibit D** – Stephen Greenhouse, “Working Late, by Choice or Not,” New York Times, May 9, 2012;
- **Exhibit E** – Complaints Filed with the Board of Professional Responsibility in 2013; and
- **Exhibit F** – Compliance Procedures Set Forth in Sections 6 and 7.

Respectfully Submitted,

**TENNESSEE COMMISSION ON CONTINUING
LEGAL EDUCATION AND SPECIALIZATION**

By: 
Tom Greenholtz, BPR No. 020105

Chairperson, *Tennessee Commission on
Continuing Legal Education and
Specialization*

CERTIFICATE OF SERVICE

I certify that a photocopy of this Petition was mailed, first class postage paid, to the attached list of individuals and organizations, and was posted on the Commission’s web site, www.cleln.com, this 30th day of October, 2013.

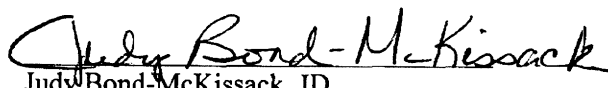

Judy Bond-McKissack, JD
Executive Director, *Tennessee Commission on
Continuing Legal Education and Specialization*

EXHIBIT A to Petition to Amend Tennessee Supreme Court Rule 21
Proposed Amendments and Modifications to Rule 21

Proposed Rule 21: Rule for Mandatory Continuing Legal Education.

Section 1. Commission on Continuing Legal Education.

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

1.02. The Commission shall have the following duties:

- (a) To exercise general supervisory authority over the administration of this Rule.
- (b) To adopt regulations consistent with this Rule.
- (c) To monitor developments in the operation of this rule, and to design, promulgate for discussion, test and recommend to this Court modifications to the Continuing Legal Education program in Tennessee as deemed appropriate by the Commission. In furtherance of this particular responsibility, the Commission may, with prior Court approval, from time to time, adopt by regulation, after notice and an opportunity to comment to the bar and CLE providers in Tennessee, new accreditation standards, evaluation programs, and other similar programs for trial periods not to exceed 42 months in duration.

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

1.04. Any Commission vacancy shall be filled by the Supreme Court to serve until the expiration of the term in which the vacancy occurred. All members shall be eligible for reappointment for no more than one additional term.

1.05. Officers of the Commission shall consist of the Chairperson, Vice Chairperson, Secretary and Treasurer. The Chairperson shall be appointed by the

Supreme Court. Each of the other officers shall be elected by members of the Commission during their first meeting of each calendar year.

1.06. Meetings of the Commission may be held at any time upon notification by any officer to the entire Commission. Votes may be cast concerning any action before the Commission by registering an affirmative or negative vote during a physical meeting, or by electronic or telephonic means, or mail.

1.07. A quorum of six (6) members shall be required for any Commission action. A majority of the members in attendance at any Commission meeting having a quorum, but no less than four (4) affirmative votes, shall be necessary to approve any action.

1.08. Members of the Commission shall receive no compensation for their services but may be reimbursed by the Commission for their incidental travel and other expenses in accordance with the allowances approved by the Administrative Office of the Courts.

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

1.10. Communications to the Commission, any subcommittee thereof, or to the Commission's staff relating to the failure of any lawyer to comply with this rule, or of any fraud upon the Commission shall be absolutely privileged, and no civil suit predicated thereon may be instituted against any complainant or a witness. Members of the Commission and its staff shall be immune from civil suit for any conduct in the course of their official duties.

Section 2. Scope and Exemptions.

2.01. This Rule shall apply to every person whose qualifications to practice law are subject to the Rules of Professional Conduct of the Supreme Court of Tennessee. The exemptions contained herein shall apply only to the mandatory

continuing legal education requirements of this Rule.

2.02. The practice of law shall be defined as described in Rule 9, Section 20.2(e).

2.03. An attorney may receive twelve (12) hours of general continuing legal education credit, and three (3) hours of ethics and professionalism credit, for passing the bar examination of any state, any examination required by a certification program approved under this Rule, or the examination for admission to practice before the United States Patent and Trademark Office. In addition, an attorney may receive three hours of ethics and professionalism credit for passing either the ethics portion of a bar examination of any state or the Multi-state Professional Responsibility Examination. The maximum credit to be earned by passing any and all bar examinations in a given compliance year is twelve (12) hours of general credit and three (3) hours of ethics/professionalism credit.

2.04 The Commission shall recognize the following exemptions:

- (a) Nonresident attorneys from other jurisdictions who are temporarily admitted to practice for a case or proceeding shall not be subject to this Rule.
- (b) Members of the Armed Forces on active duty shall not be subject to this Rule.
- (c) An attorney who is not practicing law shall not be subject to the requirements of the Rule after age sixty-five (65) upon filing a request with the Commission. This exemption shall not include the calendar year in which he or she becomes sixty-five (65) years of age. Attorneys over the age of sixty-five (65) that are practicing law are not exempt from this rule.
- (d) An attorney who is licensed to practice law in Tennessee but who resided outside of the State and did not practice law in Tennessee during the compliance year may request an annual exemption from this Rule.

- (e) Full time law school professors who are not practicing law shall not be subject to this rule.
- (f) An attorney holding an elective office in the Executive or Legislative branches of government who is prohibited by law from practicing law is exempt while holding such office.
- (g) All Justices, Judges and Magistrates of the federal system shall not be subject to the requirements of this Rule in view of their required comparable continuing legal education programs.

2.05. An attorney may petition the Commission for "Exceptional Relief" from this Rule, and may be granted Exceptional Relief upon majority vote of the Commission. An attorney applying for Exceptional Relief, including appropriate waivers, extensions of time, hardship and extenuating circumstances, shall file with the Commission a written statement showing cause why that individual should be considered for Exceptional Relief and shall specify in detail the particular relief being sought.

Section 3. Continuing Legal Education Requirement.

3.01. Unless otherwise exempted, each attorney admitted to practice law in the State of Tennessee shall obtain by December 31 of that calendar year a minimum of fifteen (15) hours of continuing legal education. Of those fifteen hours, three (3) hours shall be approved for ethics/professionalism credit ("EP credits") and twelve (12) hours shall be approved for general credit. The combined fifteen (15) hours shall include a minimum of five (5) in classroom hours of CLE credit.

3.02

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

- (b) Attorneys who have a disability which makes attendance of CLE programs inordinately difficult may file a request for a substitute program in lieu of attendance and shall therein set out continuing legal education plans tailored to their specific interests and physical abilities. The Commission shall review and approve or disapprove such plans on an individual basis. Denial of any requested substitute for attendance will be accompanied by reasons for the denial of the application and suggestions how the attorney might improve his or her application for an approved substitute for attendance.

Section 4. Continuing Legal Education Credits.

4.01. Credit will be given only for continuing legal education activities approved by the Commission.

4.02. Hours of credit in excess of the minimum annual requirement may be carried forward for credit in the succeeding calendar year, but only for the succeeding calendar year. EP credits in excess of the annual requirement will, to a maximum of three (3) hours, be carried forward to the subsequent year's EP requirement, but will not be used to satisfy any deficiency in the twelve (12) hour general requirement. Such hours must, however, be reported and paid. Any attorney required to earn CLE credits that receives an Annual Report Statement showing less than twelve (12) general credits and three (3) EP credits or that a fee is due shall sign and return the Annual Report Statement as directed in the statement.

4.03.

- (a) Credit may be earned through teaching in an approved continuing legal education activity. Presentations accompanied by thorough, high quality, readable and carefully prepared written materials will qualify for CLE credit on the basis of four (4) hours of credit for each hour of presentation. Presentations accompanied by less than five pages of outlines, or not accompanied by written materials, will qualify for CLE credit on the basis of two (2) credits per hour of presentation. Repeat presentations qualify for one-half of the credits awarded for the initial presentation. CLE credit is earned as of the date the CLE presentation occurs.

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- (b)** Credit may also be earned through teaching in an approved law school or teaching law related courses offered for credit toward a degree at the undergraduate or graduate level in an approved college, or university or community college. The Commission will award four (4) hours of CLE credit for each hour of academic credit awarded by the law school, college, community college or university for the course(s) taught. Full-time teachers who engage in the practice of law and choose to maintain their licenses to practice law are fully subject to the MCLE requirements established herein, and may not earn any credits by their ordinary teaching assignments.

4.04. Credit may be earned through formal enrollment and education of a postgraduate nature, either for credit or by audit, in an approved law school. The Commission will award one (1) credit hour for each hour of academic credit awarded for successful completion of the course.

4.05. Credit may be earned through service as a bar examiner in Tennessee or in any of the sister states. The Commission will award twelve (12) hours of general CLE credit and three (3) hours of EP credit annually for the preparation and grading of one or more bar examination questions during a given compliance year.

4.06. The Commission will award three (3) hours of EP credit annually for service on the Board of Professional Responsibility or any of its hearing committees.

4.07. The Commission may, in its discretion, award:

- (a)** Up to one-half of the annual requirement to attorneys for participation as members of governmental commissions, committees, or other governmental bodies, at either the state or national level, involved in formal sessions for review of proposed legislation, rules or regulations.
- (b)** Up to one-half of the annual requirement (six (6) general hours and one and one-half (1.5) EP hours) for published writings concerning substantive law, the practice of law, or the ethical and professional

responsibilities of attorneys if the writing is published in approved publications intended primarily for attorneys. Credit, in the amount of one (1) hour for every 1,000 words, shall be awarded not including footnotes, endnotes or citations of authority. Credit shall not be awarded to a named author when the actual principal authority was another person acting under the direction or supervision of the named author. In requesting credit under this subsection, the attorney shall provide the Commission with an affidavit stating the facts of authorship.

- (c) An annual maximum of three (3) dual hours of CLE credits earned at the rate of one hour of credit for every five billable hours of pro bono legal representation provided through court appointment, an organized bar association program or **an approved legal assistance organization**, or of pro bono mediation services as required by Tennessee Supreme Court Rule 31 or the Federal Court Mediation Programs established by the United States District Courts in Tennessee. Ethics and professionalism credits awarded pursuant to this paragraph shall be exempt from the per-hour fee imposed by Section 8 of this rule. The change in the number of billable hours from eight (8) per one-hour of credit to five (5) per one-hour of credit shall lapse on December 31, 2014, unless renewed by the Court. The Commission shall study the effect of the change in recruitment of lawyers to undertake pro bono representation and report the effect of the change.

An "approved legal assistance organization" for the purposes of this section is an organization or professional association that provides pro bono legal services AND that is approved by the Tennessee Supreme Court. An organization which receives funding from the Legal Services Corporation is presumptively approved under this section. Organizations or groups which do not provide legal assistance as their primary service or business but wish to develop an initiative or project designed specifically to provide pro bono legal services may apply to be approved by the Supreme Court under this section. Any organization seeking approval under this section must file a petition with the clerk of the Tennessee Supreme Court.

Attached as Appendix A is a form petition for use by any such organization.

- (d) Up to six (6) hours per year of dual credit for participation as a mentor or mentee in a program meeting standards established by the Commission, including programs sponsored by bar associations, law schools, law firms, or other appropriate governmental or organizational sponsors. To help facilitate establishment of mentoring programs, the Commission is authorized to provide for a program of training for mentors, whether through its own auspices or through those of other organizations, and to charge a reasonable fee for such training. With regard to mentors participating in a mentoring program sponsored by a governmental or non-profit organization, the Commission is authorized to provide such training at no charge. This subparagraph (d) shall take effect on July 1, 2013, and shall expire on December 31, 2014, unless affirmatively readopted by the Supreme Court
- (e) Up to one (1) year of CLE credit may be awarded for completion of a bar review course. An attorney shall not receive bar review credit and bar exam credit in the same compliance year.

4.08. A maximum of eight (8) hours of credit per year earned in a distance learning format approved by the Commission pursuant to Section 5.01(f) may be applied to the annual requirements.

Section 5. Continuing Legal Education Providers.

5.01. The following standards will govern the approval by the Commission of continuing legal education activities:

- (a) The activity must have significant intellectual or practical content and its primary objective must be to enhance the participant's professional competence as an attorney.

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- (b)** The activity must deal primarily with matters related to substantive law, the practice of law, professional responsibility or ethical obligations of attorneys.
 - (c)** The activity must be offered by a provider having substantial recent experience in offering continuing legal education or demonstrated ability to organize and present effectively continuing legal education. Demonstrated ability arises partly from the extent to which individuals with legal training or educational experience are involved in the planning, instruction and supervision of the activity.
 - (d)** The activity itself must be conducted by an individual or group qualified by practical or academic legal experience. The program, including the named advertised instructors, must be conducted substantially as planned, subject to emergency withdrawals and alterations.
 - (e)** Written materials should be made available to all participants at or before the time the course is presented, unless the absence of such materials is recognized as reasonable and approved by the Commission.
 - (f)** The activity must be conducted in a comfortable physical setting, which is conducive to learning, or in a distance learning format approved by the Commission.
 - (g)** No activity consisting solely of the viewing or hearing of pre-recorded material may be awarded credit.
 - (h)** Activities that cross academic lines, such as accounting-tax seminars, may be considered for approval.

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

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

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

5.05.

- (a)** Any provider desiring to advertise Commission approval of a course, program, or other activity, shall submit application for such permission and supporting documentation electronically or on the Uniform Application for Accreditation at least forty-five (45) days prior to the date on which the course or program is scheduled. Documentation shall include a statement of the provider's intention to comply with the accreditation standards of this Rule, copies of programs and written materials distributed to participants at the two most recently produced programs, if available, or an outline of the proposed program and list of instructors if the provider has not produced previous programs, and such further information as the Commission shall request. The staff of the Commission will advise the provider whether the activity is approved or disapproved in writing by mail or by electronic means within thirty (30) days of the receipt of the completed application.
- (b)** Providers denied approval of a program or activity may appeal such a decision by submitting a letter of appeal to the Executive Director within fifteen (15) days of the receipt of the notice of disapproval. Within thirty (30) days of the receipt of the appeal, the Executive Director shall make a new decision which shall be promptly delivered to the provider. Any adverse decision may be appealed to the full Commission for final decision.
- (c)** Any provider may submit to the Commission the Uniform Application for Accreditation seeking approval of a program after the program is conducted.
- (d)** An attorney licensed to practice in Tennessee who has attended an out of state CLE activity not approved in advance by the Commission may submit a detailed agenda and speaker biographies for the

purpose of obtaining accreditation of the course after the program is conducted. All rules pertaining to course accreditation shall apply.

5.06.

- (a) The provider of a continuing legal education activity approved in advance may advertise or indicate approval of an activity, as follows:

"This course has been approved by the Tennessee Commission on Continuing Legal Education for a maximum of ____ hours of credit."

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

- (1) "This program is not accredited in Tennessee"; or
- (2) "We intend to seek accreditation for this program in Tennessee"; or
- (3) "This program is not being submitted for accreditation in Tennessee".

Section 6. Annual Report.

6.01. On or before February 28 of each year, the Commission shall prepare and mail an Annual Report Statement to each attorney covered by this Rule requesting information concerning the attorney's compliance with Section 3.01 of this Rule in the preceding calendar year. The Annual Report Statement shall be mailed to the attorney's address as shown in the most recent registration statement filed by the attorney pursuant to Supreme Court Rule 9, Section 20.5, or to the attorney's last known address.

6.02. On or before March 31, each attorney shall complete the Annual Report Statement, indicating his or her completion of, exemption from, or approved substitute for accredited continuing legal education during the preceding calendar year, and shall deliver the completed Annual Report Statement to the Commission. The completed Annual Report Statement shall disclose all CLE hours earned during the preceding calendar year, including any hours to be carried

forward to the following year. Any attorney whose Annual Report Statement demonstrates compliance with Section 3.01 of this Rule, and whose Annual Report Statement demonstrates that all fees due the Commission for the preceding calendar year have been paid, shall be exempt from the requirement to sign and deliver to the Commission the Annual Report Statement described herein.

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

6.04. The files and records of the Commission are deemed confidential and shall not be disclosed except in furtherance of the duties of the Commission; statistical abstracts may, however, be drawn therefrom in an anonymous fashion.

Section 7. Noncompliance and Sanctions

7.01. By April 30 of each year, the Commission shall compile:

- (1) A list of those attorneys who did not timely file an Annual Report Statement for the preceding calendar year;
- (2) A list of those attorneys who have not complied with the requirements of Section 3.01 of this rule for the preceding calendar year; and
- (3) A list of those attorneys who have not paid all fees due under Section 8.03 of this Rule.

7.02. By April 30 of each year, the Commission shall serve each attorney listed on any of the three foregoing lists a Notice of Non-Compliance requiring the attorney to remedy his/her deficiencies on or before May 31 of that year. The notice shall be served upon the attorney by registered or certified mail, return receipt requested, at the address shown in the most recent registration statement filed by the attorney pursuant to Supreme Court Rule 9, Section 20.5 or other last known address.

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

7.04. Each attorney to whom a Notice of Non-Compliance is issued shall file an Affidavit of Compliance with the Commission on or before May 31 of that year showing that he or she has remedied his/her deficiencies. In the event an attorney fails to timely remedy his/her deficiencies, fails to pay any fee owing under Section 8.03, or fails to timely file an Affidavit of Compliance, the attorney shall pay to the Commission an additional "Continuing Non-Compliance Fee" of Two Hundred Dollars (\$200).

7.05. On or before July 1 of each year, the Commission shall prepare a draft Suspension Order listing all attorneys who were issued Notices of Non-Compliance and who failed to remedy their deficiencies by May 31. The Commission shall submit the draft Suspension Order to the Supreme Court for informational purposes. The Commission also shall mail a copy of the draft Suspension Order to each attorney named in the draft Suspension Order by registered or certified mail, return receipt requested, to the address shown in the most recent registration statement filed by the attorney pursuant to Supreme Court Rule 9, Section 20.5 or other last known address.

7.06. On or before August 10 of each year, each attorney listed in the draft Suspension Order may file an Affidavit of Compliance in a form acceptable to the Commission showing compliance with Section 3 of this Rule for the preceding calendar year. Upon the Commission's approval of the Affidavit of Compliance and upon the attorney's payment of all outstanding fees, the Commission shall remove the attorney's name from the list of potential suspensions contained in the draft Suspension Order.

7.07. On August 15 of each year, the Commission shall submit to the Supreme Court a final Suspension Order listing all attorneys with active Tennessee law

licenses who failed to comply with this Rule for the preceding calendar year. Also by August 15, the Commission shall notify the Board of Professional Responsibility of the names of all licensed attorneys who have retired, taken inactive status, been suspended, or whose license to practice law in this state is otherwise inactive, and who failed to comply with the requirements of this Rule. The Supreme Court will review the final Suspension Order and, upon the Court's approval, shall enter the Suspension Order suspending the law license of each attorney listed in the order. The Board of Professional Responsibility shall not reactivate the license of any attorney whose license is suspended pursuant to this Rule until the Commission certifies completion of a program of remedial continuing legal education satisfactory to the Commission.

7.08. Each attorney named in the final Suspension Order entered by the Court or whose name is submitted to the Board of Professional Responsibility as ineligible for reactivation for failure to meet the requirements of this rule shall pay to the Commission a Five Hundred Dollar (\$500) Suspension Fee as a condition of reinstatement of his or her law license. The Suspension Fee shall be paid in addition to the Initial Non-Compliance Fee (\$100) and in addition to the Continuing Non-Compliance Fee (\$200).

7.09. Payment of all fees imposed in this section shall be a requirement for compliance with this Rule.

7.10. An attorney suspended or made ineligible for reactivation by the Commission pursuant to this Rule may file with the Commission an application for reinstatement demonstrating compliance with Section 3.01 of this Rule. If the application is satisfactory to the Commission, if the attorney is otherwise eligible for reinstatement, and if the attorney has paid in full all fees due under this Rule, the Commission will recommend to the Supreme Court that the Court reinstate the attorney's law license.

7.11. An attorney may request a hearing before the Commission in regard to a recommendation of suspension or a recommendation against reinstatement. Additionally, any attorney not finding suitable relief before the Commission may petition the Supreme Court for modification or reversal of actions of the Commission.

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

Section 8. Financing.

8.01. The Commission shall be adequately funded to enable it to perform its duties in a financially independent and responsible manner.

8.02.

- (a)** Providers of CLE programs held within the State of Tennessee as a condition of accreditation shall agree to remit to the Commission an alphabetical list of attendees and to pay a fee of \$2.00 per approved credit hour for paper filings and a fee of \$1.00 per approved credit hour for electronic filings for each attorney licensed in Tennessee who attends the program. This provider's fee, along with the list of attendees, shall be submitted within thirty (30) days after the program is held.
- (b)** Information contained in the attendance report required by this section or any Commission requirement under this Rule or obtained by the Commission through analysis or comparison of such reports or information shall be deemed confidential.

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

8.04. This fee shall be paid at the time of, and along with, the report of such hours.

8.04. The Commission will review the level of the fees at least annually and adjust the levels as necessary to maintain adequate finances for prudent operation of the Commission.

8.05. The Commission shall deposit all funds collected hereunder with the State Treasurer; all such funds including earnings on investments and all interest and proceeds from said funds, if any, are deemed to be, and shall be designated as, funds belonging solely to the Commission. Withdrawals from those funds shall

only be made by the Commission for the purposes set forth in this rule, and for such other purposes as this Court may from time to time authorize or direct.

Section 9. Effective Dates of the Rule.

9.01. The establishment of the foregoing program for Mandatory Continuing Legal Education for attorneys licensed in Tennessee shall be effective beginning with the calendar year 1987 and shall continue until such time as the Supreme Court shall determine that its program is no longer in keeping with the Court's responsibility to the legal profession in Tennessee and the public which it serves.

Section 10. Annual CLE Compliance Summary

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

- (1) The number of courses approved and rejected for accreditation;
- (2) The number of providers from whom lawyers holding a Tennessee license have received CLE credit;
- (3) The number of credit hours earned by lawyers holding a Tennessee license, both in the aggregate and in the following general categories:
 - (i) traditional live seminars;
 - (ii) live webcasts;
 - (iii) distance learning;
 - (iv) pro bono legal representation;
 - (v) teaching and enrollment;
 - (vi) authorship; and
 - (vii) mentoring;

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- (4) The number of courses offered per provider and the attendance figures based on the categories above;
 - (5) The number of lawyers holding a Tennessee license who have been granted an exemption for the previous compliance year;
 - (6) The number of requests for exceptional relief granted by the Commission during the previous compliance year.

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

Section 11. Certification of Specialists.

11.01. The Commission is authorized to establish programs to certify as specialists attorneys practicing in this state in such areas of practice as the Commission may deem appropriate.

11.02. The Commission shall implement this program in a manner which will:

- (1) Best enhance the ability of the citizens of Tennessee to identify attorneys with special competence in particular areas of practice;
- (2) Minimize the administrative costs associated with this program by contracting with private agencies to perform any or all portions of a certification procedure for particular specialties subject to standards established by the Commission;
- (3) Insure that the administrative costs of this program are covered by fees assessed to Tennessee attorneys applying for certification as specialists, or certified or recertified as specialists, or from annual fees assessed specialists, or from fees generated under Section 8.02 of this Rule from credits

earned by certified specialists in excess of the minimum requirements of this Rule.

11.03. At a minimum, any certification standards established by the Commission must provide a reasonable basis for the determination that the lawyer possesses special competence in a particular field of law, as demonstrated by the following means:

- (a) Experience: Experience may be established either by a showing by the lawyer that he or she has completed a list of specific tasks, or that he or she has spent at least 25% of his or her practice in the specialty area during the preceding three years.
- (b) Knowledge: Knowledge of the specialty area shall be established by a written or oral examination, a portion of which must be devoted to professional responsibility and ethics as it relates to the specialty.
- (c) Practice Management: Any certification standard established by the Commission must include a self-evaluation checklist for completion by the attorney to ascertain that he or she has and maintains appropriate substantive law systems, office procedures, staff training programs, and accounting controls to assist in meeting the client's substantive legal needs, communicating adequately with the client concerning his or her legal matters, and appropriately receiving, holding, disbursing, and accounting for funds received from clients in accordance with all applicable disciplinary rules. The appropriate checklist for each specialty certification must be filed by each certified specialist with the Commission annually.
- (d) Quality Review: Any certification program approved by the Commission must include a provision for investigation of references from attorneys or judges, and clients concerning the knowledge, skills, ethics, diligence and client relations of the attorney seeking certification and (with a release from the applicant) the history of ethical complaints and disciplinary actions about the applicant with the Board of Professional Responsibility. In no event shall any

certification program require that references be obtained from specialists certified by that program.

- (e) Continuing Expertise: Recertification based on standards approved by the Commission shall be required at least every six (6) years.
- (f) Malpractice Insurance. Any specialist certified under this Rule must annually file with the Commission proof of the existence of adequate malpractice insurance coverage, unless the specialist is practicing exclusively as an employee of a governmental agency or agencies, or exclusively as an employee as in-house corporate counsel for a single corporate entity.

11.04. Prior to implementation of any certification program, the Commission shall file with the Supreme Court and publish to the attorneys of Tennessee the complete certification standards proposed for that program. For ninety (90) days after such publication, any person or entity desiring to do so may file comments on the proposed certification program with the Supreme Court and a copy with the Commission. The proposed certification program shall be effective upon entry by the Supreme Court of an Order approving the program either as submitted by the Commission or with any modifications set forth in the Order.

11.05. Nothing in this plan shall in any way limit the right of any lawyer to practice in any field of law.

11.06. For any certification program established by the Commission, the Commission shall specifically consider whether the program contains adequate safeguards to prevent cultural biases in examinations or other matters from unfairly preventing or inhibiting minority or women attorneys from becoming certified. Such safeguards may include, but are not limited to, a policy of including minority and women attorneys in decision-making groups designing and grading examinations, reviewing references, and other similar matters by any private agency performing any portion of a certification procedure.

11.07. The Commission may establish and collect reasonable fees from attorneys applying for certification or recertification, and annual fees from certified specialists.

11.08. The Commission shall approve or deny applications for certification and recertification. The Commission in the exercise of its discretion to approve or deny such application shall consider the requirements of this Rule, the certification standards approved by this Court, and any history of disciplinary complaints. The Commission shall revoke the certification of any attorney whose qualifications and disciplinary record no longer meet the requirements of this Rule and any applicable certification standards.

EXHIBIT B to Petition to Amend Tennessee Supreme Court Rule 21
Proposed Amendments and Modifications to Rule 21

Proposed Rule 21: Rule for Mandatory Continuing Legal Education.

Section 1. Commission on Continuing Legal Education.

1.01. There is hereby established the Tennessee Commission on Continuing Legal Education and Specialization consisting of ~~11~~eleven members, to be appointed by the Supreme Court of Tennessee. Nine members shall be attorneys who are resident members of the Bar of this State (three of whom shall reside in each of the Grand Divisions of the State) and two shall be non-attorneys.

1.02. The Commission shall have the following duties:

- (a) To exercise general supervisory authority over the administration of this Rule.
- (b) To adopt regulations consistent with this Rule.
- (c) To monitor developments in the operation of this rule, and to design, promulgate for discussion, test and recommend to this Court modifications to the Continuing Legal Education program in Tennessee as deemed appropriate by the Commission. In furtherance of this particular responsibility, the Commission may, with prior Court approval, from time to time, adopt by regulation, after notice and an opportunity to comment to the bar and CLE providers in Tennessee, new accreditation standards, evaluation programs, and other similar programs for trial periods not to exceed 42 months in duration.

1.03. ~~With the exception of initial appointees, all~~ All Commission members shall hold office for three (3) years and, until their successors are appointed, to staggered terms of office. ~~The initial appointees shall serve as follows:~~

~~Three members for one year;~~

~~Three members for two years;~~

~~Three members for three years.~~

~~One of the initial non-attorney appointees shall serve for one year and the other for two years.~~

1.04. Any Commission vacancy shall be filled by the Supreme Court to serve until the expiration of the term in which the vacancy occurred. All members shall be eligible for reappointment for no more than one additional term.

1.05. Officers of the Commission shall consist of the Chairperson, Vice Chairperson, Secretary and Treasurer. The Chairperson shall be appointed by the Supreme Court. Each of the other officers shall be elected by members of the Commission during their first meeting of each calendar year.

1.06. Meetings of the Commission may be held at any time upon notification by any officer to the entire Commission. Votes may be cast concerning any action before the Commission by registering an affirmative or negative vote during a physical meeting, or by electronic or telephonic means, or mail.

1.07. A quorum of six (6) members shall be required for any Commission action. A majority of the members in attendance at any Commission meeting having a quorum, but no less than four (4) affirmative votes, shall be necessary to approve any action.

1.08. Members of the Commission shall receive no compensation for their services but may be reimbursed by the Commission for their incidental travel and other expenses in accordance with the allowances approved by the Administrative Office of the Courts.

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

1.10. Communications to the Commission, any subcommittee thereof, or to the Commission's staff relating to the failure of any lawyer to comply with this rule, or of any fraud upon the Commission shall be absolutely privileged, and no civil suit predicated thereon may be instituted against any complainant or a witness.

Members of the Commission and its staff shall be immune from civil suit for any conduct in the course of their official duties.

Section 2. Scope and Exemptions.

2.01. This Rule shall apply to every person whose qualifications to practice law are subject to the Rules of Professional Conduct of the Supreme Court of Tennessee. The exemptions contained herein shall apply only to the mandatory continuing legal education requirements of this Rule.

~~**2.02.** Nonresident attorneys from other jurisdictions who are temporarily admitted to practice for a case or proceeding shall not be subject to this Rule.~~

~~**2.03.** Members of the Armed Forces on active duty shall not be subject to this Rule.~~

~~**2.04.** (a) An attorney shall be exempt from the requirements of the Rule after age sixty five (65) upon filing a request with the Commission.~~

2.02. The practice of law shall be defined as described in Rule 9, Section 20.2(e).

2.03. An attorney may receive twelve (12) hours of general continuing legal education credit, and three (3) This exemption shall not include the calendar year in which he or she becomes sixty five (65) years of age.

~~(b) An attorney who is licensed to practice law in Tennessee but who resides outside of the State and does not practice law in Tennessee may petition the Commission for an Exceptional Relief of this Rule, as described below.~~

~~(c) An attorney may petition the Commission for an "Exceptional Relief" from this Rule, and may be granted Exceptional Relief upon majority vote of the Commission. An attorney applying for Exceptional Relief, including appropriate waivers, extensions of time, hardship and extenuating circumstances, shall file with the Commission a brief showing cause why that individual should be considered for Exceptional Relief.~~

~~**2.05.** An attorney may receive 12 hours of general continuing legal education credit, and three hours of ethics and professionalism credit, for passing the bar~~

examination of any state, any examination required by a certification program approved under this Rule, or the examination for admission to practice before the United States Patent and Trademark Office. In addition, an attorney may receive three hours of ethics and professionalism credit for passing either the ethics portion of a bar examination of any state or the Multi-state Professional Responsibility Examination. The maximum credit to be earned by passing any and all bar examinations in a given compliance year is twelve (12) hours of general credit and three (3) hours of ethics/professionalism credit.

2.04 The Commission shall recognize the following exemptions:

- (a) Nonresident attorneys from other jurisdictions who are temporarily admitted to practice for a case or proceeding shall not be subject to this Rule.
- (b) Members of the Armed Forces on active duty shall not be subject to this Rule.
- (c) An attorney who is not practicing law shall not be subject to the requirements of the Rule after age sixty-five (65) upon filing a request with the Commission. This exemption shall not include the calendar year in which he or she becomes sixty-five (65) years of age. Attorneys over the age of sixty-five (65) that are practicing law are not exempt from this rule.
- (d) An attorney who is licensed to practice law in Tennessee but who resided outside of the State and did not practice law in Tennessee during the compliance year may request an annual exemption from this Rule.
- (e) Full time law school professors who are not practicing law shall not be subject to this rule.
- (f) An attorney holding an elective office in the Executive or Legislative branches of government who is prohibited by law from practicing law is exempt while holding such office.

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

2.05. An attorney may petition the Commission for "Exceptional Relief" from this Rule, and may be granted Exceptional Relief upon majority vote of the Commission. An attorney applying for Exceptional Relief, including appropriate waivers, extensions of time, hardship and extenuating circumstances, shall file with the Commission a written statement showing cause why that individual should be considered for Exceptional Relief and shall specify in detail the particular relief being sought.

~~2.06.~~ An attorney holding an elective office in the Executive or Legislative branches of government who is prohibited by law from practicing law is exempt while holding such office.

~~2.07.~~ All Justices, Judges and Magistrates of the federal system shall be exempt from the requirements of this Rule in view of their required comparable continuing legal education programs.

Section 3. Continuing Legal Education Requirement.

~~3.01.~~ Each Unless otherwise exempted, each attorney admitted to practice law in the State of Tennessee shall attend, or complete an approved substitute for attendance, a minimum of twelve (12) actual hours of approved continuing legal education each calendar year, beginning January 1, 1987. In addition, beginning January 1, 1993, attorneys shall complete three (3) additional hours per year of approved continuing education in courses dealing with ethics and professionalism ("EP credits"). All hours of continuing legal education for each calendar year shall be earned obtain by December 31 of that calendar year. a minimum of fifteen (15) hours of continuing legal education. Of those fifteen hours, three (3) hours shall be approved for ethics/professionalism credit ("EP credits") and twelve (12) hours shall be approved for general credit. The combined fifteen (15) hours shall include a minimum of five (5) in classroom hours of CLE credit.

~~3.02.~~

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

(b) Attorneys who have a permanent physical disability which makes attendance of CLE programs inordinately difficult may file a request for a substitute program in lieu of attendance and shall therein set out continuing legal education plans tailored to their specific interests and physical abilities. The Commission shall review and approve or disapprove such plans on an individual basis. Denial of any requested substitute for attendance will be accompanied by reasons for the denial of the application and suggestions how the attorney might improve his or her application for an approved substitute for attendance.

~~3.02. Each attorney must actually attend fifteen (15) instructional hours of CLE per year. An instructional hour shall be determined by the Commission.~~

Section 4. Continuing Legal Education Credits.

4.01. Credit will be given only for continuing legal education activities approved by the Commission.

4.02. Hours of credit in excess of the minimum annual requirement may be carried forward for credit in the succeeding calendar year, but only for the succeeding calendar year. EP credits in excess of the annual requirement will, to a maximum of three (3) hours, be carried forward to the subsequent year's EP requirement, but will not be used to satisfy any deficiency in the twelve (12) hour general requirement. Such hours must, however, be reported and paid for when. Any attorney required to earn CLE credits that receives an Annual Report Statement showing less than twelve (12) general credits and three (3) EP credits or that a fee is due shall sign and return the Annual Report Statement for as directed in the year in which the hours were earned is filed. statement.

4.03.

(a) Credit may be earned through teaching in an approved continuing legal education activity. Presentations accompanied by thorough, high quality, readable and carefully prepared written materials will qualify for CLE credit on the basis of four (4) hours of credit for each hour of presentation. Presentations accompanied by less than five pages of outlines, or not accompanied by written materials, will qualify for CLE credit on the basis of two (2) credits per hour of presentation. Repeat presentations qualify for one-half of the credits awarded for the initial presentation. CLE credit is earned as of the date the CLE presentation occurs.

(b) Credit may also be earned through teaching in an approved law school, or teaching law -related courses offered for credit toward a degree at the undergraduate or graduate level in an approved college, or university, or community college. The Commission will award four (4) hours of CLE credit for each hour of academic credit awarded by the law school ~~for the course taught,~~ college, community college or university for the course(s) taught. Full-time teachers who engage in the practice of law and choose to maintain their licenses to practice law are fully subject to the MCLE requirements established herein, and may not earn any credits by their ordinary teaching assignments.

4.04. Credit may be earned through formal enrollment and education of a postgraduate nature, either for credit or by audit, in an approved law school. The Commission will award one (1) credit hour for each hour of ~~class attendance,~~ academic credit awarded for successful completion of the course.

4.05. Credit may be earned through service as a bar examiner in Tennessee or in any of the sister states. The Commission will award twelve (12) hours of general CLE credit and three (3) hours of EP credit annually for the preparation and grading of one or more bar examination questions during a given compliance year.

4.06. The Commission will award three (3) hours of EP credit annually for service

on the Board of Professional Responsibility or any of its hearing committees.

4.07. The Commission may, in its discretion, award:

- (a) Up to one-half of the annual requirement to attorneys for participation as members of governmental commissions, committees, or other governmental bodies, at either the state or national level, involved in formal sessions for review of proposed legislation, rules or regulations.
- (b) Up to one-half of the full annual requirement (six (6) general hours and one and one-half (1.5) EP hours) for writing articles published writings concerning substantive law, the practice of law, or the ethical and professional responsibilities of attorneys if the articles are writing is published in approved publications intended primarily for attorneys; credit. Credit, in the amount of one (1) hour for every 1,000 words, shall be awarded not including footnotes, endnotes or citations of authority. Credit shall not be awarded to a named author when the actual principal authority was another person acting under the direction or supervision of the named author. In requesting credit under this subsection, the attorney shall provide the Commission with an affidavit stating the facts of authorship.
- (c) An annual maximum of three (3) dual hours of CLE credits earned at the rate of one hour of credit for every five billable hours of pro bono legal representation provided through court appointment, an organized bar association program or an approved legal services assistance organization, or of pro bono mediation services as required by Tennessee Supreme Court Rule 31 or the Federal Court Mediation Programs established by the United States District Courts in Tennessee. Ethics and professionalism credits awarded pursuant to this paragraph shall be exempt from the per-hour fee imposed by section Section 8 of this rule. The change in the number of billable hours from eight (8) per one-hour of credit to five (5) per one-hour of credit shall lapse on December 31, 2014, unless renewed by the Court. The TCLES Commission shall study the effect of the change in

recruitment of lawyers to undertake pro bono representation and report the effect of the change.

An "approved legal assistance organization" for the purposes of this section is an organization or professional association that provides pro bono legal services AND that is approved by the Tennessee Supreme Court. An organization which receives funding from the Legal Services Corporation is presumptively approved under this section. Organizations or groups which do not provide legal assistance as their primary service or business but wish to develop an initiative or project designed specifically to provide pro bono legal services may apply to be approved by the Supreme Court under this section. Any organization seeking approval under this section must file a petition with the clerk of the Tennessee Supreme Court. Attached as Appendix A is a form petition for use by any such organization.

(d) ~~up to~~ Up to six (6) hours per year of dual credit for participation as a mentor or mentee in a program meeting standards established by the Commission, including programs sponsored by bar associations, law schools, law firms, or other appropriate governmental or organizational sponsors. To help facilitate establishment of mentoring programs, the Commission is authorized to provide for a program of training for mentors, whether through its own auspices or through those of other organizations, and to charge a reasonable fee for such training. With regard to mentors participating in a mentoring program sponsored by a governmental or non-profit organization, the Commission is authorized to provide such training at no charge. This paragraph subparagraph (d) shall take effect on July 1, 2013, and shall expire on December 31, 2014, unless affirmatively readopted by the Supreme Court.

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

4.08. A maximum of eight (8) hours of credit per year earned in a distance learning format approved by the Commission pursuant to ~~section~~Section 5.01(f) may be applied to the annual requirements.

Section 5. Continuing Legal Education Providers.

5.01. The following standards will govern the approval by the Commission of continuing legal education activities:

- (a) The activity must have significant intellectual or practical content and its primary objective must be to enhance the participant's professional competence as an attorney.
- (b) The activity must deal primarily with matters related to substantive law, the practice of law, professional responsibility or ethical obligations of attorneys.
- (c) The activity must be offered by a provider having substantial recent experience in offering continuing legal education or demonstrated ability to organize and present effectively continuing legal education. Demonstrated ability arises partly from the extent to which individuals with legal training or educational experience are involved in the planning, instruction and supervision of the activity.
- (d) The activity itself must be conducted by an individual or group qualified by practical or academic legal experience. The program, including the named advertised instructors, must be conducted substantially as planned, subject to emergency withdrawals and alterations.
- (e) ~~Thorough, high quality, readable, and carefully prepared written~~
Written materials must~~should~~ be made available to all participants at or before the time the course is presented, unless the absence of such materials is recognized as reasonable and approved by the Commission. ~~A mere outline without citations or explanatory notations will not be sufficient.~~

- (f) The activity must be conducted in a comfortable physical setting, which is conducive to learning, or in a distance learning format approved by the Commission.
- (g) No activity consisting solely of the viewing or hearing of pre-recorded material may be awarded credit.
- (h) Activities that cross academic lines, such as accounting-tax seminars, may be considered for approval.

~~5.02. Continuing legal education activities of worthy providers may be presumptively approved by the Commission, provided such provider demonstrates to the Commission that the provider has over a substantial period of time conducted CLE activities meeting the standards for approval.~~

~~5.03. Each provider approved for credit, will be held responsible for including ethics education into its overall annual program.~~

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

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

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

5.05.

- (a) Any provider ~~(not presumptively approved)~~ desiring to advertise Commission approval of a course, program, or other activity, ~~may~~ shall submit application for such permission and supporting documentation electronically or on forms provided by the Commission Uniform Application for Accreditation at least forty-five (45) days prior to the date on which the course or program is scheduled. Documentation shall include a statement of the provider's intention to comply with the accreditation standards of this Rule, copies of programs and written materials distributed to participants at the two most recently produced programs, if

available, or an outline of the proposed program and list of instructors if the provider has not produced previous programs, and such further information as the Commission shall request. The staff of the Commission will advise the provider whether the activity is approved or disapproved in writing by mail or by electronic means within thirty (30) days of the receipt of the completed application.

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

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

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

5.06._

(a) ~~The provider of a continuing legal education activity approved in advance or a presumptively approved provider may advertise or indicate approval of an activity, as follows:~~

~~"This course has been approved by the Tennessee Commission on Continuing Legal Education for a maximum of ____ hours of credit."~~

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

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

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

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

Section 6. Annual Report.

6.01. On or before ~~January 31~~ February 28 of each year, the Commission shall prepare and mail an Annual Report Statement to each attorney covered by this Rule requesting information concerning the attorney's compliance with Section 3.01 of this Rule in the preceding calendar year. The Annual Report Statement shall be mailed to the attorney's address as shown in the most recent registration statement filed by the attorney pursuant to Supreme Court Rule 9, Section 20.5, or to the attorney's last known address.

6.02. On or before March ~~131~~, each attorney shall complete the Annual Report Statement, indicating his or her completion of, exemption from, or approved substitute for accredited continuing legal education during the preceding calendar year, and shall deliver the completed Annual Report Statement to the Commission. The completed Annual Report Statement shall disclose all CLE hours earned during the preceding calendar year, including any hours to be carried forward to the following year. Any attorney whose Annual Report Statement demonstrates compliance with Section 3.01 of this Rule, and whose Annual Report Statement demonstrates that all fees due the Commission for the preceding calendar year have been paid, shall be exempt from the requirement to sign and deliver to the Commission the Annual Report Statement described herein.

~~6.03.~~

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

6.04. The files and records of the Commission are deemed confidential and shall not be disclosed except in furtherance of the duties of the Commission; statistical abstracts may, however, be drawn therefrom in an anonymous fashion.

Section 7. Noncompliance and Sanctions

~~7.01. By March 31 of each year, the Commission shall compile:~~

~~(a)~~

7.01. By April 30 of each year, the Commission shall compile:

- (1) A list of those attorneys who did not timely file an Annual Report Statement for the preceding calendar year; and

~~(b) A list of those attorneys who timely filed an Annual Report Statement indicating lack of compliance with the requirements of Section 3 of this Rule for the preceding calendar year; and~~

~~(c) A list of those attorneys who timely filed an Annual Report Statement indicating compliance with the requirements of Section 3 of this Rule for the preceding calendar year but who did not pay any and all fees due under Section 8.03 of this Rule.~~
- (2) A list of those attorneys who have not complied with the requirements of Section 3.01 of this rule for the preceding calendar year; and
- (3) A list of those attorneys who have not paid all fees due under Section 8.03 of this Rule.

~~7.02. On March 31~~ By April 30 of each year, the Commission shall serve each attorney listed on any of the three foregoing lists a Notice of Non-

~~completion~~Compliance requiring the attorney to remedy his/her deficiencies on or before May 31 of that year. The notice shall be served upon the attorney by registered or certified mail, return receipt requested, at the address shown in the most recent registration statement filed by the attorney pursuant to Supreme Court Rule 9, Section 20.5 or other last known address.

7.03. Each attorney to whom a Notice of Non-~~completion~~who is issued shall ~~paysubject to the Commission a non-completion fee~~Tennessee CLE requirements ~~who does not satisfy the full number of required hours by December 31 of the previous compliance year shall be assessed an Initial Non-Compliance Fee of One Hundred Dollars (\$100.00). Such non-completion fee)~~on January 1 immediately following the end of the compliance year. Any Initial Non-Compliance Fee shall be paid on or before May 31 of that year unless the attorney shows to the satisfaction of the Executive Director of the Commission that the Notice of Non-~~completion~~Compliance was erroneously issued, in which case no ~~such fee is~~Initial Non-Compliance Fee shall be due.

7.04. Each attorney to whom a Notice of Non-~~completion~~Compliance is issued shall file an ~~affidavit~~Affidavit of Compliance with the Commission on or before May 31 of that year showing that he or she has remedied his/her deficiencies. In the event an attorney fails to timely remedy his/her deficiencies, ~~fails to pay any fee owing under Section 8.03, or fails to timely file such affidavit~~an Affidavit of Compliance, the attorney shall pay to the Commission, ~~in addition to the non-completion fee, a delinquent compliance fee~~an additional "Continuing Non-Compliance Fee" of Two Hundred Dollars (\$200.00).

7.05. On ~~or before~~ July 1 of each year, the Commission shall prepare a draft Suspension Order listing all attorneys who were issued Notices of Non-~~completion~~Compliance and who failed to remedy their deficiencies by May 31. The Commission shall submit the draft Suspension Order to the Supreme Court for informational purposes. The Commission also shall mail a copy of the draft Suspension Order to each attorney named in the draft Suspension Order by registered or certified mail, return receipt requested, to the address shown in the most recent registration statement filed by the attorney pursuant to Supreme Court Rule 9, Section 20.5 or other last known address.

7.06. On or before August 10 of each year, each attorney listed in the draft

Suspension Order may file an ~~affidavit~~Affidavit of Compliance in a form acceptable to the Commission showing compliance with Section 3 of this Rule for the preceding calendar year. Upon the Commission's approval of ~~such affidavit~~the Affidavit of Compliance and upon the attorney's payment of all outstanding fees, the Commission shall remove the attorney's name from the list of potential suspensions contained in the draft Suspension Order.

7.07. On August 15 of each year, the Commission shall submit to the Supreme Court a final Suspension Order listing all attorneys with active Tennessee law licenses who failed to comply with this Rule for the preceding calendar year. Also ~~on~~by August 15, the Commission shall notify the Board of Professional Responsibility of the names of all licensed attorneys who have retired, taken inactive status, been suspended, or whose license to practice law in this state is otherwise inactive, and who failed to comply with the requirements of this Rule. The Supreme Court will review the final Suspension Order and, upon the Court's approval, shall enter the Suspension Order suspending the law license of each attorney listed in the order. The Board of Professional Responsibility shall not reactivate the license of any attorney whose license is suspended pursuant to this Rule until the Commission certifies completion of a program of remedial continuing legal education satisfactory to the Commission.

7.08. Each attorney named in the final Suspension Order entered by the Court or whose name is submitted to the Board of Professional Responsibility as ineligible for reactivation for failure to meet the requirements of this rule shall pay to the Commission a Five Hundred Dollar (\$500) Suspension Fee as a condition of reinstatement of his or her law license. The ~~suspension fee~~Suspension Fee shall be paid in addition to the ~~non-completion fee~~Initial Non-Compliance Fee (\$100) and in addition to the delinquent compliance fee~~Continuing Non-Compliance Fee (\$200)~~.

7.09. Payment of all fees imposed in this section shall be a requirement for compliance with this Rule.

7.10. An attorney suspended or made ineligible for reactivation by the Commission pursuant to this Rule may file with the Commission an application for reinstatement demonstrating compliance with Section 3.01 of this Rule. If the application is satisfactory to the Commission, if the attorney is otherwise eligible

for reinstatement, and if the attorney has paid in full all fees due under this Rule, the Commission will recommend to the Supreme Court that the Court reinstate the attorney's law license.

7.11. An attorney may request a hearing before the Commission in regard to a recommendation of suspension or a recommendation against reinstatement. Additionally, any attorney not finding suitable relief before the Commission may petition the Supreme Court for modification or reversal of actions of the Commission.

~~These amendments shall apply to continuing legal education requirements for the 2002 calendar year (which will be reported in 2003) and for subsequent years. These amendments shall not be applied to continuing legal education requirements for the year 2001 (currently being reported) or for previous years.~~

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

Section 8. Financing.

8.01. The Commission shall be adequately funded to enable it to perform its duties in a financially independent and responsible manner. ~~For the first year that this Rule is in effect, however, it is expected that Petitioner Tennessee Bar Association, and perhaps the Tennessee Bar Foundation, upon financial arrangements suitable to the Commission, will furnish housing, fiscal and planning assistance and other management details for the program set forth in this Rule.~~

8.02.

(a) Providers of CLE programs held within the State of Tennessee as a condition of accreditation shall agree to remit to the Commission an alphabetical list of Tennessee-attendees and to pay a fee of \$1.252.00 per approved credit hour for paper filings and a fee of \$1.00 per approved credit hour for electronic filings for each Tennessee-attorney licensed in Tennessee who attends the program. This provider's fee, along with the list of attendees, shall be submitted within thirty (30) days after the program is held.

(b) Information contained in the attendance report required by this section, ~~or by section 5.05,~~ or any Commission requirement under this Rule, or obtained by the Commission through analysis or comparison of such reports or information shall be deemed confidential ~~and shall not be disclosed by the Commission to any party other than the sponsor providing the original information. This requirement of confidentiality extends but is not limited to information or analyses based on number of attendees, hours of credit earned, and evaluations of programs. Statistical information not identifying particular sponsors may be disclosed by the Commission in its discretion.~~

8.03. Attorneys attending approved out of state CLE programs, or other programs for which the sponsor does not report and pay the per-hour fee, shall be responsible for remitting their individual fees at the rate set under §Section

8.04. This fee shall be paid at the time of, and along with, the report of such hours.

8.04. The Commission will review the level of the fees at least annually and adjust the levels as necessary to maintain adequate finances for prudent operation of the Commission.

8.05. The Commission shall deposit all funds collected hereunder with the State Treasurer; all such funds including earnings on investments and all interest and proceeds from said funds, if any, are deemed to be, and shall be designated as, funds belonging solely to the Commission. Withdrawals from those funds shall

only be made by the Commission for the purposes set forth in this rule, and for such other purposes as this Court may from time to time authorize or direct.

Section 9. Effective Dates of the Rule.

9.01. The establishment of the foregoing program for Mandatory Continuing Legal Education for attorneys licensed in Tennessee~~attorneys~~ shall be effective beginning with the calendar year 1987 and shall continue until such time as the Supreme Court shall determine that its program is no longer in keeping with the Court's responsibility to the legal profession in Tennessee and the public which it serves.

Section 10. Annual CLE Compliance Summary

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

- (1) The number of courses approved and rejected for accreditation;
- (2) The number of providers from whom lawyers holding a Tennessee license have received CLE credit;
- (3) The number of credit hours earned by lawyers holding a Tennessee license, both in the aggregate and in the following general categories:
 - (i) traditional live seminars;
 - (ii) live webcasts;
 - (iii) distance learning;
 - (iv) pro bono legal representation;
 - (v) teaching and enrollment;
 - (vi) authorship; and
 - (vii) mentoring;

- (4) The number of courses offered per provider and the attendance figures based on the categories above;
- (5) The number of lawyers holding a Tennessee license who have been granted an exemption for the previous compliance year;
- (6) The number of requests for exceptional relief granted by the Commission during the previous compliance year.

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

Section 11. Certification of Specialists.

1011.01. The Commission is authorized to establish programs to certify as specialists attorneys practicing in this state in such areas of practice as the Commission may deem appropriate.

1011.02. The Commission shall implement this program in a manner which will:
(a)

- (1) Best enhance the ability of the citizens of Tennessee to identify attorneys with special competence in particular areas of practice;

~~(b)~~

- (2) Minimize the administrative costs associated with this program by contracting with private agencies to perform any or all portions of a certification procedure for particular specialties subject to standards established by the Commission;

~~(c)~~

(3) Insure that the administrative costs of this program are covered by fees assessed to Tennessee attorneys applying for certification as specialists, or certified or recertified as specialists, or from annual fees assessed specialists, or from fees generated under ~~section~~Section 8.02 of this Rule from credits earned by certified specialists in excess of the minimum requirements of this Rule.

10

11.03. At a minimum, any certification standards established by the Commission must provide a reasonable basis for the determination that the lawyer possesses special competence in a particular field of law, as demonstrated by the following means:

- (a) Experience: Experience may be established either by a showing by the lawyer that he or she has completed a list of specific tasks, or that he or she has spent at least 25% of his or her practice in the specialty area during the preceding three years.
- (b) Knowledge: Knowledge of the specialty area shall be established by a written or oral examination, a portion of which must be devoted to professional responsibility and ethics as it relates to the specialty.
- (c) Practice Management: Any certification standard established by the Commission must include a self-evaluation checklist for completion by the attorney to ascertain that he or she has and maintains appropriate substantive law systems, office procedures, staff training programs, and accounting controls to assist in meeting the client's substantive legal needs, communicating adequately with the client concerning his or her legal matters, and appropriately receiving, holding, disbursing, and accounting for funds received from clients in accordance with all applicable disciplinary rules. The appropriate checklist for each specialty certification must be filed by each certified specialist with the Commission annually.
- (d) Quality Review: Any certification program approved by the Commission must include a provision for investigation of references from attorneys or judges, and clients concerning the knowledge,

skills, ethics, diligence and client relations of the attorney seeking certification and (with a release from the applicant) the history of ethical complaints and disciplinary actions about the applicant with the Board of Professional Responsibility. In no event shall any certification program require that references be obtained from specialists certified by that program.

- (e) Continuing Expertise: Recertification based on standards approved by the Commission shall be required at least every six (6) years.
- (f) Malpractice Insurance. Any specialist certified under this Rule must annually file with the Commission proof of the existence of adequate malpractice insurance coverage, unless the specialist is practicing exclusively as an employee of a governmental agency or agencies, or exclusively as an employee as in-house corporate counsel for a single corporate entity.

10

11.04. Prior to implementation of any certification program, the Commission shall file with the Supreme Court and publish to the attorneys of Tennessee the complete certification standards proposed for that program. For ninety (90) days after such publication, any person or entity desiring to do so may file comments on the proposed certification program with the Supreme Court and a copy with the Commission. The proposed certification program shall be effective upon entry by the Supreme Court of an Order approving the program either as submitted by the Commission or with any modifications set forth in the Order.

1011.05. Nothing in this plan shall in any way limit the right of any lawyer to practice in any field of law.

1011.06. For any certification program established by the Commission, the Commission shall specifically consider whether the program contains adequate safeguards to prevent cultural biases in examinations or other matters from unfairly preventing or inhibiting minority or women attorneys from becoming certified. Such safeguards may include, but are not limited to, a policy of including minority and women attorneys in decision-making groups designing and grading examinations, reviewing references, and other similar matters by any private agency performing any portion of a certification procedure.

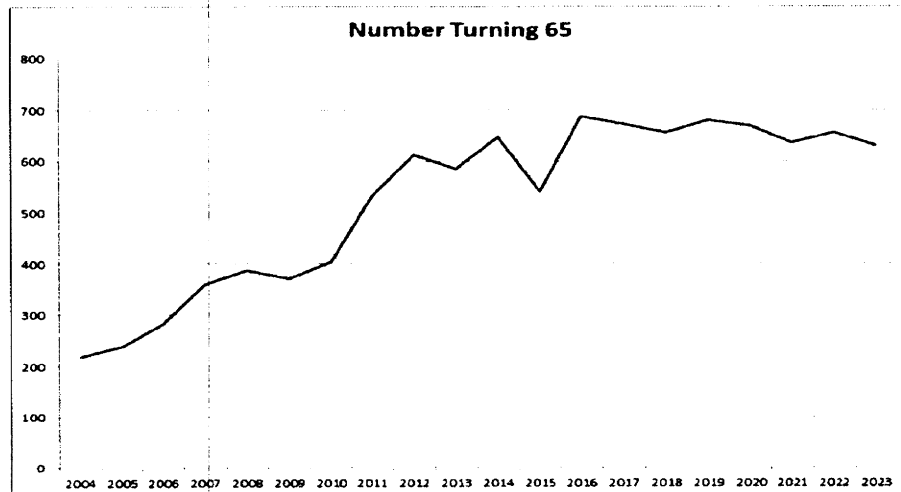
1011.07. The Commission may establish and collect reasonable fees from attorneys applying for certification or recertification, and annual fees from certified specialists.

1011.08. The Commission shall approve or deny applications for certification and recertification. The Commission in the exercise of its discretion to approve or deny such application shall consider the requirements of this Rule, the certification standards approved by this Court, and any history of disciplinary complaints. The Commission shall revoke the certification of any attorney whose qualifications and disciplinary record no longer meet the requirements of this Rule and any applicable certification standards.

**EXHIBIT C to Petition to Amend Tennessee Supreme Court Rule 21
Number of Tennessee Attorneys Turning 65 in Each Year**

Year	Number of Lawyers Turning 65
2004	218
2005	239
2006	283
2007	359
2008	387
2009	371
2010	404
2011	532
2012	613
2013	584

Year	Number of Lawyers Turning 65
2014	648
2015	540
2016	687
2017	672
2018	656
2019	681
2020	670
2021	637
2022	656
2023	631



Source: Tennessee Board of Professional Responsibility

EXHIBIT D to Petition to Amend Tennessee Supreme Court Rule 21
Stephen Greenhouse, "Working Late, by Choice or Not," New York Times,
May 9, 2012

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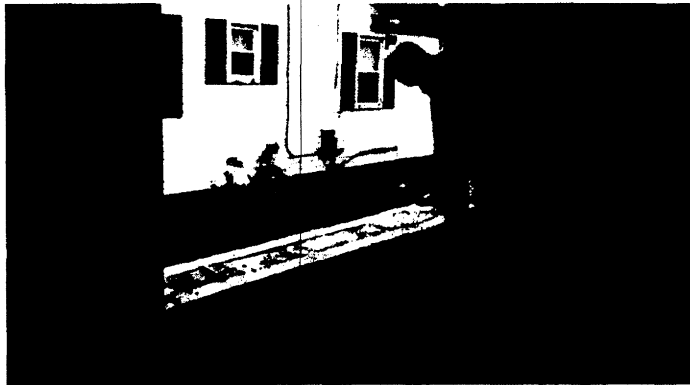
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Working Late, by Choice or Not



Mary F. Calvert for The New York Times

William Buettner, 75, a plumbing inspector in Annapolis, Md., once taught prison inmates. [More Photos](#)

By STEVEN GREENHOUSE

Published May 6, 2012

REPORT after report has made abundantly clear that job growth is weak, but there's one wide swath of the population where employment growth is going gangbusters: older Americans.

Multimedia



Still Working. Well Into the Retirement Years

Special Section

Retirement

More articles on employment, investments, estate planning and fitness for retirees.

A record 7.2 million Americans age 65 and older are working — double the number 15 years ago — partly because many older Americans love to work and partly because many feel too financially squeezed to retire.

With the value of many 401(k)s and homes taking a beating during the recession and with energy and health care prices climbing, many who dreamed that retirement was just around the corner have reluctantly kicked their retirement plans down the road.

While the overall number of Americans working has fallen by 4.4 million since the Great Recession began four and a half years ago — with many dropping out of the work force in frustration and some retiring early — the number of Americans 65 and older who are working has jumped by 1.4 million, a whopping 25 percent increase. Some work as doctors, some in retail, and some, with an entrepreneurial bent, start businesses in their 60s.

Americans are remaining healthier longer and living longer, making it easier to work past age 65. Moreover, it has grown easier for older Americans to continue working as the [See which Times articles are trending right now on Twitter](#)

economy has shifted from physically taxing manufacturing jobs to less grueling service sector jobs.

In a survey done last year, the Society of Actuaries found that 55 percent of older Americans who continued working said they had done so to stay active and involved, while 51 percent said they had done so for additional income.

"One obvious reason people are working later is money," said Steven A. Sass, program director at the Boston College Center for Retirement Research. "There's a concern about what they have in their 401(k) and about Social Security."

He said baby boomers were getting less than their parents did from Social Security because of the increase in the full retirement age — people cannot obtain full Social Security benefits until age 66, and for those born after 1957, the age will be 67. "Not only are they getting less from Social Security," Mr. Sass said, "but many don't have a pension that gives them a steady income after they retire."

These factors help explain why 18.5 percent of Americans 65 and older remain in the labor force, up from 12.1 percent in 1995. Many have stayed in the work force past 60 because older Americans seem to be paying an ever-larger share of their incomes toward medical expenses and because many corporations have stopped providing health coverage to retirees, forcing many to work until Medicare is available at 65.

"Maybe people have recovered from the stock market plunge," said Sara E. Rix, a senior policy adviser with the AARP Public Policy Institute. "But many people are still anxious about what may happen to the market, and that has caused many to delay retirement."

Here are the stories of five Americans working well past age 65.

Patricia Cotton, 72

Home Care Aide

At age 72, Patricia Cotton toils 60 hours a week as a home care aide. Monday through Friday, she drives the 45 minutes from her home in Hyattsville, Md., to Washington to care for a 98-year-old with heart disease and other problems. Each day she works 7 p.m. to 7 a.m.

"It's hard because I have a lot of lifting to do," said Ms. Cotton, who often bathes, turns over and changes her patient. "But I have no choice. I had hoped to retire at age 65. I was looking forward to it. But then I lost my money."

Ms. Cotton, an immigrant from Trinidad, says she had faithfully put money every few weeks into her Individual Retirement Account, entrusting it to a broker.

"I lost about \$150,000," she said. "I'd been putting money into it the last 25 or 30 years. My broker had me in high-risk investments. I didn't pay much attention. He said, 'You were doing so good.'"

But then the recession hit, and her I.R.A. lost half of its value — money that had been intended to supplement her \$1,200-a-month Social Security check to enable her to retire at age 65.

"I thought he was going to do something better for me," Ms. Cotton said. "I didn't know better." When the market nose-dived, she panicked and withdrew the rest of the money from her I.R.A. She was disappointed to discover that she had to pay almost half of that in tax and penalties.

"That left me all the way down," she said. "When I lost my money, there was nothing else I could have done. I had to keep going."

Ms. Cotton, a proud, divorced woman who has four children and seven grandchildren, lives on the second floor of a house that she fully paid off over 25 years. A daughter lives on the first floor, but Ms. Cotton refuses to take any money from her children.

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She usually returns from work at 8 a.m., has breakfast, goes to sleep at 9 and wakes up at 3:30 to prepare to return to work.

"When you do something for so long, you get used to it," she said. "But with that patient, you have to watch him constantly."

She receives her monthly Social Security check and puts it in a safe money market account that will be her retirement nest egg.

But when will she retire? "I have to continue for a little while," she said. "I just hope my health keeps up. So far it's going pretty good."

Dr. Rafael Garza, 87

Physician

Dr. Rafael Garza vividly remembers the day he received his medical degree 62 years ago — it was April 17, 1950, in Monterrey, Mexico. Today, at age 87, he is still going strong, having moved from the often joyous but frequently grueling practice of family medicine to focusing on wound care.

On Mondays, Wednesdays and Fridays he does his rounds at Mission Regional Medical Center in Mission, Tex., in the Rio Grande Valley, treating bedsores, protecting burn victims from infections and helping diabetics who have had amputations.

"It seems that I always wanted to be a physician," Dr. Garza said. "And now that I am a physician, I still enjoy practicing medicine."

Dr. Garza did his residency in family medicine in St. Louis and did follow-up residencies in Fort Worth and San Antonio, ultimately setting up a family practice in McAllen.

To this day, he speaks lovingly of that specialty: "You deliver the mother, then you take care of the baby, and that child continues as your patient, as he grows and develops. It's been exciting."

When he first moved to McAllen 55 years ago, there were few doctors in the area; today there are 600. "There were two surgeons and two obstetricians, and we were family physicians, and we were delivering more babies than the hospital was at the time," he said. "We were doing house calls and doing deliveries — we had an average of five a day. The time has gone by, and I'm still here."

As much as he loved family medicine, he knew he could not keep running around so much. So in 1999, at age 74, he switched practices by taking a series of courses in wound care. "I thought that would be a slower practice," he said. Now he sees only inpatients, handling a load of 12 to 18 people.

The emergency room takes care of the trauma, he noted, while he does the meticulous follow-up, trying to ease pain and repair wounds and wounded psyches.

"We have a lot of people in this area who have diabetes, and they don't have a family doctor, and they neglect their diabetes," he said. "Complications show up, and then there are sometimes amputations. I don't treat diabetes. But I do see the pressure ulcers."

"Believe it or not, I still enjoy it very much," he said. "I've been there so long, everybody is very supportive of me. I get a lot of appreciation."

Carol Berman, 77

Retail Clerk

In many ways, Carol Berman, 77, had a charmed career. In 1983, she began as executive assistant to the head of a start-up cellphone company in Columbus, Ohio. That company merged with another, and soon she was executive assistant to the head of Cellular One. After several more mergers, she found herself assistant to the chief executive of Verizon

Wireless.

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She retired in 2000, at age 66. "I loved my job, and I would have stayed, but I was already a fossil in the company," she said.

So she moved to West Palm Beach, expecting a relaxed, fulfilling life as a grandmother — she has three daughters, two stepdaughters and seven grandchildren, six of them girls.

"I worked all my life," Ms. Berman said. "When we moved to Florida to retire, I pictured myself sitting by the pool and playing cards and mah-jongg. I tried that, and I found out these people start playing at 6 p.m. You have to start dinner at 5 so you can be in bed by 8. I said, 'I can't do this.' And so I started looking for things to do."

She applied for jobs at a nearby mall, and when the Dillard's department store there offered her a position, she leapt at the opportunity. That was 10 years ago; soon she was a mainstay in the store's Ralph Lauren Polo department, which attracts many shoppers who play polo in the Palm Beach area.

"Our Polo shop is gorgeous," she said. "It doesn't just happen. The people who work there make it beautiful."

Ms. Berman said she loved the job in the beginning. "There was not the same kind of pressure," she said. "It was easy to sell. Times were good. We're near the polo grounds, so we get a lot of equestrians who come from overseas to play polo, and many remember me."

But financial bubbles burst, sales at the Polo shop slowed, and Dillard's management raised the pressure. "This whole retail thing is very difficult," Ms. Berman said. "I enjoy the people. I enjoy the customers. But there is a lot of pressure. We have quotas we have to meet. For me it's \$244 an hour. I've had two pay cuts for missing my quota. I earned \$16 an hour. But now I'm down to \$13."

"I'm really good at this," she added, but the recession and cuts in advertising caused sales to slide.

"I'm looking for additional things to do that would give me more satisfaction," she said. She plans to join a committee that fights to prevent cuts in Social Security and Medicare.

William Buettner, 78

Plumbing Inspector

William Buettner, the son of a plumber, grew up in Baltimore, near Pimlico Race Course.

"My dad wanted to be a lawyer, but he didn't become one," Mr. Buettner said. "He'd say, 'I want you to be a lawyer.' I said, 'Pop, I don't want to be a lawyer.' He said, 'If you're not going to be a lawyer, you're going to have to be a plumber.'"

So he became a plumber. He did private plumbing jobs until age 45, when he quit to become a plumbing instructor at Patuxent, a maximum-security state prison in Jessup, Md.

"I felt safer in the prison than I did in the street," Mr. Buettner said. "I never had any problem. They didn't look at the teachers like they looked at the guards. They saw us as trying to help them. Many times they'd say, 'Mr. Buettner, if I had you as a father, I wouldn't be here today.'"

At age 62, he retired from the prison. "I took a year off, thinking, I'm glad to get out of there," he said. "But at the end of a year, I couldn't wait to get back to work. I was just bored."

The prison director invited him back, and he taught at Patuxent for two more years. Around the time he was leaving that job, the plumbing inspector for the City of Annapolis asked him whether he could help out one or two days a week.

That was 12 years ago, and at 78, Mr. Buettner is still a plumbing inspector for the city. Although Annapolis has many historically protected buildings, there are plenty of

commercial jobs and residential renovations that require inspections.
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"I like to be active," Mr. Buettner said. "I go into apartment buildings, and it's three stories up or three floors down. And it keeps my mind sharp, the contact with other people."

"When I started, I felt it was good to make some extra money," he said. "But now with this economy, and property taxes and gas prices going up, it's feeling like very helpful money." He earns about \$18,000 a year from his inspection work, examining whether plumbers used the right piping and did the work properly.

"I've been a master plumber for 45 or 50 years, and there doesn't seem to be the pride in workmanship that there was years ago," he said. "It's more speed and get the job done. Now everything is plastic. Years ago, it was cast-iron pipe and lead. Now it's plastic PVC pipe. You can take your shoe and step on it, and it will crack. A rat or mouse will chew through it. With cast-iron pipe, they didn't even try. If you flush a toilet with PVC pipe in the wall, it sounds like Niagara Falls."

Mr. Buettner, who plans to retire at age 80, sees another disturbing change: "Today it's always, 'Go get a new one.' Don't repair anything. Tear it out, throw it out, and get a new thing."

Ethel Rusher, 72

Louise King, 92

Retail Workers

Last Feb. 18, Walmart phased out Ethel Rusher's and Louise King's positions as people greeters at its store in Bremerton, Wash., 15 miles west of Seattle. The two are now stocking shelves, Saturdays through Wednesdays, in the health and beauty aids department.

Ms. Rusher is 72, and Ms. King — who is Ms. Rusher's mother — is 92, making her one of the oldest of Walmart's 1.4 million employees in the United States.

"I don't think Social Security is enough to retire on," said the daughter, explaining why she was still working.

Ms. King said that she continued to work because "I don't want to sit down and die." The daughter was quick to add, however, "If she didn't live with us, she'd need it financially, too."

Ms. Rusher said: "Right now I'm satisfied working. I drive my mother back and forth. Although sometimes it's hard to go to work, but not always."

Their job involves helping customers and stocking and straightening up shelves with skin creams, shampoo, toothpaste and aspirin. Because Ms. Rusher badly hurt her back years ago lifting patients while working at a hospital, doctors have ordered her not to lift more than 15 pounds or work on a ladder. She makes sure her mother doesn't do strenuous work either.

What Ms. Rusher likes most about working at Walmart are the people. "We have customers who hunt you up and like talking with us," she said. "Some will even hug you. They miss us at the front. The store still has four greeters. They said they had too many."

She and her mother work 35 hours a week, from 3 to 11 p.m., five days a week. On their days off — Thursday and Friday — mother and daughter do laundry, go to doctors and see their children, grandchildren and great-grandchildren. Ms. Rusher said she had five children, three in Bremerton and two in California, as well as 13 grandchildren, seven of them in Bremerton.

Ms. Rusher, who has worked for Walmart for five years, said she planned to retire in two years, when her 401(k) plan fully vests — although she said she might cut back to part time, instead of retiring.

At that point, she plans to supplement her Social Security by sewing. "I've been sewing since I was a teenager," she said. "I used to make formal wedding dresses and stuff."

"A lot of people who work at Walmart tell us we should retire," Ms. Rusher said. "But we just enjoy it."

"Some people," she added, "just say they wish they still had their mothers, that I'm lucky."

A version of this article appeared in print on May 10, 2012, on page F1 of the New York edition with the headline: Working Late, by Choice or Not.

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**EXHIBIT E to Petition to Amend Tennessee Supreme Court Rule 21
Complaints Filed with the Board of Professional Responsibility in 2013**

Complaints Filed			Active Attorneys in Tennessee as of 8/22/2013		
13,162			21,142		
Number	Age Group	Percent of Total Complaints	Number	Age Group	Percent of Total Attorneys
1,139	65+	8.65%	2,827	65+	13.37%
3,206	55-64	24.36%	4,588	55-64	21.70%
4,096	45-54	31.12%	4,645	45-54	21.97%
3,453	35-44	26.23%	5,398	35-44	25.53%
1,268	25-34	9.63%	3,684	25-34	17.43%

Table 2:

Number of Complaints filed with the Board of Professional Responsibility for Calendar Year 2013.

Source: Tennessee Board of Professional Responsibility

**EXHIBIT F to Petition to Amend Tennessee Supreme Court Rule 21
Compliance Procedures Set Forth In Sections 6 and 7**

Section	Event	Current Timeline	Proposed New Timeline	Types of Fees Assessed	Current Dates on which Fees are Assessed	Proposed New Dates on which Fees are Assessed
6.01	Commission mails Annual Report Statement ("ARS") to all attorneys	31-Jan	28-Feb			
6.02	Attorneys complete and return ARS to Commission	1-Mar	31-Mar			
7.01	Commission identifies attorneys who remain non-compliant with either deficient hours or unpaid fees	31-Mar	30-Apr			
7.02	Commission mails Notice of Non-Compliance to attorneys	31-Mar	30-Apr			
7.02	Attorney establishes full compliance to avoid continuing non-compliance fee, which will be triggered on June 1. See Section 7.04.	31-May	31-May			
7.03	Deficient hours: Currently, attorneys who have either a deficiency in CLE hours or unpaid CLE course fees incur an Initial Non-Compliance Fee of \$100.00			\$100.00	31-Mar	The Commission recommends that the Initial Non-Compliance Fee be assessed on January 1, but only for attorneys who have a deficiency in CLE credit hours. Attorneys with unpaid CLE course fees are given until June 1 to remit payment before incurring any fee. If still non-compliant at that time, however, the attorney would incur the Continuing Non-Compliance Fee.
7.04	Compliant attorneys file an Affidavit of Compliance	31-May	31-May			
7.04	Non-compliant attorneys incur an additional Continuing Non-Compliance fee of \$200.00 if either hours remain deficient or CLE course fees remain unpaid			\$200.00	1-Jun	1-Jun
7.05	Commission prepares draft Suspension Order	1-Jul	1-Jul			
7.06	Compliant attorneys file an Affidavit of Compliance and seek removal from Draft Suspension Order	10-Aug	10-Aug			
7.07	Commission submits the final Suspension Order to the Supreme Court	15-Aug	15-Aug			
7.08	Non-compliant attorneys incur an additional Suspension Fee of \$500.00 upon entry of the Suspension Order			\$500.00	Upon Entry of Final Order	Upon Entry of Final Order

**List of Individuals and Organizations
Receiving Notice of the Foregoing by Mail**

Libby Sykes
Administrative Director
Administrative Office of the Courts
511 Union St Suite 600
Nashville TN 37219

Andrew Frazier
President, Benton County
P O Box 208
116 E Main
Camden TN 38320

John Willis
President, Anderson County
University of Memphis Cecil C....
1 North Front Street
Memphis, TN38103

James Snyder
President, Blount County
Law Office of James H. Snyder, Jr.
345 S Hall Rd
Alcoa, TN37701-2643

Emily Campbell Taube
Adams and Reese LLP
80 Monroe Avenue, Ste 700
Memphis, TN38103

Sandy L. Garrett
Chief Disciplinary Counsel
Board of Professional Responsibility
10 Cadillac Drive, Suite 220
Brentwood, TN 37027

Hewitt Chatman
President, Ballard-Taylor Bar Association
511 Algie Neely Rd
Denmark TN 38391

Lela Hollabaugh
Chairman of the Board
Board of Professional Responsibility
1600 Division Street, Suite 700
Nashville, TN 37203

John White
President, Bedford County
Bobo Hunt & White
P O Box 169
111 North Spring St Ste 202
Shelbyville TN 37162

Bill Brown President
Bradley County Bar Association
William J. Brown & Associates
PO Box 1001
Cleveland, TN37364

Jeffrey Kinsler
Dean, Belmont University College of Law
1900 Belmont Blvd
Nashville TN 37217

Lesley Tiller
President, Bristol County
Office of The District Attorney
P.O. Box 526
Blountville, TN 37617

Imad Al-Deen Abdullah
President, Ben Jones Chapter - National Bar Association
Baker Donelson Bearman Caldwell...
165 Madison Ave #2000
Memphis, TN38103

Kristie Anderson
President, Campbell County
PO Box 196
Jacksboro TN 37757

Matthew Maddox
President, Carroll County
Maddox Maddox & Maddox
P O Box 827
19695 E Main St
Huntingdon TN 38344

Jason Holly
President, Carter County
Holly & Holly PLLC
420 Railroad Street
Elizabethton TN 37643

William Kratzke
Dean, Cecil C. Humphreys School of Law
University of Memphis Cecil C....
1 North Front Street
Memphis, TN38103

Lynda Hood
Executive Director
Chattanooga Bar Association
801 Broad St Suite 420 Pioneer Bldg
Chattanooga TN 37402

Robin Miller
President, Chattanooga Bar Association
Spears Moore Rebman & Williams
PO Box 1749
Chattanooga, TN 37401

Lynn Newcomb
President, Cheatham County
Balthrop, Perry, Noe, Newcomb...
102 Frey St., PO Box 82
Ashland City, TN 37015

David Stanifer
President, Claiborne County
Stanifer & Stanifer
PO Box 217
1735 Main St
Tazewell, TN 37879

Derreck Whitson
President, Cocke County
Law OFC of J Derreck Whitson
P.O. Box 1230
311 East Broadway
Newport TN 37822

Christopher Keeton
Coffee County Bar Assn
Keeton & Perry, PLLC
401 MURFREESBORO HWY
MANCHESTER, TN373551580

Matthew Edwards
President, Cumberland County
Law Office of Matthew Edwards
69 E First St Ste 203
Crossville, TN 38555-4575

Billy Townsend, President
Decatur, Lewis, Perry, Wayne Counties
Townsend Law Office
26 West Linden Ave
Hohenwald TN 38462

Bratten Cook
President, Dekalb County
104 N 3rd St
Smithville TN 37166

Hilary Duke
President, Dickson County
Reynolds, Potter, Ragan &...
210 East College Street
Dickson, TN37055

Matthew Willis
President, Dyer County
Ashley Ashley & Arnold
PO Box H
322 Church Ave. N.
Dyersburg TN 38025

Beth Brooks
President, East Shelby County Bar Assn
2299 Union Ave
Memphis TN 38104

Rebecca Franklin
President, ETLAW
Attorney at Law
P.O. Box 52854
Knoxville, TN 37950-2854

Katharine Gardner
President, Federal Bar Assn Chatt. Chapter
103 Stratford Way
Signal Mountain, TN 373772520

Eric Hudson
President, Federal Bar Assn - Memphis Chapter
Butler, Snow, O'Mara, Stevens...
6075 Poplar Ave Ste 500
Memphis, TN 38119

Martin Holmes
President, Federal Bar Assn-Nashville Chapter
Dickinson Wright, PLLC
424 Church Street, Suite 1401
Nashville, TN 37219

Mark Dessauer
President, Federal Bar Assn. NE TN Chapter
Hunter, Smith & Davis, LLP
PO Box 3740
Kingsport, TN 37664

Jennifer Porth
President, Fifteenth Judicial District
J Stephen Brown PC
224 W Gay St PO Box 792
Lebanon, TN 37088-0792

Joseph Ford
President, Franklin County
McBee & Ford
17 S College St
Winchester TN 37398

Terri Crider
President, Gibson County
Flippin & Atkins P.C.
P.O. Box 160
1302 Main Street
Humboldt TN 38343

Robert Curtis
President, Giles County
Law Office of Robert W. Curtis III
P.O. Box 517
Pulaski TN 38478

Creed Daniel
President, Grainger County
Daniel & Daniel
P O Box 6
Courthouse Sq 115 Marshall Ave
Rutledge TN 37861

Lindsey Lane
President, Greene County
Leonard, Kershaw & Hensley, Llp
131 S Main St Ste 102
Greeneville, TN 37743

Mary Helms
President, Hamblen County
Wimberly Lawson Wright Daves...
P. O. Box 1834
Morristown, TN 37816

Harriet Thompson
President, Hardeman County
P O Box 600
205 East Market St.
Bolivar TN 38008

William Phillips
President, Hawkins County
Phillips & Hale
210 E Main St
Rogersville, TN 37857

Carmon Hooper
President, Haywood County
P O Box 55
10 S Court Square
Brownsville TN 38012

Tish Holder
President, Hickman County
Harvill & Assoc PC
820 Hwy 100
Centerville TN 37033

John Williams
President, Humphreys County
Porch Peeler WilliamsThomason
102 South Court Square
Waverly TN 37185

Chuck Holliday
President, Jackson-Madison County
Law Offices of Jeffrey A. Garrety
65 Stonebridge Blvd.
Jackson, TN38305

Jeremy Ball
President, Jefferson County
Dist Atty OFC
P.O. Box 690
Dandridge, TN37725

William Cockett
President, Johnson County
Smith & Cockett
PO Box 108
Mountain City TN 37683

Steven Huret
President, Kingsport
Wilson Worley Moore Gamble & Stout PC
PO Box 88
Kingsport TN 37662

Marsha Wilson
Executive Director, Knoxville Bar Association
Knoxville Bar Association
P O Box 2027
505 Main St Suite 50
Knoxville TN 37901

Heidi Barcus
President, Knoxville Bar Association
London & Amburn, P.C.
607 Market Street, Suite 900
Knoxville, TN37902

Timothy Naifeh
President, Lake County
227 Church St
Tiptonville TN 38079

William Douglas
President, Lauderdale County
P O Box 489
109 N Main St
Ripley TN 38063

Ben Boston
President, Lawrence County
Boston Holt Sockwell & Durham PLLC
P O Box 357
235 Waterloo St
Lawrenceburg TN 38464

Emily Campbell Taube
Immediate Past Pres.
Assn for Women Attorneys
Adams and Reese LLP
80 Monroe Avenue, Ste 700
Memphis, TN 38103

Melanie Gober
Executive Director
Lawyers Assn for Women
P O Box 190583
Nashville TN 37219

Russell Blair
President, McMinn-Meigs County
P.O. Box 804
Etowah, TN37331

Laura Keeton
Chair, Lawyers Fund for Client Protection
Keeton Law Office
20240 E MAIN ST
PO BOX 647
HUNTINGDON, TN 38344-0647

Gary Smith
President, Memphis Bar Association
Apperson Crump PLC
6070 Poplar Ave #600
Memphis, TN381193954

Randall E Self
Attorney At Law
President, Lincoln County
P O Box 501
131A E Market St
Fayetteville TN 37334

Tyler Weiss
President, Monroe County
Worthington & Weiss, P.C.
409 College St N Ste 1
Madisonville, TN 37354-3103

Sydney Beckman
Dean, Lincoln Memorial University
Duncan School of Law
601 W. Summit Hill Drive
Knoxville TN 37902

Stanley Ross
President, Montgomery County
Harvill Ross Hogan Ragland
PO Box 925
Clarksville, TN 370410925

Ashley Shudan
President, Loudon County
Ford & Nichols
PO Box 905
Loudon, TN37774

Michael Davis
President, Morgan County
PO Box 925
Wartburg TN 37887

Jason Davis
President, Marshall County
Bussart Law Firm
520 North Ellington Parkway
Lewisburg, TN37091

John Manson
President, Napier-Looby Bar Assn
Special Master 8th Circuit Ct.
1 Public Square
Nashville, TN 37201

Tracy Moore
President, Maury County
Moore & Peden PC
PO Box 981
Columbia, TN38402-0981

Tom Sherrard
President, Nashville Bar Association
Sherrard & Roe PLC
150 3rd Ave S #1100
Nashville, TN372012011

Gigi Woodruff
Executive Director, Nashville Bar Association
Nashville Bar Association
150 4th Avenue North #1050
Nashville, TN 37219

Joe Loser
Dean, Nashville School of Law
4013 Armory Oaks Drive
600 Linden Square
Nashville TN 37204

John Miles
President, Obion County
P O Box 8
Union City, TN38281

Daryl Colson
President, Overton County
211 N Church St
Livingston TN 38570

Albert Wade
President, Paris-Henry County
Greer & Wade, PLLC
70 Dowdy Lane
Paris, TN38242

Rachel Moses
President, Putnam County
Legal Aid Society
9 S Jefferson Ave., Ste 102
Cookeville, TN38501

James Taylor
President, Rhea County Bar
1374 Railroad St Ste 400
Dayton TN 37321

Gerald Largen
President, Roane County
PO Box 266
Kingston, TN37763

Gary Dilliha
President, Robertson County
Attorney at Law
516 S. Main Street
Springfield, TN37172

Diana Burns
President, Rutherford-Cannon County
Child Support Magistrate
16th Judicial District 20
Public Square N. Room 202
Murfreesboro, TN37130

Chantelle Roberson
President, S.L. Hutchins Chapter –
National Bar Assn.
Miller & Martin PLLC
832 Georgia Avenue Ste 1000
Chattanooga TN 37402

Mark Blakley
President, Scott County
Stansberry Petroff Marcum & Blakley PC
P O Box 240
Huntsville TN 37756

Amanda Dunn
President, SETLAW
Luther Anderson, PLLP
P.O. Box 151
Chattanooga, TN37401

James Gass
President, Sevier County
Ogle, Gass & Richardson PC
PO Box 5365
Sevierville, TN37864

Robert Cooper, Jr.
Attorney General, State of Tennessee
PO Box 20207
Nashville TN 37202

Jay Ingrum
President, Sumner County
Phillips & Ingrum
117 E Main St
Gallatin, TN37066

Tiffany Johnson
President, TN Alliance for Black Lawyers
QP Legal Research & Writing...
1067 Fleece Place
Memphis, TN 38104-5620

Ann Pruitt
Executive Director
Tennessee Alliance for Legal Services
1220 Vintage Place
Nashville TN 37215

Vinh Duong
President, TN Asian Pacific American Bar Assn c/o
Waller Lansden Dortch & Davis...
511 Union St #2700
Nashville, TN 37210

Bryan Capps
President, Tennessee Association for Justice
Adams Law Firm
7410 Broken Creek Lane
Knoxville, TN37920

Suzanne Keith
Executive Director, Tennessee Association for Justice
Tennessee Assn for Justice
1903 Division St
Nashville TN 37203

Allan Ramsaur
Executive Director, Tennessee Bar Assn
Tennessee Bar Association
221 4th Ave N Suite 400
Nashville TN 37219

Barri Bernstein
Executive Director, Tennessee Bar Foundation
Tennessee Bar Foundation
618 Church St Suite 120
Nashville TN 37219

Scott McGinness
President, Tennessee Board of
Law Examiners
Miller & Martin PLLC
832 Georgia Ave Ste 1000
Chattanooga, TN37402

Lisa Perlen
Executive Director
Tennessee Board of Law Examiners
401 Church Street Suite 2200
Nashville TN 37243

Thomas Clifton Greenholtz, Esq.
Chambliss, Bahner & Stophel, P.C.
1000 Tallan Building
Two Union Square
Chattanooga, TN 37402

John Barringer
President, Tennessee Defense Lawyers Assn
Manier & Herod PC
150 4th Ave N, Ste 2200
Nashville, TN37219

Douglas E. Dimond
General Counsel
Tennessee Department of Childrens Services
436 6th Ave N Floor 7
Nashville TN 37243

James Wally Kirby
Executive Director
Tennessee District Attorney Generals Conference
226 Capitol Blvd Ste 800
Nashville TN 37243

Kristi Rezabek
President, Tennessee Lawyers Assn for Women
Court Of Appeals Western Div
231 Algie Neely Rd
Jackson, TN38301

Karol Lahrman
Executive Director, Tennessee Lawyers
Assn for Women
P. O. Box 331214
Nashville TN 37203

Jeffrey Henry
Executive Director
Tennessee Public Defenders Conference
211 Seventh Ave N Ste 320
Nashville TN 37219

Amber Shaw
President, Tipton County
Law Office of J. Houston Gordon
114 W. Liberty Avenue, Suite 300
Covington, TN38019

Stephen Johnson, President
TN Assn of Criminal Defense Lawyers
Ritchie, Dillard, Davies &...
606 W Main Ave Ste 300
Knoxville, TN37902

Suanne Bone
Executive Director
TN Assn of Criminal Defense Lawyers
530 Church St., Ste. 300
Nashville TN 37219

Mario Ramos
President, TN Assn of Spanish Speaking Attys
Mario Ramos PLLC
611 Commerce St Suite 3119
Nashville TN 37203

James McKenzie
President, Twelfth Judicial District
12th Judicial District
1475 Market St Rm 202
Dayton TN 37321

William Lawson
President, Unicoi County
William B. Lawson, Attorney At Law
112 Gay St, Suite A Po Box 16
Erwin, TN37650-0016

David Myers
President, Union County
P O Box 13
105 Monroe St
Maynardville TN 37807

Doug Blaze
Dean, University of Tennessee
College of Law
1505 W. Cumberland Ave, Rm 278
Knoxville TN 37996

Chris Guthrie
Dean, Vanderbilt University School of Law
131 21st Ave. South Room 108
Nashville TN 37203

William Locke
President, Warren County
111 So Court Sq
McMinnville TN 37110

Dustin Jones
President, Washington County
Dustin D. Jones Attorney at Law
300 East Main St #302 D
Johnson City, TN 37601

Beau Pemberton
President, Weakley County
Law OFC of James H Bradberry
PO Box 789
Dresden, TN38225

William Mitchell
President, White County
Mitchell Law Office
112 South Main Street
Sparta TN 38583

Ursula Bailey, President
William Henry Hastie Chap. - National Bar Assn.
Law Office of Ursula Bailey
422 S Gay St Ste 301
Knoxville, TN37902-1167

Craig Brent
President, Williamson County
Craig H. Brent, Attorney
224 1st Ave S
Franklin, TN 37064-2214

Rebecca Franklin
East TN Lawyers Assn for Women
4612 Woodbridge Lane
Knoxville, TN 37921

Mary Dohner Smith
Lawyers Association for Women
Marion Griffin Chapter Pres.
Constangy Brooks & Smith
401 Commerce St., Ste. 1010
Nashville, TN 372192484

Robert Crawford, President Elect
TN. Defense Lawyers Association
Kramer Rayson LLP
800 S. Gay Street, Suite 2500
Knoxville, TN 37929

Anne Fritz
Executive Director
Memphis Bar Association
80 Monroe Suite 220
Memphis, TN 38103

Cindy Wyrick
President
Tennessee Bar Association
Ogle, Gass & Richardson PC
PO Box 5365
Sevierville, TN 378645365

Mike Spitzer, Chair
Tennessee Bar Foundation
The Spitzer Firm
19 Cedar Street
Hohenwald, TN 38462

Frances Riley, President
Association for Women Attorneys
US Bankruptcy Court
327 Central Cv
Memphis, TN 38111-6008

Mary Morris
Federal Bar Association Mid-South
Chapter Vice President
Burch, Porter & Johnson, PLLC
130 North Court Avenue
Memphis, TN 38103