

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

**IN RE: PROPOSED ADOPTION OF )  
SUPREME COURT RULE 47- ) No. M2005-00197-SC-RL1-RL  
FEE DISPUTE RESOLUTION )  
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**SUPPLEMENTAL COMMENT OF THE TENNESSEE BAR  
ASSOCIATION**

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**INTRODUCTION**

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

## **BACKGROUND**

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

### **PROPOSED SUPREME COURT RULE 47 IS CONSTITUTIONAL**

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

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

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

The TBA is not aware of any contrary authority.

## **CONCLUSION**

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

RESPECTFULLY SUBMITTED,

By: /s/ by permission \_\_\_\_\_

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## CERTIFICATE OF SERVICE

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

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Allan F. Ramsaur