

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

**IN RE: AMENDMENT OF RULES 6 AND 7
RULES OF THE TENNESSEE SUPREME COURT**

No. ADM2022-01449

**TENNESSEE BOARD OF LAW EXAMINERS RESPONSE TO COMMENT OF
THE TENNESSEE BAR ASSOCIATION**

The Tennessee Board of Law Examiners has carefully reviewed the comments submitted by the Tennessee Bar Association (TBA) and appreciates the thoughtful consideration of the proposed amendments by the Ethics and Professional Responsibility Committee.¹ The TBA recommends changes to the proposed amendments to §§ 7.01 and 10.07 of Rule 7.

The Board understands the need to revise § 7.01 of Rule 7, regarding admission for foreign-educated applicants and generally agrees with the comments of the TBA. The Board agrees that Tennessee should consider a path to compliance with education standards that does not require “substantially equivalent education,” or an LL. M. *and* time in practice. However, the Board strongly disagrees that having a passing UBE score is an appropriate substitute for education.

Rule 7, § 1.03, lists the criteria that must be met before the Board issues the Certificate of Eligibility. Often referred to as “essential eligibility requirements,” the list of criteria in § 1.03 includes paragraph (b), which requires that an applicant “has satisfied the educational requirements for admission specified by the Rule;” and paragraph (c), which requires that an

¹ There were other comments to the Proposed Amendments to Rules 6 and 7, which were related to Rule 7, § 5.01(c). The Board’s proposal is based on its response to the Petition to Amend Rule 7, § 5.01(c). The Board thanks those who commented.

applicant “has achieved the minimum score on the Uniform Bar Examination required in Tennessee for admission under section 3.01 or section 3.05...” An applicant for admission by examination score must satisfy both paragraphs (b) and (c) of § 1.03.

A similar provision can be found in § 2.02(d) for applicants educated at a non-ABA-accredited law school outside of Tennessee, which requires admission in another U.S. jurisdiction and time in practice, but which does not waive the legal education requirement based on a passing UBE score. Conflating education and an examination score, in essence, would remove the education requirement for one group of potential applicants, those educated outside the United States. At a minimum, all applicants should have to meet each of the requirements for issuance of the Certificate of Eligibility.²

The Board accordingly recommends that the Court amend Rule 7, § 7.01, keeping the “substantially equivalent education” option in paragraph (a), and amending paragraph (b) to permit applicants with a foreign law degree that is not “substantially equivalent” to meet the eligibility requirement by either earning a Traditional LL. M., which is an LL. M. in U.S. or American Law, or having a license in good standing in another jurisdiction (foreign or U.S.) plus time in practice that meets the definition of § 5.01(c). Applicants who previously did not meet the requirements of § 7.01 because they did not have substantially equivalent education and had only an LL. M. or a foreign license and time in practice, would now meet the education requirements for eligibility.³

² There are not standard eligibility requirements among the U.S. jurisdictions for foreign-educated applicants seeking admission by examination. Some require an LL. M. regardless of the level of foreign education; some have different rules for those educated in a common law jurisdiction. A few jurisdictions permit admission only if admitted in another U.S. jurisdiction. However, no jurisdiction looks solely to a passing UBE score as a substitute for a U.S. education. A state-by-state list of requirements for foreign-educated applicants can be found on Table 4 of the 2023 *Comprehensive Guide to Bar Admissions Requirements*, which can be found at <https://reports.ncbex.org/comp-guide/>.

³ The Tennessee Bar Association references recent Supreme Court decisions that have permitted applicants to the Tennessee Bar to take the examination or seek admission by transferred UBE Score. *See* TBA Comment page 2, paragraph 2. In each of these instances, the applicants would have met the foreign education requirements if the

The recommended changes provide multiple, well-defined paths for foreign-educated applicants to demonstrate eligibility for admission by examination score: (1) substantially equivalent education, (2) a foreign law degree and an LL. M., or (3) a foreign law degree, a license to practice law in at least one U.S. or foreign jurisdiction, and time in practice. Each of these options can be documented and verified. The recommended changes expand current provisions of § 7.01 to include licensing and practice in any jurisdiction, including U.S. jurisdictions. The Board also recommends that the Court remove any reference to the exercise of discretion by the Board. A redline comparison and conformed copy of the Board's proposed revisions to § 7.01 is attached as Exhibit A for the Court's consideration.

The TBA is concerned with the recommended amendment to § 10.07(c), which would give the Board discretion to terminate practice pending admission upon issuance of a Show Cause Order. When proposing this change, the Board was considering this amendment in the context of protection of the public. However, the Board finds the comments of the TBA compelling and withdraws its recommendation to amend § 10.07(c).

Attached as Exhibit B is a revised conformed copy of Exhibit B to the Petition to Amend Rules 6 and 7 that incorporates the recommended changes to § 7.01, and deletes the amendment to § 10.07(c). For the reasons stated above, the Board respectfully recommends that the Court approve the Proposed Amendments to Rules 6 and 7, consistent with the revisions noted herein and included in Exhibit B.

changes proposed by the Board had been in place at the time of those applications; review by the Supreme Court would not have been required.

Respectfully submitted,

TENNESSEE BOARD OF LAW EXAMINERS



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CERTIFICATE OF SERVICE

The undersigned certifies that a Notice of Filing of the foregoing Response to the Comment of the TBA to the Petition to Amend Tennessee Supreme Court Rules 6 and 7 has been served on the Tennessee Bar Association c/o Barry Kolar, Acting Executive Director, by email on this 14th day of March, 2023.



Lisa Perlen, Executive Director

Sec. 7.01. Eligibility to Take Examination.

(a) An applicant who has completed a course of study in and graduated from a law school in a foreign jurisdiction, which law school was then recognized and approved by the competent accrediting agency of such jurisdiction, may qualify to take the bar examination under section 3.01 or for admission by transferred UBE score under section 3.05, provided that the applicant shall satisfy the Board that his or her undergraduate education and legal education were substantially equivalent to the requirements of sections 2.01 and 2.02 of this Rule by providing a Foreign-Education Report as provided in paragraph (c) below.

(b) In the alternative, an applicant who has completed a course of study in and graduated from a law school in a foreign jurisdiction, which law school was then recognized and approved by the competent accrediting agency of such jurisdiction, may qualify to take the bar examination under section 3.01, or for admission by transferred UBE score under section 3.05, provided that the applicant shall satisfy the Board that the applicant's legal education is equivalent to a first degree in law or a Juris Doctorate Degree by submitting a Foreign-Education Report as provided in paragraph (c), below, and by satisfying one of the following additional requirements:

(1) The applicant has been admitted to the practice of law in at least one U.S. or foreign jurisdiction and is in good standing at the bar of each jurisdiction to which the applicant is admitted, as evidenced by a certificate from the highest court or agency of such jurisdiction having authority over admission to the practice of law, and the applicant has engaged in the active practice of law, as defined in section 5.01(c) of this Rule, for at least five of the eight years before applying for admission to the Tennessee bar; or

(2) The applicant has been awarded, by a law school fully accredited by the ABA or a Tennessee law school approved by the Board under section 17.01 of the Rule, an LL. M. Degree after completion of a Traditional LL. M. program that meets all of the following requirements:

(A) The Traditional LL. M. program completed by the applicant, also known as an LL. M. in U.S. or American Law, is a program in American law designed for foreign-educated students to provide instruction in the fundamentals of U.S. law. An LL. M. in a specialized area of the law, such as Tax or Environmental Law, does not meet the requirements for the Traditional LL. M. required by this Rule.

(B) The foreign-educated lawyer must participate in the LL. M. program, either full-time or part-time, in person in the United States at the ABA-accredited or Tennessee-approved law school, and instruction and assignments must be in English. If participating in a part-time program, the applicant must have completed the LL. M. program within thirty-six months after beginning the program.

(C) The degree program certifies to the Board, on such form prescribed by the Board, that LL. M. Degree earned by the foreign-educated lawyer complies with the requirements of this Rule.

(c) Foreign-Education Report. An applicant, in order to qualify to take the bar examination or seek admission by examination score under paragraphs (a) or (b), above, shall submit a comprehensive evaluation that includes a course-by-course evaluation, determination of equivalency, plus authentication of transcripts ("Foreign-Education Report") from a Credential Evaluation Service that is a member of the National Association of Credential Evaluation Service.

1 **RULE 6: ADMISSION OF ATTORNEYS.**

2
3 An applicant who has been approved for licensing under Rule 7 may seek admission to the bar of this
4 Court by either:

5 (1) Appearing in open court and representing, through a reputable member of the bar, that he or she is a
6 person of good moral character and that he or she has been issued a Certificate of Eligibility to be
7 licensed to practice law under Rule 7 and the statutes of this state; or

8 (2) Filing with the Clerk of the Supreme Court an application for admission by affidavit. The documents
9 submitted by the applicant shall demonstrate that he or she possesses the necessary qualifications for
10 admission.

11 (A) The application for admission on affidavit consists of the following:

12 (i) An application in the form provided by the Appellate Court Clerk's Office and which includes a
13 statement that the applicant possesses all qualifications and meets all requirements for admission as set
14 out in the preceding paragraph; and

15 (ii) A copy of the Certificate of Eligibility issued by the Board of Law Examiners pursuant to Rule 7,
16 Section 9.01.

17 (B) An applicant seeking admission by affidavit shall appear in person before one of the judicial officials
18 in Tennessee listed in paragraph 5, below, who will administer the oath of admission.

19 (3) Each applicant for admission shall take the following oath:

20 I, _____, do solemnly swear or affirm that I will support the Constitution of the United States and
21 the Constitution of the State of Tennessee. In the practice of my profession, I will conduct myself with
22 honesty, fairness, integrity, and civility to the best of my skill and abilities, so help me God.

23 (4) The foregoing oath of admission may be administered only by one of the following judicial officials in
24 Tennessee: (A) a Justice of the Supreme Court; (B) a Judge of the Court of Appeals; (C) a Judge of the
25 Court of Criminal Appeals; (D) a Circuit Court Judge; (E) a Chancellor; (F) a Criminal Court Judge; (G)
26 a General Sessions Court Judge; (H) a Judge of any other inferior court established by the General
27 Assembly pursuant to Article VI, Section 1 of the Tennessee Constitution; (I) the Clerk of the Appellate
28 Courts; (J) a Chief Deputy Clerk of the Appellate Courts; or (K) the Clerk (not including deputy clerks)
29 of any of the courts of such trial judges listed above.

30 (5) The oath of admission may be administered virtually through video conference technology by a
31 Justice of the Supreme Court, the Clerk of the Appellate Courts, or a Chief Deputy of the Appellate
32 Courts. The applicant shall present proof of identification in the form of an unexpired Driver's License,
33 Passport, or Military ID prior to taking the oath of admission, in addition to complying with the other
34 requirements for admission by affidavit.

35 (6) Upon the applicant's taking the oath or affirmation and paying the fee therefor, the Clerk shall issue a
36 certificate of admission. The fee for admission to the Bar of this Court shall be fixed by the Court.
37 Applications may be filed in the offices of the Clerk at Nashville, Knoxville, or Jackson.

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42 **RULE 7: LICENSING OF ATTORNEYS.**

43 **Sec. 1.01. Prerequisites to Engaging in Practice of Law or Law Business.**

44 No person shall engage in the “practice of law” or the “law business” in Tennessee as defined in Tenn.
45 Code Ann. § 23-3-101 and Tenn. Sup. Ct. R. 9, § 10.3(e), except under the authority of the Supreme
46 Court, unless the person:

47 ...

48 (c) is practicing in compliance with Tenn. Sup. Ct. R. 8, RPC 5.5(c), Tenn. Sup. Ct. R. 8, RPC 5.5(d)(2),
49 or Tenn. Sup. Ct. R. 19 (pro hac vice).

50 **Sec. 1.03. Criteria for Issuance of the Certificate of Eligibility.**

51 The Board shall issue a Certificate of Eligibility under section 9.01 of this Rule only after determining
52 that the applicant:

53 ...

54 (e) has demonstrated the reputation, character, honesty, respect for the rights of others, due respect for the
55 law, and the fitness to practice law, that in the opinion of the Board indicates no reasonable basis for
56 substantial doubts that the applicant will adhere to the standards of conduct required of attorneys in this
57 State;

58 ...

59 **Sec. 1.04. Waiver of Examination.**

60 The requirement to pass the Tennessee bar examination or provide a passing UBE score may be waived
61 for an applicant who has been admitted to practice in another state in the United States, the District of
62 Columbia, or a U.S. Territory, provided that the applicant satisfies all requirements for admission without
63 examination as specified in this Rule.

64 **Sec. 1.07. Tennessee Law Course.**

65 The Tennessee Law Course is intended to provide instruction in specific areas of Tennessee law not
66 addressed by the Uniform Bar Exam.

67 ...

68

69 (f) The Board shall provide applicants with instructions regarding access to the Tennessee Law Course as
70 follows:

71 (1) Applicants seeking admission under section 3.01 (by examination) shall receive instructions upon
72 completion of the bar examination.

73 (2) Applicants seeking admission under section 3.05 (transferred UBE score), section 5.01 (without
74 examination) or section 10.06 (spouse of military servicemember) will receive instructions upon
75 receipt of the completed character and fitness investigation from the NCBE.

76 (g) The Tennessee Law Course must be successfully completed within one year of the date that the
77 applicant completes all other requirements to be eligible for a Tennessee law license. Any applicant who

78 successfully completes the Tennessee Law Course but does not complete all other requirements for
79 eligibility to obtain a law license within such one-year period must repeat the Tennessee Law Course
80 before admission.

81

82 **ARTICLE II. EDUCATIONAL REQUIREMENTS FOR ADMISSION**

83 **Sec. 2.01. Bachelor's Degree.**

84 (a) Any applicant seeking admission must have received a Bachelor's Degree or higher from a college on
85 the approved list of the Southern Association of Colleges and Secondary Schools, or the equivalent
86 regional accrediting association, or any accreditation agency imposing at least substantially equivalent
87 standards. As part of the application for admission, an applicant shall provide evidence of the degree in
88 the form required by the Board.

89 (b) To be eligible to take the exam, an applicant shall provide evidence of the degree, earned before the
90 examination, in the form required by the Board.

91 ...

92 **Sec. 2.02. Legal Education Degree Requirements.**

93 (a) Any applicant seeking admission must have completed a course of instruction in and graduated with a
94 J.D. Degree from a law school accredited by the ABA at the time of applicant's graduation, or a
95 Tennessee law school approved by the Board pursuant to section 17.01 of this Rule at the time of the
96 applicant's graduation.

97 ...

98 (d) An attorney who received a legal education in the United States or a U.S. Territory but is ineligible for
99 admission because the law school attended does not meet the requirements of paragraph (a) above may be
100 considered for admission by examination or transferred UBE score provided the attorney satisfies the
101 following educational, licensing, and practice requirements:

102 ...

103 (e) No correspondence course will be accepted by the Board as any part of an applicant's legal education
104 to meet the requirements of this Rule. Distance, on-line, or other instruction that is not in person will be
105 accepted as part of the curriculum at an ABA-accredited or Tennessee-approved law school only to the
106 extent permitted by the ABA for accredited law schools without approval of a substantive change, or up
107 to 100% of the curriculum for law schools approved by the ABA to offer distance-learning programs. The
108 ABA permits distance learning without approval of a substantive change as provided in Definitions 7 and
109 8 and Standards 306, 311, and 511 of the Standard and Rules of Procedure for Approval of Law Schools.

110 **ARTICLE III. APPLICATION FOR ADMISSION BY EXAMINATION SCORE**

111 **Sec. 3.03. Date for Filing Application for Examination or Reexamination.**

112 The process for submitting an application for admission by examination shall begin on March 1 for the
113 July examination and October 1 for the February examination.

114 (a) Deadlines:

115 (1) The last day to submit an application and pay the fee shall be May 1 for taking the July
116 examination and December 1 for taking the February examination (the "Application Deadline").

117 (2) The application process shall be completed no later than May 20 for taking the July examination
118 and December 20 for taking the February examination (the "Final Deadline").

119 (b) For an applicant to be eligible to sit for the bar examination, an applicant must meet the following
120 deadlines:

121 (1) The correct application must be submitted by the Application Deadline;

122 (2) The fee due under the Fee Schedule provided in section 11.01 must be paid by the Application
123 Deadline;

124 (3) All supporting documentation required to complete the application process must be submitted to
125 the Board by the Final Deadline;

126 (4) All application steps, including all steps necessary to initiate the background investigation
127 required in section 6.03(b) of this Rule, must be completed by the Final Deadline.

128 (c) The Board shall detail the application process and list the items necessary for a complete application
129 in the Board Policies and Procedures. Steps in the application process shall be listed on the Board's
130 website.

131 (d) Original documents that must be provided to the Board by a third party must be received on or before
132 the Final Deadline. Documents from third parties that must be received by the Final Deadline may be
133 mailed to the Board or may be uploaded to a secure portal in accordance with the process established
134 by the Board.

135 (e) Applicants who have not completed the application process by the Final Deadline are ineligible to sit
136 for the examination. The only recourse for failure to complete the application process is to reapply for
137 the next examination.

138 **Sec. 3.04. Expiration of Application for Admission on Exam Score.**

139 (a) An application for admission by examination, re-examination, or transferred UBE score expires and
140 closes upon the earlier of:

141 . . .

142 (7) six months after the last communication from the Board, following completion of the background
143 investigation . . .

144 **Sec. 3.05. Admission by Transferred Uniform Bar Examination Score.**

145 (a) Any applicant for admission who has taken the UBE in another jurisdiction may be admitted to the
146 practice of law in this state by transferred UBE score, upon showing that the applicant:

147 (1) has taken the entire UBE in a single administration in another jurisdiction and earned a total UBE

148 scaled score equal to or greater than the minimum score required to be achieved by successful
149 Tennessee UBE applicants and that such score has not expired as provided in section 4.07(c);

150 (2) meets the educational requirements pursuant to sections 2.01 and 2.02;

151 (3) is a member in good standing in all jurisdictions in which applicant is currently admitted;

152 (4) is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any
153 other jurisdiction;

154 (5) meets the Character and Fitness Standard under section 6.01 required of all applicants for
155 admission to practice law in this jurisdiction; and

156 (6) has not engaged in the unauthorized practice of law in this or any other jurisdiction.

157 (b) An applicant who has achieved a UBE scaled score equal to or greater than the minimum score
158 required to be achieved by successful Tennessee UBE applicants that has expired pursuant to section
159 4.07(c), but is not more than five years from the date grades were released in Tennessee for the exam
160 administration for which the score was earned, may apply for admission on transferred UBE score
161 provided the attorney is licensed in another jurisdiction in the United States and has been primarily
162 engaged in the active practice of law, as defined in section 5.01(c) of this Rule, in one or more states or
163 territories of the United States, or the District of Columbia, for three of the five years immediately
164 preceding the date upon which the application is filed or the UBE score expired, whichever is later. An
165 applicant seeking admission on a UBE score that was expired at the time application is made or that
166 expires while the application is pending must demonstrate sufficient time in practice prior the final
167 expiration of the score, as provided in section 4.07(c).

168 (c) An applicant for admission by transferred UBE score shall:

169 (1) file an application for admission on transferred UBE score, including character investigation
170 information, in the manner established by the Board, including submission of all required
171 documents in the appropriate format;

172 (2) request transfer of the score from the National Conference of Bar Examiners directly to the
173 Tennessee Board of Law Examiners;

174 (3) submit a certificate of admission from the highest court of each jurisdiction to which the applicant
175 has been admitted;

176 (4) submit a certificate of good standing from each jurisdiction to which the applicant has been
177 admitted; and

178 (5) pay the application fee as adopted pursuant to section 11.01 of this Rule.

179 **Sec. 4.04. Reserved.**

180 **Sec. 4.07. Grading the Examination and Score Expiration.**

181 (a) The Board shall continue to maintain procedures which assure that the identity of each applicant in the
182 grading process is not known to any person having responsibility for grading or determining whether the
183 applicant passes or fails until the grades of all applicants have been finally determined.

184 (b) The minimum bar examination score required for a successful examination will be adopted as a
185 statement of policy and approved by the Supreme Court pursuant to section 12.05 of this Rule.

186 (c) Bar examination scores earned in Tennessee, whether by means of the former Tennessee bar
187 examination or the UBE, are valid to determine eligibility for licensing for three years after the date
188 grades are released. The scores expire after three years. A UBE score transferred to Tennessee is valid for
189 three years from the date grades were released in Tennessee for the exam administration for which the
190 score was earned unless the UBE score can be used for admission under section 3.05(b). A UBE score
191 that was earned five or more years from the date grades were released in Tennessee for the exam
192 administration for which the score was earned is not valid for admission to Tennessee.

193 (d) In order for an applicant by examination or transferred UBE score to be determined eligible for
194 licensing pursuant to section 9.01, a score equal to or greater than that required by Tennessee on the
195 Multistate Professional Responsibility Examination ("MPRE") must be achieved no more than two years
196 before earning a qualifying UBE score that is being used for admission in Tennessee under sections 3.01
197 or 3.05 of this Rule; provided, however, that an applicant who:

198 (1) is licensed by examination in another state in the United States, the District of Columbia or a U.S.
199 Territory;

200 (2) provides certification that the license is active and in good standing; and

201 (3) achieved a score equal to or greater than the score required by Tennessee on the MPRE two or
202 more years before successful completion of the Tennessee bar examination

203 may provide proof of that earlier score to satisfy the MPRE requirement. It is the responsibility of the
204 applicant to cause MPRE score reports to be furnished to the Board. The minimum MPRE score will be
205 adopted as a statement of policy and approved by the Supreme Court pursuant to section 12.05 of this
206 Rule.

207 **Sec. 4.08. Voluntary Withdrawal from the Examination.**

208 (a) An applicant may withdraw from the examination at any time prior to the start of the examination by
209 providing written notice of withdrawal from the examination to the Board.

210 (b) Once the examination begins, an applicant may withdraw from the examination by written notice to
211 the Board or by failing to appear at any session of the examination.

212 (c) An applicant who fails to appear for a session of the examination will be withdrawn from the exam
213 and not be permitted to appear for any subsequent session of the examination.

214 (d) No one may withdraw from the examination after completing all sections of the examination.

215 (e) Refund of fees will be permitted only to the extent provided in section 11.03 of this Rule.

216

217 **Sec. 5.01. Minimum Requirements for Admission Without Examination of Persons Admitted in**
218 **Other Jurisdictions.**

219 ...

220 (b) **Diploma Privilege.** An applicant who was admitted and licensed to practice in another state pursuant
221 to a “diploma privilege,” which exempts an applicant from taking a bar examination, and who has not
222 been admitted by examination or transferred UBE score in any other state in the United States, the District
223 of Columbia, or a U.S. Territory in which the applicant is in good standing, may seek a waiver of
224 subsection (a)(2) by filing a petition with the Board as provided in section 13.02, setting forth the reasons
225 why the applicant should be admitted to practice law in Tennessee. The petition shall include information
226 upon which the Board can assess the applicant's reputation, character, knowledge, skills and abilities. The
227 Board shall then conduct a hearing in response to the petition, according to the guidelines set forth in
228 section 13.03 of this Rule. After considering the totality of the proof presented, the Board shall make a
229 recommendation to the Supreme Court either for approval or denial of the petition or for such other action
230 as the Board may deem appropriate. Any applicant whose petition for waiver of subsection (a)(2) is
231 denied by the Board may file a petition for review in the Supreme Court pursuant to the procedures set
232 forth in section 14.01.

233 (c) **Active Practice of Law.**

234 (1) For the purposes of this Rule, in addition to the definitions of “Practice of Law” and “Law
235 Business” in section 1.01 of this Rule, the “active practice of law” shall include the following
236 activities, if performed in a jurisdiction in which the applicant is admitted, or if performed in a
237 jurisdiction that permits such activity by a lawyer not admitted to practice:

238 (A) private or public practice of law as a licensed attorney;

239 (B) teaching law at a law school approved by the Council of the Section of Legal Education and
240 Admissions to the Bar of the American Bar Association;

241 (C) service as a judicial law clerk or staff attorney;

242 (D) service as a Judge in a federal, state, or local court of record;

243 (E) service as Attorney General or Assistant Attorney General, Public Defender, U.S. Attorney,
244 District Attorney, or an attorney or general counsel for a local, state, or federal agency,
245 including military service;

246 (F) service as in-house counsel, provided that the attorney is duly registered under a rule similar to
247 section 10.01 of this Rule if required in the jurisdiction in which the services were provided;
248 and

249 (G) practice as a Military Spouse under a license approved similar to that awarded under section
250 10.06 of this Rule in the jurisdiction in which the services were provided.

251 (2) For the purposes of this Rule, in addition to the definitions of “Practice of Law” and “Law
252 Business” in section 1.01 of this Rule, the “active practice of law” may be construed in the Board’s
253 discretion as being actively engaged in other employment requiring interpretation of law and
254 application of legal knowledge if performed in a jurisdiction in which the applicant is admitted, or
255 if performed in a jurisdiction that permits such activity by a lawyer not admitted to practice.

256 (3) The Board shall consider such evaluative criteria as time devoted to legal work, the nature of the
257 work, whether legal training or a law license was a prerequisite of employment, and other similar
258 matters.

259 (4) For work to meet the requirement of "active practice of law," the lawyer must have been licensed,
260 in active status and in good standing in at least one jurisdiction at the time the work was performed,
261 unless the work was performed pursuant to paragraph (c)(1)(B). In no event shall any activities
262 performed pursuant to a provision similar to section 10.04 or section 10.07 of this Rule before bar
263 admission in a state or territory of the United States or the District of Columbia be accepted toward
264 the durational requirement.

265

266 **Sec. 5.03. Expiration of Application for Admission Without Examination.**

267 (a) An application for admission without examination (comity) expires and closes upon the earlier of:

268 . . .

269 (6) six months after the last communication from the Board, whether sent by mail or electronically,
270 which remains unanswered by the applicant.

271 . . .

272 **Sec. 5.04. Obligation to Amend.**

273 Until an applicant is admitted to the Tennessee bar, or the application is denied by the Board or
274 voluntarily withdrawn, the applicant is under a continuing obligation to update responses to any of the
275 information requested in the application process. Whenever there is an addition or a change to the
276 information previously provided to the Board, the applicant must amend his or her application by filing an
277 amendment or supplemental application as prescribed by the Board. An applicant whose application has
278 been on file for two years or more and that has not expired as provided in section 5.03, must submit an
279 application for supplement investigation to the NCBE every two years until such time as the Applicant is
280 admitted, has been denied admission, or has withdrawn the application for admission.

281 **Sec. 7.01. Eligibility to Take Examination.**

282 (a) An applicant who has completed a course of study in and graduated from a law school in a foreign
283 jurisdiction, which law school was then recognized and approved by the competent accrediting agency
284 of such jurisdiction, may qualify to take the bar examination under section 3.01 or for admission by
285 transferred UBE score under section 3.05, provided that the applicant shall satisfy the Board that his or
286 her undergraduate education and legal education were substantially equivalent to the requirements of
287 sections 2.01 and 2.02 of this Rule by providing a Foreign-Education Report as provided in paragraph
288 (c) below.

289 (b) In the alternative, an applicant who has completed a course of study in and graduated from a law
290 school in a foreign jurisdiction, which law school was then recognized and approved by the competent
291 accrediting agency of such jurisdiction, may qualify to take the bar examination under section 3.01, or
292 for admission by transferred UBE score under section 3.05, provided that the applicant shall satisfy the
293 Board that the applicant's legal education is equivalent to a first degree in law or a Juris Doctorate
294 Degree by submitting a Foreign-Education Report as provided in paragraph (c), below, and by
295 satisfying one of the following additional requirements:

296 (1) The applicant has been admitted to the practice of law in at least one U.S. or foreign jurisdiction
297 and is in good standing at the bar of each jurisdiction to which the applicant is admitted, as
298 evidenced by a certificate from the highest court or agency of such jurisdiction having authority over

299 admission to the practice of law, and the applicant has engaged in the active practice of law, as
300 defined in section 5.01(c) of this Rule, for at least five of the eight years before applying for
301 admission to the Tennessee bar; or

302 (2) The applicant has been awarded, by a law school fully accredited by the ABA or a Tennessee
303 law school approved by the Board under section 17.01 of the Rule, an LL. M. Degree after
304 completion of a Traditional LL. M. program that meets all of the following requirements:

305 (A) The Traditional LL. M. program completed by the applicant, also known as an LL. M. in
306 U.S. or American Law, is a program in American law designed for foreign-educated students to
307 provide instruction in the fundamentals of U.S. law. An LL. M. in a specialized area of the law,
308 such as Tax or Environmental Law, does not meet the requirements for the Traditional LL. M.
309 required by this Rule.

310 (B) The foreign-educated lawyer must participate in the LL. M. program, either full-time or
311 part-time, in person in the United States at the ABA-accredited or Tennessee-approved law
312 school, and instruction and assignments must be in English. If participating in a part-time
313 program, the applicant must have completed the LL. M. program within thirty-six months after
314 beginning the program.

315 (C) The degree program certifies to the Board, on such form prescribed by the Board, that LL.
316 M. Degree earned by the foreign-educated lawyer complies with the requirements of this Rule.

317 (c) Foreign-Education Report. An applicant, in order to qualify to take the bar examination or seek
318 admission by examination score under paragraphs (a) or (b), above, shall submit a comprehensive
319 evaluation that includes a course-by-course evaluation, determination of equivalency, plus
320 authentication of transcripts ("Foreign- Education Report") from a Credential Evaluation Service
321 that is a member of the National Association of Credential Evaluation Service.
322 ...

323 **Sec. 10.01. Registration of In-house Counsel.**

324 (a) A lawyer who is admitted to the practice of law in another U.S. jurisdiction or is a foreign lawyer and
325 who is employed as a lawyer by an organization, the business of which is lawful and consists of activities
326 other than the practice of law or the provision of legal services, and who has a systematic and continuous
327 presence in this jurisdiction pursuant to Tenn. Sup. Ct. R. 8, RPC 5.5(d)(1), shall complete the
328 requirements for registration as in-house counsel within 180 days of the commencement of employment
329 as a lawyer (the "Registration Period").
330

331 (1) A complete application for registration requires submitting to the Board the following:

332 (A) The application, including an NCBE Background Investigation Application and all required
333 supporting documents, in the manner established by the Board;
334

335 (B) The fee in the amount set by the Board under section 11.01;
336

337 (C) Certificates of admission to the highest court for each United States and foreign jurisdiction to
338 which the lawyer is admitted;
339

340 (D) Certificates of status and current good standing in all United States and foreign jurisdictions in
341 which the lawyer is admitted to practice law; and
342

343 (E) An affidavit from an officer, director, or general counsel of the employing entity in the form
344

345 provided by the Board attesting to the lawyer's employment by the entity, the date employment
346 began, and the capacity in which the lawyer is so employed, and stating that the employment
347 conforms to the requirements of this Rule.

348 (F) For any documents that are not in English, the lawyer shall submit an English translation and
349 satisfactory proof of the accuracy of the translation.

350 (2) The Board shall list the items and steps necessary for a complete application in the Board Policies
351 and Procedures.

352 (3) The lawyer obtains approval by the Board on a registration application that is:

353 (A) completed on or before expiration of the Registration Period as provided in paragraph (a) of
354 this section; or

355 (B) completed after expiration of the Registration Period and the late fee as provided in paragraph
356 (h) of this section has been paid.

357 (4) The Board has the discretion to issue approval after the Registration Period has expired. If the
358 application was completed prior to expiration of the Registration Period, the approval shall be
359 deemed timely, even if after the expiration of the Registration Period.

360 (5) For purposes of this Rule, a "foreign lawyer" is a member in good standing of a recognized legal
361 profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or
362 counselors at law or the equivalent and subject to effective regulation and discipline by a duly
363 constituted professional body or a public authority. Upon recommendation of the Board, the
364 Supreme Court may allow a foreign lawyer lawfully practicing as in-house counsel in a foreign
365 jurisdiction who does not meet the above requirements to register as an in-house counsel after
366 consideration of other criteria, including the lawyer's legal education, references, and experience.

367 ...

368 (d) A registered lawyer under this section shall:

369 (1) Complete the registration process with the Board of Professional Responsibility within thirty days
370 of approval of registration by the Board under paragraph (a)(3) of this section;

371 (2) Pay all annual fees payable by active members of the bar;

372 (3) Fulfill the continuing legal education requirements that are required of active members of the bar;
373 and

374 (4) Report to the Board, within thirty days, the following:

375 (A) Termination of the lawyer's employment as provided in paragraph (f)(1) of this section;

376 ...

377 (f) A registered lawyer's rights and privileges under this section automatically terminate when:

378 (1) The lawyer's employment with the entity employing the lawyer at the time the lawyer becomes
379 registered ends;

380 (2) The lawyer is suspended or disbarred from practice in any jurisdiction or any court or agency
381 before which the lawyer is admitted;

382 (3) The lawyer fails to maintain active status in at least one jurisdiction; or

383 (4) The lawyer fails to comply with the requirements in paragraph (d)(1) - (4), above.

384 Upon the occurrence of one or more of the foregoing events, the registered lawyer shall give written
385 notice within thirty days of the terminating event to the Board and to the Board of Professional
386 Responsibility.

387 (g) A registered lawyer whose registration is terminated under paragraph (f)(1) above, may be reinstated
388 within 180 days of the end of the lawyer's previous registered employment by completing the
389 requirements for reinstatement of registration (the "Reinstatement Period").
390

391 (1) The complete application for reinstatement of registration requires submitting to the Board the
392 following:
393

394 (A) The application for reinstatement of registration in a form prescribed by the Board, including
395 all required supporting documents and submitted in the manner established by the Board;

396 (B) The reinstatement fee set by the Board pursuant to section 11.01;

397 (C) Certificates of Admission and Good Standing as prescribed by the Board; and

398 (D) An affidavit from the current employing entity as prescribed in paragraph (a)(1)(E).

399 (2) The Board shall list the items and steps necessary for a complete application for reinstatement of
400 registration in the Board Policies and Procedures.

401 (3) The lawyer obtains approval by the Board on a reinstatement application that is completed on or
402 before the expiration of the Reinstatement Period.

403 (4) The Board has the discretion to issue approval after expiration of the Reinstatement Period upon
404 submission of a timely completed reinstatement application. Such approval is timely and the lawyer
405 shall not be considered to have engaged in unauthorized practice of law if the Board approves the
406 timely completed reinstatement application after the Reinstatement Period.

407 (5) A lawyer whose employment ends and who does not obtain new in-house counsel employment in
408 Tennessee within 180 days of termination of registration under paragraph (f)(1) of this section, or
409 who obtains new In-house Counsel employment in Tennessee but does not complete the application
410 for reinstatement of registration prior to expiration of the Reinstatement Period, must submit a new
411 application to register as provided in paragraph (a) of this section.

412 (h) A lawyer under this Rule who fails to complete the registration application under paragraph (a) of this
413 section prior to expiration of the Registration Period shall be:

414 (1) Permitted to register under this section as provided in paragraph (a), above but will be required to
415 pay a late registration fee as provided in the fee schedule established under section 11.01;

416 (2) Subject to professional discipline in this jurisdiction;

- 417 (3) Ineligible for admission pursuant to section 5.01 of this Rule;
- 418 (4) Referred by the Board to the Board of Professional Responsibility; and
- 419 (5) Referred by the Board to the disciplinary authority of the jurisdiction(s) of licensure.
- 420 (i) A lawyer's service to the lawyer's employer before timely registration under this Rule shall not
421 constitute the unauthorized practice of law or otherwise be treated as violating Tenn. Sup. Ct. R. 8, RPC
422 5.5 as long as the services are permitted under this Rule for registered lawyers and the lawyer complies
423 with the requirement to complete the registration application under paragraph (a) of this section before
424 expiration of the Registration Period or to complete the reinstatement application under paragraph (g) of
425 this section before expiration of the Reinstatement Period.
- 426 (j) A lawyer who is eligible to register under this section but who submits an application for admission
427 without examination under section 5.01, by examination under section 3.01, by transferred UBE score
428 under section 3.05, or as a Spouse of a Military Servicemember under section 10.06, must register to
429 practice pending admission under section 10.07 or also register as in-house counsel. The protections of
430 paragraph (i) apply only to lawyers who are seeking registration as in-house counsel and do not apply for
431 admission under other sections of this Rule.
- 432 **Sec. 10.03. Law Student Practice.**
- 433 ...
- 434 **(e) Approval by the Supreme Court.**
- 435 (1) The dean of the law student's law school or the director shall file a request for approval of a
436 qualified law student with the Clerk of the Supreme Court of Tennessee in Nashville on forms and
437 in the format required by the Supreme Court.
- 438 (2) Upon a showing that the law student is qualified under the provisions of this Rule, the Supreme
439 Court shall issue an order approving the law student to practice.
- 440 (3) Upon the entry of the order approving a law student to practice under this Rule, the Board shall
441 provide the student with a certificate of registration under this section.
- 442 ...
- 443 **(h) Supervision.**
- 444 (1) The qualified law student shall be under the immediate and personal supervision of an attorney
445 who meets the requirements of paragraph (3), below. If the supervising attorney is not teaching in a
446 law school clinic, the attorney must be approved in writing by the dean or director.
- 447 (2) It is the responsibility of the supervising attorney to ensure that the student is properly supervised
448 and instructed, including compliance with Tenn. Sup. Ct. R. 8, RPC 5.3, and be present for
449 administrative or adjudicatory proceedings; however, it is not necessary that the licensed attorney
450 be personally present when the student engages in other activities such as interviewing,
451 investigation, drafting and negotiation.
- 452 (3) The supervising attorney must:

- 453 (A) be a lawyer who is admitted to practice, in active status, and in good standing in Tennessee;
454 (B) have practiced for a minimum of three years;
455 (C) assume professional responsibility for the direct and immediate supervision for the professional
456 work of the qualified law student; and
457 (D) be a full-time employee of an entity identified in paragraph (g)(1)(A)-(E), above, and supervise
458 the qualified law student in connection to that employment.
459

460 **Sec. 10.04. Practice before Admission by Examination Score.**

461 . . .

462 **(c) Supervision.**

- 463 (1) The applicant shall be under the immediate and personal supervision of an attorney who meets the
464 requirements of paragraph (3), below.
465 (2) It is the responsibility of the supervising attorney to ensure that the applicant is properly supervised
466 and instructed including compliance with Tenn. Sup. Ct. R. 8, RPC 5.3, and be present as provided
467 in paragraph (d)(2), below; however, it is not necessary that the supervising attorney be present
468 when the applicant engages in activities such as interviewing, investigation, drafting, and
469 negotiation.
470 (3) The supervising attorney must:
471 (A) be a lawyer who is admitted to practice, in active status, and in good standing in Tennessee;
472 (B) have practiced for a minimum of three years; and
473 (C) assume professional responsibility for the direct and immediate supervision for the professional
474 work of the applicant.

475 **Sec. 10.07. Practice Pending Admission by Applicant Licensed in Another Jurisdiction.**

- 476 (a) A lawyer who is licensed to practice law and in good standing in another state in the United States, the
477 District of Columbia, or a U.S. Territory and who has submitted an application for admission under
478 section 3.01, 3.05, 5.01, or 10.06 of this Rule may provide legal services in this jurisdiction through an
479 office or other systematic and continuous presence during the pendency of the application for admission
480 but for no more than 365 days, provided that the lawyer:
481 (1) is not disbarred or suspended from practice in any jurisdiction;
482 . . .
483 (5) associates with a lawyer who is admitted to practice, in active status, and in good standing in
484 Tennessee;
485

486

487 (c) **Termination of Right of Practice Pending Admission.**

488 (1) The right to practice pending admission under this section terminates:

489

490 (A) if the lawyer withdraws the application for admission or if such application is denied;

491

492 (B) if the lawyer becomes disbarred, suspended, or takes disability inactive status in any other
493 jurisdiction in which the lawyer is licensed to practice law;

494

495 (C) if a formal complaint is filed with the Board of Professional Responsibility or an indictment
496 filed by the Attorney General's Office in Tennessee against the lawyer;

497

498 (D) if the lawyer fails to register for admission *pro hac vice* when required; or

499

500 (E) if the lawyer fails to timely provide the written notice required by section 10.07(a)(4).

501

502 (2) Upon termination of the right of practice, the lawyer shall not undertake any new representation
503 that would require the lawyer to be admitted to practice law in this jurisdiction and, within ten
504 days, shall:

505 (A) cease to occupy an office or other systematic and continuous presence for the practice of law in
506 Tennessee unless authorized to do so pursuant to another Rule;

507

508 (B) notify all clients being represented in pending matters, and opposing counsel or co-counsel, of
509 the termination of the lawyer's authority to practice pursuant to the authority in this section;
510 and

511

512 (C) take all other necessary steps to protect the interests of the lawyer's clients.

513 **Sec. 12.11. Confidentiality of Board Records and Files.**

514 (a) Records, statements of opinion, and other information regarding an applicant for admission to the bar
515 communicated by any entity including any person, firm, or institution to the Board or their members,
516 employees, or agents, applications for admission, examination papers and grades, and all investigative
517 records of the Board, including, but not limited to, correspondence and/or electronic transmissions to and
518 from the Board, its members and staff, minutes of Board meetings and its deliberations and all
519 documents, communications and proceedings prepared in connection with evaluations or investigations of
520 law schools under sections 17.01, 17.02, 17.03, 17.04, 17.05, 17.06, 17.07, and 17.10 of this Rule, whether
521 in paper or electronic form, shall be confidential and shall not be open to inspection without written
522 application to and authorization by an appropriate order of the Supreme Court. For examination
523 applicants who are unsuccessful on an examination, the Board is permitted to release to the applicant
524 answers to the performance test and essay questions for that examination. The Board shall specify the
525 process for obtaining the answers in the Board Policies and Procedures.

526 (b) The Board is authorized to release information that would otherwise be confidential to disciplinary or
527 law enforcement agencies of any jurisdiction, the Tennessee Lawyer Assistance Program, and to the
528 Board of Professional Responsibility upon written request. The Board may release information that is
529 otherwise confidential as follows:

530 ...

531 **Sec. 13.01. Show Cause Orders.**

532 ...

533 (b) Response to Show Cause Order. The applicant's reply to the Show Cause Order shall be in writing,
534 under oath, and may include such additional affidavits or other documents as the applicant may choose to
535 furnish.

536 **Sec. 17.01. Tennessee Law Schools.**

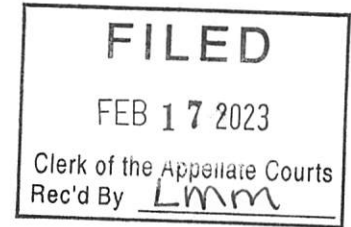
537 ...

538 (g) Substandard Law Schools.

539 (1) Any law school located in or seeking to locate in Tennessee (whether offering a full-time or part-
540 time in-person or distance-learning curriculum), which permits the enrollment of students without first
541 having obtained the written approval of the Supreme Court as provided in section 17.01, shall be
542 classified as a substandard school.

543

544



February 17, 2023

The Honorable James Hivner
Tennessee Supreme Court
401 7th Avenue North
Nashville, TN 37219

Re: *In re: Amendment of Rules 6 and 7, Rules of the Tennessee Supreme Court*
No. ADM2022-01449
Comment of Tennessee Bar Association

Dear Mr. Hivner:

The Tennessee Board of Law Examiners ("BLE") filed a petition asking the Supreme Court to amend Tennessee Supreme Court Rules 6 and 7. The Court published the petition and invited public comment.

The petition was studied over the course of several meetings by the Tennessee Bar Association ("TBA") Ethics and Professional Responsibility Committee. The Committee provided input to the TBA leadership, who carefully considered the matter. The TBA now respectfully submits the following comments for the Supreme Court's consideration.

The TBA's comments are limited to the petition's proposed changes to two rules: Rule 7, § 7.01, Foreign Educated Applicants, Eligibility to Take Examination; and Rule 7, § 10.07, Practice Pending Admission by Applicant Licensed in Another Jurisdiction.

Foreign Educated Applicants

The current rule regarding allowing foreign educated applicants who apply to sit for the bar examination or transfer a score from the Uniform Bar Examination ("UBE") can be confusing to applicants and onerous in practice. One major hurdle is the requirement that both undergraduate and law school criteria be substantially equivalent to that generally obtained by applicants educated in the United States. This is not often achieved, as many foreign countries require only a high school diploma as a prerequisite for a legal education. Tennessee's secondary path requires both that the foreign educated applicant obtain an ABA-accredited LL.M. degree focused on preparing students for admission to the Bar and that the applicant must have been licensed and have practiced law in his or her foreign jurisdiction for five of the past eight years.

TENNESSEE BAR CENTER
3310 WEST END AVE. #590
NASHVILLE, TN 37203

(615) 383-7421

WWW.TBA.ORG



The current rule often is difficult to comply with, especially for applicants who never practiced in their home country. Current attorney registration data indicates that only approximately 150 of the 23,600 actively licensed Tennessee attorneys (six-tenths of one percent) received a legal education outside of the United States. This restrictive approach to admission of foreign educated applicants contrasts sharply with Tennessee's expansive approach to the admission of lawyers licensed in other United States jurisdictions. See Sup. Ct. R. 7, §§ 5.01(a) (comity admission); 10.07 (practice pending admission).

Recently the Tennessee Supreme Court has determined that several foreign educated applicants seeking admission to the Tennessee Bar have achieved competency to take the bar examination or transfer their UBE scores in ways that do not currently satisfy Tennessee's admission rules. In the context of these recent developments, the BLE has proposed a rule change that would specifically authorize a discretionary process allowing the BLE to make recommendations to the Supreme Court when the BLE "finds that other factors may nonetheless qualify the [foreign educated] applicant to seek admission by bar examination or by transferred UBE score." Proposed Sup. Ct. R. 7, § 7.01(c)(2).

The TBA applauds the BLE for tackling a difficult and important issue. The TBA respectfully suggests, however, the proposed rule change is not an appropriate solution. The proposed rule does not provide useful criteria for applicants. Instead, it proposes to adopt an admittedly discretionary process that is undefined and so could be seen as unfair to some applicants. For example, the proposed rule does not identify the factors that might prompt the BLE to consider "transmit[ting] the applicant's file and a recommendation to the Court so that the Court may review the file and determine whether to exercise its inherent discretion to" permit the applicant to sit for the bar examination or transfer a UBE score. Proposed Sup. Ct. R. 7, § 7.01(c)(2). The proposed rule thereby puts the onus on the Supreme Court to make a decision that, if the rule gave sufficient guidance, could be made by the BLE.

In view of these concerns, the TBA urges the Tennessee Supreme Court not to adopt the proposed rule. In the interest of fairness to all applicants, and consistent with Tennessee's laudable tradition of inclusivity with respect to admission to the bar, the TBA believes that the time has come to reexamine the process for admission of foreign educated applicants. The Supreme Court should create an ad hoc committee or working group to explore this complex but important area. The working group should include representatives from various stakeholders such as the BLE, the courts, the law schools, and law firms that operate in the international arena. The Court could charge this group with reviewing the current rules and making recommendations for changes to the rules or the process that are consistent with maintaining the integrity of the legal profession.

Recognizing that the working group's study may take some time, the TBA further suggests that, as a temporary measure, the Court could enter an administrative order specifically granting the BLE discretion to refer appropriate cases to the Court while the study is underway. Such an order would be a temporary measure that could help resolve difficult cases while a more permanent solution is being sought.

Finally, as a starting point for discussion the TBA would suggest that the Court consider a new type of framework for admission of foreign educated applicants that reduces the focus on undergraduate education. The attached Appendix contains a summary of a possible alternative to the existing structure. It is intended as a starting point for discussion.

Practice Pending Admission

The petition filed by the BLE proposes a change to Sup. Ct. R. 7, § 10.07(c), regarding practice pending admission. The existing rule lists several specific circumstances under which “[t]he right to practice pending admission under this section terminates.” The proposed change would add a new provision to this list:

The right to practice pending admission under this section terminates: . . . (F) in the Board’s discretion, if an Order to Show Cause is issued by the Board, based in part on the lawyer’s character and fitness to practice law in Tennessee.

Two aspects of this proposal raise particular concerns. Before turning to those specific concerns, it is important to note a few points about practice pending admission. It applies only to lawyers who are licensed and in good standing in another United States jurisdiction. The persons who are granted the right to practice pending admission in Tennessee typically are working lawyers who decide to relocate to Tennessee for personal or professional reasons. Some of them do so under difficult or urgent circumstances. Once granted the right to practice pending admission to Tennessee, many applicants invest a great deal of time and expense in relocating to Tennessee. They do so in reliance on the fact that, unless they engage in specific types of improper conduct, they will be able to continue practicing during the pendency of their application for admission to the bar in Tennessee. That right should not be revoked without good reason, after appropriate notice and an opportunity for a hearing.

The first aspect of concern about the proposed rule relates to the Board’s discretion to determine *which applicants* who receive Show Cause Orders would have their right to practice pending admission revoked. Under the proposal, not every recipient of a Show Cause Order would be the subject of revocation. Because revocation can work a substantial hardship on the applicant, the rule should provide information about what factors the Board might consider in exercising its discretion. The lack of guidance in the proposed rule is highlighted by the fact that revocation can be triggered by an Order to Show Cause that is “based *in part*” (emphasis added) on character and fitness questions. If there are other issues that would potentially trigger such a Show Cause Order, the rule should clearly indicate what they are.


The second aspect of concern is even more significant. The proposed rule authorizes revocation of the right of practice pending admission upon the *issuance* of an Order to Show Cause. An Order to Show Cause indicates only that the Board *has cause* to believe that a character and fitness problem exists – at

the time the Order is issued, no determination has been made regarding whether the Board's belief is accurate. Because an important right that an applicant has relied on is being affected, mere issuance of an Order to Show Cause should not be grounds for revocation. If the BLE determines that a Show Cause Order should be issued, the Order should be provided to the applicant and a hearing on the Order should be held on an expedited basis. Except in extraordinary circumstances, the right to practice pending admission should *not* be revoked unless and until there has been a finding, after notice and hearing, of conduct that would warrant revocation.

Conclusion

The Tennessee Bar Association thanks the Court for the opportunity to provide these comments for the Court's consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Barry Kolar". The signature is written in a cursive style with a large initial "B".

Barry Kolar
Interim Executive Director

cc: TBA Executive Committee
Tim Chinaris, Chair, TBA Committee on Ethics and Professional Responsibility
Berkley Schwarz, Director of Public Policy & Government Affairs

APPENDIX

While maintaining the integrity of the bar admission process is of primary importance, diversification in the legal field is also a worthy and ongoing goal. There are differing ways to achieve competence in order to qualify to take a bar examination or transfer a UBE score. Many states offer a variety of paths for foreign educated applicants, such as: (1) substantially equivalent legal education; (2) practice for a specific number of years in the foreign jurisdiction; (3) acquiring a specific number of semester hours of legal education at an ABA-accredited law school in the United States; (4) completion of an ABA-accredited LLM program in the United States; or (5) passage of a Bar exam in another United States jurisdiction.

Tennessee should remove the focus on the intermediate education of those who graduated with a law degree from a foreign country and instead focus on other indicators of competency. One way to do this would be for Tennessee to set, as a baseline, that a foreign educated applicant must have graduated with a law degree recognized by the highest authority of such foreign jurisdiction. As an addition to this baseline requirement, a foreign educated applicant would also have to satisfy at least two of the following requirements:

(1) The applicant's foreign law degree is substantially equivalent to Sec. 2.02 (Legal Education Degree Requirements). The applicant must submit a comprehensive evaluation that includes a course-by-course evaluation, determination of equivalency, plus authentication of transcripts ("Foreign-Education Report") from a Credential Evaluation Service that is a member of the National Association of Credential Evaluation Services.

(2) The applicant has been admitted to practice law in the country in which he or she received the foreign law degree and must have practiced law in such jurisdiction for five of the past eight years.

(3) The applicant has completed at least twenty-four (24) in-person semester hours of legal education at an ABA-accredited law school with a focus on those courses normally found on the Bar examination.

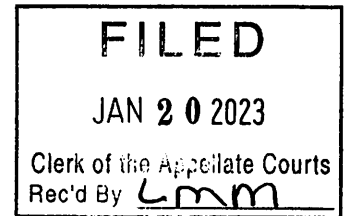
(4) The applicant has completed an in-person LLM program at an ABA-accredited law school in any advanced area of law.

(5) The applicant has passed a Bar examination in another state or territory of the United States.



January 20, 2023

James M. Hivner
Clerk, Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, Tennessee 37219-1407



ADM2022-01449

Re: ADM2022-01449

To the Honorable Justices of the Tennessee Supreme Court:

We write to reaffirm our support for amending Section 5.01(c)(1) of Tennessee Supreme Court Rule 7 to let part-time attorneys and legal professors be considered “actively practicing” lawyers for purposes of comity.

The practice of law is demanding, regardless of how many hours per week one works, and a part-time attorney is no less competent or hardworking than one who works full-time.

Attorneys who work part-time often do so because they have other responsibilities, such as raising children or taking care of a sick or elderly relative. These individuals should not be penalized for choosing to work part-time to meet their personal or familial obligations. But that is just what Section 5.01(c)(1) does.

As it’s currently written, Rule 7 severely disadvantages lawyers who want to relocate to the state if they have worked part-time for more than two of the seven years prior to filing a comity application. Rule 7 forces them to wait up to five years to waive into Tennessee, despite actively practicing law part-time, or take the Tennessee bar exam (costing hundreds or thousands of dollars and months of studying), even though they have already passed a bar exam.

This falls especially hard on women. Studies show that, on the whole, women value flexibility in work more than men do. In the past several decades, the number of women-owned businesses has increased by 3,000 percent. And women are increasingly choosing to take on work as independent contractors, or to work part-time jobs, so that they can better control their schedules. One of the primary reasons is that flexible work has allowed them to balance a fulfilling career with childcare. In fact, 70 percent of female freelancers are the primary caregivers in their homes.

Tennessee’s full-time work requirement isn’t just harmful—it also violates the principles enshrined in the state Constitution and the recently adopted Right to Earn a Living Act. This Court has long recognized that the Tennessee Constitution protects the right to earn a living free from unreasonable or arbitrary restrictions. *See, e.g., Campbell v. McIntyre*, 52 S.W.2d 162, 164 (Tenn. 1932); *Wright v.*

Wiles, 117 S.W.2d 736, 738–39 (Tenn. 1938); *Livesay v. Tenn. Bd. Of Exam'rs in Watchmaking*, 322 S.W.2d 209, 213 (Tenn. 1959). In 2016, the Tennessee legislature reaffirmed that the right to earn a living is a *fundamental* right that should be impaired only if necessary to protect the health, safety, and welfare of Tennesseans. But prohibiting part-time attorneys from practicing in Tennessee is arbitrary and does not protect the public. Attorneys who work part-time have met all the qualifications required to practice law. This Court should amend Section 5.01(c)(1) with this principle in mind and afford attorneys who work part-time the same benefit of motion without examination.

Additionally, the Tennessee Board of Law Examiner's proposal to amend Section 7.01 to permit it to make a recommendation to the Court regarding an applicant's record is a move in the right direction, but attorneys who are licensed to practice in other states and are in good standing in those states should be permitted to practice law in Tennessee, regardless of foreign education. Individuals do not lose their skills when they cross state lines.

Lawyers should have the flexibility to work part-time if the necessities of life dictate, and arbitrary barriers should not prevent capable attorneys from working in Tennessee. Rule 7 prevents this kind of flexibility and drives these qualified lawyers to other states with less stringent requirements. For these reasons, the Court should amend this rule to allow part-time attorneys and law professors to be actively practicing lawyers for purposes of comity.

Sincerely,



Kamron Kompani
Legal Programs Manager
Scharf-Norton Center for
Constitutional Litigation at the
Goldwater Institute

Lisa Marsh - No. ADM2022-01449

From: Karin Agness Lips <karin@enlightenedwomen.org>
To: appellatecourtclerk <appellatecourtclerk@tncourts.gov>
Date: 1/17/2023 8:28 AM
Subject: No. ADM2022-01449

Good morning,

I write in support of the Tennessee Board of Law Examiners Petition (No. ADM2022-01449) related to amending Rule 7. I support removing the full-time work requirement for comity.

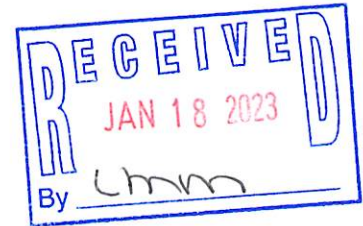
Best,
Karin

--



Karin Lips
President
Network of enlightened Women (NeW)
[571-318-9160](tel:571-318-9160)
karin@enlightenedwomen.org

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FILED

JAN 20 2023

Clerk of the Appellate Courts
Rec'd By Lmm

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

**IN RE: AMENDMENT OF RULES 6 AND 7
RULES OF THE TENNESSEE SUPREME COURT**

No. ADM2022-01449

Written comment in support of the proposed amendments

Further to the Order of the Supreme Court of Tennessee soliciting written comments on the Tennessee Board of Legal Examiners' proposed amendments of Rules 6 and 7, **Laurence Wilkinson** provides this comment **in support** of the proposed amendments with specific reference to the proposed addition of Rule 7, § 7.01(a)(2).

I am a duly qualified lawyer (solicitor) in England who relocated to Tennessee in March 2020 with my American spouse. In March 2021, I sought admission to take Tennessee bar exam in July 2021 under Tennessee Supreme Court Rule 7, § 7.01(a) on the basis that my foreign education was "substantially equivalent" to the requirements of Rule 7, §§ 2.01 and 2.02. I had five years of legal education in a Common Law jurisdiction, including one year at the University of Texas at Austin, which fulfilled the educational requirements for admission to the practice of law in England.

The Tennessee Board of Law Examiners (the "Board") issued two orders denying my application to take the Tennessee bar examination for failure to meet foreign-educated applicant

requirements. The Board's June 11 order stated that I lacked sufficient credit hours to render my foreign education "substantially equivalent" under Rule 7, § 7.01(a). I appealed the June 11 order, clarifying that I did in fact have sufficient credit hours of study, only for the Board to issue another order on November 10 finding that my education was not shown to be "substantially equivalent" to the satisfaction of the Board.

I then petitioned for review of the Board's decision on January 11, 2022. (*Wilkinson v. Tennessee Board of Law Examiners* (Case No. M2022-00080-SC-WR-CV)) My petition was opposed by the Board. This Court denied the petition on February 14, and denied a further petition for rehearing on March 4.

One of the primary points of contention in my appeal was that the Board had demanded a specific delineation of my education in order to satisfy the requirements of Rule 7.¹ This meant that the Board's focus was on how my education had been *classified* in the Foreign Education Report, rather than a full consideration of its substance. As my appeal indicated, a Foreign Education Report would not assess a degree from the United Kingdom to be directly equivalent to an American J.D. Degree because legal education in the United Kingdom is structured differently.

However, I had argued that an analysis of my education as a whole clearly demonstrated "substantial equivalence" to the requirements of both § 2.01 and § 2.02 of Rule 7: I had accumulated a substantial number of credit hours in substantive, procedural, dissertational, seminar, clinical, and professional skill elements from prestigious academic institutions in a Common Law jurisdiction, and had further gone on to qualify and practice law for over 5 years. Nonetheless, the Board determined that my education did not satisfy the specific requirements of "substantial equivalence" under Rule 7, § 7.01(a) at the time. As the Board notes in its Petition to

¹ The Board had said in its second order that "the same education used to support substantial equivalence to a Bachelor's Degree, such as the Bachelor of Laws from University of Nottingham, *cannot also be used* to support substantial equivalence to the J.D. Degree requirement."

Amend, the only option available to the Board in those circumstances was to deny me as ineligible to sit the bar exam.

I believe that the current wording of Rule 7 forced the Board to adopt a ‘form over substance’ evaluation of my educational credentials, dictated by the limitations of the Foreign Education Report. Had the substance of my education been *delineated* differently, I have no doubt the Board would have concluded that my education was substantially equivalent. This was a deeply unsatisfying outcome, and particularly frustrating given that my application was rejected a mere six and a half weeks prior to the exam date, at which point I had already expended a significant amount of time and money preparing my application and studying for the exam.

My submission is that the proposed addition of Rule 7, § 7.01(a)(2) provides an important opportunity for the Board and this Court to make a full and fair assessment of a foreign applicant’s education credentials, particularly where that foreign education is not precisely delineated into separate degrees that follow the American model (as is the case in the United Kingdom and many other established Common Law jurisdictions.) This will ensure that otherwise qualified applicants are not prevented from seeking admission to the bar purely because of the *form* of their education. And given that the threshold to pass in this context is one of “substantial” equivalence to an American legal education (not “identical” equivalence) it is right that this Court has a clear opportunity to exercise its inherent discretion in borderline cases.



Laurence James Wilkinson

20 January 2023