

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED

10/20/2017

Clerk of the
Appellate Courts

IN RE: AMENDMENT OF RULE 7,
RULES OF THE TENNESSEE SUPREME COURT

No. ADM2017-02083

ORDER

On October 18, 2017, the Tennessee Board of Law Examiners (“the TBLE”) filed a petition seeking to amend Tennessee Supreme Court Rule 7 by adopting the Uniform Bar Examination (UBE) as the standard for applicants to demonstrate the knowledge and skills for licensing and admission in Tennessee. The TBLE asserts that the UBE “is prepared and coordinated by the National Conference of Bar Examiners to test knowledge and skills that every lawyer should be able to demonstrate prior to becoming licensed to practice law,” and that the UBE “is composed of the six question Multistate Essay Examination (MEE), two Multistate Performance Test (MPT) tasks, and the Multistate Bar Examination (MBE).” The TBLE proposes that the UBE, which has been adopted in twenty-eight jurisdictions, be adopted to begin with the July 2018 administration of the Tennessee bar examination. The petition and proposed amendments to Rule 7 are attached as an appendix to this Order.

The Court hereby solicits written comments from judges, lawyers, bar associations, members of the public, and any other interested parties. The deadline for submitting written comments is January 5, 2018. Written comments should reference the docket number set out above and may be e-mailed to appellatecourtclerk@tncourts.gov or mailed to:

James M. Hivner, Clerk
Re: Tenn. Sup. Ct. R. 7
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

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

PER CURIAM

APPENDIX

PETITION TO AMEND RULE 7, RULES OF THE TENNESSEE SUPREME COURT

FILED BY THE TENNESSEE BOARD OF LAW EXAMINERS

FILED

2017 OCT 18 PM 12:01

APPELLATE COURT CLERK
NASHVILLE

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

**IN RE: AMENDMENT OF RULE 7,
RULES OF THE TENNESSEE SUPREME COURT**

No. ADM2017- 02083

PETITION TO AMEND TENNESSEE SUPREME COURT RULE 7
GOVERNING LICENSING OF ATTORNEYS

The Tennessee Board of Law Examiners (the “TBLE” or “Board”) hereby respectfully petitions this Honorable Court to amend Tennessee Supreme Court Rule 7 (“Rule 7”) to permit adoption of the Uniform Bar Examination (“UBE”), beginning with the July 2018 administration of the Tennessee bar examination, as the standard for applicants to demonstrate the knowledge and skills for licensing and admission in Tennessee. In support of its Petition, the TBLE would respectfully show as follows:

1. The UBE is prepared and coordinated by the National Conference of Bar Examiners to test knowledge and skills that every lawyer should be able to demonstrate prior to becoming licensed to practice law. It is composed of the six question Multistate Essay Examination (MEE), two Multistate Performance Test (MPT) tasks, and the Multistate Bar Examination (MBE).
2. Presently, the TBLE examination includes one MPT task and the MBE, as well as nine Tennessee-specific essay questions prepared and graded by Exam Assistants who are Tennessee attorneys.

3. The nine Tennessee essay questions are reviewed and evaluated by the Board and the Exam Assistants prior to approval and assembly of the examination.
4. The MPT and MEE questions are developed by drafting committees composed of law school professors, lawyers and judges from throughout the United States who are experts in the subjects they are drafting. In addition to the drafting committee, there are external reviewers who check for validity and fairness. Questions are pretested in secure conditions to further test the validity of the test.
5. Lawyers are more mobile than they once were. No longer do lawyers settle in one state and practice in that state until retirement. Moreover, multi-jurisdictional or cross-border practice is more common, particularly in Tennessee, where we border more states than any other state in the Union. This can be seen in the increased applications for admission without examination in recent years¹.
6. Adoption of the UBE acknowledges that certain legal concepts and lawyering skills span our borders, as well. The UBE assures uniformity in testing from administration to administration while still utilizing local attorneys to grade essay and practice tasks. Further, the methods used to develop the MEE and MPT tests result in a high quality and reliable test. While the Board and Exam Assistants work diligently to prepare high quality tests, what the Board can do locally does not compare to the resources available for the development of the MEE and MPT test items.
7. As of the date of this petition, twenty-eight jurisdictions, representing bars of all sizes, have adopted the UBE and three others are actively considering adoption. In nine of the states utilizing the UBE, the states have adopted a pre-admission local law component. In

¹ In 2012, the TBLE received 125 applications for admission without examination (comity); in 2016, the TBLE received 238, an increase of 90.4% in five years. Similarly, in 2012, the TBLE received 28 In-House Counsel registration applications; in 2016, the TBLE received 89, an increase of 218% over the same period.

nine of the states, there is not any additional component required for admission. The remaining 10 jurisdictions require a mandatory post-admission local law course. The Board recommends the Court consider a mandatory, post-admission local law component, with the caveat that the make-up and requirements of the course would be best determined by the Court and its other Commissions.

8. In order to effect the changes required by the adoption of the UBE, the Board proposes the following changes to Tennessee Supreme Court Rule 7 (“Rule 7”):
 - a. Revise section 1.02 to reference a new category of admission in section 3.05.
Further, change the reference to the score expiration provision to 3 years.
 - b. In section 1.03(c), add a reference to applications pursuant to section 3.05 to the criteria for issuance of Certificate of Eligibility.
 - c. Add a reference to new section 3.05 in section 1.04 so that an applicant seeking admission without examination under Article V is not required to provide a passing UBE score.
 - d. Clarify the education requirements for admission by transferred UBE score or without examination by adding a new section 2.01(b) to require all applicants to provide undergraduate degree transcripts. A similar provision regarding law school transcripts has been added to section 2.02(c).
 - e. Amend section 2.02(a), regarding the requirement for applicants to have a J.D. degree from an approved school to include this requirement for admission by transferred UBE score.
 - f. Modify newly renumbered section 2.02(e), formerly section 2.02(d), to allow an applicant who did not graduate from a Tennessee-approved or ABA-accredited

school to gain admission on transferred UBE score. Further, change the active practice of law requirement to three of the last five years from five of the last seven years. This time period corresponds to the time in practice requirement for licensed attorneys to gain admission on an otherwise expired UBE score. See new section 3.05, below. Other requirements for admission of graduates of out-of-state approved schools would remain unchanged.

- g. Add Section 2.04 regarding Board approval of Experiential Learning Programs, moving the provision from Section 10.03(c) and Comment (8), requiring Board approval of Clinics for state-approved schools only as such programs are required as part of the curriculum at ABA-approved law schools and subject to ABA review for new or continued accreditation².
- h. Add new section 3.05 to provide a new category of admission by transferred UBE score. This provision is for applicants who sat for the UBE in another jurisdiction, who have a score at least equal to the minimum required UBE score for admission in Tennessee, and who comply with all other requirements for admission, such as meeting the character and fitness standard, and attaining a passing score on the Multistate Professional Responsibility Examination.
- i. Revise section 4.02 to reflect that the Board will test applicants by administering the Uniform Bar Examination.
- j. Adapt the provisions in section 4.04 to identify only subjects tested on the UBE for the scope of the examination.

² While not related to the adoption of the UBE, this is a change that is required for purposes of approving law student practice and requires amendment.

- k. Modify section 4.07 to establish that the minimum passing score on the UBE will be set by Board policy and that a UBE score, whether earned in Tennessee or transferred in, are valid for determining eligibility for licensing for three years after the date grades are released, except as provided in section 3.05. Additionally, modify paragraph (d) of section 4.07 to require a passing MPRE score in order to be eligible for licensing.
- l. Include applications for admission by transferred UBE score to the practice pending admission provisions in section 5.01(g).
- m. Consider amendments to section 6.03(c) that would require in person interviews for applicants by examination or transferred UBE score who are not licensed and in good standing in at least one other U.S. jurisdiction. Presently, all applicants by examination are interviewed, which is an important feature of the character and fitness investigation for applicants. Interviews are scheduled in the weeks between the examination and grade release. The process of interviews and when interviews are conducted will have to change with an admission type not tied to the Tennessee grade release dates.
- n. Revise section 10.03 consistent with changes reference in paragraph g. above, and add Federal Public Defender and U.S. Attorney offices as permitted entities for law student practice to the extent permitted by federal law and local rules.
- o. Amend section 10.04(a) to limit law school graduate practice to 16 months from the date of the first application for admission in any jurisdiction or from law school graduation, whichever is shorter. As presently written, law school graduates who have not been successful on the bar examination in another

jurisdiction after several attempts may be able to practice law in Tennessee under this provision years after graduating law school. When section 10.04 was adopted originally, the stated purpose of the provision was to allow law school graduates who are likely to achieve a successful result on the first or second bar examination to practice while awaiting results of the bar examination for up to one year after law school graduation.

A copy of the recommended amendments to Rule 7 is attached to this Petition.

Wherefore, for the foregoing reasons, the Board respectfully requests this Honorable Court to enter an Order approving use of the Uniform Bar Examination to determine attorney competency in Tennessee and amending Tennessee Supreme Court Rule 7 as set forth herein.

Respectfully submitted,

TENNESSEE BOARD OF LAW EXAMINERS

By: Jeffrey M. Ward *with permission by*
Jeffrey M. Ward, President 

CERTIFICATE OF SERVICE

The undersigned certifies that a Notice of Filing of the foregoing Petition to Amend Tennessee Supreme Court Rule 7 Governing Licensing of Attorneys has been served upon those listed in Exhibit B by U.S. Mail, postage prepaid, on this 18th day of October, 2017, and posted on the TBLE website at www.tnble.org.



Lisa Perlen, Executive Director