

FILED

JUL 17 2018

Clerk of the Appellate Courts
Rec'd By *EW*

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE AMENDMENT OF RULE 6, RULES OF THE TENNESSEE
SUPREME COURT

No. ADM2018-713

COMMENT OF THE TENNESSEE BOARD OF LAW EXAMINERS
AND THE TENNESSEE LAW COURSE COMMITTEE

The Tennessee Board of Law Examiners (the “Board”) respectfully submits this response to the amendments to Tennessee Supreme Court Rule 6 proposed by the Tennessee Supreme Court. The Tennessee Law Course Committee (the “TLC Committee”) joins the response regarding establishing the Course as a pre-admission requirement.

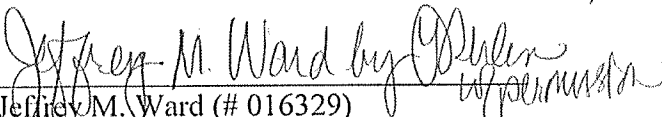
The Board and TLC Committee appreciate the interest of the Court in establishing a Tennessee Law Course in conjunction with adoption of the Uniform Bar Examination. Further, the Board and the TLC Committee have read with interest the comments that have been filed and the Motion of the Knoxville Bar Association expressing concern about the Tennessee Law Course (the “Course”) as proposed in the amendment to Rule 6.

After deliberation, the Board and the TLC Committee propose that the Court amend Tennessee Supreme Court Rule 7 rather than Rule 6, establishing the Course as a pre-admission requirement. By adding the Course as a pre-admission requirement, the Course is not unduly burdensome to administer and can be available to applicants upon completion of the bar examination, thus eliminating any delay in admission for successful applicants. Additionally, the proposed amendments to Rule 7 clarify that the Course will be designed to educate with respect to specifics of Tennessee law and is not an additional test.

Attached to this Comment as Appendix A are the recommended changes to Rule 7, Article I and Section 10.06, suggested to establish the Tennessee Law Course. Other edits as to form and to clarify timing of expiration of Certificates of Eligibility with the new UBE provisions have been

recommended to Article I by the Board at this time in order to avoid multiple amendments to the same sections in a short time period.

Respectfully submitted,



Jeffrey M. Ward (# 016329)
President, Tennessee Board of Law
Examiners and Chair, Tennessee Law
Course Committee

Milligan and Coleman, PLLC
230 W. Depot Street
Greeneville, TN 37743



Lisa D. Perlen (#012749)
Executive Director
Tennessee Board of Law Examiners
511 Union Street, Suite 525
Nashville, TN 37219
(615) 741-3234

Attachments:

Appendix A – Proposed Amendments to Rule 7, Article I and Section 10.06 (redline)
Appendix B – Proposed Amendments to Rule 7, Article I and Section 10.06 (no mark-up)

Certificate of Service

I certify that the foregoing Comment to Proposed Changes to Tennessee Supreme Court Rule 6 has been forwarded on this the 17th day of July , 2018, by U.S. mail or email to:

Marsha Watson, Executive Director
Knoxville Bar Association
mwatson@knoxbar.org


Joycelyn Stevens, Executive Director
Tennessee Bar Association
jstevenson@tnbar.org

Anne Fritz, Executive Director
Memphis Bar Association
afritz@memphisbar.org

Monica Mackie, Executive Director
Nashville Bar Association
Monica.Mackie@nashvillebar.org

Sandy Garrett, Chief Disciplinary Counsel
Board of Professional Responsibility
sgarrett@tbpr.org

Judy McKissack, Executive Director
Commission on Continuing Legal Education
Judy.McKissack@cletn.com

By:  _____

LISA PERLEN (#012749)

Executive Director, Tennessee Board of Law
Examiners

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

2 **PREFACE**

3 The Board of Law Examiners for the State of Tennessee (the “Board”) is created as a part of the
4 judicial branch of government by the Supreme Court of Tennessee under its inherent authority to
5 regulate courts. The Supreme Court appoints the members of the Board and has general
6 supervisory authority over all the Board’s actions. The Supreme Court controls admission to the
7 practice law and acts on the basis of the Board’s Certificate of Eligibility.

8 **ARTICLE I. ADMISSION TO THE BAR OF TENNESSEE**

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

10 No person shall engage in the “practice of law” or the “law business” in Tennessee as defined in
11 T.C.A. § 23-3-101 and Tenn. Sup. Ct. R. 9, § 10.3(e), except under the authority of the Supreme
12 Court, unless ~~he or she~~ the person:

13 (a) ~~he or she~~ has been:

14 (1) admitted to the bar of the Supreme Court in accordance with Tenn. Sup. Ct. R. 6; and

15 (2) issued a license by the Supreme Court in accordance with this Rule and after having been
16 administered the oath in accordance with Tenn. Sup. Ct. R. 6 as set forth in this Rule; or

17 (b) ~~he or she~~ has been granted permission to engage in special or limited practice under ~~under the~~
18 ~~provisions of~~ sections 5.01(g), 10.01, 10.02, 10.03, 10.04, or 10.06 of this Rule; or

19 (c) ~~he or she~~ is practicing in compliance with Tenn. Sup. Ct. R. 8, RPC 5.5(c), Tenn. Sup. Ct. R.
20 8, RPC 5.5(d), or Tenn. Sup. Ct. R. 19 (pro hac vice).

21 **Sec. 1.02. License; Certificate of Eligibility Required.**

22 The Supreme Court shall grant a license evidencing admission to the bar of Tennessee only upon
23 presentation of a Certificate of Eligibility issued by the Board ~~pursuant to~~ under section 9.01 of
24 this Rule. The applicant ~~must~~ shall comply with Tenn. Sup. Ct. R. 6 and obtain ~~his or her~~ the
25 license on or before the shorter ~~of~~ first of the following to occur: ~~of~~ within

26 (a) expiration of bar examination or transferred UBE scores as provided in sections 3.05(b) and
27 4.07(c); or

28 (b) two years ~~of~~ from:

29 (1) (a) the date of the notice that the applicant successfully passed the bar examination; or

30 (1)(2) (b) the date of the notice of the Board’s approval of the application for admission
31 under Section 3.05, ~~or~~ Article V, or section 10.06 of this Rule.

32 (c) ~~All bar examination scores and transferred UBE scores and investigations are invalid upon~~
33 ~~the expiration of the applicable three-year period provided in section 4.07(e) of this Rule.~~ All
34 background investigations are invalid upon expiration of the two-year period applicable to
35 background investigations, as provided in under section 6.03. If the investigation expires after

36 | issuance of the Certificate of Eligibility but prior to licensing and expiration of scores, the
37 | applicant must request a supplemental background investigation as provided in section 6.03(b).

38 | **Sec. 1.03. Criteria for Issuance of the Certificate of Eligibility.**

39 | The Board shall issue a Certificate of Eligibility ~~pursuant to~~ under section 9.01 of this Rule only
40 | ~~upon its determination after determining~~ that the applicant:

41 | (a) is at least 18 years ~~of age~~ old;

42 | (b) has satisfied the educational requirements for admission specified by this Rule;

43 | (c) has passed the examination or examinations required by this Rule, or is eligible for admission
44 | without examination as hereinafter provided in section 3.05, ~~or in~~ Article V, or section 10.06;

45 | ~~(e)~~(d) has achieved a passing score on the Multistate Professional Responsibility Examination
46 | as provided in section 4.07(d);

47 | (e) has demonstrated the reputation and character that in the opinion of the Board indicates no
48 | reasonable basis for substantial doubts that the applicant will adhere to the standards of
49 | conduct required of attorneys in this State; and

50 | (f) has certified that he or she has read and is familiar with the Tennessee Rules of Professional
51 | Conduct;

52 | (g) has completed the Tennessee Law Course as provided in section 1.07;

53 | ~~(d)~~(h) has paid all fees for licensing and admission to this Board, the Clerk of the Appellate
54 | Court, and the Board of Professional Responsibility; and

55 | ~~(e)~~(i) has evidenced a commitment to serve the administration of justice in this State.

56 | **Sec. 1.04. Waiver of Examination.**

57 | If an applicant who has been admitted to practice in another state in the United States, the
58 | District of Columbia, or a U.S. Territory ~~ies~~ satisfies the other requirements for admission, and
59 | demonstrates competence to practice in Tennessee by meeting the criteria specified in this Rule,
60 | the Board may waive the requirement of passing an examination or providing a passing Uniform
61 | Bar Examination (“UBE”) score as provided in Article V.

62 | **Sec. 1.05. Status of Persons Admitted.**

63 | All persons admitted to the bar of Tennessee are by virtue of such admission: (a) officers of the
64 | courts of Tennessee, eligible for admission to practice in any state court in ~~this State~~ Tennessee,
65 | and entitled to engage in the “practice of law” or the “law business” as defined in section 1.01 of
66 | this Rule; and (b) subject to the duties and standards imposed from time to time on attorneys in
67 | this State.

68 | **Sec. 1.06. Existing Licenses.**

69 | Nothing in this Rule will be construed as requiring the relicensing of persons holding valid
70 | licenses to practice as of the date of its adoption.

71 **Sec. 1.07. Tennessee Law Course.**

72 The Tennessee Law Course is a mandatory course for applicants to the bar of Tennessee. The
73 Tennessee Law Course is intended to provide instruction in specific areas of Tennessee law not
74 addressed by the Uniform Bar Exam.

75 (a) The Tennessee Law Course must be successfully completed before an applicant is eligible
76 for admission to the Tennessee bar for the following types of applicants to the bar of
77 Tennessee:

78 (1) Section 3.01, Admission by Examination,

79 (2) Section 3.05, Admission by Transferred Uniform Bar Examination Score,

80 (3) Section 5.01, Admission Without Examination, or

81 (4) Section 10.06, Temporary License of Spouse of Military Service member

82 (b) The Board shall administer the Tennessee Law Course.

83 (c) The Supreme Court shall determine the content of the Tennessee Law Course.

84 (d) The fee for the Tennessee Law Course shall be set as part of the Schedule of Fees
85 promulgated by the Board of Law Examiners under section 11.01 of this Rule and collected
86 by the Board. The fee is in addition to fees charged for the application for admission to
87 practice law. Applicants must pay the fee before receiving access to the Tennessee Law
88 Course.

89 ~~(a)~~(e) Tennessee Law Course shall be a digital-exclusive course. The Board shall endeavor to
90 develop the Tennessee Law Course with reasonable regard for (1) standards compliance
91 such that the Tennessee Law Course shall be reasonably accessible to applicants using
92 industry-standard hardware and software and (2) internet speed in typical use. However, the
93 applicant is ultimately responsible for ensuring the adequacy of the applicant's hardware,
94 software, and internet connection.

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

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

99 (2) Applicants seeking admission under section 3.05 (transferred UBE score), section 5.01
100 (without examination) or section 10.06 (spouse of military service member) will receive
101 instructions upon approval of their application by the Board.

102 (g) The Tennessee Law Course must be successfully completed within one year of the date that
103 the applicant completes all other requirements to be eligible for a Tennessee law license.
104 Any applicant who successfully completes the Tennessee Law Course but does not
105 complete all other requirements for eligibility to obtain a law license within such one year
106 period must repeat the Tennessee Law Course course prior to admission.

107 | (h) The Tennessee Law Course is not continuing legal education, and no fee under Rule 21,
108 | section 8.02 shall be imposed on the Board or any applicant.

109 | (i) No person holding a valid Tennessee license as of the effective date of this Rule shall be
110 | required to take the Tennessee Law Course.

111 | **Sec. 10.06. Temporary License of Spouse of a Military Servicemember.**

112 | (a) **Qualifications.** An applicant who meets all of the following requirements listed in (1)
113 | through (11) below may be temporarily licensed and admitted to the practice of law in
114 | Tennessee, upon approval of the Board. Applicant:

- 115 | (1) is the spouse of an active duty servicemember of the United States Uniformed Services
116 | as defined by the Department of Defense and that servicemember is on military orders
117 | stationed in the State of Tennessee or Fort Campbell, Kentucky;
- 118 | (2) has been licensed and admitted by examination to practice law before the court of last
119 | resort in at least one other jurisdiction of the United States;
- 120 | (3) meets the educational requirements of sections 2.01 and 2.02 of this Rule;
- 121 | (4) has achieved a passing score on the Multistate Professional Responsibility Examination
122 | (MPRE) as it is established in Tennessee at the time of application;
- 123 | (5) is currently an active member in good standing in every jurisdiction to which the
124 | applicant has been admitted to practice, or has resigned or been administratively revoked
125 | while in good standing from every jurisdiction without any pending disciplinary actions;
- 126 | (6) is not currently subject to lawyer discipline in any other jurisdiction;
- 127 | (7) possesses the moral character and fitness required of all applicants for admission and
128 | licensing in this State;
- 129 | (8) is physically residing in Tennessee or Fort Campbell, Kentucky, due to the
130 | servicemember's military orders;
- 131 | (9) has never failed the Tennessee bar examination;
- 132 | (10) certifies that ~~he or she~~ the applicant has read and is familiar with the Tennessee Rules of
133 | Professional Conduct; and
- 134 | (11) has paid such fees as may be set by the Board.

135 |
136 | (b) **Application Requirements.** Any applicant seeking a temporary license under this section
137 | 10.06 to practice law in Tennessee shall:

- 138 | (1) file an application for Temporary License for Servicemember's Spouse and an
139 | application for character investigation, including all required supporting documents, in
140 | the manner established by the Board;
- 141 | (2) submit a copy of the applicant's Military Spouse Dependent Identification and
142 | documentation evidencing a spousal relationship with the servicemember;
- 143 | (3) provide a copy of the servicemember's military orders to a military installation in
144 | Tennessee or Fort Campbell, Kentucky, or a letter from the servicemember's command
145 | verifying that the requirement in Paragraph (a)(8) of this section is met;

- 146 (4) submit certificate(s) of good standing from the highest court of each state to which the
147 applicant has been admitted and disciplinary history(ies) to demonstrate satisfaction of
148 the requirements of paragraph (a)(5) of this section 10.06; ~~and~~
149 (5) pay the fee established pursuant to section 11.01 of this Rule; and
150 (6) comply with the provisions of section 1.07 of this Rule.

151

152 (End paragraph (b); no changes to balance of Section 10.06)

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123 licensing in this State;

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125 servicemember's military orders;

126 (9) has never failed the Tennessee bar examination;

127 (10) certifies that the applicant has read and is familiar with the Tennessee Rules of
128 Professional Conduct; and

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130 (b) **Application Requirements.** Any applicant seeking a temporary license under this section
131 10.06 to practice law in Tennessee shall:

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133 application for character investigation, including all required supporting documents, in
134 the manner established by the Board;

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136 documentation evidencing a spousal relationship with the servicemember;

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138 Tennessee or Fort Campbell, Kentucky, or a letter from the servicemember's command
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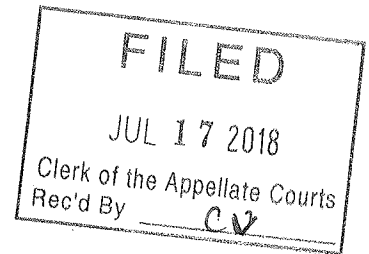
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141 applicant has been admitted and disciplinary history(ies) to demonstrate satisfaction of
142 the requirements of paragraph (a)(5) of this section 10.06;

143 (5) pay the fee established pursuant to section 11.01 of this Rule; and

144 (6) comply with the provisions of section 1.07 of this Rule.

145 (End paragraph (b); no changes to balance of Section 10.06)

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE



**IN RE: AMENDMENT OF RULE 6, RULES OF THE TENNESSEE
SUPREME COURT**

No. ADM2018-713

**COMMENT FROM THE UNDERSIGNED LAW PROFESSORS AT THE
UNIVERSITY OF TENNESSEE COLLEGE OF LAW**

We appreciate the opportunity to provide a comment in response to the Court's proposal to adopt a Tennessee Law Course as an admission requirement for Tennessee attorneys. We understand that the Court's proposal is made in conjunction with its adoption of the Uniform Bar Examination (UBE).

As University of Tennessee law professors educating many students who will practice in Tennessee, we endeavor to introduce unique aspects of Tennessee law and practice in the classroom. We have no doubt that our colleagues at Tennessee's other law schools do the same. But we are mindful that many bar applicants are educated in other states where Tennessee law is not a point of discussion. Moreover, all new Tennessee attorneys—regardless of where they received their law degree—can benefit from learning or reviewing key aspects of Tennessee law and practice.

We view the adoption of the UBE as a positive development and the Tennessee Law Course as an opportunity. While bar exams have traditionally emphasized memorization, the Tennessee Law Course could reinforce the research necessary to competently represent clients in practice in Tennessee.

In this comment, we provide some suggestions for possible content of a Tennessee Law Course and offer our services in developing and teaching the course.

Tennessee Law Course Objectives and Content

The Tennessee Law Course could help prepare new attorneys for at least three things they will do in practice in Tennessee: (1) identifying significant issues in Tennessee law; (2) researching relevant bodies of Tennessee law; and (3) navigating the Tennessee court system. These appear to be appropriate and achievable objectives for the course.

In discussing the possible content for a Tennessee Law Course, we considered the aspects of Tennessee law that will no longer be tested on the essay portion of the UBE. The current essay exam may test Tennessee state law in the following key subject matter areas: (1) Constitutional Law; (2) Criminal Law and Procedure; (3) Contracts; (4) Torts; (5) Property; (6) Evidence; (7) Civil Procedure; (8) Business Organizations; (9) Wills and Estates; (10) Family Law; (11) Professional Responsibility; and (12) Conflicts of Laws.¹ While these subjects (other than Professional Responsibility) are still on the essay portion of the UBE, it is our understanding that specific aspects of Tennessee law will not be tested.

One approach that the Court might consider is a Tennessee Law Course that addresses each of these twelve subject matter areas. In each area, bar applicants could be introduced to: (1) important or unique aspects of Tennessee law;² and (2) relevant bodies of Tennessee law and resources for researching the law.

For example, even though the Multistate Professional Responsibility Examination tests an applicant's understanding of the Model Rules of Professional Conduct, it does not test the Tennessee Rules of Professional Conduct. Tennessee's professional conduct rules are different from the Model Rules in some key respects. The Tennessee Law Course could provide instruction about unique provisions of the Tennessee Rules of Professional Conduct, key cases concerning malpractice and breach of fiduciary duty, and resources such as the Tennessee Board of Professional Responsibility website with its links to the rules, formal ethics opinions, and information for obtaining advice from ethics counsel.

We are mindful that Tennessee law is wholly unique in some areas. For instance, Tennessee's limited liability company law is the only law of its kind in the nation—providing for three types of limited liability company—with unique structures and substantive law attached to each. This is a significant departure from the two forms available under the uniform law and the laws of other states. We take the view that it is particularly important to identify and characterize these one-of-a-kind bodies of law for new bar members.

Course Handbook

One benefit of the Tennessee Law Course is that the course materials could become a resource for new (and even seasoned) Tennessee attorneys as they begin their legal research. We envision an annually updated Tennessee Law Course

¹ The current Tennessee essay exam also tests Commercial Transactions (UCC Articles 1, 2, and 9) and Restitution and Remedies. We believe that the UCC is adequately addressed by the UBE and that relevant aspects of Restitution and Remedies could be included in other subject areas.

² The Tennessee court system could be discussed in the civil procedure segment of the course.

Handbook that addresses each of the twelve subject matter areas, including links to key research resources.

While some time would be involved in annually updating the Course Handbook, the time investment would be most significant in the first year. The annual update to the Course Handbook could be made available for free on the Court's website.

Course Delivery Method

Whether course lectures are delivered online or in-person (or both), we think that each lecture could be of varying length, ranging from twenty minutes to an hour. After the Course Handbook is developed, it may become apparent that lectures are unnecessary on certain topics because the written materials are so straightforward and accessible to new attorneys. We do not envision dry lectures with presenters reading from the Course Handbook. Instead, the goal should be to provide informative talks that help new attorneys feel excited about (and prepared for) the work they will do as lawyers in Tennessee.

Ideally, a new attorney would be allowed to select the course format—online or in-person—that works best for his or her needs. An in-person course is typically more engaging and allows for interaction between teacher and students. The in-person course may be a good fit for new attorneys who have the time and inclination to finish the entire course in a single day. The in-person course could potentially be offered twice a year. Offering the in-person course in a single location would be an option if most students could be expected to opt for the online course.

We see several advantages of an online course option (with lectures recorded from the in-person course). First and foremost, the online course could be completed throughout the year at the attorney's own pace. Second, an online course could be accessed anywhere in the state. Third, an online course would provide uniform content and instruction for all new Tennessee attorneys. Finally, with an online course, it would be relatively simple to include a few (3-5) multiple-choice questions at the end of each segment, the majority of which must be answered correctly before the attorney gets credit for completing the segment.

Our Offer to Develop and Teach the Course

As professors at the University of Tennessee College of Law, we feel a special responsibility and pride in educating Tennessee lawyers. We would be pleased to serve the Court by developing the Course Handbook and teaching the Tennessee Law Course. For over 125 years, UT Law has endeavored to provide an outstanding legal education to our students. We would bring this same commitment to the Tennessee Law Course.

Beyond our knowledge of the subjects we regularly teach at UT Law, we have other relevant experiences that we would draw upon in developing the Tennessee Law Course. In recent years, we have developed and taught a daylong Tennessee bar review course as a way to give our graduates a jumpstart on studying for the bar exam. Through the years, many UT Law professors have taught Tennessee law in commercial bar preparation courses and developed related teaching materials. In addition, many of us have served on commissions, committees, and played other roles in drafting and proposing changes to Tennessee law. Finally, in partnership with various bar associations and other groups, many of us give back to the Tennessee legal community by teaching Tennessee Continuing Legal Education (CLE) courses.

We would be able to leverage this knowledge and experience in developing a Tennessee Law Course that will serve all of the new attorneys in Tennessee. Our teaching experience would allow us to develop the course in the relatively short time period necessary to offer it to those new attorneys who take the February 2019 bar examination.

Course Timing

We know that the Court has proposed the Tennessee Law Course as a post-admission requirement. We like this approach. With some context of law practice, the Tennessee Law Course may be more meaningful and helpful to new Tennessee lawyers. They may also have more energy to devote to the course after they have finished law school and bar exam preparation.

Course Fees

In light of the other costs of bar admission, it would be ideal if the course could be offered with no additional fee to bar applicants. We hope that the cost of administering the course could be contained by the contribution of time and effort by those who develop and teach the course as a service to the bar.

Beyond the Tennessee Law Course: Bridge-to-Practice CLEs for New Attorneys

Once new attorneys start practicing law, they face challenges and have questions they did not have in law school. We have discussed and appreciate the value of so-called Bridge-to-Practice or Bridge-the-Gap CLE programming that guides new lawyers in developing the practical knowledge and skills needed in day-to-day practice.³ We think that such programming would complement the Tennessee Law Course.

³ Almost twenty years ago, the Court considered, but ultimately rejected, a TBA petition to amend Rule 21 to adopt a Professional Practice Skills program. The proposal is described in detail in a 1999 *Tennessee Bar Journal* article. Douglas A.

With some guidance from the Court or the Tennessee Commission on Continuing Legal Education about desired topics and teaching methods,⁴ bar associations and other qualified organizations could develop Bridge-to-Practice CLE programs to be approved by the Commission. The programs could fall within categories such as: (1) issues of interest in a select practice area (employment law practice, administrative law practice, etc.); (2) issues of interest in a practice type (solo practice, government practice, etc.); (3) managing relationships with clients and employers; (4) skills development (taking and defending depositions, drafting contracts, etc.); (5) personal development and care (mental health, substance abuse, etc.); and (6) professionalism and professional responsibility challenges for new lawyers.

Rather than requiring all new attorneys to take the same Bridge-to-Practice CLEs, each new attorney could be allowed to choose the CLE programs that best fit their interests, challenges, and practice needs. The Court could set a minimum number of CLE hours that a new attorney must earn in Bridge-to-Practice credits in the first two years of practice.

This is a flexible approach that would be easy to implement and that might generate innovative and practical programs from CLE providers. Based on course evaluations, the CLE Commission and Court would be able to determine issues such as: whether more guidance is needed in how the courses are developed and taught; if certain Bridge-to-Practice CLEs (perhaps because they are so well-received or universally applicable) should be mandatory; or whether the required number of Bridge-to-Practice CLE hours should be increased or decreased.

Conclusion

We appreciate the opportunity to provide this comment to the Court and remain at its disposal to respond to any questions or provide further information.

Blaze, B. Riney Green, and Pamela L. Reeves, *Bridging the Gap: A Professional Practice Skills Program for New Lawyers*, TENN. B.J. 13 (Apr. 1999).

⁴ *See id.* at 15 (stating that teaching methods for the courses “should include extensive use of small discussion groups, demonstrations, simulations, and question-and-answer periods”).

Dated: July 17, 2018

Respectfully submitted,

Eric Franklin Amarante
Brad Areheart
Wendy Bach
Teri Dobbins Baxter
Zack Buck
Judy Cornett
Joan MacLeod Heminway
Michael Higdon
Lucy Jewel
Brian Krumm
George Kuney
Michelle Kwon
Alex Long
Joy Radice
Briana Rosenbaum
Paula Schaefer
Valorie Vojdik
Penny White
David Wolitz

The University of Tennessee
College of Law
1505 W. Cumberland Ave.
Knoxville, TN 37922
865-974-6793



July 5, 2018

FILED
JUL - 5 2018
Clerk of the Appellate Courts
Rec'd By _____

VIA E-Mail: appellatecourtclerk@tncourts.gov

Knoxville Bar Association
505 Main Street, Suite 50
P.O. Box 2027
Knoxville, TN 37901-2027
PH: (865) 522-6522
FAX: (865) 523-5662
www.knoxbar.org

James Hivner, Clerk of Appellate Courts
Tennessee Supreme Court
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

Re: Petition to Amend Tennessee Supreme Court Rule 6; No. ADM2018-00713

Dear Mr. Hivner:

Pursuant to the Tennessee Supreme Court's Order filed on May 30, 2018, the Knoxville Bar Association ("KBA") Professionalism Committee ("Committee") has carefully considered the proposed changes to Tennessee Supreme Court Rule 6 regarding the Tennessee Law Course (the "Course") for new lawyers. After extensive discussion, the Committee recommended that the KBA Board of Governors (the "Board") file a comment that the Course be a requisite to being admitted. The content of the Course should include ethics, procedure, evidence, and court structure, plus other distinctive aspects of Tennessee law. The Committee believes the Course should be no longer than 8 hours, be prerecorded and offered online in order to be available 365 days a year. The Committee further recommended that the cost should be minimal or equal to the cost of administration and that there should be a formal certification to indicate completion of the Course.

At the KBA Board of Governors' (the "Board") meeting held on June 20, 2018, the Committee presented a report of its recommendations regarding the specifics of the Course. Following the Committee's presentation and thorough discussion by the Board, the Board as a whole unanimously adopted the Committee's recommendation to file this comment in support of the Petition.

As always, the KBA appreciates the opportunity to comment on proposed Rules and changes to such Rules promulgated by the Tennessee Supreme Court.

Sincerely,

Keith H. Burroughs, President
Knoxville Bar Association

cc: Marsha Watson, KBA Executive Director (via e-mail)
KBA Executive Committee (via e-mail)

Officers

Keith H. Burroughs
President

Wynne du Mariau Caffey-Knight
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T. Mitchell Panter

M. Samantha Parris

Robert E. Pryor, Jr.

Mike A. Towe

Executive Director

Marsha S. Watson

mwatson@knoxbar.org

*Yvonne K. Chapman
Attorney at Law*

*1313 Pebble Creek Lane
Memphis, Tennessee 38120*



Phone: 901-494-4420

June 18, 2018

The Honorable Jeffrey S. Bivins, Chief Justice
The Honorable Cornelia A. Clark, Justice
The Honorable Holly Kirby, Justice
The Honorable Sharon G. Lee, Justice
The Honorable Roger A. Page, Justice

Tennessee Supreme Court
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

Attn: James M. Hivner, Clerk of Appellate Courts

Transmitted via email to appellatecourtclerk@tncourts.gov

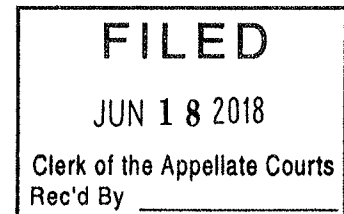
IN RE: AMENDMENT OF RULE 6, RULES OF THE TENNESSEE SUPREME COURT
No. ADM2018-713

Dear Chief Justice Bivins, Justice Clark, Justice Kirby, Justice Lee, and Justice Page:

This comment letter is in response to the Order of the Supreme Court of Tennessee, filed April 19, 2018, requesting written comments respecting proposed revisions to Tennessee Supreme Court Rule 6.

In the interest of disclosure, I have chaired the Memphis Bar Association Professionalism Committee since January 2017; however, these comments are made by me individually and not as chair or on behalf of that committee.

I have a background and continuing interest in the subject matter of this proposed rule change – focusing on developing the skills and professionalism of new lawyers admitted to the bar. Through the Memphis Bar Association, I assisted with efforts to establish a formal mentor-training course and co-presented the pilot training course in 2015. In 2017, the professionalism committee began providing panelists of experienced lawyers to present programs on lawyer mental health, professionalism and career guidance to law students in the externship course at the Memphis Law School. In 2006, I developed the curriculum for



a mandatory pre-admission course¹ for the Washington State Bar Association (WSBA) and managed the statewide program implementing this course until January 2008.

As I developed curriculum for each of these programs, I have studied the issues that necessitate them, including the 1992 ABA Report of the Task Force on Law School and the Profession: Narrowing the Gap, titled *Legal Education and Professional Development- An Education Continuum (MacCrate Report), Overview of Fundamental Lawyering Skills and Values*, commonly referred to as the *MacCrate Report*.²

In its introduction, the *MacCrate Report* explains,

[T]he title of this Report attempts to correct the distortion, and suggests a different and more accurate vision of the relationship between legal education and the practicing bar. Both communities are part of one profession. The skills and values of the competent lawyer are developed along a continuum that starts before law school, reaches its most formative and intensive stage during the law school experience, and continues throughout a lawyer's professional career. Legal educators and practicing lawyers should stop viewing themselves as separated by a "gap" and recognize that they are engaged in a common enterprise—the education and professional development of the members of a great profession. *MacCrate Report*, p. 3.

The Task Force “examined the process by which lawyering skills and professional values are acquired: before law school, during law school and after law school,” provided a “Statement of Skills and Values” along with recommendations on how to build and develop those skills and values. Those Fundamental Lawyering Skills and Fundamental Values of the Profession reflect a list of skills and values that an individual needs to become a competent and responsible member of the profession, the skills and values that other practitioners, legal employers, and judges often expect new attorneys to possess.

The Report directed its recommendations, in particular, to providers of continuing legal education “to assist new lawyers to acquire necessary skills and values and also in the development of other CLE programs to enrich generally the quality of instruction and enhance the process of professional development.” *MacCrate Report*, p. 328.

Additional recommendations directed to licensing authorities suggested mandating transition education and mentoring programs. *MacCrate Report*, p. 285-304, 334-335.

¹ See Washington Supreme Court APR 5 (b)(2), e(1) and (4) Preadmission Requirements. (last amended September 1, 2017). The preadmission program is a four-hour educational course that is prerequisite to admission to practice law in Washington State. The applicant must complete the course after being notified of passing the bar examination or qualifying for admission by reciprocity.
http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=APR&ruleid=gaapr05, (retrieved 2018-06-18).

² *Legal Education and Professional Development- An Education Continuum (MacCrate Report), Overview of Fundamental Lawyering Skills and Values* (ABA, 1992),
[https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_legal_education_and_professional_development_maccrate_report\).pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_legal_education_and_professional_development_maccrate_report).pdf). (retrieved 2018-06-18).

More recently, in a Foreword to the 2007 *Best Practices Report*³, Bob MacCrate reiterated, the “central message... is that law schools should broaden the range of lessons they teach, reducing doctrinal instruction that uses the Socratic dialogue and the case method; integrate the teaching of knowledge, skills and values, and not treat them as separate subjects addressed in separate courses; and give much greater attention to instruction in professionalism.”

As stated in *Twenty Years After the MacCrate Report*⁴, “law schools have been urged to move from a focus primarily on legal doctrine and theory to include more of an emphasis on programs that prepare students for the profession ... to teach more skills, to develop habits and values, to modify or expand the curriculum to prepare students for the global, regulatory world we live in, and to ensure that students understand the economics of the market and are business-literate.” See *Twenty Years*, p. 8.

Perhaps in response to MacCrate and its aftermath, the Tennessee Commission on Continuing Legal Education and Specialization (“Commission”) established the “Mentoring Initiative” in an effort to provide beginning lawyers with access to more resources and to encourage veteran attorneys to help guide and develop new lawyers.⁵ A pilot program offering CLE credits began July 1, 2013, but expired December 31, 2016.⁶

Should this Court decide that the additional hurdle for new lawyers suggested by this proposed rule – a mandatory post-admission course - would make a difference to the profession overall, then any curriculum design should deviate from the legal doctrine and theory suggested in the proposal. Rather, its focus should be on those skills, values, professionalism, and business development knowledge as continually recommended beginning with the report of the MacCrate commission.

³ See ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 1 (Clinical Legal Education Association 2007) (“Best Practices Report”).

⁴ *Twenty Years After the MacCrate Report: A Review of the Current State of the Legal Education Continuum and the Challenges Facing the Academy, Bar, and Judiciary*, Committee on the Professional Educational Continuum, Section on Legal Education and Admissions to the Bar, American Bar Association, March 20, 2013, https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/june2013councilmeeting/2013_open_session_e_report_prof_educ_continuum_committee.authcheckdam.pdf. (retrieved 2018-06-18).

⁵ See the Tennessee Commission on Continuing Legal Education and Specialization Press Release dated March 7, 2013, at <http://www.cletn.com/index.php/mentoring-press-release>, (retrieved 2018-06-18).

⁶ Rule 21, ¶4.07(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, 2016, unless affirmatively readopted by the Supreme Court. <http://www.tsc.state.tn.us/rules/supreme-court/21>, (retrieved 2018-06-18).

The Tennessee CLE Commission was on the right track when it developed its mentoring worksheets,⁷ as these provide excellent curriculum resources to address the skills, values, professionalism, and fundamental business issues facing lawyers.

“[I]nstruction on areas of Tennessee civil and criminal procedure, real estate, wills, estates and trusts, business organizations, family law, and administrative law,” as listed in the proposed rule, will be of little value to recently admitted attorneys, particularly those who were just examined on those subjects through a bar admission test.

One other sincere concern about the proposed rule is its requirement to set and collect a fee for the mandatory post-admission course. I urge the proponents to consider a no-fee program. An additional fee for this mandatory program will further burden law graduates and new bar applicants who are encumbered with significant debt from law school loans and the cost of admission to the bar. The failure to pay this course fee, a requirement for compliance, subjects the new attorney to suspension from practice and additional financial penalties.

A final observation is that so few have filed comments regarding this proposed rule as of this deadline date; this is astounding to me.

Thank you for the opportunity to comment.

Respectfully,

/s/Yvonne K. Chapman

⁷ <http://www.cletn.com/index.php/general-information-2/mentoring/worksheets>, (retrieved 2018-06-18).

Fundamental Lawyering Skills

A. Problem Solving

In order to develop and evaluate strategies for solving a problem or accomplishing an objective, a lawyer should be familiar with the skills and concepts involved in:

1. Identifying and diagnosing the problem
2. Generating alternative solutions and strategies
3. Developing a plan of action
4. Implementing the plan
5. Keeping the planning process open to new information and new ideas

B. Legal Analysis and Reasoning

In order to analyze and apply legal rules and principles, a lawyer should be familiar with the skills and concepts involved in:

1. Identifying and formulating legal issues
2. Formulating relevant legal theories
3. Elaborating legal theory
4. Evaluating legal theory
5. Criticizing and synthesizing legal argumentation

C. Legal Research

In order to identify legal issues and to research them thoroughly and efficiently, a lawyer should have:

1. Knowledge of the nature of legal rules and institutions
2. Knowledge of and ability to use the most fundamental tools of legal research
3. Understanding of the process of devising and implementing a coherent and effective research design

D. Factual Investigation

In order to plan, direct, and (where applicable) participate in factual investigation, a lawyer should be familiar with the skills and concepts involved in:

1. Determining the need for factual investigation
2. Planning a factual investigation
3. Implementing the investigative strategy
4. Memorializing and organizing information in an accessible form
5. Deciding whether to conclude the process of fact-gathering
6. Evaluating the information that has been gathered

E. Communication

In order to communicate effectively, whether orally or in writing, a lawyer should be familiar with the skills and concepts involved in:

1. Assessing the perspective of the recipient of the communication
2. Using effective methods of communication

F. Counseling

In order to counsel clients about decisions or course of action, a lawyer should be familiar with the skills and concepts involved in:

1. Establishing a counseling relationship that respects the nature & bounds of a lawyer's role
2. Gathering information relevant to the decision to be made
3. Analyzing the decision to be made
4. Counseling the client about the decision to be made
5. Ascertaining and implementing the client's decision

G. Negotiation

In order to negotiate in either a dispute-resolution or transactional context, a lawyer should be familiar with the skills and concepts involved in:

1. Preparing for negotiation
2. Conducting a negotiation session
3. Counseling the client about the terms obtained from the other side in the negotiation and implementing the client's decision

H. Litigation and Alternative Dispute-Resolution Procedures

In order to employ - or to advise a client about - the options of litigation and alternative dispute resolution, a lawyer should understand the potential function and consequences of these processes and should have a working knowledge of the fundamentals of:

1. Litigation at the trial-court level
2. Litigation at the appellate level
3. Advocacy in administrative and executive forums
4. Proceedings in other dispute-resolution forums

I. Organization and Management of Legal Work

In order to practice effectively, a lawyer should be familiar with the skills and concepts required for efficient management, including:

1. Formulating goals and principles for effective practice management
2. Developing systems and procedures to ensure that time, effort, and resources are allocated efficiently
3. Developing systems and procedures to ensure that work is performed and completed at the appropriate time
4. Developing systems and procedures for effectively working with other people
5. Developing systems and procedures for efficiently administering a law office

J. Recognizing and Resolving Ethical Dilemmas

In order to represent a client consistently with applicable ethical standards, a lawyer should be familiar with:

1. The nature and sources of ethical standards
2. The means by which ethical standards are enforced
3. The processes for recognizing and resolving ethical dilemmas

Fundamental Values of the Profession

A. Provision of Competent Representation

As a member of a profession dedicated to the service of clients, a lawyer should be committed to the values of:

1. Attaining a level of competence in one's own field of practice
2. Maintaining a level of competence in one's own field of practice
3. Representing clients in a competent manner

B. Striving to Promote Justice, Fairness, and Morality

As a member of a profession that bears special responsibilities for the quality of justice a lawyer should be committed to the values of:

1. Promoting justice, fairness, and morality in one's own daily practice
2. Contributing to the profession's fulfillment of its responsibility to ensure that adequate legal services are provided to those who cannot afford to pay for them
3. Contributing to the profession's fulfillment of its responsibility to enhance the capacity of law and legal institutions to do justice

C. Striving to Improve the Profession

As a member of a self-government profession, a lawyer should be committed to the values of:

1. Participating in activities designed to improve the profession
2. Assisting in the training and preparation of new lawyers
3. Striving to rid the profession of bias based on race, religion, ethnic origin, gender, sexual orientation, or disability, and to rectify the effects of these biases

D. Professional Self-Development

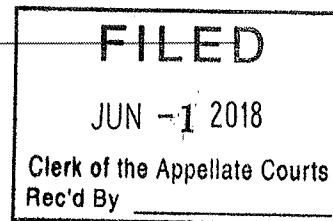
As a member of a learned profession, a lawyer should be committed to the values of:

1. Seeking out and taking advantage of opportunities to increase his or her knowledge and improve his or her skills
2. Selecting and maintaining employment that will allow the lawyer to develop as a professional and to pursue his or her professional and personal goals

appellatecourtclerk - Tennessee Law Course

ADM 2018-00713

From: Myers Morton <Myers.Morton@knoxcounty.org>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 6/1/2018 6:03 AM
Subject: Tennessee Law Course



Clerk Hivner:

The opportunity to comment is appreciated.

The Supreme Court *appears* unsatisfied with how both law schools are teaching law students and continuing legal education educates attorneys.

The practice of law for private practitioners, especially small firms, is very, very difficult, and the time, effort and expense to attend this 2nd law school *could* add to the struggle.

J. Myers Morton
Deputy Law Director
Knox County, Tennessee
400 W. Main Street
Suite 612 City-County Building
Knoxville, Tennessee 37902
Cell: (865) 680-8424
Phone: (865) 215-2327

CONFIDENTIAL:

This is a privileged and confidential communication under the common interest doctrine, joint defense agreement or attorney client privilege, and is intended only for the person(s) to whom it is addressed. It is not to be divulged in part or in whole, nor is the substance of it to be divulged in part or in whole, to anyone other than the addressee(s) without the express permission of the sender. If you have received this message and are not the intended recipient, please notify the Knox County Law Director's Office immediately at 865-215-2327, and delete the message from your system. Thank you.

appellatecourtclerk - RE: Tennessee Law Course

From: Myers Morton <Myers.Morton@knoxcounty.org>
To: appellatecourtclerk <appellatecourtclerk@tncourts.gov>
Date: 6/1/2018 7:47 AM
Subject: RE: Tennessee Law Course

Clerk Hivner:

Oops! I apologize.

"...The Court hereby solicits written comments from judges, lawyers, bar associations, members of the public, and any other interested parties with respect to the attached proposed revisions to Tennessee Supreme Court Rule 6..."

<https://s3.amazonaws.com/membercentralcdn/sitedocuments/kba/kba/0930/893930.pdf?AWSAccessKeyId=0D2JQDSRJ497X9B2QRR2&Expires=1527857052&Signature=ZgU3o6fFcmFoOBPa1INN6cOFhY%3D&response-content-disposition=inline%3B%20filename%3D%22Order%20for%20Rule%206%20amendment%20comments%2Epdf%22%3B%20filename%2A%3DUTF-8%27%27Order%2520for%2520Rule%25206%2520amendment%2520comments%252Epdf>

Amendments to **Rule 6**.

The Tennessee Law Course.

I am also merely a deputy law director.

Thank you for the opportunity to assist.

Myers

From: appellatecourtclerk [appellatecourtclerk@tncourts.gov]
Sent: Friday, June 01, 2018 8:34 AM
To: Myers Morton <Myers.Morton@knoxcounty.org>
Subject: Re: Tennessee Law Course

Director Morton:

Could you be more specific as to the purpose of your comment? Is this related to a specific proposed rule change?

Jim Hivner

Clerk of the Appellate Courts

>>> Myers Morton <Myers.Morton@knoxcounty.org> 6/1/2018 6:03 AM >>>

Clerk Hivner:

The opportunity to comment is appreciated.

Lisa Marsh - Proposed Rule 6 comments

ADM2018-713

FILED

MAY 10 2018

Clerk of the Appellate Courts
Rec'd By LM

From: jeremy gourley <tnlawman03@gmail.com>
To: <appellatecourtclerk@tncourts.gov>
Date: 5/10/2018 2:53 PM
Subject: Proposed Rule 6 comments

I believe the proposal of requiring new admittees to the bar to take and successfully pass a Tennessee Law course and examination not only to be grounded in good common-sense but is a necessity for the safety of the public-at-large and the expectation of our profession.

I would also suggest extending the requirement to pro-hac-vice attorneys who will be practicing in the state for more than a period of 30 days as a condition of their temporary admission. The reason for this last suggestion is to reduce, or discourage, the number of out-of-state attorneys who move into the State, or are relocated from other law firm offices to assist on a case long-term, from practicing in Tennessee under the pro-hac-vice guise permanently or for extended periods of time without becoming properly licensed and most importantly, educated on Tennessee law and practice.

Thank you,

--

Jeremy Gourley
615-568-0865

Example is not the main thing in influencing others.

It is the only thing. - Albert Schweitzer

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