

Lisa Marsh - IN RE: AMENDMENT OF RULE 7, RULES OF THE TENNESSEE SUPREME COURT (No. ADM2019-00108)

FILED
FEB 14 2019
Clerk of the Appellate Courts
Rec'd By LM

From: Matt Murphy <MMurphy@smythehuff.com>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 2/14/2019 9:31 AM
Subject: IN RE: AMENDMENT OF RULE 7, RULES OF THE TENNESSEE SUPREME COURT (No. ADM2019-00108)

To Whom It May Concern:

I am an active member of the Tennessee Bar, and respectfully submit this comment in the above reference matter. I support the proposed Amendments to Rule 7 of the Rules of the Tennessee Supreme Court (No. ADM2019-00108) as recommended by the Tennessee Board of Law Examiners, and as filed by the Court of January 17, 2019.

This is especially true for the proposed deletion of former Rules 3.05(a)(3) and 5.01(e) which defeated the entire purpose of a uniform licensing exam by needlessly restricting admission and creating an unintended situation where a test taker who had failed a prior exam sitting in another state would be admitted while a test taker who had failed a prior Tennessee exam would not be admitted, even if they scored the same score on the same test.

Respectfully submitted,
Matthew R. Murphy (BPR #24627)

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FEB 11 2019

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From: "Hayden, Justin" <Justin.Hayden@PNFP.COM>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 2/8/2019 6:30 PM
Subject: Amendment of Rule 7, Rules of the Tennessee Supreme Court (No. ADM2019-00108)

I, Justin T. Hayden, an active member of the Tennessee Bar, respectfully submit this comment in the above-referenced matter. I strongly support and urge the Court to adopt all proposed Amendments to Rule 7, of Rules of the Tennessee Supreme Court (No. ADM2019-00108) as recommended by the Tennessee Board of Law Examiners, and as filed by the Court on January 17, 2019. Rules 3.05(a)(3) and 5.01(e) are unfair, prejudicial, and inconsistent with the over-whelming majority of jurisdictions that have adopted the Uniform Bar Exam. Accordingly, the same should be deleted in their entirety, as proposed. Respectfully submitted, /s Justin T. Hayden

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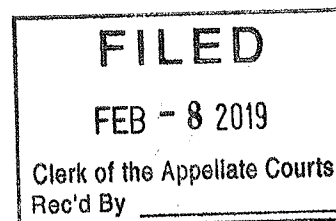
From: "Todd, Miranda" <Miranda.Todd@PNFP.COM>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 2/11/2019 10:30 AM
Subject: Amendment of Rule 7, Rules of the Tennessee Supreme Court (No. ADM2019-00108)

I, Miranda Todd, an active member of the Tennessee Bar, respectfully submit this comment in the above-referenced matter. I strongly support and urge the Court to adopt all proposed Amendments to Rule 7, of Rules of the Tennessee Supreme Court (No. ADM2019-00108) as recommended by the Tennessee Board of Law Examiners, and as filed by the Court on January 17, 2019. Rules 3.05(a)(3) and 5.01(e) are unfair, prejudicial, and inconsistent with the over-whelming majority of jurisdictions that have adopted the Uniform Bar Exam. Accordingly, the same should be deleted in their entirety, as proposed. Respectfully submitted, /s Miranda Todd

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IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE



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

No. ADM2019-00108

RESPONDENT COMMENTS TO PROPOSED RULE 7 AMENDMENTS

Respondent, David M. Smythe, an active member of the Tennessee Bar, submits the following comments to the Court's proposed Amendments to Rule 7 of the Tennessee Supreme Court's Rules:

1. Respondent is in favor of all proposed Amendments to Rule 7 as filed by the Court on January 17, 2019.

2. Respondent is particularly in favor of the Court's decision to delete former Rules 3.05(a)(3) and 5.01(e) in their entirety. Both of those Rules had provided that applicants who had been unsuccessful on the Tennessee Bar examination within the last five (5) years would be ineligible for admission to the Tennessee Bar by either Uniform Bar Exam ("UBE") transfer or by admission by comity / without exam (the "No Prior Bar Exam Failure Requirement").

3. Former Rule 3.05(a)(3) and its No Prior Bar Exam Failure Requirement was particularly troubling. Initially, this No Prior Bar Exam Failure Requirement in the Court's new UBE Transfer Rules appeared to have been included because Tennessee had a long standing similar provision in Rule 5.01(e) (admission by comity / without exam). The inclusion of that similar requirement, though, in former Rule 3.05(a)(3) did violence with the very purpose of the UBE - - which offers both uniformity of Bar Exam and portability. More importantly, though, this No Prior Bar Exam Failure Requirement in former Rule 3.05(a)(3) also put Tennessee in the

distinct minority (one of only three) of the thirty-four (34) states / territories which have adopted the UBE.¹

4. Moreover, former Rule 3.05(a)(3) was unfair and served no real purpose. It made no sense for Tennessee to delay admission (up to five (5) years) of a UBE transfer applicant who successfully scored 270 or more on a UBE exam in any states / territories which offer the UBE exam simply because the applicant had previously failed a Tennessee Bar exam within the last five (5) years. The only remedy for such an applicant under former Rule 3.05(a)(3) would be for the applicant to take again (in Tennessee) the very same UBE exam they had already successfully sat for in a sister UBE state or territory. This was unfair to the applicant and served no state purpose. The deletion of former Rule 3.05(a)(3) eliminates this potential dilemma and puts Tennessee with the majority of sister UBE states / territories which have no similar UBE restriction.

5. The Court's decision to also delete former Rule 5.01(e) and its No Prior Bar Exam Failure Requirement regarding comity / no exam admission in Tennessee is also well taken. Per **Exhibit A**, Tennessee was in the majority of other UBE jurisdictions which have similar No Prior Bar Exam Failure Requirement for this type of comity / no exam admission.

In practice, though, this Tennessee Rule (no prior exam failure in five (5) years) infrequently applied to applicants as most comity / no exam applicants were relying on five (5) of last seven (7) years of active law practice in another jurisdiction (without any disciplinary actions or other issues). For those comity / no exam applicants under former Rule 5.01(e) who

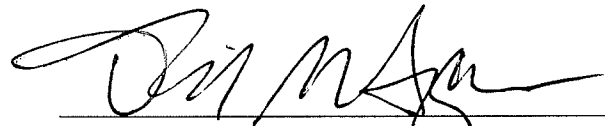
¹ See Uniform Bar Exam info summary attached as **Exhibit A** - - setting out the (34) jurisdictions which have (or are in the process) of adopting the UBE, the UBE minimum score required for each jurisdiction, and a comparison of the No Prior Bar Exam Failure Requirement in many jurisdictions regarding reciprocity / comity (without exam) versus any similar requirements for admission by UBE transfer.

had taken and failed a Tennessee Bar exam within the last five (5) years, though, this Rule deletion is well taken.

CONCLUSION

For all these reasons, all of Tennessee’s proposed Amendments to Rule 7 should be approved in their entirety. Further, the Tennessee Bar and all future Tennessee Bar admission applicants - - whether by UBE transfer or by comity / without exam - - are better served by no longer having either of these former No Prior Bar Exam Failure Requirement rules in force.

Respectfully submitted,



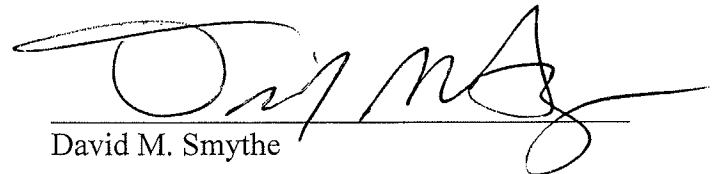
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been placed in the U. S. mail, postage pre-paid and properly addressed to:

Tennessee Board of Law Examiners
511 Union Street
Nashville, Tennessee 37219
Attn: Lisa Perlan

this 5th day of February, 2019.



David M. Smythe

Uniform Bar Exam Info Summary

No.	State/Territory	In-State/ Transfer Score	UBE Transfer Eligibility Months	UBE Transfer Admission No Prior Bar Exam Failure Requirement(s)	Reciprocity (Comity) / Without Exam Admission No Prior Bar Exam Failure Requirement(s)
1	Alabama	260/260	25	NONE	10 Years
2	Alaska	280/280	60	NONE	5 Years
3	Arizona	273/273	60	NONE	3-5 Years
4	Colorado	276/276	36	NONE	None
5	Connecticut	266/266	36	NONE	5 Years
6	Dist. of Columbia	266/266	60	NONE	None
7	Idaho	272/280	37	NONE	5 Years
8	Illinois	266/266	48	NONE	3 Years
9	Iowa	266/266	60	NONE	5 Years
10	Kansas*	266/266	36	Lifetime	Lifetime
11	Maine	276/276	36	NONE	5 Years
12	Maryland*	266/266	?	YES	3 of Last 5 yrs. or 10 yrs.
13	Massachusetts	270/270	36	NONE	None
14	Minnesota	260/260	36	NONE	3 of Last 5 Years
15	Missouri	260/260	24	NONE	None
16	Montana	266/266	36	NONE	5 Years
17	Nebraska	270/270	36	NONE	5 Years
18	New Hampshire	270/270	36	NONE	5 of Last & Years
19	New Jersey	266/266	36	NONE	5 of Last 7 Years
20	New Mexico	260/260	36	NONE	5 Years
21	New York	266/266	36	NONE	None
22	North Carolina	270/270	36	NONE	4 of Last 6 Years
23	North Dakota	260/260	24	NONE	5 Years
24	Ohio	TBA (2020)	60	NONE	5 of Last 10 years
25	Oregon	274/274	36	NONE	5 Years
26	Rhode Island	276/276	24	NONE	5 of Last 10 Years
27	South Carolina	266/266	36	NONE	No Reciprocity
28	Tennessee*	270/270	36	5 Years	5 Years
29	Utah	270/270	24	NONE	2 Years
30	Vermont	270/270	36	NONE	5 Years
31	Washington	270/270	40	NONE	3 of Last 5 Years
32	West Virginia	270/270	36	NONE	None
33	Wyoming	270/270	36	NONE	10 Years
34	U.S. Virgin Island	266/266	36	NONE	None

