

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

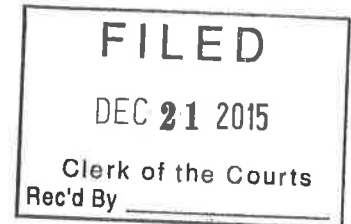
IN RE: AMENDMENT OF RULES 6, 7, AND 8 (RPC 5.5),  
RULES OF THE TENNESSEE SUPREME COURT

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No. ADMIN2015-00443

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**ORDER**



On March 12, 2015, the Tennessee Board of Law Examiners (the “TBLE”) filed a petition seeking to amend Tennessee Supreme Court Rules 6, 7, and 8 (RPC 5.5), which govern the admission and licensing of attorneys in this State. The TBLE stated in its petition that the proposed amendments were necessary: (1) to ensure internal consistency throughout these rules; (2) to ensure that these rules are consistent with relevant statutory provisions and with the TBLE’s policies and procedures, which have been approved by this Court; and (3) to expand the provisions of the rules related to licensing of attorneys admitted in other jurisdictions in consideration of the increased mobility and relocation of lawyers. The TBLE’s proposed amendments were set out in Exhibit A to the petition.

On March 25, 2015, the Court filed an order soliciting public comments about the TBLE’s petition and proposed amendments. That order set July 31, 2015 as the deadline for submitting written comments to the Court.

On April 6, 2015, nine lawyers submitted a document titled “Amendment to Petition to Amend Tennessee Supreme Court Rules 6, 7 And 8 (RPC 5.5) Governing Admission and Licensing of Attorneys.” In this document, these lawyers asked the Court to amend Rule 7 by adding a new section 5.03, “to allow for the temporary admission of qualified attorney spouses of active duty servicemembers in the United States Uniformed Services. . .while in Tennessee or at Fort Campbell, Kentucky, due to military orders of the servicemember spouse.” Attached as exhibits to the document were materials explaining the origin of the requested amendment, as well as letters of support for the proposed amendment from other Tennessee lawyers and bar associations. Although the document was originally filed as a comment to the TBLE’s petition, the Court concluded that the lawyers’ proposal also should be published for public comment. Accordingly, on April 13, 2015, the Court filed an order soliciting public comments on the proposal to add a new section 5.03 to address the temporary admission of qualified attorney spouses of active duty servicemembers. The deadline for submitting comments on that proposal also was set for July 31, 2015 (the deadline earlier set by the Court for submitting comments concerning the TBLE’s proposed amendments).

The Court received written comments from members of the public, members of the bar, the Tennessee Board of Professional Responsibility, bar organizations, and other interested parties. On September 1, 2015, the TBLE filed a “Reply to Comments to Petition to Amend Tennessee Rules 6, 7 and 8 (RPC 5.5) Governing Admission and Licensing of Attorneys” (“Reply”). In summary, the TBLE’s Reply addressed the various issues raised in the public comments received by the Court; in response to some of those comments, the TBLE recommended a number of modifications to its original proposals and attached to its Reply a modified set of its proposed amendments.

After due consideration of the TBLE’s petition, the numerous written comments received by the Court, and the TBLE’s Reply and proposed modifications, the Court hereby amends Rule 7 by repealing the current rule in its entirety and by replacing it with the revised Rule 7 set out in Appendix A to this order. In light of the adoption of the revised Rule 7, the Court also amends Rule 6, Rule 8 (RPC 5.5), and Rule 43 as set out in the attached Appendix B. Except as provided in the next sentence, the revised Rule 7 and the amendments to Rules 6, 8 (RPC 5.5), and 43 shall take effect on January 1, 2016. Because the TBLE’s process for administering the February 2016 bar examination is already underway, Section 3.03 of revised Rule 7, governing the time periods for filing applications to take the February and July bar examinations, shall not take effect until March 1, 2016.

The Court expresses its gratitude to the members and staff of the Tennessee Board of Law Examiners for their invaluable work in preparing the TBLE’s proposed revision of Rule 7 and the related rules amendments. It is evident from the TBLE’s petition and its Reply to the public comments that the Board carefully and thoughtfully considered the many issues involved in updating these rules. The Court also thanks the many individuals and organizations submitting written comments about the proposed amendments; the Court’s consideration of the TBLE’s proposals was greatly enhanced by the comments received during the public-comment period.

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

IT IS SO ORDERED.

PER CURIAM

## ***APPENDIX A***

**[Replace the current Tenn. Sup. Ct. R. 7, in its entirety, with the revised Tenn. Sup. Ct. R. 7 set out in this Appendix A; as provided in this Order, the revised Tenn. Sup. Ct. R. 7 shall take effect on January 1, 2016, except for revised Section 3.03, which shall take effect on March 1, 2016.]**

## **Rule 7. Licensing of Attorneys.**

### **PREFACE**

The Board of Law Examiners for the State of Tennessee (herein, the “Board”) is created as a part of the judicial branch of government by the Supreme Court of Tennessee pursuant to its inherent authority to regulate courts. The Supreme Court appoints the members of the Board of Law Examiners and has general supervisory authority over all the Board’s actions. Admission to practice law is controlled by the Supreme Court, which acts on the basis of the certificate of the Board.

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

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

No person shall engage in the “practice of law” or the “law business” in Tennessee as defined in T.C.A. § 23-3-101 and Tenn. Sup. Ct. R. 9, § 10.3(e), except pursuant to the authority of this Court, unless:

(a) he or she has been:

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

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

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

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

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

The Supreme Court shall grant a license evidencing admission to the bar of Tennessee only upon presentation of a Certificate of Eligibility issued by the Board pursuant to section 9.01 of this Rule. The applicant must comply with Tenn. Sup. Ct. R. 6 and obtain his or her license within two years of: (a) the date of the notice that the applicant successfully passed the bar examination; or (b) the date of the notice of the Board’s approval of the application for admission under Article V of this Rule. All bar examination scores and investigations are invalid upon the expiration of the applicable two-year period provided in section 4.07(b) of this Rule.

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

The Board shall issue a Certificate of Eligibility pursuant to section 9.01 of this Rule only upon its determination that the applicant:

- (a) is at least 18 years of age;
- (b) has satisfied the educational requirements for admission specified by this Rule;
- (c) has passed the examination or examinations required by this Rule, or is eligible for admission without examination as hereinafter provided in Article V;
- (d) has demonstrated the reputation and character that in the opinion of the Board indicates no reasonable basis for substantial doubts that the applicant will adhere to the standards of conduct required of attorneys in this State; and
- (e) has evidenced a commitment to serve the administration of justice in this State.

#### **Sec. 1.04. Waiver of Examination.**

If an applicant who has been admitted to practice in another state in the United States, the District of Columbia, or U.S. Territories satisfies the other requirements for admission, and demonstrates competence to practice in Tennessee by meeting the criteria specified in this Rule, the Board may waive the requirement of passing an examination as provided in Article V.

#### **Sec. 1.05. Status of Persons Admitted.**

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

#### **Sec. 1.06. Existing Licenses.**

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

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

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

(a) To be eligible to take the examination or to be eligible for licensing without examination pursuant to Article V, an applicant, prior to taking the bar examination, must have received a Bachelor's Degree or higher from a college on the approved list of the Southern Association of Colleges and Secondary Schools, or the equivalent regional accrediting association, or any accreditation agency imposing at least substantially equivalent standards. As part of the bar examination application, an applicant shall provide evidence of the degree in the form required by the Board.

(b) The Board in its discretion may waive the requirement of a degree from an accredited undergraduate school if the applicant has graduated from either: (1) a law school accredited by the

American Bar Association (hereafter “ABA”) or (2) a Tennessee law school approved by the Board pursuant to section 2.03 of this Rule.

**Sec. 2.02. Legal Education and Approval of Law Schools.**

(a) To be eligible to take the examination or to be eligible for licensing without examination pursuant to Article V, an applicant must have completed a course of instruction in and graduated from a regularly organized law school accredited by the ABA at the time of applicant’s graduation, or a Tennessee law school approved by the Board pursuant to section 2.03 of this Rule at the time of the applicant’s graduation.

(b) To be eligible to take the examination, an applicant must cause to be filed as part of the application a certificate from the dean or supervising authority of the school of law in which the applicant is enrolled or from which the applicant graduated, certifying that either the school is accredited by the ABA or the school is a Tennessee law school that has been approved by the Board under section 2.03 of this Rule and that:

(1) the applicant has completed all the requirements for graduation, or

(2) the applicant will have the number of credit hours required for graduation by the date of the bar examination.

If an applicant’s certificate shows that the applicant has not yet graduated as in (b)(2) above, the applicant must cause to be filed a supplemental statement by the dean or other supervising authority showing completion of all requirements for graduation by the date of the examination.

(c) Notwithstanding the provisions of sections 2.01 and 2.02 of this Rule, an attorney who received a legal education in the United States or U.S. Territories but is not eligible for admission by virtue of not having attended a law school accredited by the ABA or a Tennessee law school approved by the Board nevertheless may be considered for admission by examination provided the attorney satisfies the following requirements:

(1) The attorney holds a J.D. Degree, which is not based on study by correspondence or other than in-person attendance, from a law school approved by an authority similar to the Tennessee Board of Law Examiners in the jurisdiction where it exists and which requires the equivalent of a three-year course of study that is the substantial equivalent of the legal education provided by approved law schools located in Tennessee. The applicant shall bear the cost of the evaluation of his/her legal education, as determined by the Board, and the applicant shall not be eligible to sit for the bar examination until the applicant’s legal education is approved by the Board; and

(2) The attorney has passed a bar examination equivalent to that required by Tennessee in the state in which the law school exists; and

(3) The attorney has been actively and substantially engaged in lawful practice of law as his or her principal business or occupation for at least five of the last seven years immediately preceding the filing of the application; and

(4) In evaluating the education received the Board shall consider, but not be limited to, such factors as the similarity of the curriculum taken to that offered in law schools approved by the ABA and that the school at which the applicant's legal education was received has been examined and approved by other state bar associations examining the legal qualifications of non-ABA law school graduates; and

(5) The attorney meets all other requirements contained in the Rules of the Supreme Court of Tennessee pertaining to Admission of Persons to Practice Law.

(d) No correspondence course will be accepted by the Board as any part of an applicant's legal education to meet the requirements of this Rule. Distance, on-line or other instruction that is not in person will be accepted as part of a curriculum to the extent approved by the ABA for accredited law schools.

### **Sec. 2.03. Approval of Tennessee Law Schools Not Accredited by the ABA.**

The Board may approve any law school in Tennessee seeking provisional accreditation and pending full accreditation by the ABA for the purpose of allowing its graduates to be eligible to take the Tennessee bar examination when the standards in this section are met and the Board finds the school is effectively achieving its mission and objectives.

(a) Statement of Mission or Objectives. A school shall adopt a statement of its mission or objectives, which shall include a commitment to a program of legal education designed to provide its graduates with:

(1) An understanding of their professional responsibilities as representatives of clients, officers of the courts, and public citizens responsible for the quality and availability of justice under the law; and

(2) A basic legal education through a course of study that develops an understanding of the fundamental principles of public and private law, an understanding of the nature, basis and role of the law and its institutions, and skills of legal analysis and writing, issue recognition, reasoning, problem solving, organization, and oral and written communications necessary to participate effectively in the legal profession.

(b) Organization and Administration. A school shall adopt and maintain an organizational and administrative structure that complies with the following standards:

(1) It shall be governed by, and its general policies shall be established by, a governing board composed of individuals who are not members of its faculty and who are dedicated to fulfilling the mission or objectives of the school.

(2) It shall have a dean, selected by the governing board, to whom the dean shall be accountable; and who shall be provided with the authority and support needed to carry out the responsibilities of the position.

(3) The dean, with the advice of the faculty or its representatives, shall formulate and administer the educational program of the school, including the course of study; methods of instruction; admission; and academic standards for retention, advancement and graduation of students; and shall recommend to the governing board the selection, retention and compensation of the faculty.

(4) Alumni, students and others may be involved in assisting the governing board, the dean and the faculty in developing policies and otherwise in fulfilling the mission or objectives of the school, in a participatory or advisory capacity.

(5) A school shall not be conducted as a commercial enterprise, and the compensation of any person shall not depend on the number of students or on the fees received.

(6) A law school shall foster and maintain equality of opportunity in legal education, including employment of faculty and staff, without discrimination or segregation on ground of race, color, religion, national origin, sex or disability.

(c) Faculty. A school shall establish policies with respect to its faculty consistent with the following standards:

(1) A law school shall have a faculty whose members possess a high level of competence and experience as may be demonstrated by education, teaching ability, judicial service, and capacity for legal research and writing.

(2) To be eligible for appointment to the faculty, a person must be a licensed attorney of known ability and integrity. Nothing in this section shall, however, prevent the appointment of other persons of known ability and integrity who are not licensed lawyers to instruct in inter-disciplinary courses such as accounting, taxation, legal research, writing skills, and medicine for lawyers.

(3) A law school shall take reasonable steps to ensure the teaching effectiveness of each member of the faculty.

(4) A number of faculty members shall be employed sufficient to fulfill the mission or objectives of the school.

(d) Facilities. A school shall have classrooms, other physical facilities and technological capacities that are adequate for the fulfillment of its mission or objectives.

(e) Library. A school shall maintain a law library, including access to computerized research, sufficient to meet the research needs of its students and facilitate the education of its students



consistent with its mission or objectives. The library shall be available to all students at reasonable hours.

(f) Program of Legal Education. A school shall maintain an educational program designed to fulfill its mission or objectives, which program shall be consistent with the following standards:

(1) The educational program shall be designed to qualify its graduates for admission to the bar and to prepare them to participate effectively and honorably in the legal profession.

(2) The course of study shall:

(A) include instruction in those subjects generally regarded as the core of the law school curriculum, including but not limited to the law school subjects covered on the Tennessee bar examination and listed in section 4.04 of this Rule;

(B) be designed to fulfill the school's mission or objectives, including those expressed in paragraph (a) of this section;

(C) include at least one rigorous writing experience;

(D) require at least the minimum standards of class hours required from time to time under the ABA standards for approval of law schools for the particular category of school;

(E) be based on a schedule of classes to meet the minimum standards of class hours, which schedule may include weekend classes;

(F) include adequate opportunities, and emphasis on, instruction in professional skills, particularly skills in written communication.

(3) a school shall adopt and adhere to sound standards of academic achievement, including:

(A) clearly stated standards for good standing, advancement and graduation; and

(B) termination of enrollment of a student whose inability or unwillingness to do satisfactory work is sufficiently manifest so that such student's continuation in school would inculcate false hopes, constitute economic exploitation, or detrimentally affect the education of other students.

(g) Admissions. A school shall adopt and adhere to admission policies consistent with the following standards:

(1) A school's admission policy shall be based on, and consistent with, its mission or objectives.

(2) To be admitted, an applicant must have:

(A) Received or be on course to receive a bachelor's degree or higher as provided in section 2.01 of this Rule; and

(B) Taken an acceptable test for the purpose of assessing the applicant's capability of satisfactorily completing the school's educational program; (the Law School Admission Test sponsored by the Law School Admission Council qualifies as an acceptable test; and the use of any other test must be approved by the Board); and

(C) Satisfied the minimum requirements for admission established by the governing board of the school; and

(D) Satisfied the dean and Admissions Committee that the applicant possesses good moral character.

(3) A law school may not use admission policies or take other action to preclude admission of applicants or retention of students on the basis of race, color, religion, national origin, sex or disability.

(h) Basic Consumer Information. A school shall publish basic consumer information in a fair and accurate manner, reflective of actual practice, including:

- (1) a statement of mission or objectives;
- (2) admission data;
- (3) tuition, fees, living costs, financial aid, and refunds;
- (4) enrollment data and graduation rates;
- (5) composition and number of faculty and administrators;
- (6) description of educational program and curricular offerings;
- (7) library resources;
- (8) physical facilities; and
- (9) placement rates and bar passage data.

(i) Self-Study.

(1) The dean and faculty shall develop and periodically revise a written self-study, including an evaluation of the following topics:

- (A) the continuing relevance of the school's mission or objectives;

- (B) the effectiveness of the program of legal education;
- (C) the appropriateness of the school's admission policies;
- (D) the significance of the trend in rates of graduation and attrition;
- (E) the significance of the trends in the pass/fail rate on the bar examination;
- (F) the strengths and weaknesses of the school's policies;
- (G) goals to improve the educational program; and
- (H) means to accomplish unrealized goals.

(2) The self-study shall be completed every seven years or earlier upon written request of the Board.

(j) Functions of Board.

(1) The Board shall determine whether such Tennessee law school has met these educational standards and is effectively achieving its mission and objectives and when such school is entitled to be approved as in good standing with the Board, subject to review by the Supreme Court under the provisions of this Rule.

(2) The Board is authorized to make inquiry to the school and respond to inquiry by the school and to adopt such additional standards as in its judgment the educational needs of the school may justify, which changes shall be subject to the Supreme Court's approval.

(3) The Board may require a school to furnish such information, including periodic reports, as it deems reasonably appropriate for carrying out its responsibilities. The Board may also require a school to furnish information known to school officials relevant to the character and fitness of its students.

(4) The Board may investigate such law schools in accordance with section 2.07 of this Rule, and such investigations shall be confidential to ensure a frank, candid exchange of information and evaluation.

(5) A law school may be granted approval and be in good standing when it establishes to the satisfaction of the Board that it is in compliance with the standards set forth herein and the Board finds the school is effectively achieving its mission and objectives.

(6) If the Board has reasonable cause to believe that a law school does not comply with the standards in section 2.03 of this Rule, and/or the school is not effectively achieving its mission and objectives, it shall inform the school of its apparent non-compliance or failure to

effectively achieve its mission or objectives and follow the procedures in sections 2.09, 2.10, 2.11, 2.13 of this Rule and related sections.

(k) Certification of Compliance. The dean and the chairperson of the board of directors of the law school shall certify annually in writing to the Board that the school is in compliance with these standards and is effectively achieving its mission and objectives or, if not in compliance or not effectively achieving its mission or objectives, identify areas of non-compliance or other deficiencies, as well as its intention and plan of action to attain compliance.

(l) Tennessee Law Schools Not Accredited by the ABA. The Board will approve law schools in Tennessee pending provisional accreditation by the ABA until such time as the school is provisionally accredited. Law schools that are not provisionally accredited, do not achieve full accreditation or lose their ABA accreditation, will not be approved by the Board until a new application or similar process for provisional or renewed accreditation has begun with the ABA.

Students of Tennessee law schools currently approved by this Board but not made pending ABA provisional accreditation shall not be barred from taking the Tennessee bar examination so long as the law school continues to comply with the requirements of this Rule as it may be amended.

#### **Sec. 2.04. [Reserved.]**

#### **Sec. 2.05. Statement of Status.**

In its catalogs or other informational material distributed to prospective students, a law school shall state whether it is accredited by the ABA or has been approved by the Board pursuant to section 2.03 of this Rule. Any law school in Tennessee, which has not been accredited by the ABA or approved by the Board and which advertises in its catalog or otherwise that it is so accredited or approved, shall not be recognized by the Board as other than a substandard school and will be so classified and disapproved.

#### **Sec. 2.06. New Law Schools in Tennessee.**

Any law school located in Tennessee (whether full-time or part-time), which permits the enrollment of students without first having obtained the written approval of the Board, shall be classified as a substandard school. Its graduates shall be denied permission to take the Tennessee bar examination.

#### **Sec. 2.07. Investigation and Evaluation by Board.**

The Board may investigate and evaluate any law school located in Tennessee, from time to time, with respect to the adequacy of its facilities, faculty and course of study. In addition, representatives of the Board may participate as observers in connection with law school evaluations or investigations conducted from time to time by the ABA in its accreditation process. The refusal of any such school to cooperate or participate in the conduct of such evaluation shall be reported to the Supreme Court, which may, after hearing, take such actions as the facts may justify. Each law school located in Tennessee shall furnish to the Board copies of all documentation, including self-study analyses and evaluation reports, prepared, completed or received in connection with such school's accreditation

status with the ABA. The investigation of any law school, including all reports, data and other information provided to the Board in connection with approval of the law school's standing with the Board, shall be confidential in order to ensure a frank, candid exchange of information.

#### **Sec. 2.08. Site Evaluation of Approved Law Schools.**

(a) A site evaluation by the Board of a law school approved by the Board shall be conducted in the third year following the granting of approval and every seventh year thereafter. The Board may order additional site evaluations of a school when special circumstances warrant.

(b) The Board shall arrange for the site evaluation or inspection of the law school by a team of qualified and objective persons who have no conflicts of interest as defined in section 2.15 of this Rule.

(c) Before the site evaluation, the law school shall furnish to the Board and members of the site evaluation team a completed application (if the school is applying for approval), the current self-study undertaken by the dean and faculty, and any complaints that the law school is not in compliance with the standards.

(d) The Board shall schedule the site evaluation of the law school to take place during the academic year at a time when regular academic classes are being conducted. A site evaluation usually requires several days, as classes are visited, faculty quality assessed, admissions policies reviewed, records inspected, physical facilities examined, the library assessed, information reviewed, and consultations held with the chairperson of the board, officers of the institution, the dean of the law school, members of the law school faculty, professional staff, law students, and members of the legal community. In the case of a law school seeking approval, such visit shall be scheduled within three months after receipt by the Board of an application for approval.

(e) Following a site evaluation, the team shall promptly prepare a written report based upon the site evaluation. The team shall not determine compliance or non-compliance with the standards, but shall report facts and observations that will enable the Board and the Supreme Court to determine compliance. The report of the team should give as much pertinent information as feasible.

(f) The team shall promptly submit its report to the Board. After reviewing the report, the Board shall transmit the report to the chairperson and the dean of the law school in order to provide an opportunity to make factual corrections and comments. In the letter transmitting the report, the Board shall include the date on which the Board will consider the report and shall advise that any response to the report must be received by the Board at least fifteen (15) days prior to the date of the meeting at which the Board will consider the report. The school shall be given at least thirty (30) days to prepare its response to the report, unless the school consents to a shorter time period. The thirty-day period shall run from the date on which the Board mailed the report to the school.

(g) Following receipt of the school's response to the site evaluation report, the Board shall forward a copy of the report with the school's response to members of the Board and the site evaluation team.

(h) The Board may not consider any additional information submitted by the school after the school's response to the report has been received by the Board, unless (1) the information is received in writing by the Board at least fifteen (15) days before the Board meeting at which the report is scheduled to be considered, or (2) for good cause shown, the president of the Board authorizes consideration of the additional information that was not received in a timely manner.

(i) Upon the completion of the procedures, the Board shall consider the law school's evaluation and determine whether the school is in compliance with the standards and is effectively achieving its mission and objectives.

(j) A request for postponement of a site evaluation will be granted only if the law school is in the process of moving to a new physical facility or if extraordinary circumstances exist which would make it impossible for the scheduled site evaluation to take place. The postponement shall not exceed one year.

#### **Sec. 2.09. Action Concerning Apparent Non-Compliance with Standards or Deficiencies in Mission.**

(a) If the Board has reasonable cause to believe that a law school does not comply with the standards in section 2.03 of this Rule or is not effectively achieving its mission or objectives, it shall inform the school of its apparent non-compliance or deficiencies and request the school to furnish by a date certain further information about the matter and about action taken to bring the school in compliance with the standards or correct the deficiencies. The school shall furnish the requested information to the Board within the time prescribed.

(b) If upon a review of the information furnished by the law school in response to the Board's request and other relevant information, the Board determines that the school has not demonstrated compliance with the standards or is not effectively achieving its mission or objectives, the school may be required to appear at a hearing before the Board to be held at a specified time and place to show cause why the school should not be required to take appropriate remedial action, placed on probation, removed from the list of law schools approved by the Board, or be subject to other appropriate action.

(c) If the Board finds that a law school has failed to comply with the standards or is not effectively achieving its mission or objectives by refusing to furnish information or to cooperate in a site evaluation, the school may be required to appear at a hearing before the Board to be held at a specified time and place to show cause why the school should not be required to take appropriate remedial action, placed on probation, removed from the list of law schools approved by the Board, or be subject to other appropriate action.

(d) The Board shall give the law school at least thirty (30) days' notice of the show cause hearing. The notice shall specify the school's apparent non-compliance with the standards or its failure to effectively achieve its mission or objectives and state the time and place of the hearing. For good cause shown, the president of the Board may grant the school additional time, not to exceed thirty (30) days. Both the notice and the request for extension of time must be in writing. The Board shall send the notice of hearing to the dean of the school by certified or registered United States mail.

#### **Sec. 2.10. Fact Finder.**

- (a) The president of the Board may appoint a fact finder to elicit facts relevant to any matter before the Board.
- (b) The Board shall furnish the fact finder with a copy of the most recent site evaluation report, any action letters written subsequent to the most recent site evaluation report, notice of hearing and other relevant information.
- (c) Following the fact finding visit, the fact finder shall promptly prepare a written report. The fact finder shall not determine compliance or non-compliance with the standards or whether the school is effectively achieving its mission or objectives, but shall report facts and observations that will enable the Board to determine compliance or deficiencies. The report of the fact finder should give as much pertinent information as feasible.
- (d) The fact finder shall promptly submit the report to the Board. After reviewing the report, the Board shall transmit the report to the dean of the law school in order to provide an opportunity to make factual corrections and comments. In the letter of transmittal of the report, the Board shall include the date on which the Board will consider the report. The Board shall further advise the school as to the date upon which their response to the report must be received by the Board, which date shall be at least fifteen (15) days prior to the date of the meeting at which the Board will consider the report. The school shall be given at least thirty (30) days to prepare its response to the report, unless the school consents to a shorter time period. The thirty-day period shall run from the date on which the Board mailed the report to the school.

#### **Sec. 2.11. Hearing on Show Cause Order.**

- (a) The Board shall have available for review at the show cause hearing:
  - (1) the fact finder's report, if any;
  - (2) the most recent site evaluation report;
  - (3) any site evaluation questionnaire;
  - (4) any action letters written subsequent to the most recent site evaluation report, which letters direct the school to rectify non-compliance or correct deficiencies;
  - (5) notice of Board hearing; and
  - (6) other relevant information.
- (b) Representatives of the law school, including legal counsel, may appear at the hearing and submit information to demonstrate that the school is currently in compliance with all of the standards and is

effectively achieving its mission or objectives or to present a reliable plan for bringing the school into compliance with all of the standards and to correct deficiencies within a reasonable time.

(c) The Board may invite the fact finder, if any, and the chairperson or other member of the most recent site evaluation team to appear at the hearing. The law school shall reimburse the fact finder and site evaluation team member for reasonable and necessary expenses incurred in attending the hearing.

(d) After the hearing, the Board shall determine whether the law school is in compliance with the standards and whether it is effectively achieving its mission and objectives and, if not, it shall direct the law school to take remedial action or shall impose sanctions, as appropriate.

(1) Remedial action may be ordered pursuant to a reliable plan for bringing the school into compliance with all of the standards and to help it achieve its mission and objectives.

(2) If matters of non-compliance or deficiencies are substantial or have been persistent, then the Board may recommend to the Supreme Court that the school be subjected to sanctions other than removal from the list of approved law schools regardless of whether the school has presented a reliable plan for bringing the school into compliance or to correct deficiencies.

(3) If matters of noncompliance or deficiencies are substantial or have been persistent, and the school fails to present a reliable plan for bringing the school into compliance with all of the standards or to correct deficiencies, the Board may recommend to the Supreme Court that the school be removed from the list of approved schools.

(e) If the Board determines that the law school is in compliance and has no deficiencies, it shall conclude the matter by adopting an appropriate resolution, a copy of which shall be transmitted to the dean of the school by the Board.

#### **Sec. 2.12. Confidentiality of Approval and Evaluation Procedures.**

The proceedings set forth in sections 2.03, 2.07, 2.08, 2.09, 2.10 and 2.11 of this Rule shall be confidential to ensure a frank, candid exchange of information.

#### **Sec. 2.13. Supreme Court Consideration of Board Recommendation for Imposition of Sanctions.**

(a) If the Board determines that a law school is not in compliance with the standards or has effectively failed to achieve its mission and objectives and recommends that the school be placed on probation or removed from the list of approved law schools, the Board shall notify the Supreme Court and request a hearing. The Board shall notify the dean of the school of the time and place of the Supreme Court hearing, which shall be open to the public.

(b) The Board shall file with the Supreme Court in the public record the Board's written recommendation, the fact finder's report, if any, the most recent site evaluation report and any action letters to the school written subsequent to the most recent site evaluation report.



(c) Representatives of the law school, including legal counsel, may appear at the Supreme Court hearing at which the Board's recommendations are considered. The president of the Board of Law Examiners (or his or her designee) shall present the Board's findings, conclusions and recommendations.

(d) The Supreme Court shall determine whether to affirm the Board's findings and conclusions, and whether to adopt the Board's recommendations. The Board's findings and conclusions shall be affirmed if there is a substantial basis to support them, unless the school presents new information that, in the opinion of the Supreme Court, demonstrates that the school is in compliance with the standards.

(e) The Supreme Court may direct the law school to take appropriate remedial action or subject it to sanctions other than removal from the list of approved law schools regardless of whether the school has presented a reliable plan for bringing the school into compliance with all of the standards.

(f) The Supreme Court shall inform the dean of the law school of the decision by court order. If the decision is adverse to the law school, the order shall provide specific reasons for the decision.

(g) If the Supreme Court imposes sanctions in the absence of a reliable plan for bringing the school into compliance with all of the standards or to correct deficiencies, the Board shall monitor the steps taken by the school to come into compliance. If the Court imposes sanctions pursuant to a reliable plan for bringing the school into compliance with the standards and/or to correct deficiencies, the Board shall monitor the steps taken by the school for meeting its plan. At any time that the school is not making progress toward compliance with all of the standards or to correct deficiencies, or at any time that the school is not meeting the obligations of its plan, or if at the end of a period of time set by the Court for coming into compliance the school has not achieved compliance with all of the standards or corrected all deficiencies, the Board shall forward a recommendation that the school be removed from the list of approved schools. This recommendation shall be heard by the Court under the procedures of this section 2.13 of this Rule but the only issue for Court consideration will be whether the school has met the terms of its plan or is in compliance with all of the standards or has corrected deficiencies.

(h) At any time that the school presents information on which the Board concludes that the school is in full compliance with the standards or has corrected its deficiencies, the Board shall recommend to the Supreme Court that the school be taken off probation. This recommendation will be heard by the Court under the procedures of this section 2.13 of this Rule.

#### **Sec. 2.14. Maximum Period for Compliance with Remedial or Probationary Requirements.**

Upon communication to a law school of a final decision that it is not in compliance with the standards or has failed to effectively achieve its mission or objectives and informing it that it has been ordered to take remedial action or has been placed on probation, the school shall have a period as set by the Supreme Court to come into compliance. The period may not exceed two (2) years unless such time is extended by the Supreme Court, as the case may be, for good cause shown.

### **Sec. 2.15. Conflicts of Interest.**

Members of the Board and any site evaluation team, as well as any fact finders appointed under the provisions of Article II, should avoid any conflict of interest or perceived conflict of interest arising because a person has an “associational interest” in the law school or the law school program under review by the Board or the Supreme Court. Alumni, faculty and directors of the school under review are deemed to have an associational interest in the school and should recuse themselves from the process of review. Former faculty and board members who have terminated their relationship with the school less than five (5) years prior to the site inspection, evaluation or review process are also deemed to have an associational interest in the school and should recuse themselves from the process of review.

## **ARTICLE III. APPLICATION FOR ADMISSION BY EXAMINATION**

### **Sec. 3.01. Application Form.**

The Board shall cause a uniform application process to be completed by all applicants for admission. The application process shall require the submission of such information as the Board deems necessary or appropriate for the determination of the eligibility of applicants for admission pursuant to the criteria and standards set forth in this Rule.

### **Sec. 3.02. [Reserved.]**

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

The application process to take the examination shall begin on March 1 for the July examination and October 1 for the February examination and shall be completed no later than **May 20** for taking the July examination and **December 20** for taking the February examination. In order for the Board to have sufficient time to determine each applicant’s eligibility to sit for the bar examination, all documentation required to be submitted to the Board to complete the application process, including submitting the documents required for the background investigation required in section 6.03(b) of this Rule, must be submitted on or before the deadline, and all fees must be paid in full on or before the deadline. Original documents that must be mailed to the Board must be received on or before the deadline. Applicants who have not completed the application process by the deadline are ineligible to sit for the examination. The only recourse for failure to complete the application process is to reapply for the next examination. The Board shall list the items necessary for a complete application in the Board Policies and Procedures.

### **Sec. 3.04. [Reserved.]**

### **Sec. 3.05. [Reserved.]**

### **Sec. 3.06. Applications by Persons Admitted in Other Jurisdictions Seeking Waiver of Examination.**

Applications for admission by persons admitted in other jurisdictions seeking waiver of examination may be filed at any time in accordance with Article V of this Rule. In addition to the information required by the uniform application process, such applicants shall furnish such additional information as may be required by the Board to enable the Board to determine the applicant's eligibility for such admission.

**Sec. 3.07. Additional Information.**

(a) The Board or any individual member thereof may request any applicant to furnish additional information:

- (1) To supplement or explain answers to any question on the application;
- (2) As to the applicant's character;
- (3) As to the educational qualifications of the applicant, including information with respect to schools attended by the applicant;
- (4) As to the experience of the applicant; and
- (5) As to such other matters as may be considered germane to the provisions of this Rule.

(b) The Board or any individual member thereof, as part of the character investigation of an applicant, may request an applicant to submit to a drug test. Failure or refusal to submit to the drug test shall be sufficient cause for the Board to refuse such applicant a license.

(c) Until an applicant is admitted to the Tennessee bar, or the application is denied by the Board or voluntarily withdrawn, the applicant is under a continuing obligation to update responses to any of the information requested in the application process. Whenever there is an addition or a change to the information previously provided to the Board, the applicant must amend his or her application by filing an amendment or supplemental application as prescribed by the Board. Applications that have been on file for two years or more must be supplemented every two years until such time as the Applicant is admitted, has been denied admission, or has withdrawn the application for admission.

**Sec. 3.08. Duty of Candor and Failure or Refusal to Furnish Information.**

(a) Each applicant for admission to the bar has a duty to be candid and to make full, careful and accurate responses and disclosures in all phases of the application and admission process. Each applicant must respond fully to all inquiries. It is not proper for an applicant to give either an incomplete or misleading description of past events reflecting on the applicant's qualifications for admission to the bar.

(b) The failure or refusal by any applicant to answer fully any question on the application or to furnish information or submit to examination as required by the application or pursuant to the provisions of this Rule, shall be sufficient cause for the Board to refuse to allow such applicant to take the examination or to be admitted.

### **Sec. 3.09. False Information.**

(a) The giving of false information or the making of false statements on the application or to the Board shall be sufficient cause for the Board to refuse to allow such applicant to take the examination or to be admitted.

(b) If the Executive Director or the Board has reason to believe that any person who has been admitted gave false information or made false statements to the Board, the basis for such belief shall be reported to Disciplinary Counsel of the Board of Professional Responsibility.

### **Sec. 3.10. No Discretion to Waive Filing Dates.**

Neither the Executive Director nor the Board shall have discretion to waive or extend the dates for filing applications to take the examination specified in section 3.03 of this Rule. An applicant aggrieved by an action of the Board denying an application pursuant to this Article shall not be entitled to petition the Supreme Court for a review of said action.

### **Sec. 3.11. Applicants Requiring Non-Standard Testing Accommodations.**

The bar examination shall be administered to all eligible applicants in a manner that does not discriminate against applicants with non-standard testing needs. An applicant who is otherwise eligible to take the Tennessee bar examination may request a modification of the manner in which the examination is administered if such applicant is unable to take the examination under normal testing conditions. The Board shall adopt a policy regarding applicants requiring non-standard testing accommodations pursuant to section 12.05 of this Rule. An applicant requesting non-standard testing accommodations shall complete and submit the documents prescribed by the Board by the application deadline set forth in section 3.03 of this Rule, except when the disability first occurs after the filing deadline. Because the forms and procedures are detailed, requiring the applicant to attach statements from law school officials and treating professionals, any applicant requesting non-standard testing conditions is encouraged to request, complete, and submit the application for admission by examination and the necessary request for non-standard testing and related forms to the Board as early as possible to permit an evaluation of the request. To the extent practicable, any accommodations requested shall be consistent with the security and integrity of the examination. The Board may transmit the application for non-standard testing or refer the applicant to an appropriate professional selected by the Board for assessment and recommendations regarding the accommodation to grant. By submitting a request for non-standard testing, the applicant agrees to the release of the application to an appropriate professional and agrees to appear for assessment, if requested to do so by the Board.

## **ARTICLE IV. THE EXAMINATION**

### **Sec. 4.01. The Purpose of the Examination.**

The purpose of the examination is to enable applicants to demonstrate to the Board that they possess the knowledge, skills and abilities basic to competence in the profession, which are subject to testing.

#### **Sec. 4.02. The Structure of the Examination.**

The Board, in its discretion, shall determine the format and the structure of the examination, and shall include essay questions, the National Conference of Bar Examiners Multistate Bar Examination, other multiple choice questions, the National Conference of Bar Examiners Multistate Professional Responsibility Examination and such other categories of tests as the Board may consider appropriate. The Board may in its discretion use questions prepared by the National Conference of Bar Examiners for the Multistate Essay Examination and Multistate Performance Test. The Board may contract with others to provide test materials and to grade the same.

#### **Sec. 4.03. The Dates and Places of Giving the Examination.**

The examination shall be given in February and July of each year at any one or more of the following places: Memphis, Nashville, Chattanooga and Knoxville, provided an examination is held at least once a year in each of the three grand divisions. The Court, in its discretion, may substitute another location in the same grand division for a city named in the preceding sentence.

#### **Sec. 4.04. The Scope of the Examination.**

The examination is not designed to test the applicant's knowledge of specific law school subjects. However, familiarity with the following areas of the law is essential:

1. Constitutional law (United States and Tennessee);
2. Criminal law (substantive and procedural);
3. Contracts;
4. Torts;
5. Property (real and personal);
6. Evidence;
7. Civil procedure (United States and Tennessee);
8. Business organizations (including agency, partnerships and corporations);
9. Commercial transactions (Articles 1, 2, and 9 of the Uniform Commercial Code);
10. Wills and estates;
11. Family law (husband and wife, parent and child, marriage and divorce, etc.);
12. Professional responsibility;

13. Restitution and remedies; and

14. Conflicts of law.

**Sec. 4.05. Re-examination.**

In case of failure on examination, the Board may, in its discretion, allow the applicant to take another examination upon completion of the application process herein provided and the payment of the requisite fee.

**Sec. 4.06. Effect of Taking Examination on Eligibility for Admission.**

The fact that an applicant is allowed to take the examination shall not preclude further inquiries, investigation or proceedings with respect to the other criteria for admission under this Rule.

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

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

(b) Tennessee bar examination scores are valid to determine eligibility for licensing for two years after the date grades are released; after two years, the scores expire.

(c) A score equal to or greater than that required by Tennessee on the Multistate Professional Responsibility Examination (MPRE) must be achieved within two years of successfully completing the Tennessee bar examination; provided, however, that an applicant who:

(1) is licensed by examination in another state in the United States, the District of Columbia, or U.S. Territories,

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

(3) achieved a score of 75 or higher on the MPRE two (2) or more years before successful completion of the Tennessee bar examination

may provide proof of that earlier score to satisfy the MPRE requirement. It is the responsibility of the applicant to cause MPRE score reports to be furnished to the Board.

**ARTICLE V. PERSONS ADMITTED IN OTHER JURISDICTIONS SEEKING WAIVER OF EXAMINATION**

**Sec. 5.01. Minimum Requirements for Admission of Persons Admitted in Other Jurisdictions.**

(a) **Requirements.** An applicant who meets the requirements of (1) through (6) of this paragraph may, upon motion, be admitted to the practice of law in this jurisdiction. The applicant shall:

- (1) meet the educational requirements imposed by this Rule;
- (2) have been admitted by bar examination to practice law in one or more states or territories of the United States, or the District of Columbia;
- (3) have been primarily engaged in the active practice of law in one or more states or territories of the United States, or the District of Columbia, for five of the seven years immediately preceding the date upon which the application is filed;
- (4) establish that the applicant is currently a member in good standing in all jurisdictions where admitted;
- (5) establish that the applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any other jurisdiction; and
- (6) establish that the applicant possesses the character and fitness to practice law in this jurisdiction.

(b) **Diploma Privilege.** An applicant who was admitted and licensed to practice in another state pursuant to a “diploma privilege,” which exempts an applicant from taking a bar examination, may seek a waiver of subsection (a)(1) by filing a petition with the Board setting forth the reasons why he or she should be admitted to practice law in Tennessee. The Board shall then conduct a hearing in response to the petition, according to the guidelines set forth in section 13.03 of this Rule, for the purpose of assessing the applicant’s reputation, character, knowledge, skills and abilities. After considering the totality of the proof presented, the Board shall make a recommendation to the Supreme Court either for approval or denial of the petition or for such other action as the Board may deem appropriate. Any applicant whose petition for waiver of subsection (a)(1) is denied by the Board may file a petition for review in the Supreme Court pursuant to the procedures set forth in Article XIV.

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

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

- (A) full-time private or public practice as a licensed attorney;
- (B) teaching law full-time at a law school approved by the ABA;
- (C) service as a judicial law clerk or staff attorney; and

(D) service as a Judge, Attorney General, Public Defender, U.S. Attorney, District Attorney, or duly registered In-House Counsel or Military Spouse.

(2) For the purposes of this rule, in addition to the definitions of “Practice of Law” and “Law Business” in section 1.01 of this Rule, the “active practice of law” may be construed in the Board’s discretion as being actively engaged in other full-time employment requiring interpretation of law and application of legal knowledge if performed in a jurisdiction in which the applicant is admitted, or if performed in a jurisdiction that permits such activity by a lawyer not admitted to practice; however, in no event shall any activities that were performed pursuant to a provision similar to section 10.04 or section 5.01(g) of this Rule in advance of bar admission in a state or territory of the United States or the District of Columbia be accepted toward the durational requirement. The Board shall consider such evaluative criteria as time devoted to legal work, the nature of the work, whether legal training or a law license was a prerequisite of employment, and other similar matters.

(d) **Unauthorized Practice of Law.** For purposes of this rule, the active practice of law shall not include work that, as undertaken, constituted the unauthorized practice of law in the jurisdiction in which it was performed or in the jurisdiction in which the clients receiving the unauthorized services were located.

(e) **Previous Tennessee Bar Examination.** An applicant who has failed a bar examination administered in this jurisdiction within five years of the date of filing an application under this Rule shall not be eligible for admission on motion.

(f) **Admission on Motion Application and Fees.** Any applicant seeking admission on motion to the practice of law in Tennessee shall:

(1) file an application for admission on motion, including character investigation information, in a manner established by the Board, including all required supporting documents;

(2) submit a certificate of good standing from the highest court of each jurisdiction to which applicant has been admitted; and

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

(g) **Practice Pending Admission by Applicant Licensed in Another Jurisdiction.** A lawyer currently holding an active license to practice law in another state in the United States, the District of Columbia, or U.S. Territories and who has submitted an application for admission upon motion in compliance with this section 5.01 of this Rule or an application for examination in compliance with section 3.03 of this Rule may provide legal services in this jurisdiction through an office or other systematic and continuous presence during the pendency of the application for admission on motion but for no more than 365 days, provided that the lawyer:

(1) is not disbarred or suspended from practice in any jurisdiction;



(2) has not been denied admission to practice in any jurisdiction, including Tennessee, unless the Board determines otherwise;

(3) reasonably expects his/her application for admission to be granted;

(4) notifies the Board of Professional Responsibility in writing within 30 days of first establishing an office or other systematic and continuous presence for the practice of law in this jurisdiction that the lawyer has done so pursuant to the authority in this section 5.01;

(5) associates with a lawyer who is admitted to practice in Tennessee;

(6) complies with Tenn. Sup. Ct. R. 8, RPC 7.1 and RPC 7.5 in all communications with the public and clients regarding the nature and scope of the lawyer's practice authority in Tennessee;

(7) pays the fee associated with the Application to Practice Pending Admission;

(8) does not appear before a tribunal in Tennessee that requires *pro hac vice* admission unless the lawyer is granted such admission;

(9) has never before practiced in Tennessee pursuant to this provision, unless the Board determines otherwise; and

(10) notifies the Board of Professional Responsibility and the Board if the lawyer becomes the subject of a pending disciplinary investigation in any other jurisdiction at any time during the period of practice authorized under this provision.

**(h) Termination of Right of Practice Pending Admission.** The right to practice pending admission established by section 5.01(g) terminates if the lawyer withdraws the application for admission or if such application is denied; if the lawyer becomes disbarred, suspended, or takes disability inactive status in any other jurisdiction in which the lawyer is licensed to practice law; or if the lawyer fails to timely provide the written notice required by section 5.01(g)(4). Upon termination of the right of practice, the lawyer shall not undertake any new representation that would require the lawyer to be admitted to practice law in this jurisdiction and, within 10 days, shall:

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

(2) notify all clients being represented in pending matters, and opposing counsel or co-counsel, of the termination of the lawyer's authority to practice pursuant to section 5.01 of this Rule; and

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

**(i) Transitional Provision.** From January 1, 2016, and continuing through December 31, 2016, the Board is authorized to exercise its discretion in adjudicating pending applications for comity

admission that have not been finally ruled upon as of the effective date (January 1, 2016) of this revised Rule. Such discretion includes waiving or altering time periods or otherwise varying the provisions for admission by comity, and the Board shall tailor such discretion toward granting the applicant's application for comity admission as long as the Board otherwise reaches the conclusion that the lawyer possesses the character and fitness to practice law in this jurisdiction.

**Sec. 5.02. Additional Considerations.** In determining whether such applicants satisfy the requirements of section 5.01 of this Rule, the Board shall consider any evidence submitted by the applicant in an effort to demonstrate that the applicant possesses the knowledge, skill and abilities basic to competence in the profession.

## **ARTICLE VI. CHARACTER AND FITNESS INVESTIGATION**

### **Sec. 6.01. Applicable Standard.**

(a) An applicant shall not be admitted if in the judgment of the Board there is reasonable doubt as to that applicant's honesty, respect for the rights of others, and adherence to and obedience to the Constitution and laws of Tennessee and the United States as to justify the conclusion that such applicant is not likely to adhere to the duties and standards of conduct imposed on attorneys in this State. Any conduct which would constitute grounds for discipline if engaged in by an attorney in this State shall be considered by the Board in making its evaluation of the character of an applicant.

(b) The Board may adopt statements of policy to implement the application of the foregoing standard.

### **Sec. 6.02. Investigatory Committees.**

(a) In order to assist the Board in conducting character investigations of applicants, the Supreme Court shall appoint one or more investigating committees within each disciplinary district established under Rule 9. Each committee shall consist of not less than five (5) nor more than thirty (30) members of the Bar of this State who maintain an office for the practice of law within that district and who are in good standing; provided, however, that the District 5 committee may have up to sixty (60) members. Attorneys who teach in any capacity in any of the State's ABA accredited or state-approved law schools are ineligible to serve as members of the Investigatory Committees. The Board may recommend to the Court the creation of additional committees or the increase in membership of any committee.

(b) The members of each investigating committee shall be appointed from time to time by the Supreme Court and shall serve at the pleasure of the Court for terms of up to five (5) years. Members may be reappointed to serve a second five-year term. Members of an investigating committee may be recommended by the President or Board of Directors of the local bar association or associations in the district, the President or Board of Governors of the Tennessee Bar Association, members of the Board, or members of the investigatory committee in the district in which the vacancy exists.

(c) The Supreme Court shall select each committee chair. The chair shall be responsible for the administration of the work of the committee.

(d) The Executive Director shall provide an annual report to the Supreme Court in June listing the names of the members of each committee and the names of each committee chair, as well as a report of recommendations from the Board regarding the size of any committee.

**Sec. 6.03. Investigating Procedures.**

(a) Each application for admission with examination or without examination shall be referred first to a member of the Board for preliminary review for the purpose of:

(1) detecting any deficiencies in the application; and

(2) determining whether any additional information is needed with respect to any aspect of the application.

(b) As part of the character and fitness requirement for licensing, each applicant, other than an applicant pursuant to section 10.01 of this Rule, is required to have a current completed background investigation conducted by the National Conference of Bar Examiners (NCBE). It is the responsibility of each applicant to make the request to the NCBE for a background investigation and pay the required fee directly to the NCBE. In the event an applicant has not been licensed within two years of submission of the original background investigation, the applicant must request a supplemental investigation at that time and every two years thereafter, until the applicant is licensed or the application is withdrawn or denied.

(c) The Executive Director shall transmit the application and the results of the background investigation, if available at the time of the interview, to the chair of the appropriate investigating committee. The chair shall assign applications to committee members for review, interview and investigation.

(d) On the receipt of an application, the investigating committee member to whom the application has been assigned shall review same and such other information as may be transmitted by the Executive Director and shall conduct such investigation as appears to him or her to be appropriate. In any event, each applicant referred to a committee shall be interviewed in person by a member of that committee. In conducting such investigations, the investigating committee member may take statements from the applicant and from such other persons as may be considered appropriate.

(e) On the completion of the investigation, the investigating committee member shall report his or her findings to the Board, in the form directed by the Board, and shall recommend fully, recommend with reservations or not recommend the applicant for licensing and admission.

**Sec. 6.04. Certificate of Good Moral Character.** An applicant seeking admission to practice law in Tennessee must submit to the Board, before permission is granted to take the bar examination, a certificate from the dean or supervising authority of the law school from which the applicant graduated indicating that to the best of its knowledge and belief the candidate has demonstrated such reputation and character in the opinion of the law school that indicates no reasonable basis for substantial doubt that the applicant would adhere to the standards of conduct required of attorneys in

this State and that the law school has provided full and complete information requested by the Board regarding the character and fitness of the candidate. If the applicant has been previously admitted to another jurisdiction, a certificate of good standing from the highest court of each jurisdiction to which applicant has been admitted must accompany the application to the Board. Without waiving the requirement of proof of good moral character, the Board, in its discretion and for exceptional circumstances shown by the applicant, may waive the requirement of a certificate of good standing from the highest court of each jurisdiction to which applicant has been admitted.

## **ARTICLE VII. FOREIGN-EDUCATED APPLICANTS**

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

(a) Notwithstanding the provisions of sections 2.01 and 2.02 of this Rule, an applicant who has completed a course of study in and graduated from a law school in a foreign country, which law school was then recognized and approved by the competent accrediting agency of such country, may qualify, in the discretion of the Board, to take the bar examination, provided that the applicant shall satisfy the Board that his or her undergraduate education and legal education were substantially equivalent to the requirements of this Rule. Applicants shall furnish such additional information as may be required by the Board to enable the Board to determine the applicant's eligibility for such admission.

(b) In addition to the requirement in (a), above, the applicant shall demonstrate to the satisfaction of the Board that 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 2.03 of this Rule, an LL.M. Degree for the Practice of Law in the United States in a degree program that meets the following requirements:

(1) The degree program certifies to the Board, on such form prescribed by the Board, that the foreign-educated lawyer received his or her LL.M. degree from a law school that is accredited by the ABA or is a Tennessee law school approved by the Board pursuant to section 2.03 of this Rule;

(2) The degree program prepares students for admission to the Bar and for effective and responsible participation in the United States legal profession; and

(3) The courses for the LL.M. for the Practice of Law in the United States must be taught in English and in the United States or its territories and must be attended on site at the ABA-accredited or Tennessee approved law school. The program may be full or part-time but, if part-time, the LL.M. must be completed within 36 months.

(c) A foreign-educated applicant who meets the foreign-education requirements in section 7.01(a) and who began a program of 24 hours in residence at an ABA-accredited law school or one-third of the credit hours necessary to graduate in residence from a Tennessee approved law school no more than twelve months prior to January 1, 2016, may, in the discretion of the Board and upon request for waiver, be deemed eligible to sit for the examination in lieu of the requirements of section 7.01(b) of this Rule.

### **Sec. 7.02. Additional Information from Applicants Licensed in a Foreign Country.**

Any applicant licensed to practice in a foreign country desiring admission in Tennessee shall be required to pass the examination and shall supplement the application with the following documents:

- (a) a certified copy of the record or license of the court or agency which admitted the applicant to practice law in such country; and
- (b) at least 3 letters from attorneys or judges in such foreign country certifying that the applicant is in good standing at that bar, or was in good standing at that bar when the applicant left that foreign country.

## **ARTICLE VIII. COMMITMENT TO SERVE THE ADMINISTRATION OF JUSTICE IN TENNESSEE**

### **Sec. 8.01. Applicable Standard.**

The requisite commitment to serve the administration of justice in Tennessee subject to the duties and standards imposed on attorneys in this State shall be evidenced by a statement by the applicant before examination, or admission by comity, that the applicant agrees to abide by the duties and standards imposed from time to time on attorneys in this State.

### **Sec. 8.02. [Reserved.]**

### **Sec. 8.03. [Reserved.]**

## **ARTICLE IX. ISSUANCE OF LICENSE—EFFECTIVE DATE OF ADMISSION**

### **Sec. 9.01. Certificate of Board.**

(a) Upon the completion of all requirements for licensing, including the payment of all required fees, the Board, acting through the Executive Director, shall certify to the Supreme Court that an applicant is eligible for admission and issue to the applicant a “Certificate of Eligibility for Admission” (the “Certificate of Eligibility”). The Board shall promptly notify the Clerk of the Supreme Court and the Board of Professional Responsibility of the issuance of the Certificate of Eligibility.

(b) The Certificate of Eligibility shall be valid for 90 days from the date of issuance. The Board, for good cause shown and subject to the time limit imposed by section 1.02 of this Rule, may grant the applicant a reasonable extension of the time within which to complete the licensure process, including compliance with Tenn. Sup. Ct. R. 6, if the applicant shows to the satisfaction of the Board that he or she is unable to complete the process within the 90-day period.

### **Sec. 9.02. Issuance of License.**

(a) On the basis of the Certificate of Eligibility, and upon the successful applicant’s compliance with Tenn. Sup. Ct. R. 6, the Supreme Court shall issue a license admitting the successful applicant to the

bar of Tennessee. However, if at any time prior to the administering of the oath of admission, the Board receives notice of any event that would have changed the Board's decision to approve an applicant for licensing, the Board, in its discretion, may revoke the Certificate of Eligibility.

(b) The license shall be in such form as may be approved by the Supreme Court. Each such license shall be signed by the members of the Board and the members of the Court.

#### **Sec. 9.03. Effective Date of Admission.**

An applicant shall not be considered admitted to the bar of Tennessee until issuance of a license by the Supreme Court and upon compliance with Tenn. Sup. Ct. R. 6.

#### **Sec. 9.04. Duty of Applicant to Inform Board of Subsequent Events.**

If at any time prior to the issuance of a license to an applicant he or she becomes aware of any fact or circumstance which might indicate that such applicant is not entitled to admission, such applicant shall promptly advise the Board of such fact or circumstances.

#### **Sec. 9.05. Disapproval by the Supreme Court.**

At any time prior to the issuance of a license, the Supreme Court may for good cause disapprove the issuance of such license. On such disapproval, the Court shall enter an order stating the grounds for such disapproval and may refer the matter to the Board for such further action as the Supreme Court may deem appropriate.

#### **Sec. 9.06. Replacement License.**

For good cause shown, the Board may recommend to the Supreme Court the issuance of a replacement license to any person who has previously been licensed to practice law in Tennessee.

#### **Sec. 9.07. Denial of License.**

If the decision of the Board to deny an application is based, in whole or in part, on the failure of the applicant to demonstrate good moral character, due respect for the law, or fitness to practice law, the applicant may not reapply for admission within a period of thirty-six (36) months after the issuance of the order denying the application.

### **ARTICLE X. SPECIAL OR LIMITED PRACTICE**

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

(a) A lawyer admitted to the practice of law in another United States jurisdiction who has a continuous presence in this jurisdiction and is employed pursuant to Tenn. Sup. Ct. R. 8, RPC 5.5(d)(1) as a lawyer by an organization, the business of which is lawful and consists of activities other than the practice of law or the provision of legal services, shall file an application for registration as in-house counsel within 180 days of the commencement of employment as a lawyer or

if currently so employed then within 180 days of the effective date of this Rule, by submitting to the Board the following:

- (1) A completed application in the form prescribed by the Board;
- (2) A fee in the amount set by the Board pursuant to Article XI;
- (3) Documents proving admission to practice law and current good standing in all jurisdictions in which the lawyer is admitted to practice law; and
- (4) An affidavit from an officer, director, or general counsel of the employing entity attesting to the lawyer's employment by the entity and the capacity in which the lawyer is so employed, and stating that the employment conforms to the requirements of this rule.

(b) A lawyer registered under this section shall have the rights and privileges otherwise applicable to members of the bar of this State with the following restrictions:

(1) The registered lawyer is authorized to provide legal services to the entity client or its organizational affiliates, including entities that control, are controlled by, or are under common control with the employer, and for employees, officers and directors of such entities, but only on matters directly related to their work for the entity and only to the extent consistent with Tenn. Sup. Ct. R. 8, RPC 1.7; and

(2) The registered lawyer shall not:

(A) Except as otherwise permitted by the rules of this State, appear before a court or any other tribunal as defined in Tenn. Sup. Ct. R. 8, RPC 1.0(m), or

(B) Offer or provide legal services or advice to any person other than as described in paragraph (b)(1), or hold himself or herself out as being authorized to practice law in this State other than as described in paragraph (b)(1) of this section 10.01.

(c) Notwithstanding the provisions of paragraph (b) above, a lawyer registered under this section is authorized to provide pro bono legal services through an established not-for-profit bar association, pro bono program or legal services program or through such organization(s) specifically authorized in this jurisdiction.

(d) A lawyer registered under this section shall:

- (1) Pay all annual fees payable by active members of the bar;
- (2) Fulfill the continuing legal education requirements that are required of active members of the bar;
- (3) Report to the Board, within 30 days, the following:

(A) Termination of the lawyer's employment;

(B) Whether or not public, any change in the lawyer's license status in another jurisdiction, including by the lawyer's resignation;

(C) Whether or not public, any disciplinary charge, finding, or sanction concerning the lawyer by any disciplinary authority, court, or other tribunal in any jurisdiction.

(e) A lawyer who is registered or who is required to register under this section shall be subject to Tenn. Sup. Ct. R. 8 (Rules of Professional Conduct) and all other laws and rules governing lawyers admitted to the active practice of law in this State. The Board of Professional Responsibility has and shall retain jurisdiction over the lawyer who is registered or required to register with respect to the conduct of the lawyer in this or another jurisdiction to the same extent as it has over lawyers generally admitted in this State.

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

(1) The lawyer's employment terminates;

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

(3) The lawyer fails to maintain active status in at least one jurisdiction.

Upon the occurrence of one or more of the foregoing events, the registered lawyer shall give notice in writing within 30 days to the Board and to the Board of Professional Responsibility.

(g) A registered lawyer whose registration is terminated under paragraph (f)(1) above, may be reinstated within 180 days of termination upon submission to the Board of the following:

(1) An application for reinstatement in a form prescribed by the Board;

(2) A reinstatement fee set by the Board pursuant to Article XI; and

(3) An affidavit from the current employing entity as prescribed in paragraph (a)(4).

(h) A lawyer under this rule who fails to register within 180 days shall be:

(1) Subject to professional discipline in this jurisdiction;

(2) Ineligible for admission pursuant to Article V of this rule;

(3) Referred by the Board to the Board of Professional Responsibility; and

(4) Referred by the Board to the disciplinary authority of the jurisdiction(s) of licensure.



(i) A lawyer's rendering of service to the lawyer's employer prior to timely registration under this Rule shall not constitute the unauthorized practice of law or otherwise be treated as violating Tenn. Sup. Ct. R. 8, RPC 5.5 as long as the services are permitted under this Rule for registered lawyers and the lawyer files the application for registration under section 10.01(a) of this Rule within 180 days of the commencement of the lawyer's employment.

(j) A lawyer seeking to practice in this State under the authority of Tenn. Sup. Ct. R. 8, RPC 5.5(d)(l) and who complies fully with the requirements of this Rule on or before July 1, 2016, shall not be barred from registration under this Rule, admission pursuant to Article V of this Rule, or from practicing under the authority of RPC 5.5(d)(l) solely by the fact of prior noncompliance with Tennessee law concerning licensure of in-house counsel.

#### **Sec. 10.02. Attorneys in Clinical and Related Law School Programs.**

(a) An attorney who is enrolled or employed in a clinical program in an approved Tennessee law school or who, after graduation from an approved law school, is employed by or associated with an organized legal services program operated by an approved Tennessee law school providing legal assistance to indigents in civil or criminal matters, and who is a member of a court of last resort of another state (the term "state" including Territories and the District of Columbia) shall be admitted to practice before the courts of this State in all causes in which that attorney is associated with a legal clinic operated in conjunction with an approved law school. Admission to practice under this Rule shall be limited to the above causes and shall become effective upon filing with the Board:

(1) A certificate of any court of last resort certifying that the attorney is a member in good standing at the bar of that court; and

(2) A statement signed by the Dean of the law school that the attorney is enrolled or employed in a clinical program in an approved Tennessee law school.

(b) When the above requirements are met to the satisfaction of the Board, it shall grant admission to practice to the applicant and shall certify such by letter to the applicant.

(c) Admission to practice under this section shall cease to be effective whenever the attorney ceases to be enrolled in or associated with such program. When an attorney admitted under this section ceases to be so enrolled or associated, a statement to that effect shall be filed with the Board by a representative of the law school or legal services program. In no event shall admission to practice under this Rule remain in effect longer than 2 years for any individual admitted under this Rule, except in the discretion of the Supreme Court in special situations for good cause shown. Attorneys who wish to continue to practice in this State must seek admission under Article III (by examination) or Article V (without examination) of this Rule so that they are eligible for licensing prior to the expiration of the two-year period. Time in practice pursuant to this section will count as "active practice of law" for purposes of admission pursuant to Article V (without examination) of this Rule.

(d) Attorneys admitted to practice under this section may be suspended from practice in the manner now or hereafter provided by Tenn. Sup. Ct. R. 9 for the suspension or disbarment of attorneys.

### **Sec. 10.03. Law Student Practice.**

(a) Any law student who has successfully completed one-half of the legal studies required for graduation from any school of law from which a graduate is eligible under this Rule to take the Tennessee bar examination may, with the written approval of the Supreme Court of Tennessee, provide legal services to, and/or may appear in any municipal, county, or state court on behalf of, any person or entity financially unable to afford counsel or on behalf of the State of Tennessee or of any municipal or county government; provided, however, that the law student is participating in a law school clinical program, furnishing assistance through a legal aid program, or serving as an assistant to a District Attorney, Public Defender, the State's Attorney General, the general counsel of any State agency, or a county or municipal legal director's office, and that the law student is under the immediate and personal supervision of a member of the law school's faculty, a licensed legal aid attorney, a District Attorney General or designated Assistant District Attorney General, a District Public Defender or designated Assistant District Public Defender, the Attorney General of Tennessee or any assistant in his or her office, the general counsel of any State agency or any staff attorney in his or her office, or the director of a county or municipal legal office or designated staff attorney.

(b) Before any student shall be eligible to provide legal services and/or appear in court under this section, the dean of the approved law school or the director of the law school clinical program shall file with the Supreme Court of Tennessee for its approval a list of students who are eligible for certification under this section and certify to the Supreme Court that such students meet the requirements of this section. Upon written approval by the Supreme Court of Tennessee of such students so selected and certified, such approved students shall be and are thereby authorized to provide legal services and/or appear in any municipal, county or State court on behalf of any person or entity financially unable to afford counsel, the State of Tennessee, or any municipality or county in the State of Tennessee in a manner consistent with the requirements of this section.

(c) The Board shall approve a law school's clinical program and shall certify such approval to the Supreme Court of the State of Tennessee as a prerequisite for the approval of law students who are practicing under this section in a clinical setting. The criteria for approval shall be:

(1) that the law school itself is approved under the foregoing sections of this Rule;

(2) that if the law school has an in-house legal clinic which directly represents clients, that the program has a full-time faculty member as director, who is an attorney licensed to practice law in Tennessee; and

(3) that the law school clinical program is otherwise operated in a manner consistent with the requirements of this Rule.

Certification of approval of such law school clinical program may be withdrawn by the Board if the same ceases to meet the foregoing criteria.

(d) In the case of students working in a legal aid office, a Public Defender's Office, District Attorney's office, the office of the Attorney General of Tennessee, the office of the general counsel of any State agency, or the office of a municipal or county legal director, it shall be the responsibility

of the director of clinical education or the dean of the law school to transmit to the legal aid office, Public Defender's Office, District Attorney's office, office of the Attorney General of Tennessee, office of the general counsel of any State agency, or the office of the municipal or county legal director the names of the students who are certified under this section.

(e) The written approval of such students by the Supreme Court of Tennessee shall be and remain in force and effect until the student graduates from law school or ceases to be enrolled in the law school.

### **Explanatory Comments.**

(1) The purpose of this section is educational; consequently, its focus is on providing opportunities for students to further their legal studies through properly supervised experiential education. Interpretation of this section should be in accordance with its educational goal.

(2) The term "approved law school" refers to any law school in the state of Tennessee that has been accredited by the ABA or any law school in the state of Tennessee approved under section 2.03 of this Rule.

(3) In order to provide consistency between three-year and four-year law school programs, section 10.03 allows for certification of a student who has completed at least half of his or her law school studies. At a four-year law school, a student is eligible for certification under this section after successful completion of two years of law school, while at a three-year law school, a student is eligible after successful completion of three semesters.

(4) The term "provide legal services" is to be construed broadly, so as to allow a law student who is admitted under this section to provide any and all services that could be provided by a licensed attorney. Students admitted under this section may also appear in capacities such as guardian ad litem where the person whose interests are represented would qualify for appointed counsel.

(5) Students shall be personally and directly supervised by a clinical faculty member or legal aid lawyer, public defender, district attorney, assistant Attorney General, staff attorney for a State agency or staff attorney at a metropolitan legal office when appearing in court or tribunal; however, it is not necessary that the licensed attorney be personally present when the student engages in other activities such as interviewing, investigation and negotiation. It is, however, the responsibility of the licensed attorney to ensure that the student is properly supervised and instructed, including compliance with Tenn. Sup. Ct. R. 8, RPC 5.3.

(6) "Person or entity financially unable to afford counsel" includes all persons who would be termed "indigent" by a legal aid provider, all persons whom any court deems eligible for the appointment of counsel, as well as persons and organizations who have unsuccessfully attempted to secure legal counsel or who can otherwise demonstrate to the satisfaction of the clinic director that they cannot reasonably afford counsel. The term also encompasses any organization which is composed of a majority of persons who meet the federal definition of "indigency" as well as any not-for-profit organization the purpose of which is to assist "indigent" persons.

(7) When the dean or director of clinical education certifies to the court that a student has met the conditions for admission under this section, the dean or director is certifying that the student is in good standing and has successfully completed sufficient credit hours to satisfy the minimum requirements for the second half of law school. A student will be deemed to have successfully completed the requisite amount of credits when he or she has been deemed to have passed (rather than simply have completed) sufficient courses.

(8) A law school clinical program includes a live-client clinic within the law school, an externship program operated by the law school—regardless whether it is a part of the legal clinic—or any other law school credit-bearing activity that involves the representation of clients.

(9) A student may be certified under this section and represent clients under the provisions of this section when working at a legal aid office, district attorney's office, public defender's office, office of the Attorney General of Tennessee, office of the general counsel of any State agency or the office of the director of a municipal or county law department whether or not the student is receiving law school credit for that work. It is the responsibility of the dean or clinic director at the school at which the student is enrolled to ensure that the supervision provided by the legal aid office, public defender, district attorney, Attorney General, general counsel of a State agency or municipal or county law department or office is adequate under the section.

(10) The terms "director of a municipal or county law office" or "director of a municipal or county law department" presume an office within the county or municipality which represents the county or municipality. For such an office to be recognized under this section, there must be at least one attorney in that office whose full-time employment is as the attorney for the municipality or county.

#### **Explanatory Comment [2008].**

Subsection 10.03(a) is amended so that, to be eligible to provide legal services under this section, a law student is no longer required to attend a law school located in the state of Tennessee. Rather the amendment extends the provisions of this section to students enrolled in any law school from which a graduate would be eligible to take the Tennessee bar examination.

#### **Sec. 10.04. Practice before Admission by Examination.**

##### **(a) Eligibility.**

(1) An applicant may register with the Board in order to perform the services described in paragraph (c) of this section provided the applicant:

(A) has never been licensed to practice law in in another State in the United States, the District of Columbia, or U.S. Territories;

(B) has submitted an application pursuant to section 3.03 of this Rule;

(C) meets the educational requirements of section 2.01 of this Rule;

(D) works in Tennessee under the supervision of a licensed Tennessee attorney; and

(E) has:

(i) not yet had an opportunity to take the Tennessee bar examination;

(ii) taken the examination but not yet received notification of the results of the examination; or

(iii) taken the examination, but has not yet been admitted as a member of the Tennessee bar.

(2) An applicant is eligible for supervised practice under this section beginning with the submission of the first Application to the Bar of Tennessee by examination. The privilege to engage in supervised practice expires on the date of the admissions ceremony for successful examination applicants, the date of grade release for unsuccessful applicants, or upon issuance of an Order to Show Cause.

(3) Applicants who are unsuccessful on the examination may register for supervised practice upon submitting an application for the next available exam.

(4) In no event shall the privilege to engage in supervised practice continue for more than sixteen (16) months from the date of an applicant's first Application for Admission. The Board shall have no discretion to extend the time an applicant may engage in limited practice.

(5) An applicant who is licensed in another jurisdiction and seeking admission by examination pursuant to Article III or without examination pursuant to Article V of this Rule may practice as provided in section 5.01(g).

**(b) Registration Process.** In order to perform the services described in paragraph (c), the applicant must have submitted to the Board the NCBE application, completed the Tennessee Supplemental application process and paid the fees associated with the application. Additionally, the applicant must have registered for supervised practice according to the procedures established by the Board and paid the required fee. The applicant must include with the registration an affidavit from an attorney licensed and in good standing in Tennessee stating that the attorney agrees to undertake the supervision of the applicant in accordance with this section.

**(c) Services Permitted.** Under the supervision of a member of the bar of this State, and with the written consent of the person on whose behalf the applicant is acting, an applicant approved for supervised practice may render the following services:

(1) the applicant may counsel and advise clients, negotiate in the settlement of claims, represent clients in mediation and other non-litigation matters, and engage in the preparation and drafting of legal instruments. Any communication other than internal communications

may be signed by the applicant with the accompanying designation "Tennessee Bar Applicant" but must also be signed by the supervising member of the bar.

(2) Applicant may appear in the trial courts, courts of review and administrative tribunals of this state, including court-annexed arbitration and mediation, subject to the following qualifications:

(A) Written consent to representation of the person on whose behalf the applicant is acting shall be filed in the case and brought to the attention of the judge or presiding officer.

(B) Appearances, pleadings, motions, and other documents to be filed with the court may be prepared by the applicant and may be signed with the accompanying designation "Tennessee Bar Applicant."

(C) In criminal cases in which the penalty may be imprisonment, in proceedings challenging sentences of imprisonment, and in civil or criminal contempt proceedings, the applicant may participate in pretrial, trial, and post-trial proceedings as an assistant of the supervising member of the bar, who shall be present and responsible for the conduct of the proceedings.

(D) In all other civil and criminal cases in the trial courts or administrative tribunals, the applicant may conduct all pretrial, trial, and post-trial proceedings with the supervising attorney present unless the applicant is permitted by the judge or presiding officer to participate without direct supervision.

(E) In matters before appellate courts, the applicant may prepare briefs, excerpts from the record, abstracts, and other documents. If any such filings set forth the name of the applicant as a counsel of record in addition to the supervising member of the bar, the name of the applicant must be accompanied by the designation "Tennessee Bar Applicant" but must be filed in the name of the supervising member of the bar. Upon motion by the supervising member of the bar, the applicant may request authorization to argue the matter before the appellate court but, even if the applicant is permitted to argue, the supervising member of the bar must be present and responsible for the conduct of the applicant at the hearing.

(d) **Compensation.** An applicant rendering services authorized by this section shall not request or accept any compensation from the person for whom applicant renders the services. The supervising attorney may make an appropriate charge. The applicant may be compensated as an employee of a firm, agency, clinic or other organization so long as the rate of such compensation is established independent of compensation paid for representation.

(e) Any applicant who otherwise meets all the qualifications contemplated in this section, but who is unable to make a connection or association with a practicing attorney for purposes of serving as a supervising attorney as required by this section may make application to any trial judge holding court in the county of such applicant's residence for aid in the establishment of a supervised practice under

this section. Such practice must accord strictly with the provisions of this section. No deviation will be permitted.

#### **Sec. 10.05. Conditional Admission.**

An applicant whose previous conduct or behavior would or might result in a denial of admission may be conditionally admitted to the practice of law upon a showing of sufficient rehabilitation and/or mitigating circumstances. The Board shall recommend relevant conditions relative to the conduct or the cause of such conduct with which the applicant must comply during the period of conditional admission.

(a) **Conditions.** The Board may recommend that an applicant's admission be conditioned on the applicant's complying with conditions that are designed to detect behavior that could render the applicant unfit to practice law and to protect the clients and the public, such as submitting to alcohol, drug, or mental health treatment; medical, psychological, or psychiatric care; participation in group therapy or support; random chemical screening; office practice or debt management counseling; and monitoring, supervision, mentoring or other conditions deemed appropriate by the Board. The conditions shall be tailored to detect recurrence of the conduct or behavior which could render an applicant unfit to practice law or pose a risk to clients or the public and to encourage continued abstinence, treatment, or other support. The conditions should be established on the basis of clinical or other appropriate evaluations, take into consideration the recommendations of qualified professionals, when appropriate, and protect the privacy interests of the conditionally admitted lawyer to professional treatment records to the extent possible. The terms shall be set forth in a confidential order (the "Conditional Admission Order"). The Conditional Admission Order shall be made a part of the conditionally admitted lawyer's application file and shall remain confidential, except as provided in this and any other applicable rules. The Board shall issue the Temporary Certificate of Eligibility for Admission pursuant to section 9.01 of this Rule upon completion of the registration process after issuance of the Conditional Admission Order. The Board shall have no further authority over the conditionally admitted lawyer once such lawyer obtains a license to practice law.

(b) **Notification to the Board of Professional Responsibility.** Immediately upon issuance of a Conditional Admission Order, the Board shall transmit a copy of the order to the Board of Professional Responsibility. If the Board of Professional Responsibility or any other jurisdiction's disciplinary authority receives a complaint alleging unprofessional conduct by the conditionally admitted lawyer, or if the Monitoring Authority designated pursuant to paragraph (d) notifies the Board of Professional Responsibility of substantial noncompliance with the Conditional Admission Order, the Board of Professional Responsibility shall request a copy of relevant portions of the lawyer's bar application file, and the Board shall promptly provide the requested materials to the Board of Professional Responsibility.

(c) **Length of Conditional Admission.** The conditional admission period shall be set in the Conditional Admission Order, but shall not exceed sixty (60) months, unless notification of substantial noncompliance with the Conditional Admission Order has been received by the Board of Professional Responsibility or a complaint of unprofessional conduct has been made against the

conditionally admitted lawyer with the Board of Professional Responsibility or any other lawyer disciplinary authority.

(d) **Compliance with Conditional Admission Order.** During the conditional admission period, the Monitoring Authority shall be the Tennessee Lawyer Assistance Program. The Monitoring Authority shall take such action as is necessary to monitor compliance with the terms of the Conditional Admission Order, including, but not limited to, requiring that the conditionally admitted lawyer submit written verification of compliance with the conditions, appear before the Monitoring Authority, and provide information requested by the Monitoring Authority.

(e) **Costs of Conditional Admission.** The applicant shall be responsible for any direct costs of investigation, testing and monitoring. Other costs shall be borne in accord with this Rule or any other applicable Tennessee Supreme Court Rule.

(f) **Failure to Fulfill the Terms of Conditional Admission.** Failure of a conditionally admitted lawyer to fulfill the terms of a Conditional Admission Order may result in a modification of the Conditional Admission Order that may include extension of the period of conditional admission, suspension or revocation of the Conditional Admission Order or such other action as may be appropriate under Tenn. Sup. Ct. R. 9, including temporary suspension pursuant to Tenn. Sup. Ct. R. 9, § 12.3. The Monitoring Authority shall promptly notify the Board of Professional Responsibility whenever it determines that the conditionally admitted lawyer is in substantial noncompliance with the terms of the Conditional Admission Order. Notification of such noncompliance by the Monitoring Authority shall automatically extend the conditional admission until disposition of the matter by the Board of Professional Responsibility and any resulting appeals.

(g) **Violation of Conditional Admission Order.** The Board of Professional Responsibility shall initiate proceedings to determine whether the conditional admission should be revoked, extended or modified by filing a petition to review conditional admission. Consideration and disposition of any such petition shall follow the procedure for formal proceedings as set forth in Tenn. Sup. Ct. R. 9; however, the only issue to be determined is whether the conditional admission should be revoked, extended or modified. Any decision to extend or modify the Conditional Admission Order must be made in consultation with the Monitoring Authority. If the conditionally admitted attorney was temporarily suspended due to substantial noncompliance with a monitoring agreement, any disposition of the petition to review conditional admission may include dissolution of the temporary suspension.

(h) **Expiration of Conditional Admission Order.** Unless the Conditional Admission Order is revoked or extended as provided herein, upon completion of the period of conditional admission, the conditions imposed by the Conditional Admission Order shall expire. The Monitoring Authority shall notify the Board of Professional Responsibility of such expiration.

(i) **Confidentiality.** Except as otherwise provided herein, and unless the Supreme Court orders otherwise, the fact that an individual is conditionally admitted and the terms of the Conditional Admission Order shall be confidential provided that the applicant shall disclose the entry of any Conditional Admission Order to the admissions authority in any jurisdiction where the applicant applies for admission to practice law. In addition to ensuring that the relevant records of the Board,



the Board of Professional Responsibility and the Tennessee Lawyer Assistance Program are confidential, the Board shall use reasonable efforts to structure the terms and conditions of the conditional admission so that the conditional admission does not pose a significant risk to confidentiality. These provisions for confidentiality shall not prohibit or restrict the ability of the applicant to disclose to third parties that the applicant has been conditionally admitted under this Rule, nor prohibit requiring third-party verification of compliance with the terms of the Conditional Admission Order by admission authorities in jurisdictions to which the conditionally admitted lawyer may subsequently apply.

(j) **Education.** The Board shall make information about its conditional admission process publicly available and shall reasonably cooperate with the Tennessee Lawyer Assistance Program in its efforts to educate law students, law school administrators and applicants for bar admission regarding the nature and extent of chemical abuse, dependency, and mental health concerns that affect law students and lawyers.

(k) **Disciplinary Complaints.** The provisions of this section shall not affect the authority of the Board of Professional Responsibility, pursuant to Tenn. Sup. Ct. R. 9, to investigate a complaint filed against a conditionally admitted lawyer by a person or entity other than the Monitoring Authority, to recommend a disposition of such complaint pursuant to Tenn. Sup. Ct. R. 9, § 8.1, or to initiate a formal disciplinary proceeding as to such complaint, pursuant to Tenn. Sup. Ct. R. 9, § 8.2.

#### **Sec. 10.06. Temporary License of Spouse of a Military Servicemember.**

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

(1) is the spouse of an active duty servicemember of the United States Uniformed Services as defined by the Department of Defense and that servicemember is on military orders stationed in the State of Tennessee or Fort Campbell, Kentucky;

(2) has been licensed and admitted by examination to practice law before the court of last resort in at least one other jurisdiction of the United States;

(3) meets the educational requirements of sections 2.01 and 2.02 of this Rule;

(4) has achieved a passing score on the Multistate Professional Responsibility Examination (MPRE) as it is established in Tennessee at the time of application;

(5) is currently an active member in good standing in every jurisdiction to which the applicant has been admitted to practice, or has resigned or been administratively revoked while in good standing from every jurisdiction without any pending disciplinary actions;

(6) is not currently subject to lawyer discipline in any other jurisdiction;

(7) possesses the moral character and fitness required of all applicants for admission and

licensing in this State;

(8) is physically residing in Tennessee or Fort Campbell, Kentucky, due to the servicemember's military orders;

(9) has never failed the Tennessee bar examination;

(10) certifies that he or she has read and is familiar with the Tennessee Rules of Professional Conduct; and

(11) has paid such fees as may be set by the Board.

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

(1) file an application for Temporary License for Servicemember's Spouse and an application for character investigation, including all required supporting documents, in the manner established by the Board;

(2) submit a copy of the applicant's Military Spouse Dependent Identification and documentation evidencing a spousal relationship with the servicemember;

(3) provide a copy of the servicemember's military orders to a military installation in Tennessee or Fort Campbell, Kentucky, or a letter from the servicemember's command verifying that the requirement in Paragraph (a)(8) of this section is met;

(4) submit certificate(s) of good standing from the highest court of each state to which the applicant has been admitted and disciplinary history(ies) to demonstrate satisfaction of the requirements of paragraph (a)(5) of this section 10.06;

(5) pay the fee established pursuant to section 11.01 of this Rule.

**(c) Issuance, Renewal and Subsequent Application.**

(1) Issuance. Upon approval and certification by the Board, the applicant for temporary license shall, upon registration and payment of applicable fees and taking the oath of admission as set forth in sections 9.01 and 9.02 of this Rule, become a member of the Tennessee bar. An attorney temporarily licensed pursuant to this section shall be subject to the same membership obligations, including payment of fees and continuing legal education requirements, as other active members of the Tennessee bar, and all legal services provided in Tennessee by a lawyer licensed and admitted pursuant to this section shall be deemed the practice of law and shall subject the attorney to all rules governing the practice of law in Tennessee, including the Tennessee Rules of Professional Conduct. The original term of the license is two years.

(2) Duration and Renewal.

(A) Persons who hold a temporary license under this provision may apply for subsequent one-year extensions to their license upon filing of an application for extension with the Board. The application for extension must include sworn verification that the temporarily licensed attorney continues to meet all of the qualifications for temporary license as set forth in paragraphs (a), (b) and (c) of this section, and include the required fee for the application. Requests for extension must be submitted to the Board at least one month prior to the expiration of the temporary license. Requests for extension must be approved by both the Board and the Supreme Court to be effective.

(B) When the active duty servicemember is assigned to an unaccompanied or remote follow-on assignment and the temporarily licensed attorney continues to physically reside in Tennessee or Ft. Campbell, Kentucky, the temporary license may be renewed until that unaccompanied or remote assignment ends, provided that the attorney spouse complies with the other requirements for renewal.

(C) Subsequent Applications. A temporarily licensed attorney who wishes to become a permanent member of the bar of Tennessee may apply for admission under Article III (by examination) or Article V (without examination) of this Rule for the standard application fee minus the application fee paid to the Board for the application for temporary license, not including any fees for requests for extension or background investigation fees. The requirement for a background investigation will be waived if the application for admission is submitted within two years of the original Application for Temporary License.

**(d) Termination.**

(1) Event of Termination. An attorney's temporary license to practice law pursuant to this section shall immediately terminate and the attorney shall immediately cease all activities under this section upon the occurrence of any of the following:

(A) the spouse's discharge, separation or retirement from active duty in the United States Uniformed Services, or the spouse's no longer being on military orders stationed in the State of Tennessee or Fort Campbell, Kentucky, except as provided in section 10.06(c)(2)(A);

(B) failure of the temporarily licensed attorney to meet any licensing requirements applicable to all active attorneys possessing a license to practice law in this State, including failure to submit a timely application to renew the temporary license;

(C) the attorney no longer physically residing within the State of Tennessee or at Fort Campbell, Kentucky;

(D) the request of the temporarily licensed attorney;

(E) the issuance to the temporary attorney of a Tennessee license under Article III (by examination) or Article V (without examination) of this Rule;

(F) the temporarily licensed attorney receiving a failing score on the Tennessee bar examination;

(G) the suspension, disbarment or other action affecting the temporarily licensed attorney's good standing with the bar of Tennessee or any other jurisdiction in the United States in which the temporarily licensed attorney is licensed.

**(2) Notices Required.**

(A) An attorney temporarily licensed under this section shall provide written notice to the Board and the Board of Professional Responsibility of any Event of Termination within thirty (30) days of the occurrence thereof;

(B) Within thirty (30) days of the occurrence of any Event of Termination, the temporarily licensed attorney shall:

(i) provide written notice to all his or her clients that he or she can no longer represent such clients and shall furnish proof to the Board and the Board of Professional Responsibility within forty-five (45) days of such notification; and

(ii) file in each matter pending before any court or tribunal in this State a notice that the attorney will no longer be involved in the matter, which shall include such other attorney licensed to practice law in Tennessee selected by the client, as counsel in the place of the temporarily licensed attorney.

## **ARTICLE XI. FEES**

### **Sec. 11.01. Schedule of Fees.**

The Board shall adopt, from time to time, a schedule of fees to be paid by applicants. No fee shall be charged without the approval of the Supreme Court.

### **Sec. 11.02. Payment Mandatory.**

No step in the admissions process may be taken except upon the payment of the fees required for that step. No license will be issued until all fees due from the applicant have been paid.

### **Sec. 11.03. Refunds.**

Fees are non-transferable and non-refundable, except that the fee for examination or re-examination may be refunded in part as provided in the schedule of fees adopted by the Board and approved by the Supreme Court, as provided in section 11.01 of this rule.

## **ARTICLE XII. ORGANIZATION AND POWERS OF BOARD**

### **Sec. 12.01. Composition of Board and Term.**

The Board shall consist of five attorneys licensed to practice law in this State and in good standing. The Board members shall be appointed to three-year terms by the Supreme Court. No member who has served three successive three-year terms shall be eligible for reappointment to the Board until three years after the termination of the most recent term.

### **Sec. 12.02. Officers and Allocation of Responsibilities.**

The officers of the Board shall consist of a President, a Vice President and a Secretary-Treasurer. The Board may, however, allocate responsibilities not requiring formal action, as it deems appropriate, on an informal basis.

### **Sec. 12.03. Official Seal.**

The Board shall use a seal of office containing the following words: "STATE OF TENNESSEE BOARD OF LAW EXAMINERS."

### **Sec. 12.04. Formal Actions; Quorum.**

(a) Denial of an application to take the bar examination, or denial of a license, or the adoption of Board policies and rules shall be taken only on formal action concurred in by at least three members of the Board, expressed in an order.

(b) Three (3) members of the Board shall constitute a quorum.

(c) Preliminary approval to take the bar examination may be given and any other informal action may be taken by any member of the Board.

### **Sec. 12.05. Policy and Procedure of the Board.**

(a) The Board shall have the power to adopt such statements of policy and procedure as it may deem necessary or expedient, not inconsistent with the rules of the Supreme Court. Upon adoption by the Board, the Executive Director shall provide a copy of the policy or procedure to the Court for approval.

(b) All such statements of policy and procedure shall be maintained by the Executive Director as the Board's Statement of Policy and Procedure and shall be open to public inspection. The Board shall take reasonably appropriate steps to ensure that applicants are given the opportunity to become familiar with the Board's Statement of Policy and Procedure, as well as with this Rule.

### **Sec. 12.06. Docket of Proceedings.**

The Executive Director shall maintain a docket of all proceedings before the Board in which formal action of the Board is taken, or in which a hearing is held with respect to any application for admission.

**Sec. 12.07. Appointment and Duties of Executive Director.**

The Supreme Court shall appoint an Executive Director of the Board, who shall serve at the pleasure of the Supreme Court. Following his or her appointment, the Executive Director shall report to the Board, which shall conduct regular performance evaluations of the Executive Director and report such evaluations to the Supreme Court. The Executive Director shall be responsible for all administrative duties in the enforcement of this Rule, including, but not limited to, investigation of the character of applicants, investigation of schools, preliminary review of applications, making arrangements for the giving of examinations, keeping books, records and files, and such other responsibilities as may be delegated or directed by the Board.

**Sec. 12.08. Secretarial Assistance.**

The Executive Director may employ such full or part-time secretarial and other office assistance as he or she may deem appropriate.

**Sec. 12.09. Assistants to the Board.**

The Supreme Court may appoint attorneys licensed to practice law in this State and in good standing to assist in the preparation and grading of examination questions, and to perform such other duties in the enforcement of this Rule as the Board may from time to time direct. The assistants shall serve staggered terms of five (5) years and may be reappointed to serve a second five-year term, provided that shorter terms may be designated initially by the Court where necessary to observe the above rotation practices.

**Sec. 12.10. Salaries.**

Subject to budgetary limitations, the Board shall fix the salary of the Executive Director, of attorney assistants, and of the employees of the Board.

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

Applications for admission, examination papers and grades, and all investigative records of the Board, including, but not limited to, correspondence and/or electronic transmissions to and from the Board, its members and staff, minutes of Board meetings and its deliberations and all documents, communications and proceedings prepared in connection with evaluations or investigations of law schools under sections 2.03, 2.07, 2.08, 2.09, 2.10, 2.11, 2.12, and 2.15 of this Rule, whether in paper or electronic form, shall be treated as confidential and shall not be open to inspection by members of the public without written application to and authorization by an appropriate order of the Supreme Court. Statistical information not identified with any particular applicant and information relating to whether and when an applicant has been admitted may be released to any person. The Board is authorized to release information which would otherwise be confidential to the licensing,

disciplinary or law enforcement agencies of any jurisdiction, the Tennessee Lawyer Assistance Program, the Board of Professional Responsibility, and to the National Conference of Bar Examiners. Notwithstanding the provisions above, completion of an Application to the Bar of Tennessee constitutes Applicant's permission allowing the Board to release Applicant's name, address and email address to Bar and professional legal associations in Tennessee, as approved by the Board, and, for applications for admission by examination, Applicant's name and exam result to the law school from which Applicant graduated.

**Sec. 12.12. No Power to Waive or Modify Rule of the Supreme Court.**

Except as expressly provided in this Rule, the Board has no power to waive or modify any provision of this Rule.

**Sec. 12.13. Subpoena Power.**

The Board and each member thereof are vested with the power to issue subpoenas for witnesses, to compel their attendance, and to compel the production of books, records and documents, to administer oaths to witnesses and to compel witnesses to give testimony under oath, and to have and exercise all other power and authority conferred by the laws of this State and the rules of the Supreme Court upon Commissioners or upon Special Masters of this Court. Said subpoenas shall in each instance be attested by the Clerk or a deputy clerk of this Court. Subpoenas shall be issued and enforced in accordance with the provisions of Title 24, Tenn. Code Ann., as in the case of Commissioners authorized to take depositions.

**Sec. 12.14. Counsel for Board.**

(a) The Board is authorized to request any of the attorney assistants to the Board to act as counsel, or to request the State or any local bar association to furnish counsel, to assist the Board in investigations, preparation for hearings, or the conduct of hearings.

(b) The Attorney General shall represent the Board in any proceedings in court, including the review of Board actions in the Supreme Court.

**Sec. 12.15. Immunity.**

(a) Members of the Board, District Committee Members, the Executive Director, Assistants and employees of the Board shall be immune from civil suit in the course of their official duties.

(b) Records, statements of opinion, and other information regarding an applicant for admission to the bar communicated by any entity, including any person, firm or institution, without malice, to the Board, or to its members, employees or agents, are privileged, and civil suits for damages predicated thereon may not be instituted.

(c) The immunity granted in this section 12.15 shall not be construed to limit any other form of immunity available to any covered person.

## **ARTICLE XIII. FORMAL PROCEEDINGS BEFORE THE BOARD**

### **Sec. 13.01. Show Cause Orders.**

If the Board finds, from the information furnished it or from investigations made under its authority, that grounds for doubt exist as to whether an applicant meets the criteria and standards provided in this Rule, the Board shall issue an order requiring the applicant to show cause why the applicant should not be denied admission or the opportunity to take the examination as the Board may determine. Any such show cause order shall state the grounds thereof and shall afford the applicant an opportunity to reply thereto within a period designated therein. Any such reply shall be in writing, under oath, and may include such additional affidavits or other documents as the applicant may choose to furnish. If the Board determines that any such reply is not sufficient, the Board shall notify the applicant and afford him or her the opportunity to be heard in accordance with the procedures provided in this Rule. The Board or the Executive Director, however, may contact the applicant in order to secure an informal resolution of the matter before resorting to the formal procedures herein provided, but no such informal disposition shall be made without the consent of the applicant.

### **Sec. 13.02. Petitions to Board.**

(a) Any person who is aggrieved by any action of the Board involving or arising from the enforcement of this Rule (other than failure to pass the bar examination) may petition the Board for such relief as is within the jurisdiction of the Board to grant.

(b) Any such petition must:

(1) Be in writing, under oath;

(2) Be filed with the Executive Director within 30 days after notice of such action by the Board; and

(3) Must state with reasonable particularity the relief which is sought and the grounds therefor.

(c) Any such petition may:

(1) Be accompanied by such affidavits and other documentary evidence as the petitioner may deem appropriate;

(2) May be supported by a Memorandum of Law setting forth pertinent authorities and arguments; and

(3) May ask the Board to set the matter for hearing.

(d) The Board may order a hearing of any such petition on its own initiative.

### **Sec. 13.03. Hearings Before the Board.**



(a) The Executive Director shall serve notice on the petitioner or the respondent to a show cause order and any other interested parties fixing the time and place of the hearing and indicating the matters to be heard.

(b) The petitioner or respondent and any other person made a party to the proceeding shall have the right to be represented by counsel and to present evidence and argument with respect to the matters in issue.

(c) The burden of proof shall be upon the petitioner, or the respondent in the case of a show cause order.

(d) Any person having a direct interest in the matters in issue in any proceeding may, upon written motion, be allowed to intervene and become a party of record.

(e) The Board shall not be bound by the rules of evidence applicable in a court, but it may admit and give probative effect to any evidence which in the judgment of the Board possesses such probative value as would entitle it to be accepted by reasonably prudent persons in the conduct of their affairs. The Board, however, shall give effect to the rules of privilege recognized by law. The Board may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.

(f) All evidence, including records and documents in the possession of the Board of which it desires to avail itself, shall be offered and made a part of the record, and no factual information shall be considered by the Board which is not made part of the record.

(g) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(h) The Board may take notice of judicially cognizable facts and, in addition, may take notice of general or technical facts within its specialized knowledge.

(i) The Board may cause subpoenas to be issued for such witnesses as any party may in good faith and for good cause shown request in writing.

(j) The Executive Director shall arrange for the presence of a court reporter to transcribe any oral hearing. The per diem charge of such reporter shall be paid by the party requesting the hearing, or, in the case of a show cause order, by the Board. In its discretion, the Board may waive the presence of a reporter and use an electronic or similar recording device. At the direction of the Board, or at the request of any party, a transcription of the hearing shall be made, and the transcription shall be incorporated in the record, if made. The party requesting the transcription shall bear the cost thereof. If the Board elects to transcribe the proceedings, any party shall be provided copies thereof upon payment to the Board of a reasonable compensatory charge.

(k) At the direction of the Board and by agreement of the parties, all or part of a hearing may be conducted by telephone, or other electronic means, if each party has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.

(l) Any member of the Board may hold hearings when authorized by the Board to do so, but any decision shall be made by a majority of the Board. Any member participating in the decision without being present for the hearing shall read the transcript of the proceedings and the entire record before the Board.

#### **Sec. 13.04. Default.**

(a) If a party fails to respond to a show cause order, the Board may hold that party in default, serve a notice of default on that party, and after the period stated in that notice, enter an order taking such action as the Board deems appropriate.

(b) If a party fails to appear at a hearing, the Board may hold that party in default, serve a notice of default on the party, and after the period stated in that notice, dismiss the petition, or, in the case of a hearing set by the Board on its own initiative, enter an order taking such action as the Board deems appropriate.

(c) When a party fails to respond to a show cause order, or fails to appear at a hearing, the Board may, at its election, proceed with the hearing in the absence of that party.

(d) A party who has been held in default may file a petition for setting aside that default within 15 days after the entry of an order based on that default, which petition shall state with particularity the grounds thereof.

#### **Sec. 13.05. Costs.**

The Board may require payment of or security for the costs and expenses of any hearing before the Board, in such a manner as it deems reasonably compensatory.

#### **Sec. 13.06. Decisions of Board.**

The Board's decision on any hearing before it shall be made in writing and a copy thereof shall be mailed or delivered to all parties of record.

#### **Sec. 13.07. Informal Disposition.**

Unless precluded by law or by this Rule, informal disposition may be had of any matter before the Board by stipulation, agreed settlement, or consent order.

#### **Sec. 13.08. Motions and Other Matters Preliminary to Hearing.**

(a) Any party who desires to raise any matter preliminary to the hearing or to obtain any order from the Board prior to the hearing shall do so by motion, which shall be made in writing, shall state with reasonable particularity the grounds therefor, and shall set forth the relief or order sought.

(b) Any member of the Board may dispose of any motion, subject to the right of review by the entire Board.

## **ARTICLE XIV. REVIEW OF BOARD DECISIONS**

### **Sec. 14.01. Petition for Review.**

Any person aggrieved by any action of the Board may petition the Supreme Court for a review thereof as under the common law writ of certiorari, unless otherwise expressly precluded from doing so under this Rule. A petition filed under this section shall be made under oath or on affirmation and shall state that it is the first application for the writ. *See* Tenn. Code Ann. §§ 27-8-104(a) and 27-8-106. On the grant of the writ, the Executive Director shall certify and forward to the Clerk of the Supreme Court a complete record of the proceedings before the Board in that matter. Any such petition must be filed within 60 days after entry of the order of the Board. The Board shall have 30 days after filing of any such petition within which to file a response.

### **Sec. 14.02. Costs.**

The Supreme Court may make such orders as it may consider appropriate with respect to the payment of or security for costs and other expenses of hearings before the Court.

### **Sec. 14.03. Exhaustion of Board Remedies.**

The Supreme Court will entertain no application or petition from any person who may be affected directly or indirectly by this Rule unless that person has first exhausted his remedy before the Board.

### **Sec. 14.04. No Review of Failure to Pass Bar Examination.**

The only remedy afforded for a grievance for failure to pass the bar examination shall be the right to re-examination as herein provided.

## **ARTICLE XV. SURRENDER OF LAW LICENSE**

An attorney licensed to practice in Tennessee may petition the Supreme Court to accept the surrender of his or her license to practice law.

The petition shall be filed in the office of the Clerk of the Supreme Court in Nashville. The petitioner shall contemporaneously serve copies of the petition upon the Chief Disciplinary Counsel of the Board of Professional Responsibility, the Executive Director, and the Executive Director of the Commission on Continuing Legal Education and Specialization.

The petition shall state under oath:

(a) the reason(s) for the requested surrender;

(b) whether disbarment, suspension, disciplinary, or other administrative action of any nature is in effect or pending as to the petitioner;

(c) whether there is a potential grievance, complaint, disciplinary or administrative action of any nature in any jurisdiction which may likely be filed against the petitioner;

(d) whether the attorney is currently on probation, under criminal charge(s), or under investigation for criminal charge(s), of any nature in any jurisdiction.

The Supreme Court may decline to consider any petition during the pendency of any of the matters described herein above.

The attorney shall attach the law license to the petition or shall attach an affidavit fully explaining why the license is not attached.

Upon consideration of the petition, the Supreme Court may grant the petition or deny it. If the Supreme Court grants the petition, the order accepting the surrender shall state the date the surrender shall take effect. The Clerk of the Supreme Court shall mail a copy of the order to the surrendering attorney, the Board of Professional Responsibility, the Board, and the Commission on Continuing Legal Education and Specialization.

As of the effective date of the order accepting surrender, the attorney shall have no license to practice law in this state. After the effective date of the order, this license shall not be reinstated, and the attorney may not be licensed to practice law in Tennessee until he or she applies for a law license in Tennessee and meets the requirements of this Rule.

## **ARTICLE XVI. REINSTATEMENT OF LAW LICENSE**

**Sec. 16.01.** In accordance with Tenn. Sup. Ct. R. 9, §§ 10 and 13, an attorney who has been suspended, disbarred or assumed inactive status and who wishes to take the bar examination as evidence of the attorney's fitness to practice law, must apply for examination as provided in section 3.03 of this Rule, and attach to the application a disclosure that the application is being submitted pursuant to this section 16.01.

**Sec. 16.02.** Applicant's bar examination scores will not be posted but will be released directly to the applicant.

**Sec. 16.03.** Submitting an application to take the bar examination constitutes the applicant's permission to allow the Board to release the results of the bar examination and the background investigation directly to the Board of Professional Responsibility.

*[end of Appendix A]*

## ***APPENDIX B***

***Amendments to Tenn. Sup. Ct. R. 6;  
Tenn. Sup. Ct. R. 8, RPC 5.5;  
and Tenn. Sup. Ct. R. 43***

[Amend Rule 6 as indicated below; deleted text is indicated by overstriking, and new text is indicated by underlining:]

## **Rule 6. Admission of Attorneys.**

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

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

(2) Filing with the Clerk of the Supreme Court an application for admission by affidavit. Such application shall contain:

(A) A personal statement by the applicant that he or she possesses all qualifications and meets all requirements for admission as set out in the preceding paragraph; ~~and~~

(B) A statement by two sponsors (who must be members of the Bar of this Court and must personally know the applicant) endorsing the correctness of the applicant's statement, stating that the applicant possesses all the qualifications required for admission and affirming that the applicant is of good moral and professional character. Upon timely application and for good cause shown, the Board of Law Examiners, in its discretion, may waive this requirement; and,

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

(3) The documents submitted by the applicant shall demonstrate that he or she possesses the necessary qualifications for admission. Upon the applicant's taking the oath or affirmation and paying the fee therefor, the Clerk shall issue a certificate of admission. The fee for admission to the Bar of this Court shall be fixed by the Court. Applications may be filed in the offices of the Clerk at Nashville, Knoxville, or Jackson.

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

I, \_\_\_\_\_, do solemnly swear or affirm that I will support the Constitution of the United States and the Constitution of the State of Tennessee, and that I will truly and honestly demean myself in the practice of my profession to the best of my skill and abilities, so help me God.

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

[Amend Rule 8, RPC 5.5(d)(3) and Comment [17], as indicated below; deleted text is indicated by overstriking, and new text is indicated by underlining:]

**Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law.** — (a) \* \*

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

(3) A lawyer providing legal services pursuant to paragraph (d)(1) is subject to registration pursuant to Tenn. Sup. Ct. R. 7, § 10.01, and may be subject to other requirements, including assessments for client protection funds and mandatory continuing legal education. Failure to register in a timely manner may preclude the lawyer from later seeking admission in this jurisdiction.

(e) \* \* \* \*

#### **Comment.**

[1] \* \* \* \*

[17] ~~If an employed lawyer establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the lawyer may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education. See Tenn. Sup. Ct. R. 7, § 10.01 (Registration of In-House Counsel).~~ [Effective January 1, 2016, RPC 5.5 was amended by moving the substance of former Comment [17] to new RPC 5.5(d)(3) (above).]

[18] \* \* \* \*



[Amend Tenn. Sup. Ct. R. 43, § 14(b) as indicated below; new text is indicated by underlining:]

**Rule 43. Interest on Lawyers' Trust Accounts.** — Tennessee Supreme Court Rule 8, Rule of Professional Conduct 1.15, requires that Tennessee lawyers who maintain pooled trust checking accounts for the deposit of client funds participate in the IOLTA (Interest On Lawyers' Trust Accounts) program.

\* \* \* \*

**Section 14.** Unless exempt under this Section 14, every lawyer admitted to practice in Tennessee shall certify in the lawyer's annual registration statement required by Tennessee Supreme Court Rule 9, as a condition of licensure, that all funds in the lawyer's possession that are required pursuant to RPC 1.1 5(b) to be held in an IOLTA account are, in fact, so held and shall list the name(s) of the financial institution(s) and account number(s) where such funds are deposited. This certification shall be made on a form provided by the Board of Professional Responsibility and shall be submitted by the lawyer within the time period set forth in Rule 9 for the annual registration statement. A lawyer licensed in Tennessee is exempt, and shall so certify on the lawyer's annual registration statement, if:

(a) the lawyer is not engaged in the private practice of law in the State of Tennessee;

(b) the lawyer serves as a Judge, Attorney General, Public Defender, U.S. Attorney, District Attorney, in-house counsel registered pursuant to Tennessee Supreme Court Rule 7, Section 10.01, teacher of law, on active duty in the armed forces or employed by state, local or federal government and not otherwise engaged in the private practice of law;

(c) \* \* \* \*

*[end of Appendix B]*