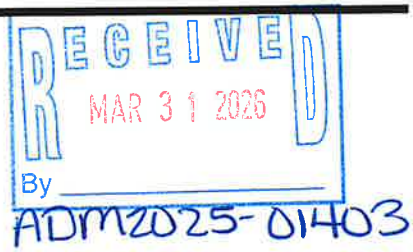
MaryBeth Lindsey



To: appellatecourtclerk
Subject: RE: Docket No. ADM2025-01403

From: David Majchrzak <dmajchrzak@rosinglaw.com>
Sent: Tuesday, March 31, 2026 1:17 PM
To: appellatecourtclerk <appellatecourtclerk@tncourts.gov>
Subject: Docket No. ADM2025-01403

Warning: Unusual sender <dmajchrzak@rosinglaw.com>
You don't usually receive emails from this address. Make sure you trust this sender before taking any actions.

I received an inquiry yesterday that led me to believe that a comment letter I understood was sent in early March may not have been received. I have recompiled the letter and exhibits and am submitting on behalf of the Association of Professional Responsibility Lawyers in case it has not been received. I realize that this is after the deadline, but offer it to the extent that it may prove helpful.

ROSING POTT & STROHBEHN LLP

David Majchrzak
General Counsel and Partner
(619) 387-3157 (CA Direct)
(602) 898-3865 (AZ Direct)
dmajchrzak@rosinglaw.com
www.rosinglaw.com

Office Address
770 1st Ave, Suite 200
San Diego, CA 92101

APRL ASSOCIATION OF PROFESSIONAL RESPONSIBILITY LAWYERS

5015 Madison Ave
Suite A, #284
Sacramento CA 95841
www.aprl.net

February 24, 2026

James Hivner, Clerk
Re: Regulatory Reform
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1307

Dear Tennessee Supreme Court,

On behalf of APRL, an association of over 400 lawyers and law professors advising and representing lawyers in ethics matters, I enclose APRL's comments on potential regulatory reforms to increase access to quality legal representation. APRL, as an organization, and its members, as individuals, have dedicated a significant amount of time to studying such issues. For your consideration, we offer white papers and proposals for the revision of Model Rules 5.4 and 5.5.

We also appreciate the inquiry into whether any legal services currently provided by lawyers could be competently provided by paraprofessionals and, if so, what qualifications, limitations, or subject matter restrictions the Court should consider imposing. while APRL is actively engaged in efforts to adapt the regulation of lawyers to unmet needs for legal services, as an organization it has not formulated a specific position on this issue. Many of our members have opinions on this issue based on varying levels of experience with innovative programs. But, as an organization, APRL generally supports changes that have the potential of broadening the availability of competent services to be provided to people who need them. To the extent that Tennessee were to experiment with specific programs, as some other states have, it could prove helpful. We note that the wisdom and success of any particular "paraprofessional" program may very much depend on the details of its implementation.

Thank you for considering our comments. Please let me know if you would like to discuss any of these ideas further.

Very truly yours,

David M. Majchrzak
APRL 2025-2026 President

Enclosures:

1. Letter Regarding APRL Proposal for a Revised Model 5.5
2. 12.12.24 APRL Proposed Revisions to Model Rule 5.4

ENCLOSURE 1

APRL ASSOCIATION OF PROFESSIONAL RESPONSIBILITY LAWYERS

600 W. Van Buren Street
Suite 700
Chicago, IL 60607
www.aprl.net

Phone: (312) 782-4396
Fax (312) 782-4725

April 18, 2022

By email: rturner@clarkhill.com
Reginald M. Turner, Esq.
President, American Bar Association

Re: APRL's Proposal for a Revised Model Rule 5.5

Dear President Turner:

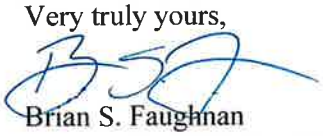
On behalf of APRL, an association of over 400 lawyers and law professors advising and representing lawyers in ethics matters, I enclose APRL's proposal for a replacement Model Rule 5.5 to better reflect the way lawyers practice in the 21st Century. Our proposal advocates that a lawyer admitted in any United States jurisdiction should be able to practice law and represent willing clients without regard to the geographic location of the lawyer or the client, without regard to the forum where the services are to be provided, and without regard to which jurisdiction's rules apply at a given moment in time. At the same time, our new Model Rule 5.5 would still preserve judicial authority in each state to regulate who appears in state courts, emphasizes that lawyers must be competent under Rule 1.1 no matter where they are practicing or what kind of legal services they are providing, and ensures that lawyers will be subject to the disciplinary jurisdiction of not only their state of licensure but wherever they practice.

Several years ago, one of my predecessors as President of APRL, George Clark, established a committee focused on the Future of Lawyering. The Future of Lawyering Committee is chaired by two other past presidents of our organization, Jan Jacobowitz and Art Lachman. After several years of hard work and discussions, the first action item from that group is a proposal to replace current ABA Model Rule 5.5 with a new version. That group has also created a very detailed report that discusses the history of the existing rule, how it is rooted in troubling presumptions, and how it is anachronistic in relation to the modern practice of law. In addition to the revised proposed rule itself, I also enclose a copy of that Report of the Future of Lawyering Subcommittee of the Association of Professional Responsibility Lawyers.

In March, APRL's Board voted to adopt the proposed revised rule as APRL's own proposal and authorized the report prepared by a Subcommittee of our Future of Lawyering Committee to be publicly disseminated. We hope to garner support not only within the ABA for this proposal, but also in any states independently willing to consider changes to their own versions of RPC 5.5. I would ask that you help disseminate these materials to the appropriate channels within the ABA.

I thank you for your time, your consideration, and your service to our profession.

Very truly yours,



Brian S. Faughnan
APRL 2021-2022 President
Lewis Thomason, P.C.

APRL MODEL RULE 5.5

RULE 5.5: Multijurisdictional Practice of Law

(a) A lawyer admitted and authorized to practice law in any United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction, subject to the other provisions of this rule.

(b) Only a lawyer who is admitted to practice in this jurisdiction may hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer who provides legal services in this jurisdiction shall:

(1) Disclose where the lawyer is admitted to practice law;

(2) Comply with this jurisdiction's rules of professional conduct, including but not limited to Rule 1.1 (Competence), and with the admission requirements of courts of this jurisdiction;

(3) Be subject to Rule 8.5 regarding the disciplinary authority and choice of law rules of this jurisdiction; and

(4) Not assist another person in the unauthorized practice of law in this, or any other, jurisdiction.

(d) A lawyer admitted and authorized to practice law in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, may provide legal services in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates;

(2) are not services for which the forum requires pro hac vice admission; and

(3) do not arise under the law of any U.S. jurisdiction, unless the services are provided after consultation with a lawyer authorized to practice law in this jurisdiction.

New Comments

1. This rule acknowledges that the practice of law now routinely transcends geographic jurisdictional boundaries. The question of what it means for a lawyer to practice law "in" a jurisdiction has been clouded by advances in technology that facilitate lawyers' ability to communicate, work, and appear in other jurisdictions. For example, historically a lawyer's physical presence in a jurisdiction was the predominate factor in determining where the lawyer practiced law. In modern law practices, lawyers routinely send e-mails, place phone calls, and participate in video calls with clients and other parties in other jurisdictions, rendering the lawyer's physical location irrelevant to the lawyer's capacity to provide legal

services. Similarly, the advent of on-line research, including access to local rules and ordinances, has enhanced lawyers' ability to master competency without regard to artificial geographic limitations. Hence, this rule recognizes the realities of current law practice and expanding access to lawyers while still being mindful of the need for public protection.

2. The definition of the practice of law may be established by statute or common law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to individuals admitted and authorized to practice law in at least one United States jurisdiction, protects the public against rendition of legal services by unqualified and unaccountable persons. Under the circumstances specified in section 5.5(d) of this rule, lawyers licensed in a foreign jurisdiction may also practice law without undue risk of harm to the public.

3. A lawyer is "admitted" in a jurisdiction when they have been formally licensed to appear in the courts of that jurisdiction without limitation. A lawyer may be "authorized" to practice in a jurisdiction if they are admitted to practice in any U.S. jurisdiction or, where court rules so require, the lawyer has been admitted to appear by a pro hac vice procedure, or other similar mechanism. A lawyer may be admitted to practice but not authorized to do so, because, for example, the lawyer is on inactive status. Under this rule, a lawyer must be both admitted and authorized to practice in at least one United States jurisdiction.

4. The distinction of being admitted in a particular jurisdiction relates to the privilege of regularly appearing in the courts of this jurisdiction and communicating that privilege to the public. Thus, while lawyers admitted in other jurisdictions may practice in this jurisdiction as provided in this rule, only lawyers admitted in this jurisdiction may represent that they are fully authorized to appear regularly in the courts of this jurisdiction.

5. Paragraph (c)(1) requires that all lawyers, including lawyers admitted in this jurisdiction, disclose the jurisdiction(s) in which they are admitted. Such disclosure is necessary to inform consumers of legal services and other parties where the lawyer's license originates and to facilitate disciplinary enforcement. This Rule anticipates that the primary form of disclosure will be in written communications, such as lawyers' signature blocks on correspondence and in lawyer advertising, including websites. A lawyer who communicates orally with another person and knows, or reasonably should know, that the other person has a misunderstanding about the lawyer's licensure, has an affirmative duty to correct the person's impression. *See* Rule 4.3.

6. A lawyer may establish an office for the practice of law in this jurisdiction with proper disclosure of the jurisdiction(s) in which the lawyer is admitted.

7. Whether and how lawyers may communicate the availability of their services in this jurisdiction is governed by Rules 7.1 – 7.3.

8. All lawyers are required to be competent in the practice of law. *See* Rule 1.1. The lawyer's duty of competence applies regardless of practice area or the jurisdiction in which a matter is located.

9. All lawyers are subject to the disciplinary authority of the jurisdictions in which they practice. *See* Rule 8.5(a). The frequency with which disciplinary authorities have exercised their authority to prosecute and discipline lawyers not licensed in their jurisdiction has increased in the past decade, suggesting that geographic boundaries are not an impediment to holding lawyers accountable for ethical misconduct. Hence, allowing lawyers to practice in multiple jurisdictions does not undermine public protection.

10. A lawyer does not engage in the unauthorized practice of law by employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. *See* Rule 5.3. A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants, and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

11. To the extent that a court rule or other law of this jurisdiction requires a lawyer who is not admitted to practice in this jurisdiction to obtain admission pro hac vice before appearing before a tribunal or administrative agency, this Rule requires the lawyer to obtain that authority. In the absence of such requirements, this Rule permits lawyers to appear before administrative agencies in jurisdictions in which they are not admitted, subject to the other provisions of this Rule.

12. In situations in which pro hac vice admission is required, this Rule permits a lawyer to engage in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is authorized to practice law under this rule but for which pro hac vice admission has not yet been obtained. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents.

13. Paragraph (d) applies to a foreign lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the foreign lawyer to provide personal legal services to the employer's officers or employees or legal services to the general public. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The lawyer's ability to represent the employer outside the foreign jurisdiction in which the lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the lawyer's qualifications and the quality of the lawyer's work. To further decrease any risk to the client, when advising on the domestic law of a United States jurisdiction or on the law of the United States, the foreign lawyer authorized to practice under this Rule needs to first consult with a lawyer admitted and authorized to practice in at least one U.S. jurisdiction.

REPORT OF THE FUTURE OF LAWYERING SUBCOMITTEE OF THE ASSOCIATION OF PROFESSIONAL RESPONSIBILITY LAWYERS REGARDING PROPOSED REVISED MODEL RULE 5.5[1]

Introduction

The Association of Professional Responsibility Lawyers Committee on the Future of Lawyering proposes a revised Model Rule 5.5 that offers a 21st century approach to the practice of law. Since the adoption of the current Model Rule 5.5 in 2002, lawyers in the United States have continued to expand their practices beyond state and national borders. The existing rule no longer adequately addresses the day-to-day questions lawyers have about multi-jurisdictional practice and it preserves outdated notions of how lawyers serve their clients. APRL believes that a broader rule is critical to the future of the profession.

APRL's proposed revision of Model Rule 5.5 reflects the concept that a lawyer admitted in any U.S. jurisdiction should be able to engage in the practice of law and represent willing clients without regard to the geographic location of the lawyer or the client, the forum the services are provided in, or which jurisdiction's rules apply at a given moment in time. The proposed revision recognizes that ethics rules will continue to govern the conduct of lawyers and require competence in the delivery of legal services provided; acknowledges that courts and other tribunals have the inherent power to control who appears before them; and embraces the fact that technology has fundamentally changed the ease with which clients and lawyers work together over vast distances.

The proposed revised Model Rule 5.5 offers up a regulatory model that would be similar, though not identical to the way that driver's licensing works in our nation. Although each jurisdiction implements its own scheme for granting drivers' licenses, those licenses are, of necessity, recognized in every U.S. jurisdiction. Drivers are expected to inform themselves of the laws in jurisdictions to which they travel.

APRL's proposal does not ignore state licensure. To the contrary, APRL's proposal would enhance public protection by requiring that all lawyers, in every jurisdiction,

[1] The members of the subcommittee involved in the drafting of the proposed rule and of this report are: Kendra Basner (San Francisco, CA), Eric Cooperstein (Minneapolis, MN), Craig Dobson (New York, NY), Brian S. Faughnan (Memphis, TN), Jan Jacobowitz (Miami, FL), Arthur Lachman (Lake Forest Park, WA), David Majchrzak (San Diego, CA), Sari Montgomery (Chicago, IL), Lynda Shely (Scottsdale, AZ), and Hope Todd (Washington, D.C.).

disclose the jurisdictions in which they are licensed. APRL's proposal preserves the authority of judicial branches to regulate who appears before them, reminds lawyers of their ethical obligation under Rule 1.1 to be competent in all the services they provide, and ensures that lawyers will be held responsible for any misdeed committee in the relevant jurisdictions.

The proposal which APRL now urges acknowledges that clients must continue to be protected from the incompetent practice of law. However, the proposal also elevates the client's right to choose counsel to a co-equal status in the context of the regulation of multijurisdictional practice and acknowledges that protecting clients from incompetent lawyering does not require artificial boundaries that prevent clients from choosing competent counsel of their choice even if the lawyer they choose is licensed elsewhere.

The report provides APRL's reasoning and support for its proposal, including some significant historical context for Rule 5.5. The report addresses the realities of today's practice to highlight the unnecessary restriction on the ability of lawyers to practice in multiple jurisdictions and considers the recent experience of lawyers and their clients during the global pandemic.

The report also expands the principles that APRL believes should be at the heart of a regulatory structure that addresses multijurisdictional practice in a manner that benefits both clients and their lawyers. The report also discusses why certain existing "solutions" to these problems are insufficient, unjust, or both. Finally, the report includes historical context and insight into the origin of today's approach and the systemic problems that are exacerbated by its continuing existence.

Technology and the Evolution of the Practice of Law

If it was not already clear before the onset and consequences of the Covid-19 Global Pandemic ("2020 Pandemic") that technology has changed the modern practice of law, the conclusion is now undeniable. In the face of stay-at-home and other quarantine orders, technology has allowed lawyers to remotely meet with clients, negotiate deals, mediate, and appear in court via Zoom and other video conferencing technology.[2] Today's

[2]Jan L. Jacobowitz, Chaos or Continuity? The Legal Profession: From Antiquity to the Digital Age, the Pandemic, and Beyond, 23 Vanderbilt Journal of Entertainment and Technology Law 279 (2021);

technology readily allows a lawyer to practice law from almost anywhere assuming available access to a wireless network. However, Model Rule 5.5 and its various state iterations prohibit the unauthorized practice of law—even with the use of remarkable technology during a global Pandemic. As discussed below, both the historical underpinnings of Rule 5.5 and the contemporary practice of law compel a review and revision to what should be considered the unauthorized practice of law and the rules that prohibit it.

It is important to note that not only is there a lack of evidence that lawyers are harming the public by working across state lines (assuming that they are licensed and in good standing in at least one state), but also that there is no evidence clients prioritize the location of their lawyer when deciding who to retain. In fact, Clio's 2020 Legal Trends Report indicates that:

> - ...Many consumers (37%) prefer to meet virtually with a lawyer for a consultation or first meeting, and 50% would rather conduct follow-up meetings through video conference. 56% of consumers would prefer videoconferencing over a phone call.
> - ...The majority of consumers (65%) prefer to pay using electronic forms of payment, such as credit cards, debit cards, or online payment systems such as Clio Payments, PayPal, or Apple Pay over cash or check.
> - ...The majority of consumers (69%) prefer working with a lawyer who can share documents electronically through a web page, app, or online portal. [3]

Thus, not only can lawyers and clients conduct the business of law remotely, regardless of physical location, but many even find it preferable. Just as the rules have evolved regarding competence, confidentiality, and technology so too should Rule 5.5 be revised to permit lawyers and clients to work together remotely without fear of

---

https://news.bloomberglaw.com/us-law-week/pandemic-pressures-restriction-on-where-lawyers-can-practice.

[3] 2020 Legal Trends Report (Clio) available at https://www.clio.com/resources/legal-trends/2020-report/.

disciplinary or statutory action against the lawyer for violations of Rule 5.5 or UPL regulations.

Geographical Limitation and The Public's Access to Legal Services

There is no legitimate dispute that there is an access to justice crisis in the United States. This access to justice crisis – in all U.S. jurisdictions - exists under the current regulatory framework restricting the unauthorized practice of law. The "access to justice" gap includes many under-served clients who are willing to pay legal fees for a lawyer's representation, but do not ever hire a lawyer. Admittedly, there are multiple reasons why clients with some means to pay may not hire a lawyer. One of those reasons is an actual physical access problem -- the unavailability of lawyers in the clients' geographic area. Legal services "deserts" exist in many states where there are too few lawyers, or none at all, in a geographic area. Rural consumers have less access to lawyers than urban and suburban consumers.[4] Geographic restrictions on admission further compound the problem.

In some rural areas lawyers are retiring, but new lawyers are not moving to those areas to replace them. Other locations do not have locally admitted lawyers, thus causing consumers in these legal services deserts to have to travel long distances to meet with a lawyer.

The lack of truly local lawyers can be remedied to some degree by harnessing technology to make representation by lawyers from other parts of the same state easier, but it is only the profession's current ethical rules that make using lawyers geographically nearby but, in another state or jurisdiction as a broader remedy untenable.

Unfortunately, even in jurisdictions that have written their UPL rules and laws to be in line with ABA Model Rule 5.5, lawyers in another state or jurisdiction cannot provide legal services on a regular basis in a jurisdiction where they are not admitted. The current state regulatory restrictions on practicing law reinforce some of the reasons these geographic legal deserts continue to exist.

---

[4] *See* Conference of State Court Administrators, *Courts Need to Enhance Access to Justice in Rural America*, p. 1-3 (2018).

Lawyers who may be only a few miles away from clients in need cannot provide the services if the lawyers are not admitted to practice law where the clients live. Those same available lawyers may be under-employed or unemployed, yet an arbitrary state boundary prohibits them from providing services.

Additionally, those unemployed and under-employed lawyers may not be able to afford to pay a second state's admission fees, repeatedly satisfy CLE requirements, and so forth. Yet those lawyers may be competent and would otherwise be available at a reasonable fee but for current ethical and regulatory restrictions. Forcing unemployed lawyers who are competent and licensed in at least one state to take an additional bar examination, pay additional bar dues, and be challenged again about their character and fitness for the ability to serve underserved legal communities in another jurisdiction is illogical.

An unyielding, purely geographic, border inhibits the ability for competent and willing lawyers to provide legal services to consumers who need access to those services. The current state admission framework inhibits clients' ability to receive legal services and further inhibits clients' choice of counsel. If there were more flexibility for "border" lawyers to provide legal services for clients who are geographically close, whatever the applicable state law may be, the cost of legal services would be reduced, availability and access would be increased, and lawyers could be more gainfully employed.

U.S. jurisdictions continue to struggle to bridge the access to justice gap by failing to adequately amend rules concerning the "practice of law" and who may provide legal services because much of the focus is on including more and more categories of nonlawyers.[5] This is not the only solution, and it blatantly ignores an obvious path forward.

Jurisdictions continue to have lawyers who are unemployed and under-employed[6] all while legal services "deserts" exist in places where paying clients would be willing to

---

[5] *See, e.g., Washington LLLTs and legal navigators, AZ CLDPs and LPS, California Document Preparers, Minnesota Nonlawyers, NM nonlawyers, NY advocates, Utah Sandbox Participants.* National Center for State Courts, Non-Lawyer Legal Assistant Roles Efficacy, Design, and Implementation (2015) at 2 (A study by the National Center for State Courts (NCSC) in 2013, "Estimating the Cost of Civil Litigation" reports that the average cost for typical civil court case types puts the courts beyond the financial means of many litigants).

[6] 2020 Legal Trends Report (Clio), *supra.*

hire a lawyer who is presently unavailable to them. The current outdated state regulatory framework further reinforces the access to legal services problem in the U.S and it does so despite a wealth of experience demonstrating that modern technology can allow lawyers to provide many legal services seamlessly and competently to clients from just about any location.

Competency and the Paradox of the Licensed Lawyer

The seemingly arbitrary nature of the geographical limitations imposed by the current regulatory structure is heightened by an understanding of the paradox associated with how few restrictions exist on a lawyer's ability to practice by subject matter. Once admitted in a U.S. jurisdiction, a lawyer is permitted to practice in any area of law of the lawyer's choosing or in multiple areas of law.

Indeed, historically, lawyers might take any case that crossed their office threshold, be it a family law matter one day, a criminal matter the next, or HIPAA compliance for a third-party provider of information systems the day after that. Over the past several decades, the profession has observed a trend away from the concept of lawyers as generalists and toward lawyers narrowing their practice to only one or two areas, in which they develop deep expertise. But that outcome has arisen because of the marketplace, not any ethical restrictions on practice.

A lawyer's voluntary devotion to one area of practice, however, in no way restricts the scope of the lawyer's license in their state. An attorney with 20 years of experience, but only involving family law, who learns of a neighbor's, relative's, or former client's severe car accident may agree to represent that person. Similarly, a lawyer who, following admission to the bar, works in a non-legal setting for twenty years, faces no licensing restrictions in taking on that same personal injury case as long as they have an active law license. Moreover, a newly minted lawyer immediately after passing the bar could take on a family law case, a car-accident lawsuit, and a contract negotiation with a hospital for a physician. The lawyers in these scenarios might not be the best lawyers for the job, but the Rules of Professional Conduct assume that the lawyers can educate themselves about the subject matter and competently handle the case. *See* Rule 1.1, cmt. [2].

The "Competency Fallacy of Rule 5.5," however, dictates that a lawyer licensed in "State A", who has devoted their entire career to personal injury work for example, would not be competent to represent the car-accident victim described above (without the association of local counsel)[7] because the lawyer is presumed to be incapable of knowing or coming to understand "the law of State B." Instead, if that State A-licensed lawyer wanted to be able to regularly represent clients with personal injury cases in State B, the lawyer would have to obtain a second license to practice law, a license issued by State B. Those who accept the current systemic issues often rely upon arguments that lawyers who wish to be able to practice across state lines more freely can simply obtain such additional licenses through reciprocity. This option to pursue additional licenses through reciprocity is not an adequate solution, and for many jurisdictions, is simply not true.

Those who tout the virtues of reciprocity not only ignore that 11 states do not offer reciprocity or provisional/reduced admission requirements at all, but they usually gloss over the burdens that this default imposes upon lawyers in the jurisdictions where it is a possibility. First, many jurisdictions impose a "time in practice" requirement such that a lawyer seeking to become licensed in a new jurisdiction without having to sit for the bar examination must have either practiced law for a set number of years, often five or more, or must have been engaged in active law practice for some percentage (often 60% or more) of the most recent time-period or both.

For example, to seek admission by reciprocity in Tennessee, a lawyer must have been licensed in another jurisdiction for at least 5 years and must have been engaged in the active practice of law for 5 of the 7 years preceding the date of the application. See Tenn. Sup. Ct. R. 7, § 5.01(a)(3). On the other hand, there are some jurisdictions that allow reciprocity if the lawyer received a minimum passing score on the Multistate Bar Examination so long as the lawyer applies within a certain amount of time after passing that test.

Second, for those jurisdictions that conditionally allow reciprocity, the application and admissions process for reciprocity has built in expenses – both upfront and recurring

[7] Of course, even with local counsel, the lawyer will likely also have to seek pro hac vice admission to appear in the State B court in connection with the litigation. Furthering the paradox, most rules for pro hac vice admission do not include anything that would require the lawyer seeking admission to demonstrate substantive competence with respect to the issues being litigated or even as to litigation generally.

-- in the form of application fees, the fee charged by the National Conference of Bar Examiners for conducting a background investigation (discussed below), additional annual registration or bar fees, and, in some jurisdictions, additional imposed taxes in the form of professional privilege taxes and the like.

Third, the addition of another state of licensure can also lead to the imposition of even more required hours of continuing legal education if both the lawyer's original jurisdiction and the new jurisdiction impose mandatory hours requirements and if the states' approaches to calculating hours or certifying courses are not identical.

Fourth, even for lawyers that have practiced for long enough to be eligible for admission by reciprocity, the process can take an excessive time, especially when considering that the person awaiting a ruling on their application is someone who has most likely already passed a bar examination (unless they are among the small minority of lawyers (pre-pandemic) to have obtained licensure in a diploma-privilege state) and also has already been vetted through a state's character and fitness evaluation process.

The process can take months and may even last for a year or longer. The timing of the process is prolonged because it is not one of a rubber stamping of decisions made in the home licensing jurisdiction; nor is it one in which the exploration into the applicant's background is reasonably limited to life events occurring after the issuance of the original law license.

Instead, an applicant must authorize a brand-new background investigation by either the National Conference of Bar Examiners or other state authorized investigatory body. The state entity from which reciprocity is sought then waits for the results of that new investigation and has the power to dig into any aspects of the applicant's background that it feels raises substantial questions about the applicant's character and fitness.

Thus, someone who is already a licensed lawyer in one state can find themself facing opposition to their admission in another jurisdiction on character and fitness grounds involving past conduct that did not prevent their admission to their home jurisdiction. These situations seem discordant enough when the grounds being examined truly involve only "conduct." But the unfairness is made even starker when situations arise involving concerns about physical or mental health conditions rather than actual incidents of past misconduct. Such a situation, indirectly presented in subsequent federal court litigation, resulted in one federal district judge (now a member of the D.C. Circuit Court of Appeals),

authoring a scathing opinion taking Kentucky's regulatory process to task. *See Jane Doe v. Supreme Court of Ky.*, No. 03:19-cv-00236-JRW, (W.D. Ky. Aug. 28, 2020).

The collective burdens this general approach imposes have been the subject of scrutiny with application to military spouse attorneys, a very small subset of the population with very successful lobbying efforts at seeking regulatory reforms. Roughly 30 states have enacted rule revisions or other accommodations in response to such efforts. You can find an up-to-date listing of such revisions at https://www.msjdn.org/rule-change/.

While much of the focus of lobbying efforts made on behalf of military spouse attorneys focused on the sympathetic nature of their circumstances and the practical realities associated with being required to move frequently – sometimes even faster than the wheels of the regulatory system can turn to fully process a reciprocity application – there is fundamentally little reason to believe that a lawyer falling within this small subset is more ethical or more competent than another lawyer simply because they are married to someone in active military service.

Returning to Tennessee as an example, after lobbying efforts and a rules revision petition filed by a prominent military spouse attorneys' group, an exception was adopted in Tennessee that permits someone who is not licensed in Tennessee, but who is married to an active member of the U.S. armed forces, to obtain a temporary license in Tennessee without having to submit to a new NCBE character and fitness investigation as long as they are "the spouse of an active duty servicemember of the United States Uniformed Services," are "physically residing in Tennessee or Fort Campbell, Kentucky due to the servicemember's military orders," and can demonstrate several other basic requirements. *See* Tenn. Sup. Ct. R. 7, § 10.06(a).

Although the overall sample size is small when compared to the bar as a whole, the apparent dearth of any known cases of discipline for incompetent handling of matters by military spouse attorneys in the 30 jurisdictions where barriers to licensure have been dropped cannot be overlooked as an indicator that the "Competency Fallacy of Rule 5.5" cries out for re-evaluation. While allowing these lawyers more freedom to represent clients has not resulted in any noticeable increase in discipline, state bars have been actively imposing discipline against lawyers solely for engaging in "unauthorized practice

of law" in circumstances where the existence of any harm to consumers of legal services is questionable.

Client Trust and Choice of Counsel

APRL's proposed revisions to Model Rule 5.5 do not reject the need for client protection but elevates the client's right to choose counsel to a co-equal status in the context of the regulation of multijurisdictional practice. Providing client protection does not require artificial boundaries that prevent clients from choosing competent counsel of their choice even if the lawyer they choose is licensed elsewhere.

A client's right to choose, discharge, or replace their lawyer is a core ethical principal that permeates the Rules of Professional Conduct and is underscored in case law throughout the country. The law of law firm breakups and lawyer departures clarifies that neither a law firm nor any of its lawyers have a possessory interest in clients. The Supreme Court of Indiana has articulated in concise fashion the broadly recognized concept that clients are not "chattel" but independent actors with agency: "Although the firm may refer to clients of the firm as 'the firm's clients,' clients are not the 'possession' of anyone, but, to the contrary, control who will represent them." *Kelly v. Smith*, 611 N.E.2d 118, 122 (Ind. 1993).

The concept that an individual has a right to legal counsel is traditionally centered around the concept that "choice" necessarily suggests alternatives from which to choose. When the client is prepared to pay for legal representation, it would make sense that the client should be empowered to choose whoever the client wishes. This largely unchallenged freedom of choice continues past the initial selection of a lawyer. "[T]he right to change attorneys, with or without cause, has been characterized as 'universal.'" *Echlin v. Super. Ct. of San Mateo County*, 90 P.2d 63, 65 (Cal. 1939).

One scenario that highlights this issue is when a lawyer who has been working on a matter departs the firm where they have been employed. In such instances, the client has three choices, to remain a client with the firm, to remain a client with the departing lawyer, or whether to select new counsel altogether. *See, e.g.*, ABA Formal Ethics Op. 489; Rules Regulating the Florida Bar, rule 4-5.8; Virginia State Bar Professional Guidelines, rule 5.8 (both requiring that clients be notified of these three options).

It is because of a client's choice of counsel that restrictive covenants precluding lawyers who depart a firm from competing in the same marketplace have generally been found to be unenforceable outside of conditions on retirements, such as permitted by Model Code of Professional Responsibility DR 2-108(A) and Model Rule 5.6. Such restrictions not only discourage mobility within the marketplace but also deny clients the ability to choose between the firm and the withdrawing lawyer who previously represented them.

Under common law, the client's right to choose who should serve as their lawyer has been regarded as necessary to ensure that the proper dynamics exist for this unique fiduciary relationship. More than 90 years ago, the City Court of New York remarked, "It is unquestioned that a client has the right to terminate the relationship of attorney and client at any time, with or without cause. That right is afforded him by the law because of the peculiar nature and character of the relationship, which in its very essence is one of trust and confidence. It is a right for the benefit of the client and is intended to save him from representation by an attorney whose services he no longer desires." *Gordon v. Mankoff*, 261 N.Y.S. 888, 889-90 (1931).

Further, under the Sixth Amendment, there is a presumption that a criminal defendant may retain counsel of choice. For example, the Supreme Court concluded that the denial of a defendant's request for a continuance to consult with a lawyer violated due process rights. "Regardless of whether petitioner would have been entitled to the appointment of counsel, his right to be heard through his own counsel was unqualified. ...A necessary corollary is that a defendant must be given a reasonable opportunity to employ and consult with counsel; otherwise, the right to be heard by counsel would be of little worth." *Chandler v. Fretag*, 348 U.S. 3, 9, 10 (1954). This is consistent with the Supreme Court's earlier statement that "it is hardly necessary to say that, the right to counsel being conceded, a defendant should be afforded a fair opportunity to secure counsel of his own choice." *Powell v. Alabama,* 287 U.S. 45, 53 (1932).

A client's preference for counsel is even honored when looking at the termination of the relationship between a lawyer and a client. Clients may end a lawyer's representation at any time and for any reason. Conversely, lawyers may terminate the relationship only based on one or more of the enumerated situations set forth in Model

Rule 1.16(a) and (b)—and may only do so upon following the procedures set forth in (c) and (d).

Indeed, it is not unheard of for a court to deny a lawyer's application to withdraw from representing a client, even when the appropriate conditions are present. This issue is often litigated when a client terminates a lawyer's engagement before the occurrence of an event that a fee is contingent upon. The terminated lawyer often argues that the client's decision is unfair, particularly if the lawyer believes there was no just cause for the termination. But fairness to lawyers is subordinate to clients' right to choose and change their legal representatives. *See, e.g., Fracasse v. Brent*, 494 P.2d 9, 13 (Cal.1972). The Supreme Court of California has remarked:

> The interest of the client in the successful prosecution or defense of the action is superior to that of the attorney, and he has the right to employ such attorney as will in his opinion best subserve his interest. The relation between them is such that the client is justified in seeking to dissolve that relation whenever he ceases to have absolute confidence in either the integrity or the judgment or the capacity of the attorney. . . . The fact that the attorney has rendered valuable services under his employment, or that the client is indebted to him therefor, or for moneys advanced in the prosecution or defense of the action, does not deprive the client of this right. (*Id.*)

Even where a client's right to choose is not absolute, for example, where a lawyer has a conflict of interest that cannot be waived, courts still articulate that the right to choose counsel should be of paramount importance. Particularly when addressing challenges by third parties—often in the context of asserted conflicts—courts have consistently concluded that a client's choice of counsel should be infringed upon only in cases where injustice will result. [8]

---

[8] *See, e.g., Blumenfeld v. Borenstein*, 247 Ga. 406, 408 (1981) (reversing disqualification based solely on marital status, holding, "The mere fact that the public may perceive some conduct as improper is, without some actual impropriety, insufficient justification for interference with a client's right to counsel of choice."); *United States v. Urbana*, 770 F. Supp. 1552, 1556 (S.D.Fla. 1991) (courts disqualify an accused's lawyer of choice only as a measure of last resort). *Macheca Transport Co. v. Philadelphia Indem. Co.*, 463 F.3d 827, 833 (8th Cir. 2006) (the extreme measure of disqualifying counsel of choice should be used only when absolutely necessary); *In re BellSouth Corp.*, 334 F.3d 941, 961 (11th Cir. 2003) (the right to counsel of choice may only be overridden for compelling reasons); *Optyl Eyewear Fashion Intern. Corp. v. Style Companies, Ltd.*, 760 F.2d 1045, 1050 (9th Cir. 1985) (because of potential for abuse, disqualification motions should be subject to particularly strict judicial scrutiny); *Evans v. Artek Sys. Corp.*, 715 F.2d 788, 794 (2d Cir. 1983) (movant must meet a heavy burden to remove opposing counsel).

Yet when it comes to the multi-jurisdictional practice of law, the principal of client choice of counsel is strikingly absent. No matter that the prospective client has known the lawyer personally for many years, is related to the lawyer, has a prior professional relationship with the lawyer, is familiar with the lawyer's expertise in a narrow area of the law, or was referred to the lawyer by a trusted associate. If the lawyer is not licensed in the state in which the client resides or where a matter occurs, the client's choice receives no deference under Rule 5.5. Client choice of a lawyer is paramount, except when it contravenes an outdated regulatory scheme based on state boundaries

The Long and Problematic History of Placing Geographic Restrictions on the Right to Practice Law

Historical context proves useful when attempting to understand the current framework and to justify amending it to reflect the contemporary practice of law. In fact, "[t]he state-based licensing process originated more than two centuries ago when the need for legal services was locally based and often involved the need for representation in court."[9] It is worthwhile to journey back to this time to understand both the historical reasoning and its inapplicability to today's legal profession.

The authority to admit lawyers to practice in a jurisdiction derives from the role of the judiciary in the American legal system:

> From the colonial period until today, American courts have claimed the English common law tradition of inherent power—a power not derived from statute—to regulate the lawyers practicing before them, especially with respect to admission to practice. Thus, the courts must license lawyers before lawyers will be given audience, courts set the terms upon which legal practice is pursued, and courts enforce the rules they have themselves established.[10]

From Colonial Times to 1921

[9] Report of the ABA Commission on Multijurisdictional Practice, at 7 (August 2002) ("2002 MJP Report")."

[10] 1 Geoffrey Hazard, Jr., William Hodes & Peter Jarvis, THE LAW OF LAWYERING §1.07, at 1-26 (4th ed. 2021).

In colonial America, local judges generally determined admission in colonial courts, usually based on service in an apprenticeship for a number of years. An alternative approach was to permit lawyers admitted to the English bar to practice anywhere in the colonies.[11] After the American Revolution, states imposed varying admission requirements, with bar examinations, where they existed, generally a mere formality that could be bypassed by choosing a different area of study, such as clerking under a practitioner or judge.[12]

"[C]ontrol of the American legal profession remained highly localized and dispersed through the first hundred years or so following the Revolution."[13] Thus, "during the Jacksonian era, Bar admission requirements became increasingly less strict because of the perceived elitism of admission practices as contrary to democratic ideals."[14] As a result, almost any *man* who desired to practice law could gain admittance.[15] Where examinations were required, they were often oral and minimal, and have been characterized as "laughable" and almost a "farce" or a "joke."[16] "By 1860, of the thirty-nine states, only nine had any specific requirements for admission to their Bar."[17]

---

[11] Daniel Hansen, *Do We Need the Bar Examination? A Critical Evaluation of the Justifications for the Bar Examination and Proposed Alternatives,* 45 CASE W. RES. L. REV. 1191, 1193-94 (1995).

[12] *Id.* at 1194-95.

[13] James Jones, Anthony Davis, Simon Chester & Caroline Hart, *Reforming Lawyer Mobility—Protecting Turf or Serving Clients?,* 30 GEORGETOWN J. LEGAL ETHICS 125, 129 (2017).

[14] Hansen, *supra,* at 1195; Carol Langford, *Barbarians at the Bar: Regulation of the Legal Profession Through the Admissions Process,* 36 HOFSTRA L. REV. 1193, 1199 (2008). *See also* Jones, et al., *supra,* at 129 ("early efforts by the old established bars of the original colonies to keep the legal profession small and elite through rigorous admissions standards following the American Revolution largely collapsed, in no small part because of the diverse legal needs of a vast and rapidly expanding country of individual entrepreneurs"), citing Lawrence Friedman, A HISTORY OF AMERICAN LAW 315–18 (2d ed. 1985).

[15] Hansen, *supra,* at 1195-96; Langford, *supra,* at 1199. *See also* Matthew Ritter, *The Ethics of Moral Character Determination: An Indeterminate Ethical Reflection upon Bar Admissions,* 39 CAL W. L. REV. 1, 7 (2002) ("Although good moral character remained requisite for admission to the practice of law in many states, Bar membership was effectively open at the end of the Civil War to any and all male citizens who could produce a personal reference.").

[16] Hansen, *supra,* at 1196, 1200; Lawrence Friedman, A HISTORY OF AMERICAN LAW 317, 652 (2d ed. 1985). An often-told anecdote from the pre-Civil War period is of Abraham Lincoln examining an Illinois bar applicant while the future president was taking a bath. Hansen, *supra,* at 1196 (quoting Joel Seligman, *Why the Bar Exam Should be Abolished,* JURIS DR., at 48 (Aug.-Sept. 1978).

[17] Ritter, *supra,* at 7.

"The radical democratization of Bar admissions prompted widespread calls for its reform in the later nineteenth century."[18] The post-Civil War years saw the beginning of the standardized law school curriculum in this country, as Christopher Columbus Langdell's theory of legal education, based on the case method of Socratic instruction and focused on increased standards and more uniformity (which would effectively limit competition in the profession), became accepted.[19]

In addition, "[e]xpanding post-war industrialization increased concern over the character certification and competency of lawyers to deal with the extensive legalization of the social economy."[20] "The ancestor to the modern written bar examination developed between 1870 and 1890 and gained substantial ground and acceptance in the 1890s... [B]y the 1920s, there was a written bar examination in most states."[21] Further, "[b]etween 1880 and 1920, states adopted additional entry procedures, such as publication of applicants' names, probationary admissions, recommendations by the local Bar, court-directed inquiries, and investigation by character committees."[22]

1921 ABA Root Report

What has become the traditional route to bar admission now includes "graduating from an accredited law school, passing the admitting state's bar examination, and satisfying the state's bar examiners that the applicant possesses the requisite character to

---

[18] Deborah Rhode, *Moral Character as a Professional Credential,* 94 YALE L.J. 491, 498 (1985)

[19] Hansen, *supra,* at 1198-99.

[20] Langford, *supra,* at 1204.

[21] Hansen, *supra,* at 1200 (noting that "the written bar exam principally developed as a replacement for oral bar exams, and not as a check on law schools," and citing George Stevens, *Diploma Privilege, Bar Examination or Open Admission,* 46 B. EXAMINER 15, 25-26 (1977), for the proposition that "the bar exam was intended to standardize admissions requirements and was considered egalitarian in the sense that its mission was to equalize the disparate admissions requirements in various regions around the country").

[22] Rhode, *supra,* at 499.

practice law."[23] This uniform route to lawyer admission in virtually every state has its roots in the ABA Root Committee Report, issued 100 years ago, in 1921.[24]

The Root Report established the ABA's position that three years of law school education should be required for licensed lawyers (with two years of college as a prerequisite for law school entry), but that such a requirement alone was not sufficient. "[G]raduation from a law school should not confer the right of admission to the bar, and that every candidate should be subjected to an examination by public authority to determine his fitness."[25] The diploma privilege was eventually eliminated and replaced by required exams by all of the states with the exception of Wisconsin as of 2020.[26]

The Root Report urged states to impose these legal education and bar examination requirements based on two primary considerations: "efficiency" and "character." "The part played by lawyers in the formulation of law and in the establishment and maintenance of personal and property rights requires a high degree of efficiency for the proper service of the public."[27]

As to "character" considerations specifically, the Report noted that "it is plain that the private and public responsibilities of the profession demand a high standard of morality and implicit obedience to correct standards of professional ethics."[28] Thus, "character screening effectively arrived in the early twentieth century."[29] By 1927, a large

---

[23] 2002 MJP Report, at 7.

[24] Elihu Root, et al., *Report of the Special Committee to the Section of Legal Education and Admissions to the Bar of the American Bar Association,* 44 REP. ANNUAL MTG. A.B.A. 679 (1921) ("Root Report").

[25] *Id.* at 687-88

[26] *See* Hansen, *supra,* at 1192 & n.7. Objections to the diploma privilege in the 20th Century included "(1) a fear that law school education lacked uniformity in the length of time given over to study; (2) a belief that the diploma privilege was anti-democratic because it tended to favor state law schools over private schools, which were often not granted the privilege; (3) a belief that the diploma privilege discriminated against state residents who studied at out-of-state institutions; (4) a belief that the bar examination produced a higher standard of practice; and (5) a fear that the diploma privilege allowed law schools to circumvent the state's control of the bar." Beverly Moran, *The Wisconsin Diploma Privilege: Try It, You'll Like It,* 2000 WISC. L. REV. 645, 647. The third and fifth of these objections implicate federalism concerns that form the basis of current UPL regulation in state statutes and the ethics rules.

[27] *Id.* at 680.

[28] *Id.*

[29] Keith Swisher, *The Troubling Rise of the Legal Profession's Good Moral Character,* 82 ST. JOHN'S L. REV. 1037, 1041 (2008). Other articles exploring the history of character and fitness requirements in detail

majority of the states had "strengthen[ed] character inquiries through mandatory interviews, character questionnaires, committee oversight, or related measures."[30]

The Report urged immediate action by the organized bar, the ABA, and state and local bar associations "to prevent the admission of the unfit and to eject the unworthy," and to "purify the stream at its source by causing a proper system of training to be established and to be required."[31] It is probably an understatement to say that when enforcement of character requirements began in earnest in the middle part of the 20th Century, "both its motivations and outcomes were extremely problematic."[32] In 1971 and again in 1991, the ABA and the National Conference of Bar Examiners reaffirmed the basic conclusions and recommendations of the Root Report.[33]

Statutory Developments and Enshrinement of UPL Restrictions in the Ethics Rules

Although the original 1908 ABA Canons on Professional Ethics did not contain a provision regarding the Unauthorized Practice of Law (UPL), professional bar associations began to organize against UPL about a decade before the issuance of the Root Report. In 1914, "the New York County Lawyers Association launched the first unauthorized practice campaign by forming an unauthorized practice committee to curtail competition from title and trust companies," and the ABA followed suit by forming

include Deborah Rhode, *Moral Character as a Professional Credential*, 94 YALE L.J. 491, 498-503 (1985); Roger Roots, *When Lawyers Were Serial Killers: Nineteenth Century Visions of Good Moral Character*, 22 N. ILL. U. L. REV. 19 (2001); Matthew A. Ritter, *The Ethics of Moral Character Determination: An Indeterminate Ethical Reflection upon Bar Admissions*, 39 CAL. W. L. REV. 1, 4-13 (2002); and Carol Langford, *Barbarians at the Bar: Regulation of the Legal Profession Through the Admissions Process*, 36 HOFSTRA L. REV. 1193, 1196-1208 (2008).

[30] Swisher, *supra*, at 1041 (quoting Rhode, *supra*, 94 YALE L.J. at 499).

[31] Root Report, at 681.

[32] Swisher, *supra*, at 1040. As well documented in Professor Rhode's seminal 1995 article and expanded upon by Professor Swisher in his 2008 piece, scrutiny based on "character" excluded from admission "unworthy groups" based on gender and ethnicity considerations, as well as other perceived "problem" applicants. *Id.* at 1041-42. By the late 1950s, the U.S. Supreme Court had imposed constitutional constraints on these standards, requiring a rational connection to fitness to practice. *Id.* at 1042 (citing cases).

[33] Hansen, *supra*, at 1201 & nn.62, 63 (citing the 2nd and 3rd editions of the NCBE's Bar Examiner's Handbook).

its own committee on unauthorized practice by 1930.[34] "Beginning in the 1920s, bar associations attempted to gain greater control over the practice of law by spearheading efforts to 'integrate' the bar through court rules (pursuant to inherent powers) or statutes that required every lawyer to belong to the state bar."[35] And beginning in the 1930s, most state legislatures adopted statutes outlawing (and sometimes criminalizing) UPL,[36] with state supreme courts asserting their authority (often stated as "exclusive" authority vis-à-vis the legislature) to define and regulate UPL and the practice of law.[37]

UPL was first mentioned in an ABA ethics code in a September 30, 1937, amendment to the ABA Canons. New Canon 47, titled "Aiding the Unauthorized Practice of Law," provided that "No lawyer shall permit his professional services, or his name, to be used in aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate."

Three decades later, the restriction on assisting UPL was enshrined in the ABA Model Code of Professional Responsibility but also paired with a new prohibition. Canon 3 of the 1969 ABA Model Code of Professional Responsibility was titled "A Lawyer Should Assist In Preventing the Unauthorized Practice of Law." DR 3-101 of the Model Code,

---

[34] Derek Denckla, *Nonlawyers & the Unauthorized Practice of Law: An Overview of the Legal & Ethical Parameters,* 67 FORDHAM L. REV. 2581, 2583-84 (1999).

[35] *Id.* at 2582. "Invoking 'inherent powers,' the highest state courts have claimed the jurisdiction—sometimes exclusive—to regulate every aspect of the practice of law, through such activities as specifying conditions for admission, disciplining or disbarring those lawyers who fail to exercise good conduct, and promulgating lawyers' codes of conduct." *Id.; see also* RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §1, cmt. *c* (2000) ("The highest courts in most states have ruled as a matter of state constitutional law that their power to regulate lawyers is inherent in the judicial function. Thus, the grant of judicial power in a state constitution devolves upon the courts the concomitant regulatory power."). The historical development of, and the role of the organized bar in, the "inherent power" doctrine in the context of state UPL regulation is extensively discussed in Laurel Rigertas, *Lobbying & Litigating Against "Legal Bootleggers"—The Role of the Organized Bar in the Expansion of the Courts' Inherent Powers in the Early Twentieth Century,* 46 CAL. W. L. REV. 65 (2009); and in Laurel Rigertas, *The Birth of the Movement to Prohibit the Unauthorized Practice of Law,* 37 QUINNIPIAC L. REV. 97 (2018).

[36] The language of these statutes appears to focus on the unauthorized practice of law by nonlawyers, but "most jurisdictions regarded even out-of-state *lawyers* as engaged in UPL, unless they had met local licensing requirements. Thus, lawyers were prohibited from practicing law in violation of local regulations, which meant that in courtroom litigation, at least, and perhaps in arbitration as well, out-of-state lawyers were required to seek admission *pro hac vice.* . . . Furthermore, whether out-of-state lawyers could participate in interstate transactional work in the 'wrong' jurisdiction, or even advise clients about the situation was uncertain, and many lawyers were willing to test the limits of a state's tolerance." 2 Hazard, Hodes & Jarvis, *supra,* §49.02, at 49-5.

[37] *See* Denckla, *supra,* at 2585.

titled "Aiding Unauthorized Practice of Law," provided that "(A) A lawyer shall not aid a non-lawyer in the unauthorized practice of law" and "(B) A lawyer shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction." The focus of the Ethical Considerations in Canon 3 was on practice by so-called non-lawyer "layman," but EC 3-9 explained the restriction on multijurisdictional practice:

> Regulation of the practice of law is accomplished principally by the respective states. Authority to engage in the practice of law conferred in any jurisdiction is not per se a grant of the right to practice elsewhere, and it is improper for a lawyer to engage in practice where he is not permitted by law or by court order to do so. However, the demands of business and the mobility of our society pose distinct problems in the regulation of the practice of law by the states. In furtherance of the public interest, the legal profession should discourage regulation that unreasonably imposes territorial limitations upon the right of a lawyer to handle the legal affairs of his client or upon the opportunity of a client to obtain the services of a lawyer of his choice in all matters including the presentation of a contested matter in a tribunal before which the lawyer is not permanently admitted to practice.

In a footnote supporting the first proposition in this EC (that regulation of the practice of law is accomplished principally by the respective states), the ABA Code cited the U.S. Supreme Court decision in *United Mine Workers v. Illinois State Bar Ass'n,* 389 U.S. 217, 222 (1967): "That the States have broad power to regulate the practice of law is, of course, beyond question." Quoting ABA Ethics Op. 316 (1967), the footnote also noted that "It is a matter of law, not of ethics, as to where an individual may practice law. Each state has its own rules." In recognizing the potential practical difficulties with imposing these restrictions, another footnote also quoted ABA Ethics Op. 316 for the proposition that

> Much of clients' business crosses state lines. People are mobile, moving from state to state. Many metropolitan areas cross state lines. It is common today to have a single economic and social community involving more than

> one state. The business of a single client may involve legal problems in several states."[38]

The Ethical Consideration noted these practical difficulties without providing guidance on how to resolve them.

This uncertainty continued with the enactment of the Model Rules. "When Model Rule 5.5 was originally promulgated in 1983, . . . it carried forward from the Model Code of Professional Responsibility, without elaboration, both aspects of the traditional prohibition on the unauthorized practice of law."[39] The rule simply provided that "A lawyer shall not (a) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or (b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law." There was a single comment:

> The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. Paragraph (b) does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3. Likewise, it does not prohibit lawyers from providing professional advice and instruction to nonlawyers whose employment requires knowledge of law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

As of the adoption of the Model Rules in the early 1980s, the state-based framework for regulation of lawyer admission and practice by the 50 individual states and

---

[38] An additional footnote quoted from a New Jersey Supreme Court case, *In re Estate of Waring*, 47 N.J. 367, 376, 221 A.2d 193, 197 (1966): "[W]e reaffirmed the general principle that legal services to New Jersey residents with respect to New Jersey matters may ordinarily be furnished only by New Jersey counsel; but we pointed out that there may be multistate transactions where strict adherence to this thesis would not be in the public interest and that, under the circumstances, it would have been not only more costly to the client but also 'grossly impractical and inefficient' to have had the settlement negotiations conducted by separate lawyers from different states."

[39] 2 Hazard, Hodes & Jarvis, *supra*, §49.02, at 49-4.

the District of Columbia was a *fait accompli,* altogether consistent with traditional and historical federalism principles, and seemingly immutable.[40] Any and all constitutional and other challenges to the individual states' authority to regulate the practice of law within their borders, as well as federal courts' authority to condition admission based on admission in the state in which they sit, have been decisively and universally rejected by the courts.[41]

Birbrower: The California Supreme Court Grabs Lawyers' Attention

Despite the long history of the restrictions set forth above, the application of UPL restrictions to licensed lawyers who practice law across state lines where they are not licensed, referred to as interstate UPL, did not receive much attention in the profession until 1998 when the Supreme Court of California issued its landmark decision in the case *Birbrower, Montalbano, Condo & Frank v. Superior Court of Santa Clara County*.[42] In sum, the Court held that New York-licensed lawyers from the New York law firm of Birbrower, Montalbano, Condo & Frank had engaged in UPL because the firm's lawyers

---

[40] For example, the 2002 MJP Report, at page 7, noted: "Lawyers in the United States are not licensed to practice law on a national basis, but are licensed by a state judiciary to practice law within the particular state. In general, state admissions processes are intended to protect the public by ensuring that those who are licensed to practice law in the state have the requisite knowledge of that state's laws and the general fitness and character to practice law." And §3 of the Restatement of the Law Governing Lawyers, adopted in 2000, accepts as essentially unchangeable based on historical experience the concept of judicial authority of each state to regulate law practice within state boundaries. *See* RESTATEMENT, *supra,* §3 & cmt. *b* ("[J]urisdictional limitations on practice applicable to lawyers are primarily a function of state lines. . . . Occasionally, proposals are put forward for removal of state-line limitations on practice, as by means of a national bar-admission process. However, local interest in maintaining regulatory control of lawyers practicing locally is strong and historically has prevented adoption of such proposals.").

[41] *E.g., Schoenefeld v. Schneiderman,* 821 F.3d 273 (2d Cir. 2016) (upholding against constitutional challenge under the Privilege and Immunities Clause a state requirement for nonresident bar members to maintain a physical office in the state), *cert. denied,* 137 S. Ct. 1580 (2017); *National Association for the Advancement of Multijurisdictional Practice (NAAMJP) v. Howell,* 851 F.3d 12 (D.C. Cir.) (joining "the chorus of judicial opinions" rejecting constitutional challenges of the NAAMJP and lawyer Joseph Giannini to local rules of practice limiting who may appear in particular state and federal courts), *cert. denied,* 138 S. Ct. 420 (2017); *NAAMJP v. Lynch,* 826 F.3d 191 (4th Cir.) (rejecting NAAMJP's constitutional challenge to conditions placed on admission to the Maryland federal district court bar), *cert. denied,* 137 S. Ct. 459 (2016); *Giannini v. Real,* 911 F.2d 354 (9th Cir.) (upholding constitutionality of California bar examination and local federal rules conditioning admission), *cert. denied,* 498 U.S. 1012 (1990); *Lawyers United Inc. v. U.S.,* 2020 WL 3498693 (D.D.C. June 29, 2020) (rejecting constitutional challenges to federal bar admission rules in D.C., California, and Florida), *aff'd,* 839 Fed. Appx. 570 (March 15, 2021).

[42] 949 P.2d 1 (1998), *cert. denied,* 525 U.S. 920 ("*Birbrower*")

handled a matter in California for a California client in preparation for a California arbitration based on a contract governed by California law. The Court further held that because the firm violated California's UPL statute it could not enforce its fee agreement and collect the substantial fees it had earned for the California legal services it had provided.[43]

Birbrower generated a great deal of controversy and concern among lawyers and law firms throughout the country. It particularly created uncertainty for lawyers who regularly practiced across state lines as to what amount of legal work and activity would constitute the unlawful practice of law. (Those interested in a more thorough discussion of *Birbrower* can find a deeper dive into its facts and ramifications at Appendix A.)

Although the California Court of Appeal case that quickly followed on the heels of *Birbrower*, *Estate of Condon v. McHenry* 65 Cal.App.4th 1138, 76 Cal. Rptr. 2d 922 (1998) ("*Condon*"), attempted to clarify some of these concerns by emphasizing that purpose of the UPL rules to protect the state's people and entities should be paramount in any analysis, the holding in Condon that a Colorado lawyer did not commit UPL by representing a Colorado client concerning a California matter was not widely noticed.

While there are courts that have deviated from *Birbrower*, *Birbrower's* influence continues to impact interstate UPL. For example, in the 2016 case *In re Charges of Unprofessional Conduct in Panel File No. 39302*, 884 N.W.2d 661 (Minn. 2016), a Colorado-admitted lawyer agreed to represent his in-laws in a post-judgment debt collection matter in Minnesota. The Colorado lawyer was not licensed in Minnesota and never set foot in the state, but he unsuccessfully tried to negotiate a settlement of the Minnesota matter by telephone and email.

In defending himself against disciplinary charges, the Colorado lawyer argued that a lawyer practices law *in* a jurisdiction in one of three ways: (1) by being physically present in the jurisdiction; (2) by establishing an office or other systematic and continuous presence in the jurisdiction; or (3) by entering an appearance in a matter through the filing of documents with a tribunal. *Id.* at 665. Citing *Birbrower*, the court determined that physical presence in the state was not the only way to practice law in Minnesota and that through multiple e-mails sent over several months, the lawyer advised Minnesota

[43] *Id.* at 11.

clients on Minnesota law in connection with a Minnesota legal dispute and attempted to negotiate a resolution of that dispute with a Minnesota attorney demonstrating an ongoing attorney-client relationship with his Minnesota clients and that his contacts with Minnesota were not fortuitous or attenuated. *Id.* at 666. Thus, the court held that the out-of-state lawyer committed the unauthorized practice of law in Minnesota by violating Minn. R. Prof. Conduct 5.5(a) resulting in the lawyer being disciplined.

In response to *Birbrower* and after issuance of the 2002 MJP Report, the ABA eventually adopted a revision to the Model Rules to authorize temporary practice in jurisdictions other than a lawyer's licensed jurisdiction.

The 2002 MJP Report and the Most Recent Revisions to ABA Model Rule 5.5

The 2002 MJP report, which preceded and largely served as an advocacy piece for changes to ABA Model Rule 5.5 adopted by the House of Delegates the same year, summarized the purported policy basis for multijurisdictional UPL restrictions in state statutes and the lawyer ethics rules:

> In general, a lawyer may not represent clients before a state tribunal or otherwise practice law within a particular state unless the lawyer is licensed by the state or is otherwise authorized to do so. Jurisdictional restrictions promote a variety of state regulatory interests. Most obviously, by limiting law practice in the state to those whom the state judiciary, through its admissions process, has deemed to be qualified to practice law in the state, they promote the state interest in ensuring that those who represent clients in the state are competent to do so. Jurisdictional restrictions also promote the state interest in ensuring that lawyers practicing law within the state do so ethically and professionally. Lawyers licensed by the state are thought to be more conversant than out-of-state lawyers with state disciplinary provisions as well as with unwritten but understood expectations about how members of the local bar should behave, and lawyers in the state may be disciplined more easily and effectively than out-of-state lawyers when they engage in professional improprieties. By strengthening lawyers' ties to the particular communities in which they maintain their offices, jurisdictional restrictions may also help maintain an active and vibrant local bar, which in many communities serves a crucial public role, because lawyers serve voluntarily on court committees, in public office, and on boards of not-for-profit institutions in the community. 2002 MJP Report, at 9.

The 2002 MJP Report noted that "no state categorically excludes out-of-state lawyers and there is general agreement that, as a practical matter, lawyers cannot serve clients effectively unless accommodations are made for multijurisdictional law practice, at least on a temporary or occasional basis." *Id.* at 10. For litigation matters, the Report noted that *pro hac vice* admission rules existed in every state but was not available for some aspects of litigation matters, such as pre-litigation work and ADR. *Id.* at 10, 12. Transactional lawyers "also commonly provide services in states in which they are not licensed," and on behalf of clients in their state of admission, often "travel outside the state in order to conduct negotiations, gather information, provide advice, or perform other tasks relating to the representation." *Id.* at 12. Thus, the Report noted that lawyers, as of the end of the 20th Century,

> have general understandings about how jurisdictional restrictions apply to their work in states where they are not licensed. These understandings are shaped less by the wording of the UPL provisions or by decisional law, which is sparse, than by conventional wisdom or by what the U.S. Supreme Court has called "the lore of the profession." On one hand, lawyers understand that they may not open a permanent office in a state where they are not licensed and also that they may not appear in the court of a state where they are not licensed without judicial authorization. On the other hand, lawyers recognize that they may give advice in their own states concerning the law of other jurisdictions, that they may represent out-of-state clients in connection with transactions and litigation that take place where the lawyer is licensed, and that they may travel to other jurisdictions in connection with legal work on behalf of clients who reside in and have matters in the state where the lawyer is licensed.

Id. at 13. And these understandings were "to some extent, reinforced by the sporadic enforcement of state UPL laws," with regulatory actions "rarely brought against lawyers who assist clients on a temporary basis in connection with multi-state or interstate matters." *Id.*

Consistent with the recommendations of the 2002 MJP Report, the ABA adopted temporary practice rules contained in Model Rule 5.5(c). It permits four exceptions to UPL that allow lawyers to "provide legal services on a temporary basis" in a jurisdiction where they are not admitted: (1) when they associate with local counsel who actively

participates in the matter; (2) when they are assisting or participating in an actual or potential proceeding before a tribunal, generally by obtaining pro hac vice admission; (3) when they are participating in an arbitration, mediation or other alternative resolution; and (4) where the legal services in the second state "arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice." Model Rule 5.5(c) (1-4).

Model Rule 5.5(d) further allows lawyers admitted in another US jurisdiction or in a foreign jurisdiction, or a person lawfully practicing as in-house counsel under the laws of a foreign jurisdiction to provide legal services through an office or other systematic or continuous presence in a jurisdiction where the lawyer is not licensed if certain criteria are met. Model Rule 5.5(d-e). Model rule 5.5(a-b), however, essentially continued, other than otherwise as excepted under the above sub-sections, to prohibit interstate multijurisdictional practice.

These revisions to the ABA Model Rules met widespread approval in terms of being adopted by a majority of U.S. jurisdictions, but not all jurisdictions have done so, and issues persist. Some of those issues revolve around lawyers' need to evaluate the approaches of jurisdictions that have not embraced the Model Rule approach to temporary practice, while other issues stem from problems involving the lack of "fit" between modern law practice and either regulating activity based only on geographic boundaries or based upon notions that any lawyer practices "the law of a jurisdiction."

Competence as an Ongoing Regulatory Justification

Defenders of the current version of Rule 5.5 often assert that restrictions on multi-jurisdictional practice are necessary to ensure the competence of lawyers who represent clients in their jurisdiction. In addition to the previously discussed competence paradox involved in the privileges of licensed lawyers under the current regulatory structure, the modern landscape of how lawyers become licensed to practice law across the United States undermines this rationale.

As discussed above, jurisdiction to regulate the practice of law has been largely a matter of geographic boundaries up to this point,[44] with some exceptions.[45] Notably, authorization to practice law within the state of licensure is comprehensive; the license does not limit a lawyer to work involving the law of the licensing jurisdiction. Although jurisdictional licensing based exclusively on a lawyer's location has provided the benefit of clarity both in terms of the authorization and freedom to practice regardless of what laws or jurisdictions the lawyer's work might touch; lawyers can now effectively practice nationwide in many respects without ever leaving their licensing jurisdictions. Moreover, the jurisdictional regulatory scheme limits lawyers' ability to physically relocate while serving clients only in those jurisdictions in which the lawyers are admitted to practice.

Licensing Lawyers in 2021

Admission by Bar Examination

As discussed above, the competency argument for multi-jurisdictional practice restrictions assumes that admission to practice in one jurisdiction does not establish competence to practice in any other jurisdiction. The underlying premise in that proposition is that some special training or testing is required to demonstrate competence in a particular jurisdiction.

Presently, 41 U.S. jurisdictions have adopted the Uniform Bar Examination (including Michigan, which announced in October 2021 that it would adopt the UBE, to be administered starting in 2023). The candidates for admission in those jurisdictions take identical bar examinations, although the minimum threshold for passing scores varies among jurisdictions:[46]

---

[44] RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §3(1) (2000), "A lawyer currently admitted to practice in a jurisdiction may provide legal services to a client...at any place within the admitting jurisdiction." *Id.* COMMENT (e): "Admission in a state permits a lawyer to maintain an office and otherwise practice law anywhere within its borders."

[45] Federally authorized practice, for example, allows one to practice law nationwide. See *Sperry v. Florida*, 373 U.S. 379 (1963). Federal law sets the maximum qualifications required to practice before all but one federal agency at being a member of the bar of a state. See 5 USC §500(b). Some federal courts also allow for application to admission based upon a bar license in any jurisdiction along with admission to a federal court in that jurisdiction. See, e.g., L.R.Civ.P. 83.1 (WDNY).

[46] *See* https://www.ncbex.org/exams/ube/score-portability/minimum-scores/ (last visited Jan. 8, 2022).

260	Alabama, Minnesota, Missouri, New Mexico, North Dakota
264	Indiana, Oklahoma
266	Connecticut, District of Columbia, Illinois, Iowa, Kansas, Kentucky, Maryland, Montana, New Jersey, New York, South Carolina, Virgin Islands
270	Arkansas, Maine, Massachusetts, Nebraska, New Hampshire, North Carolina, Ohio, Oregon, Rhode Island, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wyoming
272	Idaho, Pennsylvania
273	Arizona
276	Colorado
280	Alaska

Twenty-four of the UBE jurisdictions have no additional or substitute exam component tailored to that particular jurisdiction.[47] Of the 16 jurisdictions that have a state-specific component, nine require attending a course or tutorial in the jurisdiction's law (all the courses but one, New Mexico's, are online, and only New York requires both an online course and an online test). When an applicant from another jurisdiction transfers in a passing UBE score, such applicants may also be required by these nine states to complete the state-focused course or tutorial. Seven jurisdictions (including New York) require an applicant to complete an online multiple-choice test. All seven states require anyone seeking admission, either by bar exam or transfer of score from another jurisdiction, to complete the test.

[47] https://reports.ncbex.org/comp-guide/charts/chart-5/#1610472174303-4aeee78b-6a74 (last visited Jan. 8, 2022).

Admission on Motion

Virtually all of the jurisdictions permitting admission by motion impose the same jurisdiction-specific exam and course requirements for those applicants. Otherwise, the states permitting admission by motion treat the lawyer's experience in their home jurisdiction as sufficient to demonstrate competence to be licensed in the new jurisdiction.

Conclusion

Geographic limitations on a lawyer's provision of services long accepted by the legal profession in the name of client protection often deprive clients of ever having an opportunity to exercise a truly full and free "choice" of counsel. These geographic restrictions exist even if lawyer and client are both willing to enter into the engagement, oftentimes already having an existing professional relationship. Geographic limitations also make no accommodation for the idea that the relationship may benefit from both the level of trust that the client has in the lawyer as the "first choice" as well as any existing knowledge the lawyer has about the client, including relevant goals, priorities, tendencies, and communication style.

Instead of such a rigid approach, APRL's proposed Model Rule 5.5 allows clients to consciously choose the lawyer they want to represent them as long as the lawyer has disclosed to the client the facts as to where they are licensed. It does not abandon client protection in empowering client choice. It also ensures that lawyers who ultimately do provide incompetent legal services, or who otherwise run afoul of their ethical obligations, will be capable of being held responsible for their misconduct or shortcomings in any (or all) of the relevant jurisdictions.

APRL's proposal to revise Model Rule 5.5 is also consistent with the trend that has come from several jurisdictions who have issued guidance during the 2020 Pandemic to lawyers who found themselves practicing across state lines less by choice and more by necessity.[48] Not all of the guidance issued in these jurisdictions has been focused entirely

[48] D.C. Opinion 24-20: Teleworking from Home and the COVID-19 Pandemic (March 23, 2020) (interpreting the "incidental and temporary practice" exception of DC's Rule 49(c)(13)); *see also* N.J. Committee on the Unauthorized Practice of Law Op. 59, Advisory Committee on Prof. Ethics Op. 742 (Oct. 6, 2021); Pennsylvania State Bar Op. 300 (April 2020); Utah State Bar Ethics Advisory Committee Opinion

upon, or limited to situations where, lawyers were forced for public health reasons to live somewhere other than where they were licensed, but, if history is a guide, absent further improvements in the rule itself, then the progress that has been made will likely not come to fruition. APRL's proposed Model Rule 5.5 embeds the concepts of client choice, transparency, and accountability in a way that we believe will long outlive those who currently practice law under the existing regulatory system.

No. 19-03 (May 14, 2019); The Fla. Bar re: Advisory Opinion – Out-of-State Attorney Working Remotely From Florida Home, SC20-1220 (Fla. May 20, 2021).

ENCLOSURE 2

APRL ASSOCIATION OF PROFESSIONAL RESPONSIBILITY LAWYERS

December 12, 2024

William R. Bay
President of the American Bar Association (ABA)
wbay@thompsoncoburn.com

Dear President Bay,

On behalf of the Association of Professional Responsibility Lawyers (APRL), I enclose APRL's proposed revisions to Model Rule 5.4 (Professional Independent of a Lawyer) and the supporting report of APRL's Future of Lawyering Subcommittee (Report). APRL believes that there is a critical need for changes to this ethics rule to address the continued, inevitable involvement of non-lawyers in legal delivery systems while maintaining regulations that protect consumers. APRL's Board of Directors, identified on this letterhead, voted unanimously to adopt the proposed revised rule and authorized public dissemination of the Proposed Rule and Report.

APRL is an association of over 450 lawyers, law professors, state bar counsel, in-house counsel, judges, and others throughout the United States dedicated to servicing clients and the legal profession in the areas of legal ethics, professional liability, risk management, lawyer discipline, and all other facets of the law of lawyering. Its Future of Lawyering (FOL) Subcommittee members, as identified in Appendix A to the enclosed Report, crafted the revised Model Rule 5.4 in thoughtful consideration of the current state of the legal profession, the needs of consumers, and the concerns expressed by the ABA and various US jurisdictions regarding the sharing of legal fees with non-lawyers. The Report details the history of existing Rule 5.4, discusses the expressed and implied exceptions to the rule that presently exist, and explains how the current rule fails to address the contemporary and ever-evolving practice of law.

APRL agrees with the assessment you shared at the ABA's August 2024 Annual Meeting: "We face a new set of challenges that require a different approach."[1] APRL believes its revised Rule 5.4 offers a different approach that is unquestionably needed and should be adopted. The amended Rule 5.4 would allow lawyers to share fees with nonlawyers as long as the lawyer maintains professional judgment (as required under Rule 2.1), adheres to the duty to supervise (as required by Rule 5.3), and the total fees charged to the client remain reasonable (as required by Rule 1.5). It also requires that whenever a lawyer and a

[1] Quote stated in ABA Journal article by Danielle Braff entitled, "Incoming ABA President Bill Bay calls on legal profession to 'stand together'[,]" dated August 5, 2024.

APRL ASSOCIATION OF PROFESSIONAL RESPONSIBILITY LAWYERS

non-lawyer individual or entity outside of the lawyer's law firm intend to share legal fees, the client must consent. APRL's proposal further acknowledges the jurisdictions that regulate Alternative Business Structures (ABS) and provides other jurisdictions the flexibility to consider future state amendments while still requiring compliance with the jurisdiction's registration requirements.

We hope to garner support for this proposal not only within the ABA but also in individual United States jurisdictions independently willing to consider changes to their own versions of Rule 5.4. To this end, APRL will also distribute its rule revision proposal and Report to the individual jurisdictions.

Please do not hesitate to contact me with any questions you may have.

Thank you for your time, consideration, and service to our profession.

Sincerely,

Kendra L. Basner
APRL President 2024-2025
O'Rielly & Roche, LLP
kendra@oriellyroche.com

ASSOCIATION OF PROFESSIONAL RESPONSIBILITY LAWYERS (APRL)

Future of Lawyering Subcommittee's Report Regarding Proposed Revisions to ABA Model Rule 5.4[1]

Table of Contents

---

[1] The members of the subcommittee involved in the drafting of the proposed rule and of this report are: Kendra Basner (San Francisco, CA), Eric Cooperstein (Minneapolis, MN), Anthony Davis (New York, NY), Craig Dobson (New York, NY), Brian S. Faughnan (Memphis, TN), Jan Jacobowitz (Miami, FL), David Majchrzak (San Diego, CA), Tyler Maulsby (New York, NY), Sari Montgomery (Chicago, IL), Jayne Reardon (Chicago, IL), Lynda Shely (Scottsdale, AZ), and Hope Todd (Washington, D.C.). See Appendix A for the complete list of APRL's Future of Lawyering Subcommittee members. The views expressed herein are solely those of the authors as approved for publication by the APRL Board and the Future of Lawyering subcommittee and do not necessarily reflect the views of any other organization, employer, or affiliated entity.

I. Executive Summary

The American Bar Association (ABA) adopted Model Rule 5.4 in 1983, prohibiting fee-sharing between lawyers and non-lawyers. Most U.S. jurisdictions follow Model Rule 5.4's ban on sharing legal fees with non-lawyers and non-lawyer ownership of law firms engaged in legal practice. In fact, for decades Washington D.C. stood alone as the sole jurisdiction within the United States that allowed non-lawyer ownership and fee-sharing albeit under narrow circumstances.

More recently, in 2020, Arizona and Utah reconsidered the 5.4 prohibitions. Utah established a regulatory sandbox to explore the sharing of fees. Arizona eliminated Rule 5.4 in 2021 and established an alternative business structures option. Three years of data from Utah and Arizona evidence no adverse effects on the legal profession or consumers thereby paving the way for both the ABA and state regulators to reconsider and remove this traditional ban.

As former ABA President Judy Perry Martinez aptly stated, "We need new ideas. We're one-fifth into the 21st century, yet we continue to rely on 20th-century processes, procedures, and regulations."

The **Association of Professional Responsibility Lawyers** (APRL) proposal responds to the call for new ideas and proposes to amend Rule 5.4 to allow lawyers to share fees with nonlawyers as long as the lawyer maintains their professional judgment (as is required of all lawyers at all times by Rule 2.1), adheres to the duty to supervise (as is required of lawyers by Rule 5.3), and the total fees charged to the client remain reasonable (as is required of lawyers by Rule 1.5).

APRL's proposal also requires that whenever there is to be fee-sharing between a lawyer and an entity or individual who is not an employee of the lawyer's law firm, then the client must provide consent for it to be permissible. The addition of client consent not only largely models itself after the existing rule regarding fee sharing among lawyers in separate law firms, but also provides a veto power to any client who truly cares not just about how much legal services cost them but about who receives such payments.

Additionally, APRL's proposal acknowledges the states that regulate alternative business structures through registration requirements and provides the option for future state amendments to Rule 5.4 by requiring compliance with any state-level registration requirements.

The Association of Professional Responsibility Lawyers is an independent association of over 400 private practice attorney, large law firm in-house risk management and general counsel, state bar regulators, general counsel to non-lawyer owned businesses, and law professors who grapple with legal ethics issues every day in a variety of settings. The Association also includes lawyers who practice law in Canada and the United Kingdom and have experienced firsthand that the legal profession has

not collapsed or been compromised when lawyers are permitted to share legal fees with non-lawyers.

APRL lawyers have provided advice to lawyers seeking to both innovate in the delivery of legal services and comply with Rule 5.4. APRL lawyers have also advised and counseled others outside of our profession who have sought to innovate in ways where it has been less than clear whether lawyers can participate in light of Rule 5.4. Rule 5.4's imposition on innovation has also been discussed and debated at numerous legal seminars.

Thus, APRL members have first-hand knowledge on how removing the barrier imposed by restrictions on the sharing of fees with non-lawyers would not only drive innovation in the legal profession, but also could create new tools for addressing the unmet need for legal services. Rapid changes in technology over the past two decades and diversification in the delivery of legal services compel changes to the rules on fee sharing that will not only benefit lawyers but also will advance the legal profession's role in providing assistance to those in need while adequately protecting consumers of legal services.

II. Why Lawyers and Clients Alike Stand to Benefit From Change.

A significant disconnect exists in the United States between people needing legal assistance and the availability or affordability of lawyers. This gap, often referred to as a call for "access to justice" or "access to legal services," is well-documented by multiple stakeholders:

- Many Americans cannot afford to retain lawyers when they need legal services.
- Even more people are financially unwilling to pay current lawyer rates for legal services.
- Many lawyers operate below full capacity in terms of workload.[2]

In other industries and professions, financially motivated actors often bridge such supply-demand gaps by pairing willing consumers with willing providers for a fee. Consumers and providers may gladly pay a third party for this connection service, as they may lack the time or skill to find each other independently. Third parties can become highly efficient and effective in this task. However, the legal profession's ethics rules prohibiting fee-sharing with non-lawyers prevent such market-based solutions for consumers seeking legal services.

---

[2] See Clio's 2024 Legal Trends Report, available at https://www.clio.com/resources/legal-trends/; generally S. Weissman et al., "The World Needs More Lawyers," Regulatory Transparency Project of the Federalist Society (2023) available at https://rtp.fedsoc.org/paper/the-world-needs-more-lawyers; Hon. Neil M. Gorsuch, "Bridging the Affordability Gap, 45-APR Wyo. Law. 16, 17 (2022); Legal Services Corp., The Justice Gap: The Unmet Civil Legal Needs of Low-Income Americas) (Mary C. Slosar et al. eds, 2022); Rebecca L. Sandefur, Access to What?, 148 Daedalus 49 (2019); Lincoln Caplan, The Invisible Justice Problem, 148 Daedalus 19 (2019).

The case of Avvo Legal Services illustrates this point. Avvo created a lawyer search and rating platform that initially only allowed visitors to post questions on the site, which lawyers may choose to answer. Avvo later added features that allowed consumers to hire lawyers at affordable rates. For a time, the platform successfully connected willing lawyers with interested consumers, resulting in high satisfaction levels for all participants. Consumers paid a fee to Avvo, and Avvo retained a portion of that fee as payment for the use of the platform and provided the remainder of the fee to the lawyer. In other words, the fee paid by the consumer was shared between Avvo and the lawyer. Consumers who used the platform did not object to the fee being shared in this manner. However, state bar ethics opinions condemned lawyers' participation in this innovative platform, ultimately forcing Avvo to abandon this endeavor.[3]

These ethics opinions relied primarily on the theory that by sharing fees with a nonlawyer (Avvo), the arrangement jeopardized the lawyers' ability to exercise their independent professional judgment in advising and representing their clients. No known data supports this assumption. APRL rejects the premise that a lawyer, merely because they may share 10% of a fee ultimately paid to them by a client with someone who helped connect them with the client, will be unable to exercise their professional judgment consistent with their ethical obligations. Because of other exceptions long deemed acceptable by the attorney ethics rules, tens, if not hundreds, of thousands of lawyers in our nation navigate more difficult economic circumstances on a daily basis. In fact, lawyers in the United States have been successfully maintaining their independent judgment, adhering to their ethical duties, and, in some situations, actually sharing fees with non-lawyers for decades so long as certain explicit or implied allowances exist. Some such circumstances include but are certainly not limited to, plaintiff's attorneys working on a contingent fee basis, lawyers handling legal matters funded by a third-party payor, in-house corporate counsel whose sole source of salary comes from their client-employer, or defense counsel who is paid by an insurance company to represent the interests of an insured. Our profession has a wealth of experience in demonstrating that lawyers can retain their independent professional judgment in the face of strong economic interests of others impacted by the representation.

To be sure, exercising independent professional judgment is a core value of the legal profession, embodied in ABA Model Rule 2.1 (adopted in most jurisdictions): "A lawyer shall exercise independent professional judgment and render candid advice" when representing a client. Lawyers already face, and navigate, various financial

[3] Indiana Supreme Court Disciplinary Comm'n, Op. 1-18 (April 9, 2018); Utah State Bar Ethics Advisory Opinion Committee, Opinion No. 17-05 (Sept. 27, 2017); New York State Bar Ass'n Committee on Professional Ethics, Op. 1132 (Aug. 8, 2017); New Jersey Advisory Committee on Professional Ethics/Committee on Attorney Advertising/Committee on the Unauthorized Practice of Law, ACPE Joint Opinion (June 2017); Pennsylvania Bar Ass'n Formal Op. 2016-200 (Sept. 2016); The Supreme Court of Ohio: Board of Professional Conduct, Opinion No. 2016-3 (June 2016); South Carolina Bar Ethics Advisory Opinion 16-06 (2016).

pressures to their independent professional judgment, whether it be from the pressures of law firm owners to generate income or the lawyers' own financial needs. Yet the Rules of Professional Conduct do not regulate the inner financial workings of law firms. No evidence suggests that lawyers would be any more vulnerable to improper influence by non-lawyer constituents than they already face from lawyer colleagues as well as other outside, non-lawyer influences that are currently accepted by the profession such as those mentioned above. No rationale explains how a lawyer's professional independence is strong enough to repel influence by other lawyers (and non-lawyers under certain circumstances) but so fragile that it would crumble in the face of pressures by nonlawyers.

Moreover, lawyers' largest and most forceful constituency are their clients, most of whom are nonlawyers and who regularly press lawyers to take aggressive positions in litigation, create roadblocks to discovery, delay proceedings, etc. Lawyers exercise independent professional judgment every day despite the pressures placed upon them by the people and entities paying the lawyers' bills. If lawyers can withstand those pressures; the opposite application to fee sharing appears to be a distinction without a difference.

Removing the ethical restriction on lawyers working with non-lawyers to provide legal services and allowing non-lawyer ownership interests in law firms could lead to expanded access to legal services. Working with nonlawyers who have experience and expertise in technology, marketing, advertising, business management, and finances, among other areas, could bring to the table new ideas, talent, focused hands [manpower], and, yes, perhaps capital, ultimately allowing lawyers to leave those responsibilities to such professionals so the lawyers can refocus on providing quality legal services. For example, membership in organizations like AAA or AARP could provide its members ready access to lawyers for specific legal matters. Large subscription/membership companies might bundle access to lawyers into their business models, such as Amazon Prime offering legal services at affordable rates to members. Along those same lines, imagine if lawyers could pay non-lawyer advertisers and marketers, for instance, a portion of the legal fees generated from a successful advertisement (similar to a contingency fee) instead of paying advertising and marketing costs in advance with only the mere hope that the advertising will be effective in bringing in clients. Such an option could help many lawyers, particularly solo lawyers and small firms, who simply don't have funds available to invest in advertising (or other such non-lawyer services) but are desperately in need of generating additional work to keep their practice afloat.

Furthermore, lifting the restriction on fee sharing could facilitate the creation of technology platforms that provide additional opportunities for lawyers to expand their client base and increase efficiency. Currently, developing such platforms is generally only accessible to those with significant capital. Most law firms tend not to retain capital in the firm from year to year, favoring year-end distributions of profits to the owners of the firms. Allowing fee-sharing with non-lawyers would enable lawyers to partner with technology experts in exchange for equity, potentially leading to tools

that automate tasks or add value to a practice and may lower the firm's overhead expenses.

The current restrictions on non-lawyer ownership of law firms limit lawyers' access to capital for investment and growth. When only lawyers can invest or have an ownership share, law firms' only source of capital comes from equity stakeholders. This often forces lawyers to turn to expensive litigation funding alternatives in the litigation context. In the transactional context, fewer funding options leave clients with fewer choices when selecting a lawyer.

Moreover, legal education often doesn't include guidance on running a business, and the prevalence of the billable hour doesn't inherently drive efficiency. The quantity over quality business model that so many lawyers and law firms feel forced to implement just to make ends meet isn't in the best interest of anyone. The ethical restrictions prevent firms from attracting people with expertise in efficiently running a consumer business because they're limited in how they can compensate these individuals.

Eliminating the prohibition on sharing fees with non-lawyers could enhance access to more effective and efficient legal services for consumers while providing additional opportunities for lawyers. This change wouldn't diminish lawyers' duty to exercise professional independent judgment, which Rule 2.1 preserves. Therefore, the fear that lawyers' independent professional judgment will erode shouldn't stifle efforts to find innovative ways to benefit both lawyers and clients.

III. Historical Context for Prohibition on Sharing Fees with Non-Lawyers

The prohibition on sharing fees with nonlawyers has historical roots that are intertwined with the development of rules and statutes prohibiting the unauthorized practice of law (UPL). Both concepts highlight the tension between policies ostensibly protecting the public and allegations that the legal profession has designed rules to protect its own turf.

England enacted one of the first laws that addressed the unauthorized practice of law. A 1292 statute empowered the Lord Chief Justice 'to appoint a certain number of attorneys and lawyers of the best and most apt for their learning and skill, who might do service to his court and people; *and that those chosen only and no other, should practice.*'[4] Centuries later, a 1729 Act of Parliament prohibited nonlawyers from using a lawyer's name for profit.

[4] Jan L. Jacobowitz & Peter R. Jarvis, Unauthorized Practice or Untenable Prohibitions: Refining and Redefining UPL, 13 ST. MARY'S J. ON LEGAL MALPRACTICE & ETHICS 283, 289 (2023) (internal citations omitted) (emphasis added).

Interestingly, until the Civil War, America had few significant restrictions on admission to law practice. [5] This seemingly casual attitude stemmed from the following logic:

> An individual with practical experience and a frontier spirit but no law school education (e.g., Abraham Lincoln) could plainly have more skill and insight than someone who was merely theoretically trained. Moreover, nineteenth-century state bars were often reluctant to require formal legal education as a requisite for admission to practice law because such a requirement could render the practice of law "accessible to only elites." Thus, law school, a law degree, and formal theoretical education about the practice of law were not universally thought necessary to imbue individuals with the competence required to provide legal information and advice to clients. [6]

In the early 1800s, English courts applied the 1729 Act to invalidate a lawyer's agreement to pay his clerk one-third of the law firm's profits as salary. This concept crossed the Atlantic and reached the U.S. Supreme Court after the Civil War. In *Meguire v. Corwine,* the plaintiff, a nonlawyer, had helped the defendant secure an appointment as special counsel for the government in a valuable case. The defendant, in turn, had promised to pay the plaintiff half of the legal fees that the defendant received for pursuing the case. In a dispute between the two over the amount defendant should pay to plaintiff, the Court denounced fee-sharing agreements as "forbidden by a statute or condemned by public policy" and "clearly illegal." [7]

Oddly, despite the low bar for admission to practice law, cases prohibiting lawyers from sharing fees with nonlawyers continued to emerge. In 1908, the American Bar Association (ABA) codified its first set of Canons. Canon 28 prohibited lawyers from paying nonlawyers for referring cases.

The late 1800s had seen a proliferation of lawyers: from approximately 20,000 lawyers in 1850 to about 114,000 lawyers at the turn of the century. Along with increasing numbers of lawyers came the establishment of bar associations. Initially serving as social organizations, by the early 1900s, these associations began engaging in advocacy, focusing on unauthorized practice of law. Some analyses conclude that these initiatives aimed more at erecting barriers to entry to protect the professional elite than increasing the bar's professional status.[8]

A convergence of UPL and fee-sharing issues emerged as state bars objected to the practice of law through corporations. The corporation became both the nonlawyer

---

[5] Jacobowitz and Jarvis, at 290.

[6] Id.

[7] Roy D. Simon Jr., *Fee Sharing Between Lawyers and Public Interest Groups*, 98 Yale L.J. 1069,1077 (1989) (internal citations omitted.).

[8] Jacobowitz and Jarvis, .at 292.

impermissibly sharing fees and an entity engaged in unauthorized practice of law. States passed legislation prohibiting corporations from practicing law, and courts determined that the attorney-client relationship couldn't exist between a corporate-employed attorney and the corporation's client.

> The relation of attorney and client. . . cannot exist between an attorney employed by a corporation to practice law for it, and a client of the corporation, for he would be subject to the directions of the corporation and not to the directions of the client. . .. The corporation would control the litigation, *the money earned would belong to the corporation* and the attorney would be responsible to the corporation only.[9]

In response to these developments, the ABA established a special committee to propose amendments to the Canons. The resulting Canons 33, 34, and 35, adopted in 1928, prohibited partnerships with non-lawyers, fee division except with another lawyer, and the control of legal services by lay agencies.

These Canons formed the basis for the 1969 ABA Model Code, which in turn laid the groundwork for today's ABA Model Rules of Professional Conduct. Despite multiple reviews and recommendations for change over the years, including the Kutak Commission's proposed Rule 5.4 in 1983 that would have permitted fee-sharing with non-lawyers. Particularly telling was the 1983 Kutak Commission's comment that

> To prohibit all intermediary arrangements is to assume that the lawyer's professional judgment is impeded by the fact of being employed by a lay organization .... The assumed equivalence between employment and interference with the lawyer's professional judgment is at best tenuous .... Applications of unauthorized practice principles, only tenuously related to substantial ethical concerns raised by intermediary relationships, may be viewed as economic protectionism for traditional legal service organizations ....
>
> The exceptions to per se prohibitions on legal service arrangements involving nonlawyers have substantially eroded the general rule, leading to inconsistent treatment of various methods of organization on the basis of form or sponsorship. Adherence to the traditional prohibitions has impeded development of new methods of providing legal services.[10]

Similarly, the ABA's Multijurisdictional Commission's report in 2000 proposed that lawyers be

> permitted to share fees and join with ,nonlawyer professionals in a practice that delivers both legal and nonlegal professional services . . ., provided that the lawyers have the control and authority necessary to

---

[9] *In re Co-operative Law Company* 198 N.Y. 479, 95 N.E. 15 (1910):

[10] Art Lachman, Lawyer Professional Independence & Rule 5.4: An Overview, at 5, ABA National Conference on Professional Responsibility, Vancouver, BC (May 2019).

> assure lawyer independence in the rendering of legal services…This Recommendation must be implemented in a manner that protects the public and preserves the core values of the legal profession, including competence, independence of professional judgment, protection of confidential client information, loyalty to the client through the avoidance of conflicts of interest, and pro bono publico obligations.[11]

The report caused animated debate, but no changes to the ABA position.

Since then, the ABA has continued to fail in any effort to resolve the fee-splitting issue. In 2022, ABA Resolution 402 reaffirmed Rule 5.4 and the policies supporting the prohibition on fee-sharing with nonlawyers. The resolution argued that innovation can occur without abandoning core values that ensure the practice of law remains a learned and independent profession serving the public and defending justice.

Despite all ABA rule revisions since 1908, the fundamental prohibitions in the 1928 Canons remain, primarily in today's Model Rule 5.4. This persistence occurs despite the evolution of business, technology, and the growing, desperate need for increased access to legal services for the public – a public apparently neither served nor protected by Rule 5.4.

IV. Evidence Shows Naysayer Concerns Are Invalid

A. Lawyer Independence Can Be Maintained When Non-Lawyers Are Involved

Model Rule 5.4's raison d'être remains the protection of lawyers' professional independence of judgment. Rule 5.4 approaches this solely through an economic lens, prohibiting or restricting the sharing legal fees with nonlawyers, allowing nonlawyer equity interests in firms, or permitting nonlawyers to occupy director or officer roles.

For Model Rule 5.4 jurisdictions, this creates a single business model: only lawyers may profit from a firm's success or make significant business decisions, including those unrelated to client services. This attempt to minimize situations where lawyers might prioritize economic incentives over clients' best interests ignores the reality of in-house legal departments, where nonlawyers routinely oversee lawyers without such restrictions.

B. Current Exceptions to Rule 5.4

Rule 5.4's requirements and related ethical opinions limit not only the sharing of legal fees directly received from clients but also the sharing of law firm revenue or profits with nonlawyers. However, practical necessities have led to many exceptions to this ban over the years, some of which are inconsistent with each other.

For example, Model Rule 5.4 contains four exceptions adopted by most states:

---

[11] Lachman, at 8.

- Allowing nonlawyer employees to receive profit-sharing compensation (but not a share of the legal fees from a particular case).
- Permitting fee-sharing with nonprofit organizations. This permits bar associations, which are not licensed professional firms for the practice of law, to operate lawyer referral services in which the lawyers promise to share future legal fees with the bar association, whereas for-profit lawyer referral services and lead-generation services are prohibited unless they follow the strict restrictions created by the Bar, are approved by the Bar, and ultimately share fees with the Bar.
- Allowing payment to a lawyer's estate after death.
- Permitting the purchase of a deceased, disabled, or disappeared lawyer's practice.

Other exceptions and contradictions have emerged:

- Lawyers can pay a percentage of legal fees to nonlawyer credit card providers, but they may not enter into a lease with nonlawyer landlords for office space that includes a percentage of law firm revenue in the rent calculation (a common model for retail businesses).
- Captive law firms are assumed to be able to maintain independent judgment in representing insureds, despite 100% of the lawyer's cases being referred to them by nonlawyer insurers.
- Lawyers are permitted to enter into litigation financing arrangements with third party, nonlawyer lenders that require the lawyers to guarantee repayment of the loans.
- Lawyers and law firms may enter into loan arrangements with banks that include covenants on what the lender may do if the borrower defaults. These provisions frequently give the lender far greater powers over the practice of law in the event of even technical defaults than nonlawyer shareholders would have in a corporate entity.
- Lawyers may accept payments of litigation fees and costs from other third-party nonlawyers.
- Some jurisdictions allow lawyers to share fees with nonlawyer-owned law firms in other jurisdictions where such sharing is permitted.

These exceptions demonstrate the inconsistencies in applying Rule 5.4 and suggest that the concerns about the "fragility" of lawyer independence may be overstated.

C. Rule 5.4 Does Not Hold Up the Sky

Defenders of Rule 5.4 restrictions tend to approach the rule from a perspective that the rule is so critical that any relaxation of the rule will be catastrophic, that the sky will surely fall and repercussions of sharing fees with nonlawyers will be impossible

to control. A review of the jurisdictions that have experimented with nonlawyer fee sharing reveals no such doomsday scenario.

1. *District of Columbia*

D.C. amended its version of Rule 5.4 in 1991 to allow nonlawyers performing professional services to hold financial interests or managerial authority in law firms. For instance, a D.C. law firm may have a partner who is a lobbyist, accountant, or social worker, electrical engineer, or e-discovery expert. D.C. firms also may make a nonlawyer CEO, CIO, or CFO a shareholder in the firm, thereby improving the likelihood of attracting and retaining quality personnel. D.C. doesn't permit "passive" investment/ownership (unlike England and Australia, discussed below). The rule has been in effect for thirty years and yet there's no indication that firms with nonlawyer partners have more bar complaints or that nonlawyer partners have inhibited lawyers' independent professional judgment.

The ABA perhaps tacitly acknowledged that nonlawyer ownership of law firms in D.C. did not impede lawyers' professional judgment when it issued Formal Opinion No. 13-464, "Division of Legal Fees with Other Lawyers Who May Lawfully Share Fees with Nonlawyers." That opinion held that lawyers in jurisdictions following the Model Rules version of 5.4 did not violate that rule in sharing fees with a D.C. law firm that had nonlawyer owners. Several state bar associations have concurred with Opinion 13-464.

This marginal concession continued with Formal Opinion 21-499 which interpreted Model Rule 5.4 to allow a lawyer to "passively invest in a law firm that includes nonlawyer owners ... operating in a jurisdiction that permits ABS entities, even if the lawyer is admitted to practice law in a jurisdiction that does not authorize nonlawyer ownership of law firms." Georgia has adopted a revised version of its Rule 5.4, and New York has since issued an ethics opinion, permitting lawyers in their states to conduct business with Alternative Business Structures in other states, such as Arizona and Utah.[12]

2. *England, Wales, and Australia*

The Legal Services Act of 2007 authorized nonlawyer ownership for British law firms. The first nonlawyer-owned law firms were approved in England in 2012. All law firms in England and Wales are required to register with the Solicitors Regulation Authority (SRA) and there is an application/disclosure requirement for Alternative Business Structure (ABS) law firms that have nonlawyer ownership to assure that the firm that is providing legal services disclose who will have strategic management control in the law firm and that the firm employs a lawyer who has at least three years of experience. About half of all new law firms in England are ABS firms, with no noticeable increase in ethics complaints.

---

[12] *See* Ga. R. Prof. Cond. 5.4(e) and (f); New York City Bar Ass'n Op. 2020-1.

Similarly, Australia has permitted nonlawyer ownership of law firms since 2007, with at least five firms publicly traded on the Australian Stock Exchange, again without increased legal ethics violations. Incorporated Legal Practices (ILPs) must disclose which of its services are legal services and which are nonlegal services; designate an "Authorized Principal" who holds a certificate to supervise the legal services and is a director of the firm; and maintain liability insurance.[13]

3. Utah

In 2020, Utah created a "regulatory sandbox" to test various legal service delivery options. Participants include businesses partially or completely owned by nonlawyers, lawyers partnering with nonlawyers providing ancillary services, and nonlawyers providing legal services under strict regulation. The Sandbox is approved to operate for seven years, gathering data about the participants and reporting on how the participants have managed to deliver legal services. Applicants to the Sandbox include businesses that are partially or completely owned by nonlawyers and legal services delivered by lawyers, businesses where lawyers partner with nonlawyers who provide ancillary services that assist legal clients (such as accountants and financial planners), and businesses where nonlawyers provide legal services. This last category of legal service model is the most highly regulated to assure that consumers of the legal services are still the recipients of competently performed legal work.

Applicants to the Sandbox must disclose all controlling persons, who is providing financing, and how the applicant plans to reach legal consumers "currently underserved by the legal market." Disbarred attorneys may not serve as a controlling person or manager or director of legal services in a Sandbox applicant.

Participants in the Sandbox must provide regular reports to the Innovation Office and even undergo auditing of their services if nonlawyers (including technology) are providing the legal work. They are subject to compliance with both the Rules of Professional Conduct and Sandbox regulations overseen by the Utah State Bar, which has enforcement authority for complaints involving Sandbox participants.

As of January 2024, the sandbox had 51 authorized entities, with minimal consumer complaints and satisfactory service quality assessments. Examples of authorized entities approved in U.S.:

1. LawHQ: Formed to raise capital to develop an app that locates plaintiffs and collects evidence for claims against phone spammers.
2. Law on Call: A subsidiary of an established registered agent company, offering small business clients access to a team of lawyers through a $9 subscription fee.

---

[13] *See* Information Kit, Incorporated Legal Practices (Queensland Law Society), available at: https://www.qls.com.au/getattachment/a3d3ff48-dfaf-40c0-ae67-49a179a53fd6/doc20160607_ilp_infokit_fnl.pdf

3. Off the Record: Connects consumers who have received traffic citations to lawyers who advise them on challenging their tickets.

4. Rasa Legal: a beneficial corporation that uses AI-enabled software and nonlawyer providers to help residents of Utah determine whether they are eligible to expunge their criminal records and then execute the process.[14]

Quality assessment (audits) data from the January 2024 Report concluded "there was no evidence of material or substantial harm to consumers, and services were found to be at least satisfactory by the Office, the LSI Committee, and independent lawyer auditors."[15]

4. Arizona

Arizona eliminated Rule 5.4 entirely in January 2021, allowing lawyers to share legal fees with nonlawyers in both traditional and Alternative Business Structure (ABS) law firms. ABS firms must be licensed and meet specific requirements, including:

- File a detailed application disclosing everyone who will hold a ten percent or greater "economic interest" in the firm. Applicants must undergo extensive background investigations into each authorized person and disclose whether the firm will have outside financing.
- Have an Arizona-admitted lawyer serve as the "Compliance lawyer" who takes responsibility for overseeing the firm's legal services and compliance with the Arizona Code of Judicial Administration for ABS law firms.[16] (ACJA 7-209)
- Disclose how the firm will maintain the confidentiality of client data, check for conflicts, and comply with the Rules of Professional Conduct and ABS Code of Conduct, and trust accounting requirements.
- Describe the practice areas contemplated by the firm and how the firm will support the regulatory objectives of the ABS program (including, for instance, promoting public interest and access to legal services, encouraging an independent, strong, and diverse legal profession, and maintaining adherence to professional standards).
- Pay a filing fee to support the costs of investigation and review of the application.

The Court's Licensing Division staff vets each application. Next, the Court's ABS Committee interviews the applicants. Following approval by that committee, the

---

[14] D. Engstrom, *et. al.*, "Legal Innovation After Reform: Evidence from Regulatory Change" (Sept. 2022) (available at https://law.stanford.edu/publications/legal-innovation-after-reform-evidence-from-regulatory-change/) (last visited May 17, 2023).

[15] *See* Activity Report: January 2024, Utah Innovation Office at 7, available at: https://utahinnovationoffice.org/wp-content/uploads/2024/03/January-2024-Activity-Report.pdf

[16] Arizona Code of Judicial Administration (ACJA), 7-209.

Arizona Supreme Court reviews the applications. Among the criteria that may result in the denial of an application is a proposed ownership interest by a disbarred lawyer.

A nonlawyer may own 100 percent of an ABS in Arizona. Unlike DC Rule 5.4, an Arizona ABS law firm may have "passive" investment/ownership by another entity or company. Licensees also must submit an annual renewal application and must comply with the Rules of Professional Conduct and the ABS Code of Conduct. The Compliance Lawyer and Designated Principal have mandatory reporting obligations. Since the inception of the ABS law firm program, only one licensee has been subject to a Reprimand for violation of the Rules and Code. Complaints about ABS law firms are investigated and prosecuted by the State Bar of Arizona, just like complaints about lawyers.

Unlike Utah's Regulatory Sandbox, Arizona ABS law firms may only deliver legal services through lawyers. Nonlawyers in an ABS cannot provide legal services.

As of October 2024, there were over 100 licensed Arizona ABS law firms. Arizona lawyers in traditional firms may also share legal fees with nonlawyers under certain conditions. This means that an Arizona lawyer in a traditional law firm may, for instance, pay a percentage of legal fees to a paralegal as a bonus; pay a percentage of legal fees to someone who refers the client to the firm (with informed consent from the client); and pay a percentage of fees to a technology company or lender, as long as the payment does not give the third party an "economic interest" in the law firm.

These examples demonstrate that allowing nonlawyer involvement in law firms and fee-sharing arrangements hasn't led to the dire consequences some feared. Instead, they've provided opportunities for innovation and increased access to legal services while maintaining professional standards and client protection.

5. Other Jurisdictions on the Horizon

On December 5, 2024, the state of Washington joined Arizona and Utah in exploring change in legal entity regulation. The Supreme Court of Washington's December 5 order directs the Court's Practice of Law Board (Board) and Washington State Bar Association (WSBA) to work in collaboration to "conduct a pilot project of entity regulation to test reforming the activities prohibited in RCW 2.48.180, RPC 5.4, and LLLT RPC 5.4."[17] This pilot program will allow companies and non-profit entities to offer legal services under carefully monitored conditions. The Court stated: "The purpose and focus of this pilot project are to collect data and information to inform reform efforts related to the regulation of the practice of law, and more specifically, to rules and regulations governing entities engaging in activities whether or not they constitute the practice of law." Updates about Washington's pilot program will be posted at www.wsba.org/pilot-project.

---

[17] In the Matter of the Adoption of a Pilot Project to Test Entity Regulation Using the Practice of Law Board's Framework for Legal Regulatory Reform, Supreme Court of Washington, Order No. 25700-B-721, December 5, 2024, at 4.

Michigan, New Mexico, and North Carolina established task forces to analyze and consider possible changes to Rule 5.4. Oregon, Virginia, and Vermont have released non-binding, opinion-based reports recommending reforms to Rule 5.4.

On the other hand, Illinois formed a task force and issued a report in September 2020 recommending changes for a more sustainable, modern, and equitable legal profession. Unfortunately, the Illinois State Bar Association rejected the task force's recommendations to explore ways to allow lawyers to "responsibly partner with other disciplines." California formed a task force that suffered a similar fate, in that its access to justice committee was disbanded before it could complete its assignment. On September 18, 2022, the California legislature, which regulates the State Bar of California and attorneys, passed legislation expressly forbidding the task force's initiative to continue.

V. Current ABA Model Rule 5.4 and APRL's Suggested Revisions

APRL's proposed revisions aim to give lawyers and law firms access to critical funding and the opportunity to partner and create new business models that better serve modern America's legal needs while continuing to protect consumers of legal services.

APRL's Future of Lawyering (FOL) Committee[18] has developed its Rule 5.4 proposal after considering:

- the historical context and intent of Rule 5.4;
- data from Arizona, Washington D.C., Utah's sandbox, and other countries permitting legal fee-sharing with non-lawyers;
- each state's current Rule 5.4 and other relevant rules;
- ethics, regulatory, and practical concerns expressed by some states and members of the legal profession; and

[18] See Appendix A. The views expressed herein are solely those of the authors as approved for publication by the APRL Board and the Future of Lawyering subcommittee and do not necessarily reflect the views of any other organization, employer, or affiliated entity.

Current Model Rule 5.4: Professional Independence of a Lawyer

Law Firms And Associations

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

APRL's Suggested Revisions to Model Rule 5.4

Revised Rule 5.4: Sharing of Fees with a Nonlawyer

(a) A lawyer may share fees with a nonlawyer when:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate provides for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;

(3) a lawyer or law firm includes nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

(b) A lawyer may also share fees with a nonlawyer when the lawyer exercises independent judgment as required by Rule 2.1, retains responsibility for the nonlawyer under Rule 5.3, and

(1) If the sharing is with a nonlawyer outside of the lawyer's law firm:

a. the client agrees to the arrangement, including the share each person or entity will receive, and the agreement is confirmed in writing; and

b. the total fee is reasonable.

(2) If the sharing is with a nonlawyer within the lawyer's firm or employer and one or more nonlawyers have a financial interest in the business entity, the business entity has complied with any registration requirements in this jurisdiction.

APRL's proposal retains some features of the rule and recommends removing others, as follows:

- APRL states the rule in the affirmative, stating the conditions under which fees may be shared, instead of stating the general rule as a prohibition subject to exceptions.
- In section 5.4(a), APRL retains provisions currently found in Rule 5.4(a).
- The current Rule 5.4 frames the rule in the context of professional independence, even though those requirements also appear in Model Rules 2.1 and 5.3. To avoid misunderstanding, in the event Rule 5.4 were read as a stand-alone rule, APRL's revised rule retains references to professional independence and responsibility for supervision of nonlawyers in subsection (b).
- APRL proposes adding, in revised subsection (b)(1), a requirement for client consent, in writing, to fee-sharing arrangements between lawyers and non-lawyers. Some states, including California in its Rules of Professional Conduct, Rule 1.5.1, demand such requirements for fee-sharing arrangements between lawyers not in the same firm.

VI. Conclusion

APRL believes that the time for change is now. Realistically, the time for change – as evidenced by the successful efforts of the other jurisdictions discussed above – is long overdue; however, changing the rules now that prohibit lawyers from collaborating with nonlawyers and sharing fees is certainly better done late than never.

APRL also recognizes that recent formal actions of the ABA attempting to "declare" an end to any consideration of changes to the rules on fee sharing might cause many who receive this message favorably to believe that any effort to convince the ABA to change its position and adopt the revisions proposed in this paper would be a futile one. Whether the ABA will be as receptive to a clarion call for change does not alter the fact that change is needed. Thus, rather than presenting this proposal as a call to action to be solely heeded by states, APRL encourages the ABA to lead, rather than obstruct, significant regulatory reform that will benefit both lawyers and consumers of legal services, and importantly, do no harm.

APPENDIX A

ASSOCIATION OF PROFESSIONAL RESPONSIBILITY'S FUTURE OF LAWYERING SUBCOMMITTEE[1]

FOL Co-Chairs:

Jan L. Jacobowitz

Jan is a Past President of APRL and current co-chair of APRL's Future of Lawyering subcommittee. She is a Florida licensed lawyer who practices as a legal ethics consultant. Her background as a litigator, in-house counsel, and legal ethics scholar provides her with a unique perspective and skill set. Jan is involved in the ongoing, dynamic national conversations about legal ethics and the evolving nature of the practice of law. Jan was invited to become an ABA Foundation Fellow in 2018 and received the 2012 ABA Smythe Gambrell Award, honoring the Professional Responsibility & Ethics Program work at the University of Miami School of Law she directed. Prior to devoting herself to legal education and legal ethics consulting, Jan practiced law for over twenty years. She began her career as a Legal Aid attorney in the District of Columbia; prosecuted Nazi war criminals at the Office of Special Investigations of the U.S. Department of Justice. She then practiced privately in general practice and commercial litigation firms in Washington and Miami.

Brian S. Faughnan

Brian is a Past President of APRL and current co-chair of APRL's Future of Lawyering subcommittee. He is a sole practitioner and owner of Faughnan Law, PLLC, located in Memphis, Tennessee. Prior to founding his own law firm, Brian practiced law for over twenty years in large and mid-sized full-service law firms. In addition to handling business litigation and appellate litigation, his practice focus involves solving problems for lawyers. Over the years, Brian has represented hundreds of lawyers in disciplinary matters, law firms and lawyers in litigation and other matters involving professional liability, and applicants for admission to practice in Tennessee. He has also served as an expert witness in a variety of matters in federal and state courts in Tennessee.

Brian has been listed in The Best Lawyers in America for each of the last seventeen years and was named 2017 Appellate Practice "Lawyer of the Year" in Memphis by that publication. He is also listed as a "Super Lawyer" by Mid-South Super Lawyers, and has an

[1] The views expressed herein are solely those of the authors as approved for publication by APRL's Board and the Future of Lawyering subcommittee and do not necessarily reflect the views of any other organization, employer, or affiliated entity.

AV rating from Martindale Hubbell. Brian is a frequent author and speaker on ethics and professional responsibility issues. He is a co-author of the book "Professional Responsibility in Litigation," which is now in its Third Edition published by the ABA. He shares his thoughts on legal ethics, professional responsibility, and other aspects of the law of lawyering at www.faughnanonethics.com. He is currently a member of the ABA Standing Committee on Ethics and Professional Responsibility. Brian is also a former President of the Association of Professional Responsibility Lawyers and a former Chair of the Tennessee Bar Association's Standing Committee on Ethics and Professional Responsibility.

FOL Members:

Kendra L. Basner

Kendra is the current President of APRL. She is a member of California's Civility Task Force, an Editorial Board Member for the ABA/BNA Lawyer's Manual on Professional Conduct, and APRL's liaison to the ABA Coordinating Counsel. She is the Past Chair and current executive committee member of the Bar Association of San Francisco's (BASF) Legal Ethics Committee and was honored with BASF's 2019 Award of Merit. Kendra also served a three-year term as a member of the State Bar of California's Committee on Professional Responsibility and Conduct (COPRAC) from 2017-2020. She is licensed in California and Wyoming. She is an experienced litigator and a California-certified specialist in legal malpractice law. Kendra was a partner with Hinshaw & Culbertson until 2018. She is presently a partner of O'Rielly & Roche LLP, where she devotes her practice to counseling and advising lawyers, law firms, in-house corporate counsel, legal service providers, and related businesses concerning legal ethics, risk management, and law practice planning and compliance with the unique perspective gained through advocating on behalf of lawyers in civil cases and State Bar discipline matters. She also serves as an expert on legal malpractice and legal ethics issues. She frequently writes and speaks locally, nationally and internationally on legal ethics, legal malpractice and risk management. Prior to entering private practice, Kendra began her legal career as a prosecutor for the Delaware Attorney General's office in the criminal and fraud divisions.

George R. Clark

George is a Past President of APRL. He is a D.C. licensed lawyer who represents other lawyers and law firms regarding ethics, professional responsibility, and the law of lawyering with respect to lawyers. He is also a member of the DC Bar Legal Ethics Committee 2022-23 and ending his six-year tenure; from 2009-2012, he served as Chair of the DC Bar's Rules of Professional Conduct Review Committee, completing his Committee term beginning in

2006. George was a member and prior liaison to the ABA Center for Professional Responsibility Coordinating Council. He was also a prior liaison to the ABA Center on Professional Responsibility Policy Implementation Committee. George also previously served as the Chairman of the International Bar Association, Media Law Committee. After leaving Reed Smith in 2003, Mr. Clark established his solo practice as a way to advise attorneys throughout the nation and overseas. Drawing on 35 years of hands-on experience, he provides legal opinions, serves on all aspects of legal ethics and professional responsibility, serves as an expert witness, consults on matters such as conflicts of interest and disqualification, defends lawyers in disciplinary cases, and helps attorneys get admitted to the bar. He has been elected for inclusion in *2012 through 2024 Washington DC Super Lawyers.* He has served as President, Chair, and Board member of several Washington, D.C., Civic groups.

Eric T. Cooperstein

Eric is licensed in Minnesota and started his private law practice devoted to legal ethics in the fall of 2006. He has represented hundreds of lawyers and law firms in ethics and law-practice-related matters. Eric is a former Senior Assistant Director of the Office of Lawyers Professional Responsibility, where he worked from 1995 to 2001, and a former member of the 4th District Ethics Committee, on which he served from 2003 through April 2007. Eric has served on the board of Minnesota Lawyers Mutual Insurance since 2015. He recently completed nine years on the board of Minnesota Continuing Legal Education, including three years as Chair. From October 2023 through June 2024, he served on the Minnesota Supreme Court Advisory Committee to Review the Rules on Lawyers' Professional Responsibility. Governor Tim Walz appointed Eric to the board of the Minnesota Housing Finance Agency in March 2023, where he continues to serve. Eric is a past president of the Hennepin County Bar Association (HCBA) (2013-2014) and past chair of the Hennepin Lawyer magazine committee (2015 – 2017). Eric also chaired MSBA's Rules of Professional Conduct Committee from July 2009 through June 2012. Eric served on the 2007-08 Minnesota Supreme Court's Advisory Committee regarding the Attorney Discipline System. Eric also served in the ABA House of Delegates (2016 – 2019) and on the ABA Standing Committee on Bar Services and Activities (2017 – 2021).

Chessie da Parma

Chessie is a new member of APRL and is licensed in New York. She is an associate at Frankfurt Kurnit Klein & Selz PC where she advises companies and individuals in a wide range of disputes, including commercial litigation, intellectual property matters, and professional responsibility issues. Prior to joining Frankfurt Kurnit, Ms. da Parma was a litigation associate at TLT LLP based in Bristol, UK, and worked at a litigation boutique in

New York. While in the UK, Ms. da Parma represented major lenders and UK clearing banks in both consumer and commercial litigation matters.

Anthony Davis

Anthony is a Past President of APRL. He is licensed in New York and Colorado. Anthony is also a non-practicing, licensed Barrister and Solicitor in England and Wales. He is presently a partner at Fischer Boyles where he advises lawyers and law firms in the United States and internationally in the areas of professional responsibility, risk management and every aspect of the law governing lawyers. Anthony is the author of books, numerous scholarly articles, and the bi-monthly "Professional Responsibility" column in the New York Law Journal. Anthony is a Lecturer-in-Law at Columbia University School of Law, teaching "Professional Responsibility Issues in Business Practice." He is a Fellow of the College of Law Practice Management and a Member of the American Law Institute (ALI). He is presently a member of the New York City Bar Professional Ethics Committee, 2010-2013; 2023 –and a past member of its Professional Responsibility Committee, 1992-1995, 1998-2001, 2007-2010, 2019-2022.

Edward X. Clinton Jr.

Edward is licensed in Illinois and has 32 years of experience in Commercial and Malpractice Litigation. He is a principal in the Clinton Law Firm and focuses his practice on business litigation and legal malpractice. He represents lawyers before the Attorney Registration and Disciplinary Commission. In addition to his extensive litigation practice, Edward serves as an expert witness in legal malpractice claims. He is a member of the Chicago Bar Association, Economic Club of Chicago, Union League Club, Seventh Circuit Bar Association, American Bar Association and the Association of Professional Responsibility Lawyers. In 1991, Ed graduated, *cum laude*, from Harvard Law School. He was a law clerk to the Honorable Michael S. Kanne of the United States Court of Appeals for the Seventh Circuit from September 1991 to September 1992. From 1992 to May 1996, he worked as a commercial litigation associate at Mayer, Brown & Platt. After working at Katten Muchin & Zavis, Ed joined the Clinton Law Firm in 1997 as a shareholder.

Kenneth Craig Dobson

Craig is licensed in New York and South Georgia. He presently practices in New York for Dobson Law LLC and provides ethics advice to lawyers, represents lawyers in disciplinary matters, and practices immigration and nationality law. He is the current Chair of the National Ethics Committee for the American Immigration Lawyers Association (AILA). Craig previously served as Georgia UPL Liaison for the American Immigration Lawyers

Association's (AILA) Georgia-Alabama Chapter and was appointed by the Supreme Court of Georgia to serve as Chairperson of the District 1 UPL Committee for the State Bar of Georgia from 2014 to 2017. He is currently a member of AILA's National Ethics Committee and was chair from 2017 to 2021. Additionally, he is a member of the New York City Bar Association's Mindfulness & Wellbeing in Law Committee and vice-chair of AILA's new Lawyer Well-Being Committee. In October 2017, he became one of the first National Board-Certified Health & Wellness Coaches. Craig has a Bachelor of Arts in philosophy from Furman University and a Juris Doctor, cum laude, from New England School of Law. During law school, he received CALI awards in both the Law and Ethics of Lawyering and International Business Transactions and served as Editor-in-Chief of the New England Journal of International and Comparative Law. Craig not only spends his days studying the law and ethics of lawyering, but he is also frequently called upon to teach and write on the subject.

Arthur J. Lachman

Arthur is a Past President of APRL and former chair of APRL's Future of Lawyering Committee, who led the committee's efforts to revise the attorney advertising model rules. Arthur is licensed in Washington where he has been a solo practitioner since 2003. He advises and represents lawyers and law firms on legal ethics, professional responsibility, and the law of lawyering. He is a former chair of the ABA Center for Professional Responsibility's National Conference Planning Committee. He is co-author of *The Law of Lawyering in Washington,* published by the Washington State Bar Association, and served as chair of the WSBA Rules of Professional Conduct Committee from 2008 to 2010. He holds bachelor's and graduate degrees in accounting from the University of Illinois at Urbana-Champaign. A 1989 graduate of the University of Washington School of Law, he clerked on the Ninth Circuit Court of Appeals, has practiced as a commercial litigation attorney, and has taught civil litigation and ethics subjects at both Puget Sound area law schools.

David M. Majchrzak

David is the current President-Elect of APRL. He is licensed in California and Arizona. He served as the co-chair of the California Lawyers Association's first Ethics Committee and as a member of the organization's Future of the Profession Task Force, and he co-chaired 2022's annual meeting. He currently serves as the chair of the ABA working group on Model Rule 5.5, a member of the ABA Standing Committee on Professionalism, a member of the editorial board of the ABA/Bloomberg Law Lawyers' Manual on Professional Conduct, a liaison to the ABA Standing Committee on Ethics and Professional Responsibility, and a member of the ABA National Conference on Professional Responsibility Planning Committee. David also served a three-year term as a member of the State Bar of California's

Committee on Professional Responsibility and Conduct (COPRAC), and chair of its outreach committee. He is also a past chair of the San Diego County Bar Association's Legal Ethics Committee. In 2022, David served as the president of the San Diego County Bar Association. He has also been active within the American Inns of Court. He served for four years as president of the William L. Todd, Jr. chapter and two years on the national program awards committees. Presently, he serves on the executive committee for the Law Practice Management and Technology section of the California Lawyers Association. He has also served as an officer of the Association of Discipline Defense Counsel. David is a seasoned ethicist, civil litigator, and certified specialist by the State Bar of California in legal malpractice law, is listed in Best Lawyers in America and Super Lawyers, and is rated AV®-Preeminent™ by Martindale-Hubbell. He is the Managing Shareholder of Klinedinst's Arizona office and serves as the firm's Deputy General Counsel. He represents clients in matters involving attorney and law firm risk management, discipline defense, legal malpractice claims, and judicial discipline. He has also served as an expert on legal ethics issues.

Tyler Maulsby

Tyler is the Immediate Past President of APRL. He is licensed in New York and New Jersey and is the co-chair of the Litigation Group at the law firm of Frankfurt Kurnit Klein & Selz. He co-chairs the New York City Bar Association's Subcommittee on Artificial Intelligence and Legal Ethics, which is part of the Presidential Task Force on Artificial Intelligence and Digital Technologies. He is the immediate past chair of the New York City Bar Association's Committee on Professional Ethics. Tyler represents law firms and individual lawyers in a wide range of legal ethics and professional responsibility matters, including legal malpractice litigation, legal fee disputes, partnership breakups, attorney discipline and admission matters, attorney departures and lateral hires, and law firm partnership agreements. He also provides ethics opinions and advice to lawyers and law firms and serves as an expert witness in attorney ethics and professional responsibility matters. He serves as an adjunct professor at NYU School of Law where he teaches Legal Ethics and Professional Responsibility.
He is also a member of the ABA Center for Professional Responsibility and the ABA Standing Committee on Public Protection in the Provision of Legal Services. Before joining Frankfurt Kurnit, Mr. Maulsby was a criminal defense attorney with The Bronx Defenders, a public defense office in New York City.

Sari W. Montgomery

Sari is the current Secretary of APRL and Chair of the ABA Standing Committee on Professional Regulation. She is licensed in Illinois and has devoted her career to the law of lawyering, legal ethics, and professional responsibility for over 30 years. Sari also serves on

the Illinois State Bar Association Standing Committee on Artificial Intelligence in the Practice of Law, and the Committee on Professional Conduct, which drafts ethics opinions for the benefit of all Illinois lawyers. She is also a member of the Board of Managers of the Chicago Bar Association. Sari is a partner in the Chicago firm of Robinson, Stewart, Montgomery & Doppke LLC and has successfully represented lawyers at every stage of the disciplinary process from investigation and hearing, to appeals before the Attorney Registration and Disciplinary Commission (ARDC) Review Board and the Illinois Supreme Court for nearly fifteen years. Sari also represents judges in disciplinary proceedings, bar applicants in navigating the Character and Fitness process, and provides ethics advice to lawyers, law firms, government agencies, and law related businesses. She was formerly Litigation and Senior Litigation Counsel at the ARDC, where she conducted hundreds of investigations and prosecuted dozens of cases before the ARDC Hearing Board. Sari frequently presents at international, national, state, and local CLE programs and has published extensively. She is a faculty member of the Practising Law Institute (PLI) and the National Academy of Continuing Legal Education (NACLE), and is an Adjunct Professor at Northwestern University Pritzker School of Law where she teaches Legal Ethics.

Jayne Reardon

Jayne is licensed in Illinois and is a nationally renowned expert on legal ethics and professionalism. She is active in local and state bar associations as well as in committees and divisions of the ABA. She is a former Chair of the ABA's Standing Committee on Professionalism for three consecutive years and received the Center for Professional Responsibility's highest lifetime honor: The Michael Franck Professional Responsibility Award. An experienced trial lawyer, Jayne has tried cases in state and federal courts across Illinois and on appeal up to the United States Supreme Court. She also sits on the national rosters of the American Arbitration Association for Commercial and Consumer Arbitration and is a certified neutral in the Early Dispute Resolution Process. Jayne is presently a Partner, Deputy General Counsel, and Chair of the Arbitration & Mediation at the law firm of Fisher Broyles. Her past experience includes service as Executive Director of the Illinois Supreme Court Commission on Professionalism, an organization dedicated to promoting ethics and professionalism among lawyers and judges, and disciplinary counsel for the Illinois Attorney Registration and Disciplinary Commission.

Lynda C. Shely

Lynda is a Past President of APRL. She is licensed in Arizona, the District of Columbia, and Pennsylvania and is a Shareholder in the Phoenix office of Klinedinst. She served as the 2020–2023 Chair of the ABA Standing Committee on Ethics and Professional Responsibility, was an Arizona delegate in the ABA House of Delegates from 2016–2023, a

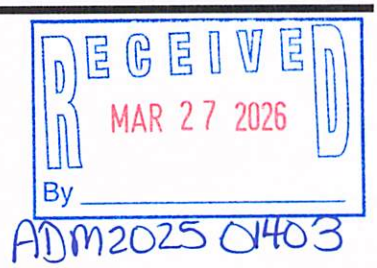
prior Chair of the ABA Standing Committee on Client Protection, and a longtime member of the ABA's Center for Professional Responsibility. Lynda also served on the Center's Conference Planning Committee and the Standing Committee on Professionalism. Additionally, she is a member of the State Bar of Arizona Ethics Advisory Group and the Arizona Supreme Court's ABS Committee. Prior to private practice in Arizona, she was the Director of Lawyer Ethics at the State Bar of Arizona. Lynda has led the efforts of several organizations as President, including the National ABS Law Firm Association (2022–2023), the Association of Professional Responsibility Lawyers (2014–2016), and the Scottsdale Bar Association (2008–2009). Lynda has also received multiple recognitions for contributions to the legal community, including the State Bar of Arizona, 2007 "Member of the Year" the Maricopa County Bar Association, e Hall of Fame in 2023 and Member of the Year in 2022, the Arizona Women Lawyers' Association, Maricopa Chapter, Ruth V. McGregor Award in 2015, the Scottsdale Bar Association Award of Excellence in 2010, and 2024 Arizona Women Lawyers' Association Sarah Herring Sorin Award.

Hope C. Todd

Hope oversees the legal ethics program at the District of Columbia Bar. She is staff counsel to the D.C. Bar Rules of Professional Conduct Review and Legal Ethics Committees. Hope is licensed in D.C. and New York. Since 2006, she has provided legal ethics guidance through the D.C. Bar's Ethics Helpline on the interpretation and application of the D.C. Rules of Professional Conduct. Hope regularly teaches ethics Continuing Legal Education courses and serves on panels for local and national audiences. She is a contributing author for the "Speaking of Ethics" and "Ask the Ethics Experts" features of the Washington Lawyer magazine. She is a former member (2014-2017) of the American Bar Association's (ABA) Standing Committee on Ethics and Professional Responsibility (SCEPR) and served as the SCEPR liaison to the ABA Commission on the Future of Legal Services. She is a member of the National Organization of Bar Counsel (NOBC), the Association of Professional Responsibility Lawyers (APRL), and the ABA Center on Professional Responsibility. Before joining the D.C. Bar in 1998, Ms. Todd was in private practice in the state of New York.

MaryBeth Lindsey

To: appellatecourtclerk
Subject: RE: Comment-Docket: No. ADM2025-01403 (7)



From: Wen Fa <wen@beacontn.org>
Sent: Friday, March 27, 2026 6:27 PM
To: appellatecourtclerk <appellatecourtclerk@tncourts.gov>
Subject: Comment-Docket: No. ADM2025-01403 (7)

Warning: Unusual sender <wen@beacontn.org>
You don't usually receive emails from this address. Make sure you trust this sender before taking any actions.

Mr. Hivner:
Please find our comment letter on non-lawyer ownership of law firms attached to this email. We appreciate the opportunity to comment on this important matter.
Best,
Wen

--

Wen Fa
Vice President for Legal Affairs

Beacon
CENTER OF TENNESSEE

972.743.7166 | Wen@BeaconTN.org | BeaconTN.org

Beacon
CENTER OF TENNESSEE

Name: Wencong Fa
Address: 54 Music Square East, Suite 125, Nashville, TN 37203
Email Address: wen@beacontn.org
Position of Organization: Vice President for Legal Affairs/Beacon Center of Tennessee
Docket Number: No. ADM2025-01403 (7)

Introduction

The Beacon Center of Tennessee is a nonprofit organization dedicated to providing free market solutions on public policy issues in Tennessee. Beacon urges this Court to reduce or eliminate Tennessee regulations prohibiting non-lawyer ownership of law firms and fee sharing with non-lawyers. These regulations stymy the ability of those in the legal field to provide needed services and are contrary to the long-held principle in Tennessee that individuals should be free to make their own economic decisions. *See Baugh v. Novak*, 340 S.W.3d 372, 382–83 (Tenn. 2011). By eliminating these regulations, this Court can unleash entrepreneurial ingenuity to increase both the quantity and quality of legal services available to Tennesseans.

The Problem

The United States is experiencing an access-to-justice crisis. Our nation ranks 112 out of 143 countries in terms of the affordability of and access to the civil justice system. *WJP Rule of Law Index*, World Justice Project (2025), https://worldjusticeproject.org/rule-of-law-index/country/2025/United%20States/Civil%20Justice/. This crisis goes back several years. As one court observed, "studies suggest that as much as 80% of the legal needs of the poor and disadvantaged are not being met," in large part because "funding and resources for legal aid have dropped dramatically." *In re Amends. to Rule Regulating Fla. Bar 1-7.3.*, 175 So. 3d 250, 251 (Fla. 2015). This crisis encompasses "a significant portion" of non-indigent individuals who nonetheless "do not possess the means to afford full and rigorous representation of counsel." *Persels & Assocs., LLC v. Cap. One Bank, (USA), N.A.*, 481 S.W.3d 501, 506 (Ky. 2016).

As the Court has acknowledged in its request for comments, Tennessee has not been spared from these issues. Despite their best efforts, local legal services organizations cannot solve this problem on their own. Since there are only "1.6 legal aid attorneys for every 10,000 residents in poverty [in Tennessee], the tenth lowest ratio in the country," such organizations "turn away 50% of the people who reach out to them for help." *Democracy, the Justice Gap, and Preserving the Rule of Law*, Legal Aid Society of Middle Tennessee and the Cumberlands (June 26, 2024), https://las.org/democracy-the-justice-gap-and-preserving-the-rule-of-law/. As the Court also recognizes in its request for comments, this problem is made worse because Tennesseans who do not meet the requisite poverty threshold cannot receive services from legal aid organizations. The dearth of available legal services, rather

than being the inevitable consequence of unavoidable circumstances, stems from the government's policy choices.

The current regulatory framework artificially constrains the market for legal services and prevents innovative, affordable delivery models from emerging. According to Stanford Law professor David Freeman Engstrom, "[a] growing consensus among scholars...holds that" restrictions on non-lawyers taking an economic interest in legal service entities "wall off law firms from the technological, financial, and service innovations that have transformed almost every other part of the modern economy." David Freeman Engstrom et al., *Regulatory Innovation at the Crossroads: Five Years of Data on Entity-Regulation Reform in Arizona and Utah*, SLS Blogs (June 2, 2025), https://law.stanford.edu/2025/06/02/regulatory-innovation-at-the-crossroads-five-years-of-data-on-entity-regulation-reform-in-arizona-and-utah/. This negatively impacts consumers because modern legal practice requires substantial capital investment in technology, support staff, and infrastructure. Given that "modern litigation is expensive, . . . deep-pocketed wrongdoers can deter lawsuits from being filed if a plaintiff has no means of financing her or his case." *Lannan Found. v. Gingold*, 300 F. Supp. 3d 1, 19 (D.D.C. 2017) (quoting *Hamilton Cap. VII, LLC, I v. Khorrami, LLP*, No. 650791/2015, 2015 WL 4920281, at *5 (Sup Ct, Aug. 17, 2015)). Investment from outsiders would help "provide victims their day in court." *Id.*

Reducing or Eliminating these Regulations Will Be Effective

This makes reform of the subject restrictions to permit alternative business structures an important piece of the puzzle" for "solv[ing] the access to justice crisis." *Id.* Changing Tennessee rules to permit non-lawyer ownership of law firms and fee sharing would enable law firms to accumulate the capital necessary to invest in technology that can reduce costs and increase efficiency, expand into underserved rural and urban communities, develop more scalable service models for routine legal matters, and even compete with unauthorized providers who fill gaps left by the regulated profession. This would empower Tennessee firms to provide a greater range and higher quality of legal services to underserved individuals.

Similar changes have already been instituted or are being initiated in D.C., Arizona, Utah, and Washington state. Since 1991, Washington, D.C., with certain limitations, has permitted lawyers to partner with non-lawyers. *Comment on Proposed Changes to D.C. Rules Pertaining to Nonlawyer Owners in a Firm*, DC Bar (June 25, 2025), https://www.dcbar.org/news-events/news/comment-on-proposed-changes-to-d-c-rules-pertainin. Arizona has permitted non-lawyers to hold economic interests in law firms since 2021. Karen E. Rubin, *Non-Lawyer Ownership of Law Firms Is Trending – But Is it a Good Idea?*, Ohio Bar (March 22, 2021), https://www.ohiobar.org/member-tools-benefits/practice-resources/practice-library-search/practice-library/2021-ohio-lawyer/non-lawyer-ownership-of-law-firms-is-trending--but-is-it-a-good-idea. Utah created a "regulatory sandbox" in 2020 in which certain regulations are suspended to permit entities with non-lawyer investors or owners to provide legal services. *Id.* Washington state recently launched its "Entity Regulation Pilot Project," which will allow entities operated by non-

lawyers to apply to offer legal services. *Entity Regulation Pilot Project*, Washington State Bar Association (Jan. 9, 2026), https://www.wsba.org/about-wsba/entity-regulation-pilot.

Available data shows the outcomes of these reforms have been positive. A Stanford Law School study finds that, roughly five years after the reforms were put in place in Arizona and Utah, innovations to business structures and technology have been spurred with the benefits redounding to consumers. David Freeman Engstrom et al., *Legal Innovation After Reform: Five Years of Data on Regulatory Change* 2–3, 20–32 (Stan. Law Sch. 2025), https://law.stanford.edu/wp-content/uploads/2025/06/SLS_CLP_LegalInnovation_REPORT_v5.pdf. Notably, lawyers continue to play a significant role in these new types of entities, thus "mitigating concerns that 'corporate' practice of law will sideline lawyers or forego their unique ethical training, perspective, and obligations." *Id.* at 3, 26–27. Publicly accessible information concerning consumer complaints and disciplinary action in Utah and Arizona provide "little to no evidence of harm" stemming from these regulatory changes. *Id.* at 3, 32–33. Accordingly, were Tennessee to reduce or eliminate rules prohibiting non-lawyers from taking an economic interest in the provision of legal services, we can reasonably expect access to justice to improve with minimal negative side effects.

Reducing or Eliminating these Regulations Is Consistent with Fundamental Legal Principles

Importantly, such rule changes would also place Tennessee's regulatory framework on a sounder legal footing, more in line with Tennessee and American constitutional principles. The legal legitimacy of regulations prohibiting non-lawyer ownership of law firms and fee sharing with non-lawyers is suspect because such regulations infringe (1) on the freedom of contract held by attorneys, clients, and non-lawyers and (2) on the associational rights of attorneys and clients.

The regulations at issue restrict the freedom of contract of attorneys, clients, and non-lawyers seeking to enter into agreements in which non-lawyers take a financial interest in law firms or legal services. Tennessee recognizes the freedom of contract in "statutory and case law" and as "an inherent part of the right of liberty and the right of property." *Baugh*, 340 S.W.3d at 383 (citing 21 Steven W. Feldman, *Tennessee Practice: Contract Law and Practice* § 1:6, at 17 (2006); *State ex rel. Astor v. Schlitz Brewing Co.*, 104 Tenn. 715, 746 (1900)). Though the prevailing view of this Court is that "[t]he freedom of contract must give way to the preservation of the public health, safety, morals, or general welfare," the access to justice crisis and the previously discussed probable benefits of permitting greater freedom of contract in the legal field weigh in favor of reducing or eliminating existing barriers, not upholding the status quo. *Id.* (citing *State v. Greeson*, 174 Tenn. 178, 186 (1939)).

The subject regulations also impinge on the freedom of association under the First Amendment to the U.S. Constitution because they restrict the right of attorneys and clients to organize with others in matters that involve the exercise of expression and petitioning the courts. The First Amendment includes "a right to associate for the purpose of engaging in those activities protected by the First Amendment—speech, assembly, petition for the

redress of grievances, and the exercise of religion." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 618 (1984). Clients, for their part, have a right to petition the courts for redress. *United Mine Workers of Am., Dist. 12 v. Illinois State Bar Ass'n*, 389 U.S. 217, 221–22 (1967). As for attorneys, the U.S. Supreme Court has recognized lawyers can engage in a constitutionally protected act of associational expression by engaging in a "kind of cooperative, organizational activity," such as litigating for the purpose of advancing "beliefs and ideas." *In re Primus*, 436 U.S. 412, 438 n.32 (1978) (citing *Nat'l Ass'n for Advancement of Colored People v. Button*, 371 U.S. 415, 430 (1963); *Nat'l Ass'n for Advancement of Colored People v. State of Ala. ex rel. Patterson*, 357 U.S. 449, 460 (1958)). Despite this, the Court declined to recognize a similar protection when the attorney is motivated by commercial interests. *Id.* (discussing *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447 (1978)).

Following this ruling, however, the Court's views on commercial speech appear to be shifting. The Court stated that "the degree of First Amendment protection is not diminished merely because . . . speech is sold rather than given away." *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 756 n.5 (1988) (citation omitted). Justice Thomas expressed skepticism on the commercial versus non-commercial speech dichotomy, stating "I doubt whether it is even possible to draw a coherent distinction between commercial and noncommercial speech," and "I do not see a philosophical or historical basis for asserting that 'commercial' speech is of 'lower value' than 'noncommercial' speech." *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 575 (2001) (Thomas, J., concurring); *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 533 (1996) (Thomas, J., concurring). Views denigrating commercial or professional speech are also in tension with a premise acknowledged in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*—that one's right to her own personal expression can be implicated when providing goods and services to customers for money. *See* 584 U.S. 617, 633 (2018). Accordingly, regulations like those in question significantly restrict the ability of attorneys and clients to engage in constitutionally protected associational activities.

Conclusion

The Court should reduce or eliminate regulations prohibiting non-lawyer ownership of law firms and fee sharing. Doing so will both increase the quantity and improve the quality of legal services available to Tennesseans. And it will allow our state to make significant headway in solving the access to justice crisis.

Regulatory Reform in TN

By Brian Faughnan <
https://faughnanonethics.com/author/bsfaughnan/>

March 24, 2026 < https://faughnanonethics.com/regulatory-reform-in-tn/>

I am certain many of you have forgotten but I did promise last year to offer more thoughts on potential regulatory reforms being considered by the Tennessee Supreme Court. Today is the day I make good on that promise.

If you are looking for a refresher, **read here first. < https://faughnanonethics.com/icymi-because-i-sure-did/>**

Now that you are back, you know like I do that the Court's request for comment covers seven questions. Today's mission is explaining what I would like to see the Court do. Later, I'll weigh in with what I predict will happen.

The first four questions the Court asks all relate to the law school experience and the bar examination.

The Court should not take any action with respect to law schools in Tennessee to change the arrangements in terms of ABA accreditation. The attack on the ABA's role in accreditation is nothing more than right-wing politics run amok and part of a plan announced by **The Heritage Foundation in July 2025 < https://www.heritage.org/conservatism/report/how-break-the-american-bar-associations-accreditation-monopoly>** . To directly answer one of its questions, the Court should conclude that there are no practicable alternatives on the question of accreditation of law schools in Tennessee.

The Court also asks if there is something less expensive than law school that would adequately prepare individuals to be lawyers in Tennessee. Law school is undoubtedly an absurdly expensive experience compared to what it cost back in the 1990s. But I do not think that trying to go to some apprenticeship or other approach to allow people to become lawyers without attending law school is a wise idea in 2026.

That does not mean that the Court should not take steps to alter the landscape for becoming licensed to practice law in Tennessee. While the Court's fourth question does not directly address the idea of reconsidering the bar exam altogether, diploma privilege for graduates of Tennessee law schools is the alteration to the landscape that makes sense. I have frequently written about the fact that **the bar examination is neither necessary nor a fair indicator of whether someone will or will not be able to competently practice law. < https://faughnanonethics.com/its-another-fine-day-to-abolish-the-bar-exam/>** Passing the bar examination is about being able to

excel at a closed book test with a time limit restriction. As I wrote back in 2021:

> Very, very little of the work of an attorney involves memorizing things and knowing answers off the top of one's head. Success during a law school career spread out over three years is a much more reliable indicator of whether someone should be issued a law license.

I have *always* been good at standardized and timed tests. **The fact that I also turned out to be a decent attorney is mostly a coincidence. < https://faughnanonethics.com/being-a-lawyer-is-testing-becoming-a-lawyer-still-shouldnt-turn-on-passing-a-test/>**

An add-on benefit of allowing for licensure via diploma privilege for graduates of Tennessee law schools would be to make the "value" of the sticker price for a three-year law school curriculum significantly higher in Tennessee than it currently is.

The Court has also included a question about whether it should make changes to the ability of lawyers licensed in other jurisdictions. An obvious thing that I would like to see the Court do is change the current requirement that a lawyer seeking comity admission in Tennessee must show that they have practiced law for five of the last seven years. Given the fact that comity applicants are already required to go through essentially the same character and fitness process as new admittees and also still have to take a Tennessee law course before they can receive their license, there is no actual consumer protection basis

for imposing this "time in service" kind of requirement on lawyers who are already licensed in another state or D.C.

In my representation of lawyers over the years, I have also personally experienced this requirement serving as a barrier to licensure for very qualified lawyers who are not interested in having to take a bar examination to become licensed in Tennessee. Someone could have 30+ years of spotless law practice in another jurisdiction, but for any number of reasons have a gap in practice that would leave that person unable to satisfy the five out of the last seven years requirement on its face. A lawyer could have taken a few years off to spend time with their children before they are old enough to go to school or organized daycare or a lawyer could have taken a job in public service or elected office. Those are just two of the more obvious examples. While the current rule opens up the "possibility" that the Board of Law Examiners would find your other activities sufficient to satisfy this requirement, the fact that the Board of Law Examiners refuses to provide guidance in advance to lawyers about whether their application will be well received, this "possibility" is far too slender a reed for lawyers to feel comfortable moving to Tennessee to pursue.

While the Court's fifth question only specifically inquired about whether it should make changes to the rules to make it easier for lawyers licensed in other jurisdictions to become licensed in Tennessee (comity admission), I also would like to see the Court take this opportunity to adopt a revised version of RPC 5.5 that is patterned after the version that APRL proposed during the year I served as its President. If you want more information about that change and the reasons for it, **you can read about all of that here. <**

https://faughnanonethics.com/aprl-is-leading-the-way-toward-modernizing-the-practice-of-law/>

The Court's sixth question regards whether to allow people without law licenses to perform some tasks that would otherwise be considered the unauthorized practice of law. Recognizing that reform in this area will also inevitably involve having to coordinate with the Legislature in our state, I would like to see the Court push for one version or another of the kinds of initiatives that have been established in other jurisdictions. That could include something like the limited licensure legal technicians (LLTs) [and other paraprofessional licensing endeavors] that have been implemented in places like Oregon and Washington or programs such as court navigators that have been pursued in New York. Likely the best path that the Tennessee Supreme Court could take, however, is to implement something modeled on what **Alaska has done with its Community Justice Worker program. < https://www.alsc-law.org/cjw/>**

Finally, the Court has also asked whether it should make any changes with respect to the ethical rules that prevent lawyers from sharing attorney fees with people who are not lawyers or that prevent people who are not lawyers from having ownership interests in law firms or both.

I would like to see the Court implement changes to the ethics rules in both respects.

The restrictions on fee sharing by lawyers with regular people bear very little relevance for clients other than the fact that they are detrimental

to them in the end. Clients ultimately care about how much they are paying for the representation, not what lawyers do with the fees after they are paid. < https://faughnanonethics.com/honestly-transparency-is-all-that-we-need/> There have been examples of concepts in the not-too-distant past where companies have built platforms to match attorneys and clients on matters at price points agreeable to each < https://faughnanonethics.com/friday-follow-up-more-proof-that-its-risky-for-lawyers-to-work-with-avvo-legal-services/> . Those companies were forced out of business not because consumers and attorneys were not willing to use their product < https://faughnanonethics.com/you-would-have-thought-it-would-have-been-with-houston-but-still/> but because the ethics rules prohibiting fee sharing were wielded to prohibit lawyers from participating without putting their license at risk thereby driving those companies out of business. That outcome did not "protect" consumers of legal services at all.

I have written quite a bit in the past about the questionable genesis of the ethics rules prohibiting lawyer from working in a corporate form owned by people other than lawyers, as well as the questionable nature of the idea that such prohibitions are beneficial to consumers or necessary to make sure lawyers maintain their independent professional judgment.

There are law firms in existence today of such size that they are multi-billion dollar businesses. < https://www.ft.com/content/37fb8860-ca96-4057-beec-c6723b573aa8?syn-25a6b1a6=1> We also allow lawyers to put

themselves at risk of outside economic pressure through debt, as they are free to take out lines of credit in amounts of whatever size their bank will allow. But we prohibit equity, and we claim the reason is that someone not a lawyer with an equity stake will be able to undermine how the lawyer represents clients and wields her independent professional judgment.

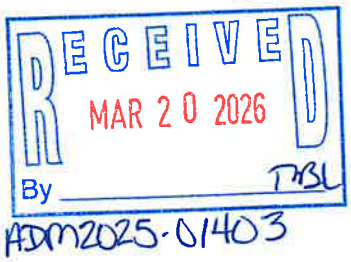
There are, of course, ways for the Court to create additional layers of protection through imposing direct, or indirect, requirements that anyone involved in the ownership of a law firm **must agree to be bound by the same rules of professional conduct as are lawyer owners. < https://faughnanonethics.com/aprl-takes-the-lead-again/>**

One thing I did not mention that has changed since my prior post linked back at the top, the deadline for public comment has been extended to April 30, 2026. So, if you want to send in a comment, there is still time and you can do so simply by emailing to appellatecourtclerk@tncourts.gov.

This post will be my comment.

FAUGHNAN LAW
PLLC

BEERSHEBA SPRINGS LEGAL CLINIC, INC.
P.O. BOX 205 / 19626 STATE ROUTE 56
BEERSHEBA SPRINGS, TN 37305
PH. 931-444-9682



March 20, 2026

Via Electronic Mail – *appellatecourtclerk@tncourts.gov*

James Hivner, Clerk
Re: Regulatory Reform
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1307

Re: ***ADM 2025-01403***

Dear Mr. Hivner:

I apologize that I did not become aware of the Court's Order and the March 16, 2026, deadline for submission of written comments until the deadline had already passed.

I respectfully request that the Court waive compliance with the deadline for submission and consider my comments nevertheless. Accordingly, I am lodging the attached comments with you for the Court's consideration should my request be granted.

In support of my request that my comments be considered, I was licensed to practice law in Alabama in 1963, in Tennessee in 1964, and after a year as a law clerk for U.S. District Judge William Miller I was in active full-time practice until my retirement in 2023, except for seven years when I was a professor of law at the University of Alabama, 10 years when I was a professor of law at Belmont University, and one year when I was a student at the NYU School of Law Graduate Tax Program. Nine of my years of practice were in a general practice in Columbia, Tennessee, and forty-two years were in a tax and business practice in Nashville, Tennessee.

Respectfully submitted,

Charles A. Trost (BPR #4079)
Charles_trost@att.net

Attachment: Comments

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

NO. ADM 2025-01403

COMMENTS IN RESPONSE TO COURT'S ORDER

1. Lowering Educational Standards

I do not think the Court should modify, reduce or eliminate its reliance on the ABA accreditation standards in setting the minimum educational standards for applicants to the Tennessee Bar. To do so would make Tennessee an outlier among the states and would not, in my opinion, do anything positive to address the fundamental problem the Court is undertaking to address, which is, as I understand it, a lack of access to legal assistance in many of the more rural counties.

According to the ABA there are in active practice in the US 1,374,720 as of 2025. The population of the U.S. is estimated to be 349,000,000 which approximately .0039% or 4 per thousand of the population. But the average is deceptive because the percentages vary significantly from state to state with the range being from the highs of 9.5 per thousand in New York to 2.1 per thousand in Arkansas and South Carolina. At 2.73 per thousand Tennessee ranks at the lower end of the scale.

However, these averages are also deceptive as these figures demonstrate:

County	# of Lawyers	Population	Percentage
Davidson	5,663	715,884	7.9
Shelby	3,445	929,744	3.7
Knox	1,962	478,959	4.1
Hamilton	1,234	366,207	2.2
Williamson	1,229	247,726	5.0

What this illustrates is that if Nashville-Davidson County were a state its percentage of lawyers would be the second highest in the country. The growth of the Nashville Bar over time can be seen from my experience. When I clerked for Waller Lansden in 1963 there were seven lawyers in the firm and it was second in size behind Bass Berry & Sims with nine lawyers. When I joined Waller as a partner in 1981 I was the 19th lawyer in the firm. When I retired in 2023 there were more than 230 lawyers in the firm.

The six law schools in Tennessee graduated 690 new lawyers in 2024, although not all were able to pass the bar. At one new lawyer for every 28 actively practicing lawyers that barely covers the need. So obviously more have moved in to make up the short fall, although most of the Vanderbilt graduates leave the state. There is, however, no shortage of young people wanting to become lawyers as the ratio of acceptances to applicants on average is about 40%.

The problem of there not being enough lawyers in poor areas of the state is one purely driven by economisc. The average law school graduate leaves with a student debt of $137,500 of which $112,500 is from law school. Coupled with the high cost of houses and inflation in general most law graduates look for jobs in the areas that produce the highest paying jobs. My first law firm salary was $300 per month. But then my first house cost $18,000. Today some entering associate salaries in big law firms range from $215,000 to $225,000. Solo practitioners and small firms simply cannot compete.

I recently spoke with a practicing lawyer in Winchester, TN. He told me that at 62 he is among the youngest lawyers practicing in the 12th Circuit. And a few weeks ago a 45 year old lawyer in Paris (Henry County), TN, told me that he has more work than he can do, but has not been able to hire anyone to work with him. I don't know, but I suspect these anecdotal stories can be found in rural areas and small towns all across the state. But lowering the standards for people to qualify as lawyers will not solve the problem in my opinion.

2. Alternatives to ABA Accreditation

In my opinion there are no practical alternatives to the ABA accreditation system already in place. My experience in 17 years teaching in two different law schools tells me that the problem that many law schools have is that their standards are not rigorous enough, or are not rigorously enforced. This results in dismal bar passage rates all across the country. In 2023 the national overall bar passage rate was 58%. This is not a result that has no solution. Belmont Law School had a first time bar passage rate in 2024 of 94.8%, and in 2018 and 2019 it was 100%, ranking it the highest in Tennessee and at the very top nationally. The secret—enforced grading standards that failed students who could not or chose not to do the work required to receive a law degree. It is a disgrace, but many law schools continue to take tuition from students who do not perform well and are statistically sure to never pass the bar exam. For them it is all about getting tuition money.

3. Less Costly Alternatives to Three Years of Law School

In 1906 Justice Hugo Black graduated from the University of Alabama Law School after one year and went on to have a distinguished legal career. A lot has changed in the intervening 120 years. The world of business and the legal problems and challenges lawyers have to deal with have evolved and changed significantly in that time. The reality that I saw was that in half of those 120 years the complexity of compliance increased so much that CLE could barely keep up. For me, I saw the advantage of an extra year of law school to enhance my skills and knowledge. In my opinion, diminishing the level of formal legal education only dumbs down the level of the capability of new law graduates.

4. Alternative Pathways to Bar Admission

Law students already are being required to have practicums. Trying to substitute a term working in a legal and clinic or "reading law" with an older lawyer is not a substitute for a structured curriculum and well-crafted class syllabus. While practical experience is helpful to a beginning lawyer—I had two years clerking while in law school for a solo practitioner in Northport, AL—it only supplements one's skills rather than substitutes for formal legal training. The simple problem is that unless it is in a formal law school setting there is no "quality control"

and thus no way to evaluate its efficacy. Creating a second class or tier of "lawyers" will not solve the problem of underserved areas; it will only create new problems. The people of Tennessee do not deserve to have inadequately qualified lawyers foisted on them.

5. Modification of Reciprocal Licensing Requirements

In my opinion qualified lawyers who have been licensed to practice in other states should not have difficulty in transferring their law license to Tennessee. But I don't think Tennessee should accept lawyers form other states whose requirements are not as strict as ours. Letting in less qualified and inadequately prepared lawyers through the "back door" only exacerbates the problem. And for sure Tennessee should not lower its character and fitness standards. We do not need to become a garbage dump for other state's bad actors.

6. Allowing Paraprofessionals to Provide Limited Legal Services

Providing needed legal services to currently underserved communities can be accomplished in two ways:

(a) One way is to allow a class of legal providers to be licensed at a level below that of lawyers. Legal Services of Tennessee[1] currently does that very effectively with well-trained and experienced paralegals that they call "Advocates." Allowing them to provide more services, up to and including representing clients in Court in uncontested matters and some contested matters, as well as interviewing clients andtriaging their legal problems will allow governmentally funded legal services and private, non-governmental free legal clinics like the one I have set up in Grundy County, to meet a lot of currently unserved legal needs in a competent and legal way. Thought should be given to how much a licensing system could work. Nurse practitioners are a model.

(b) When I went to law school at the University of Alabama as an in-state student in 1960-63 the tuition was $96 per semester. It was the only state supported law school and it was fully supported by the State. But those days are long gone.[2] Tuition today at the University of Tennessee College of Law is $20,562 in-state and $39,322 out-of-state—but both are cheap compared with Vanderbilt at $78,799 and Belmont at $57,705. One way to incentivize law graduates to take legal jobs in underserved areas would be for the State of Tennessee to set up a fund that would reimburse the costs of legal education based on a set criteria of qualifying areas of practice and qualifying reimbursable expenses. A recommendation coming from the Supreme Court would in my opinion go a long way towards such a program receiving favorable consideration by the General Assembly.

7. Relaxation of the Rules Prohibiting Non-Lawyer Ownership of Law Firms

Of all of the ideas I have seen being put forth as a way to solve the problem of "legal deserts," this is the least likely one of all. It would not alleviate the problem; in my opinion it would only exacerbate it. I recently experienced the effect when the local law firm I had been with for 42 years was acquired by an out-of-state mega firm. Two things followed—hourly rates went

---

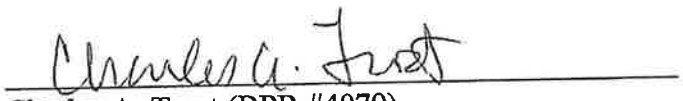
1 Law firms have gradually expanded the level of legal services they allow to be provided and charged for by paralegals.

2 In state tuition at Alabama today is $25,879 and 45% are in state and out of state is $48,100.

up and pro bono work was greatly limited. And if the acquiring firm is not owned by lawyers, but by say accountants, the competition for talent would increase and legal fees would go up even more. In no way would the acquiring companies be incentivized to provide more than a token amount of free or low-cost legal services.

One thing that could be done would be for the Court to allow Judicial Circuits to put in place requirements that all court filings and appearances be by lawyers practicing regularly in the Circuit. One of the major financial disrupters of legal fee economics came with lawyers advertising whichresu lted in major out-of-state law firms being able to pick off well-paying plaintiff's contingent fee cases. Forcing these back into the lawyers in the Circuits will provide a source of revenue to lawyers in rural areas that has largely dried up and consequently diminished the source of revenue needed to sustain a profitable law practice.

Respectfully submitted,



Charles A. Trost (BPR #4079)
Charles_trost@att.net

DEFENDING EDUCATION
EMPOWER. EXPOSE. ENGAGE.

Submitted via e-mail
March 16, 2026

James Hivner, Clerk
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1307

Re: Defending Education's Comments on Potential Regulatory Reforms to Increase Access to Quality Legal Representation (No. ADM2025-01403)

Dear Mr. Hivner,

Defending Education (DE) is a nationwide grassroots organization whose members include students, educators, professionals, and concerned citizens. DE's mission is to prevent—through advocacy, legislation, and, if necessary, litigation—the politicization of America's education system. DE submits this letter in response to the Tennessee Supreme Court's call for comments on potential reforms to the rules governing admission to the Tennessee bar, including whether the Court should "reduce" or "eliminate its reliance on [American Bar Association] accreditation in setting minimum educational requirements for applicants to the Tennessee Bar." Order at 4.

Simply put, the ABA should have no role in accrediting law schools. Though it claims to speak for the legal profession as a whole, the ABA is an ideologically motivated activist organization that regularly endorses and litigates on behalf of divisive political causes. And that activism bleeds into the ABA's accreditation standards, which are designed to promote the Association's ideological goals rather than ensure academic quality. Indeed, the ABA has compelled American law schools—under threat of losing their accreditation—to adopt discriminatory admissions and hiring practices and parrot the Association's views on issues of diversity and so-called bias in the legal profession.

But activism has no place in accreditation, which is why at least two states have already revoked the ABA's monopoly on accrediting law schools. Other jurisdictions appear poised to follow suit. The Tennessee Supreme Court should do the same and end the ABA's role as "an unaccountable" and ideologically slanted "arbiter of legal education." Lindsay, *Ditching the ABA Monopoly: A Call for Competition among Texas Law Schools*, Texas Public Policy Foundation (Sept. 16, 2025), perma.cc/JYT7-HG75.

DEFENDING EDUCATION | 4532 CHERRY HILL RD | SUITE 119 | ARLINGTON, VA | 22207-3304

I. The ABA is an activist political organization.

States and members of the public have a strong interest in "ensuring that those who enter into legal practice do so with an adequate baseline of preparation." Chesney, *Comment re proposed changes to the Rules Governing Admission to the Bar of Texas* at 5 (June 30, 2025), perma.cc/3SP3-KJVJ. To achieve that goal, accreditation must focus on academic quality. But the ABA is not a neutral, merit-focused body. It is an ideologically motivated organization that abuses its prestige and accrediting power to promote partisan goals.

The ABA makes no effort to disguise its partisanship. It regularly engages in left-wing advocacy, taking controversial stances on policy issues that have little if any unique connection to the legal profession. *See Policy & Positions*, ABA (visited Mar. 12, 2026), bit.ly/3Np3EFg. The Association, for example, frequently issues statements supporting stricter gun control, liberal immigration policies, loose abortion access, and drastic climate policies. *See, e.g.*, *Gun Violence Policy*, ABA (visited Mar. 12, 2026), bit.ly/4llxUNS; *Immigration*, ABA (visited Mar. 12, 2026), bit.ly/40Ys77B; Robert, *ABA House reaffirms longstanding support for reproductive rights*, ABA (Aug. 9, 2022), bit.ly/4segupk; *Climate Change Takes Center Stage*, ABA (Oct. 17, 2019), bit.ly/3OXgV8L.

And the ABA doesn't just push those positions in the public square. It consistently files amicus briefs supporting left-leaning causes in litigation. (And often finds itself on the losing side.) The ABA has filed briefs defending the use of race in college admissions, encouraging broad abortion rights and strict gun control, supporting transgender bathroom access, and opposing the First Amendment rights of small business owners. *See, e.g.*, *SFFA v. Harvard*, 20-1199 (U.S. filed Aug. 1, 2022); *Dobbs v. Jackson Women's Health Organization*, 19-1392 (U.S. filed Sept. 20, 2021); *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 20-843 (U.S. filed Sept. 21, 2021); *G.G. v. Gloucester County School Board*, 15-2056 (4th Cir. filed May 15, 2017); *Masterpiece Cakeshop v. CCRC*, 16-111 (U.S. filed Oct. 30, 2017).

Wading into contentious policy debates and litigation is bad enough. But the ABA does so even when the positions it takes are unpopular among its own members and even when those positions are squarely foreclosed by caselaw. When the ABA endorsed expansive abortion access, for example, more than 3,000 members resigned from the Association in protest. *See* Hager, *Lawyers Quit ABA Over Abortion Stand*, LA Times (Nov. 4, 1992), perma.cc/D2TR-SG3J. The ABA, those members explained, had "become more political" and "less professional than it should be." *Id.* When the Supreme Court ultimately recognized that abortion is an issue left to the political branches, the ABA accused the Court of "deny[ing] millions of people" their rights and endangering women's "physical and mental health." *Statement of ABA President Reginald Turner Re: Reproductive Access and the Dobbs Decision*, ABA (June 24, 2022), bit.ly/4lqX9yx. When the

Court recognized a historically rooted right to bear arms in public, the ABA called the decision "disturb[ing]." *Statement of ABA President Reginald Turner Re: Gun violence and the Bruen decision*, ABA (June 23, 2022), bit.ly/40sN1vr. More recently, the ABA incorrectly insisted that the so-called Equal Rights Amendment was ratified even though the deadline for ratification had long since passed, *see ABA Resolution 601*, ABA (Aug. 6, 2024), perma.cc/8Y9A-7VMZ, a position the Ninth Circuit has described as "meritless," *Valame v. Trump*, 2025 WL 1983954, at *1 (9th Cir. July 17, 2025).

The ABA also targets elected officials when it disagrees with their political priorities. When President Trump followed through on his promise to rein in federal spending by eliminating wasteful grant programs, the ABA accused him of "wide-scale affronts to the rule of law." *The ABA supports the rule of law*, ABA (Feb. 10, 2025), bit.ly/4cFhJJb. Notably, the ABA's statement failed to disclose that the Association had a financial interest in the grant programs shuttered by the Trump Administration. *See* Letter from Chairman Andrew Ferguson to FTC Staff at 1 (Feb. 14, 2025), perma.cc/BFE6-GFDW. And the ABA later joined other left-wing groups to file multiple lawsuits challenging the Administration's funding decisions. *See ABA lawsuits over halt in federal funding*, ABA (Apr. 28, 2025), bit.ly/4b7uDhW. The ABA has also criticized President Trump's treatment of federal judges, but its defense of the judiciary is conspicuously one-sided. The Association neglected, for example, to condemn the leak of a draft of the Supreme Court's *Dobbs* decision or offer any comment on the attempted murder of Justice Brett Kavanaugh. *See* Steurer, *North Dakota judge says American Bar Association is too liberal*, North Dakota Monitor (June 17, 2025), bit.ly/4bibqbZ.

The ABA's partisan attacks extend to judicial nominees as well. "Peer-reviewed studies have shown the ABA," which until recently enjoyed a privileged role in rating federal judicial nominees, "evaluates nominees of Republican presidents more harshly than those of Democratic presidents." Williams, *The Myth of the Unqualified Trump Judge*, National Review (June 23, 2020), bit.ly/4b5lFBL. That includes "exceptionally distinguished" jurists like Justices Robert Bork and Clarence Thomas and Judges Richard Posner and Frank Easterbrook, who all received "curious" mixed ratings from the ABA, with several evaluators calling them "unqualified." Liptak, *Legal Group's Neutrality is Challenged*, NY Times (Mar. 30, 2009), bit.ly/4bpVp40. In the ABA's eyes, "just being nominated by a Democrat" instead of "a Republican" is "'better than any other credential or than all other credentials put together.'" Williams, *supra.*

Given the ABA's emphasis on partisanship over professionalism—and its insistence on staking out controversial and legally untenable positions—it is no wonder that the Association's membership is on the decline. Indeed, although it presents itself as the voice of the legal profession, in reality the ABA counts only a small fraction of practicing attorneys among its members. And that number continues to drop even as the number

of lawyers in America grows. In 1979, for example, roughly half of America's lawyers were members of the ABA; today, that number is only 17%. Turley, *The rise and fall of the American Bar Association*, The Hill (Dec. 6, 2025), bit.ly/47wtGNN.

The ABA is free to promote any message and file any brief that it likes. But it cannot operate as a left-wing activist organization while holding itself out as a neutral representative of the legal profession. It certainly cannot be trusted to wield semi-governmental authority over the entire legal profession as the sole accreditor for law schools.

II. The ABA uses accreditation standards to push its ideological agenda.

The ABA is an activist organization. As such, rather than craft accreditation standards with an eye towards guaranteeing academic quality, the ABA has used its accreditation power to promote its ideological agenda. It has imposed standards that compel law schools to parrot the Association's view on controversial issues. And it has used those standards to force law schools to discriminate against applicants based on race.

Consider "Standard 206." First imposed in 2006, this provision requires law schools seeking accreditation to "demonstrate by concrete action a commitment to diversity and inclusion by providing full opportunities for the study of law and entry into the profession by members of underrepresented groups, particularly racial and ethnic minorities, and a commitment to having a student body that is diverse with respect to gender, race, and ethnicity." Standard 206(a), *Standards and Rules of Procedure for Approval of Law Schools 2025-2026*, ABA, at 17 (2025), perma.cc/DCS4-QZT3. Likewise, in faculty hiring, it requires schools to "demonstrate by concrete action a commitment to diversity and inclusion by having a faculty and staff that are diverse with respect to gender, race, and ethnicity." *Id.* (Standard 206(b)).

In other words, Standard 206 pressures law schools to discriminate on the basis of race, sex, and ethnicity in admissions and hiring. To create, through "concrete action," a student body and faculty *defined* by their "gender, race, and ethnicity" means law schools must *consider* those characteristics when making decisions about which students to admit and which faculty to hire. Indeed, the ABA's own interpretation of Standard 206 encourages schools to "use race and ethnicity in its admissions process to promote diversity and inclusion." *Id.* (Interpretation 206-2). And law schools subject to the requirement understand it to require straightforward race-, ethnicity-, and sex-based decisionmaking. *See* Styrsky et al., *Unconstitutional Accreditation Pressures Force Law Schools to Discriminate Against Faculty and Students*, Pacific Legal Foundation, at 4 (July 2025), perma.cc/KDZ3-BU9S.

Needless to say, this requirement violates federal law. Educational institutions cannot discriminate based on sex, and no institution receiving federal funds can discriminate based on race or ethnicity. *See* 20 U.S.C. §1681; 42 U.S.C. §2000d; *SFFA v. Harvard*, 600 U.S. 181, 198 n.2 (2023). That is doubly true for state-run law schools, which are *constitutionally* barred from discrimination in admissions and hiring. *See* U.S. Const. amend. XIV, §1; *SFFA*, 600 U.S. at 198 n.2, 230. Even the ABA's own rules of professional conduct bar lawyers from engaging in "discrimination on the basis of race, sex," or "ethnicity" in their legal practice. ABA Model R. of Prof'l Conduct 8.4(g). And that principle "contains no carveout for 'diversity'" initiatives that "turn on the consideration of impermissible characteristics like … race." Order, *Judicial Complaint No. 11-25-90043* (11th Cir. Mar. 20, 2025), perma.cc/SD8T-XVLL.

Standard 206's blatant discrimination mandate is no longer tenable following the Supreme Court's decision in *SFFA v. Harvard*. In a "zero-sum" process like admissions or hiring, law schools cannot "conside[r]" race, sex, or any other immutable trait without penalizing individuals who don't belong to a preferred group. 600 U.S. at 218-29. That's why the ABA, under scrutiny from state and federal governments, was forced to temporarily suspend the rule and is seemingly on the path to repealing it. *See* Letter from U.S. Att'y Gen. Pam Bondi to ABA Council of the Section of Legal Education (Feb. 28, 2025), perma.cc/L4GL-RRP4; Letter from 21 State Att'ys Gen. to ABA Council of the Section of Legal Education (June 3, 2024), perma.cc/M3FN-QNUP; *Council of the ABA Section of Legal Education Extends Standard 206 Suspension to 2026*, ABA (May 9, 2025), bit.ly/40qK1Qm; *Matters for Notice and Comment: Standard 206*, ABA (Feb. 26, 2026), bit.ly/4sZYoHF.

But the fact that the ABA imposed this discrimination mandate on law schools in the first place and maintained it for almost two decades in the name of "diversity" and "inclusion" is reason enough to revoke the ABA's role as the sole accrediting body for Tennessee law schools. Plus, although it is retreating from Standard 206, the ABA insists that its "commitment" to preferences for those who, in the ABA's eyes, "have been historically excluded from the legal profession … has not changed." *American Bar Association statement Re: Standard 206*, ABA (Feb. 22, 2025), bit.ly/4s7yvFN.

Standard 206, moreover, is simply one example of how the ABA uses its accreditation power to impose its preferred ideology on law schools. In 2022, for instance, the ABA instituted a new rule—Standard 303(c)—requiring law schools to "provide education to law students on bias, cross-cultural competency, and racism." *Standards and Rules of Procedure for Approval of Law Schools 2025-2026*, ABA, at 23 (2025), perma.cc/DCS4-QZT3. The rule does not define "bias," "cross-cultural competency," or "racism," but insists upon the "importance" of educating law students on these topics and their "obligation" to "eliminate racism in the legal profession." *Id.* at 24 (Interpretation 303-6).

Like Standard 206, Standard 303(c) goes beyond an accreditor's role in ensuring baseline academic quality. Instead, it mandates the specific content—and *viewpoint*—that students must be taught. Worse, it "presuppos[es] that some students are biased and racist and therefore need instruction euphemistically referenced as 'cross-cultural competency.'" Ackerman et al., *Response to Notice re Proposed Revisions to Standards 205, 206, and 303* at 3 (June 23, 2021), perma.cc/F6VU-J786. And it undermines core "principles of academic freedom" *Id.* at 4. In fact, Standard 303(c) is so clearly inappropriate as an accreditation metric that an ideologically diverse collection of Yale Law School professors, including esteemed liberal scholars like Bruce Ackerman and Akhil Amar, wrote an open letter opposing the rule as a "particularly disturbing … attempt to institutionalize dogma" on matters "unrelated to any distinctively legal skill." *Id.* at 3. Law schools, the professors explained, should "teach [students] skills" and allow them to "reach their own conclusions," not require them "to adopt a specific world view." *Id.* at 3-4.

The ABA's efforts to impose ideological conformity go beyond written standards. The Association has a history of "pressur[ing] schools to engage in racial balancing and lower academic standards in favor of diversity." Shapiro, *The ABA Deserves to Lose Its Accreditation Monopoly*, The Civitas Institute (June 10, 2025), perma.cc/23NP-ZHR6. In 2000, for example, the ABA "investigated George Mason University School of Law extensively" for "supposed violations of its diversity standards and only gave up after the school quietly lowered its admissions standards to satisfy the ABA's demands." Styrsky et al., *Unconstitutional Accreditation Pressures Force Law Schools to Discriminate Against Faculty and Students*, Pacific Legal Foundation, at 2 (July 2025), perma.cc/KDZ3-BU9S. The problem, to be clear, "was not lack of outreach" to minority students; rather, the ABA faulted George Mason for failing to adopt "'significant preferential affirmative action'" for minority applicants in the admissions process and failing to offer race-specific "'scholarship grants.'" Letter from U.S. Comm'n on Civil Rights Comm'rs Peter Kirsanow & Gail Heriot to U.S. Sen. Bill Cassidy at 10, 12 (Feb. 18, 2025), perma.cc/S4VT-9DWZ (emphasis omitted). Other law schools have likewise been forced to adjust their admission standards or adopt diversity programs under threat of losing their accreditation. *See id.* at 15-16; Styrsky, *supra* at 2.

In other words, as federal authorities have already determined, the American Bar Association has "not only failed in [its] responsibility" to "determine which institutions provide a quality education" and "therefore merit accreditation," it has also "also abused [its] enormous authority" to "compe[l] adoption of discriminatory ideology." Exec. Order No. 14279 §1, *Reforming Accreditation to Strengthen Higher Education*, 90 Fed. Reg. 17529 (Apr. 23, 2025), perma.cc/Q6Z9-NHEB.

III. Tennessee should revoke the ABA's monopoly, as other jurisdictions already have.

No one doubts the strong public interest in ensuring that new lawyers are qualified. But that interest is not well-served by giving a monopoly on accreditation power to an ideologically biased group like the ABA.

And make no mistake: the ABA's role as the exclusive accreditor for our nation's law schools *is* a monopoly. The Federal Trade Commission has said so. *Comment re: Proposed Amendment to Rule 1 of the Rules Governing Admission to the Bar of Texas*, FTC, at 3 (Dec. 1, 2025), perma.cc/NV5L-U72V. And the ABA uses that monopoly power to impose unnecessary requirements that are "irrelevan[t] to ensuring a baseline level of legal education," which "harms competition" and increases costs. *Id.* at 6-7, 9. Indeed, the ABA "has a long history of" antitrust violations. *Id.* at 6. Thirty years ago, for example, the ABA entered into a consent decree prohibiting the Association from "using its law school accreditation monopoly to harm competition." *Id.*; *see United States v. ABA*, 934 F. Supp. 435 (D.D.C. 1996). But in 2006, a federal court found that "on multiple occasions the ABA ha[d] violated" the decree's "clear and unambiguous provisions." *United States v. ABA*, 2006 WL 1737775 (D.D.C. June 26, 2006). Even the ABA itself has "acknowledged longstanding criticism that its" accreditation practices "drive up student costs." Sloan, *FTC says ABA is a 'law school accreditation monopoly*, Reuters (Dec. 2, 2025), bit.ly/3OVReFB.

Combined with its ideological pressure on matters of diversity, the ABA's monopoly power essentially creates "a 'diversity cartel' among law schools, effectively insulating schools that give large [race- and sex-based] preferences from competition on issues like bar passage rate with schools that would rather give smaller preferences or none at all." Heriot, *Accreditation Overreach Part 2*, The Federalist Society (Oct. 23, 2015), perma.cc/3DAF-4V7X.

Fortunately, states like Tennessee do not have to suffer under the ABA's monopoly. There are "practicable alternatives to ABA accreditation." Order at 4. Most obviously, the Tennessee Supreme Court could approve law schools directly without using a separate accrediting body as an intermediary. A few states already have some version of this model, allowing graduates of law schools approved by the state supreme court or state bar—in addition to schools accredited by the ABA—to sit for the state's bar exam. *See* Canaparo et al., *How to Break the American Bar Association's Accreditation Monopoly*, The Heritage Foundation, at 9 (July 15, 2025), perma.cc/B7GC-B4DW. If Tennessee were to opt for this approach, it could approve schools based on a mixture of factors like bar passage rates, job placement rates, debt-to-income ratios for recent graduates, faculty qualifications, and curricular requirements. *See* Chandler, *Accrediting for Tomorrow: Law*

School Metrics and Interstate Compacts, The Civitas Institute (June 10, 2025), perma.cc/G4KJ-FZQN; Chesney, *supra* at 9. The Court could also presumptively allow graduates of state-run law schools to sit for the bar. And of course, Tennessee could recognize alternative accreditors as such entities become available.

To complement these approaches, Tennessee could also "join interstate compacts to ensure bar reciprocity." Shapiro, *supra*. This would ensure that law degrees from Tennessee schools remain portable across the country, increase access to legal services in Tennessee by allowing graduates from other law schools to sit for the Tennessee bar, and make recognition from state high courts "effective enough to be able to supplant intermediaries like the ABA." Muller, *How state bars could accredit law schools without the ABA or any other intermediary institution*, Excess of Democracy (Aug. 21, 2025), perma.cc/XDZ5-9ERB. Interstate compacts, moreover, are an increasingly feasible possibility as more and more states consider dropping the ABA as their sole law school accreditor.

Thankfully, regardless of which path it takes, Tennessee does not have to tread new ground. Two states—Texas and Florida—have already revoked ABA's monopoly on accreditation. The Texas Supreme Court now approves law schools directly based on "simple, objective, and ideologically neutral criteria using metrics no more onerous than those currently required by the ABA." *Final Approval of Amendments to Rule 1 of the Rules Governing Admission to the Bar of Texas*, Misc. Dkt. No. 26-9002, at 1 (Tex. Jan. 6, 2026), perma.cc/8BVC-DMAE. Florida, for its part, opened the door to alternative accreditors recognized by the U.S. Department of Education or the Florida Supreme Court. *In re: Amendments to Rules Regulating the Florida Bar and Rules of the Supreme Court Relating to Admissions to the Bar*, No. SC2025-2064, at 5-6 (Fla. Jan. 15, 2026), perma.cc/4RBY-CQ3H. At least one other state, Ohio, is considering a similar move. *See* Novak, *Ohio Supreme Court Advisory Committee Begins Evaluation of Law School Accreditation*, JD Supra (Nov. 7, 2025), perma.cc/CJ6V-DGB9.

These states are reclaiming their role in our federalist system. "They are remembering that … it is states, not private ideological cartels, that regulate professions." Mendenhall, *End the American Bar Association's Grip on Law Schools*, The Heritage Foundation (Jan. 30, 2026), perma.cc/P78P-X78C. The federal government is doing the same: the White House has directed the Department of Education to reconsider the ABA's status as a federally recognized accreditor for law schools, *see* Exec. Order No. 14279 §2, *Reforming Accreditation to Strengthen Higher Education*, 90 Fed. Reg. 17529 (Apr. 23, 2025), perma.cc/Q6Z9-NHEB, and the Department of Justice has eliminated the ABA's privileged role in evaluating judicial nominees, *see* Letter from U.S. Att'y Gen. Pam Bondi to ABA President William R. Bay (May 29, 2025), perma.cc/8XJ5-CS3H.

As the rule changes adopted by Texas and Florida demonstrate, there is more than one path for reform. But the key point is that Tennessee, like other states, is not beholden to the ABA and its ideological bias. This Court is free to pursue alternative models for accrediting law schools that do not force schools to discriminate or violate academic freedom. DE encourages the Court to do so.

Respectfully submitted,

/s/ Sarah Parshall Perry
Sarah Parshall Perry
Vice President and Legal Fellow
Defending Education

MaryBeth Lindsey

From:	appellatecourtclerk
Sent:	Tuesday, March 17, 2026 10:18 AM
To:	MaryBeth Lindsey; Kim Meador
Subject:	FW: Defending Education Comments on docket number ADM2025-01403 in re: Potential Regulatory Reforms to Increase Access to Quality Legal Representation
Attachments:	TN Supreme Court Comment Letter - Mar 16 - 1PM FINAL LETTERHEAD.pdf

Please process the attached comment.

Jim

James M. Hivner
Clerk of the TN Appellate Courts
Phone: (615) 741-1314
Email: jim.hivner@tncourts.gov
Address: 401 7th Ave. N., Nashville, TN 37219

From: Sarah Parshall Perry <sarah@defendinged.org>
Sent: Monday, March 16, 2026 2:56 PM
To: appellatecourtclerk <appellatecourtclerk@tncourts.gov>
Subject: Defending Education Comments on docket number ADM2025-01403 in re: Potential Regulatory Reforms to Increase Access to Quality Legal Representation

Comments re: ADM2025-01403, Potential Regulatory Reforms to Increase Access to Quality Legal Representation

Mr. Hivner,

Defending Education submits the attached comments regarding docket number ADM2025-01403, Potential Regulatory Reforms to Increase Access to Quality Legal Representation. Please let us know if any additional information is required or would be helpful.

Thanks very much,

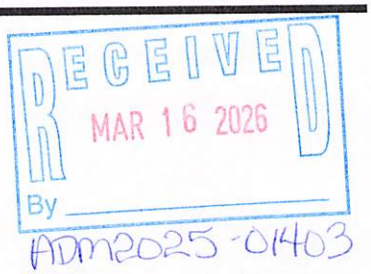
Sarah

Sarah Parshall Perry
Vice President & Senior Legal Fellow
Defending Education
410-493-2462

sarah@defendinged.org
defendinged.org

MaryBeth Lindsey

From: April Burns-Norris <april@communitybridges1111.org>
Sent: Monday, March 16, 2026 4:05 PM
To: appellatecourtclerk
Subject: Tennessee efforts to increase affordable legal help.



March 16, 2026

Public Comment On Potential Regulatory Reforms To Increase Access To Quality Legal Representation **No. ADM2025-01403**.

In support of the Institute of Justice and in response to the Tennessee Supreme Court's request for public comments concerning the growing access-to-justice crisis, I submit the following:

Legal services currently provided by lawyers can be competently provided by paraprofessionals with short, easy-to-access training and/or evidence of successful volunteer assistance with basic civil legal needs with an emphasis on evictions, probate matters and benefits paperwork.

The State of Tennessee as well as the rest of America are experiencing a homelessness epidemic and affordable housing crisis. The existing resources like court appointed mediation and Legal Services Corporation (LSC) representation is insufficient due to the absence of assistance before an eviction is filed and the mediation only applicable for cases with neither party having legal representation.

There also appears to be a form of conflict of interest with these agencies representing tenants in cases against public housing authorities and corporate attorneys. The outcome of most cases with LSC representation is agreed move outs. It is very rare that tenants have their legal defenses heard or the right to damages taken seriously. This is ultimately denial of due process and denied access to justice.

Housing is the foundation to accessing the "American Dream". When LAS and Courts are not fully protecting tenant's rights, this results in preventable evictions, which is a miscarriage of justice that denies access to the building block of healthy, thriving families and communities.

The Court should modify, reduce or eliminate regulations prohibiting non-lawyers from ownership of law firms or fee sharing.

Denying this creates additional financial hardships placed on tenant's and community organizations that use their own resources to fight against frivolous claims. Probate matters involving unrepresented parties can also result in preventable homelessness.

By allowing non-attorney's to be compensated it will help balance the power dynamics in court rooms across the State of Tennessee and further enhance their ability to assist more low-income Tennesseans.

Nonprofit organizations like Community Bridges Inc-Connect The Dots and other community advocates have shown some success through Court Watch services, Landlord Tenant Mediation and connection to community financial resources to pay past due rent; however, this work remains unpaid due to the current regulations.

The need for more than just "an attorney" is further supported in the July 2023 Stanford Law Review Volume 75, 'Lawyers Aren't Rent' by Juliet M. Brodie and Larisa G. Bowman.

Respectfully submitted by,

April Burns-Norris
She/Her
Community Bridges Inc.
"The People's Advocate"
www.communitybridges1111.org
(615) 988-0494

MaryBeth Lindsey

From:	appellatecourtclerk
Sent:	Tuesday, March 17, 2026 10:12 AM
To:	MaryBeth Lindsey; Kim Meador
Subject:	FW: Tennessee efforts to increase affordable legal help.
Attachments:	Tennessee efforts to increase affordable legal help.

Please process the attached comment.

Jim

James M. Hivner
Clerk of the TN Appellate Courts
Phone: (615) 741-1314
Email: jim.hivner@tncourts.gov
Address: 401 7th Ave. N., Nashville, TN 37219

AMERICAN BAR ASSOCIATION
Legal Education and
Admissions to the Bar

321 N Clark Street
Chicago, IL 60654-7598
312.988.6738
legaled@americanbar.org
www.americanbar.org/legaled

To: Supreme Court of Tennessee

Re: Comments on Law School Accreditation Component of Tennessee's Bar Admission Requirements

Via email: appellatecourtclerk@tncourts.gov

March 16, 2026

Dear Chief Justice Bivins:

The Council of the American Bar Association ("ABA") Section of Legal Education and Admissions to the Bar ("the Council") seeks to provide comments, as requested by the Supreme Court of Tennessee ("the Court") in its Order dated September 16, 2025. The Council understands that the Court is "interested in reassessing its approach to regulation of the legal profession to ensure that all Tennesseans have access to affordable quality legal services." Order, at 4.

Considering this focus on access to justice, the Council would like to address the Court's inquiries into (1) Whether the Court should modify, reduce, or eliminate its reliance on ABA accreditation in setting minimum educational requirements for applicants to the Tennessee Bar; and (2) Whether there are any practicable alternatives to ABA accreditation that the Court should consider. Order, at 4. The remainder of this Comment will refer to Council accreditation rather than ABA accreditation. Although the accreditation Council is a part of the ABA's Section of Legal Education and Admissions to the Bar, its accreditation work is separate and independent from the larger ABA. See supra Section IIIB.

The Council submits these comments to illustrate that the existing national accreditation system protects students, graduates, and the public. Moreover, the Council's Standards align with the Court's concern that citizens have access to affordable and high-quality legal services. As such, it makes sense to retain the current national system even as the Council, all state supreme courts, and other stakeholders work to continuously improve that existing system.

The Council's accreditation Standards provide minimum educational requirements designed to ensure that graduates of a law school can offer high-quality legal assistance to the public. They enable Tennessee law schools to recruit students with top academic credentials while providing high-quality, cost-effective and innovative legal education; and they ensure graduates the portability of a law degree from any accredited law school throughout the United States, enabling graduates from schools in other states to pursue practice in Tennessee. Through enforcement of rigorous programmatic Standards and collection and reporting of data, this national accreditation scheme not only protects the public and promotes access to justice, but also gives prospective law students important information as they make choices about how to spend their educational dollars.

The Council recognizes that the Tennessee Supreme Court—like each state supreme court—has the authority to define which graduates are eligible to sit for the bar exam in its state, and to define the minimum educational requirements for those applicants. The Council encourages the Court to create alternatives in addition to, not instead of, Council accreditation. This Court already has provided an alternative to Council-accredited law schools by recognizing the Nashville School of Law. The Court can continue to create alternate pathways to licensure, accredit additional law schools, or impose additional state-based requirements alongside Council accreditation—as other state supreme courts have done. These options would be far less disruptive than entirely ending recognition of the Council's accreditation function.

The Council also understands that its role as a national accreditor comes with great responsibility and does not take its role for granted. Maintaining the trust of the state supreme courts, who are the regulators of the profession, is crucial to continuing in its role. In addition to submitting these comments, the Council welcomes the opportunity to engage in dialogue with and hear any concerns of the Supreme Court of Tennessee in writing, virtually, or in person.

I. The Council promotes excellence in Tennessee's legal profession and enhances access to justice by ensuring the portability of law graduates' degrees.

As the Court is recognizing the importance of expanding access to justice, the Council asks the Court to consider that providing quality legal representation in all parts of the state (including legal deserts) depends on ensuring that the pool of potential lawyers is as broad and deep as possible. Portability of law graduates' degrees is one foundational way to ensure this breadth and depth. The portability of law graduates' degrees is essential to the State of Tennessee and its state bar admitting authorities, law students, and graduates. In 2024 alone, for example, the 10 states (including Tennessee) that reported the relevant data show that approximately 25% of the individuals who passed a bar exam—more than 6,000 individuals—graduated from an out-of-state Council-accredited law school.[1] With a portable law degree, law graduates can practice anywhere

[1] Alabama, Alaska, California, Florida, Georgia, Massachusetts, New York, Ohio, Tennessee, and Texas.

in the country without satisfying different educational requirements in each state. This portability is particularly crucial in light of the geography of Tennessee, in which many underserved rural areas are within a few dozen miles of the state border.

The Council's role as the national accreditor facilitates this portability. That role is rooted in its close to 100 years of experience accrediting law schools: the first Standards were adopted in 1921 with a list of approved law schools following soon afterward.[2] Out of that history grows the Council's current mission, which is "to provide a fair, effective, and efficient accrediting system for American law schools," and "to serve ... as the nationally recognized accrediting body for American law schools." This long-standing expertise and consistent mission have led to the recognition of the Council's role in the national accreditation system in two ways. First, the bar admitting authorities of every state and territory—including all state supreme courts—recognize graduation from a Council-accredited law school as a means of satisfying a condition for licensure.[3] Second, since 1952 the Council has been the only accreditor recognized by the United States Department of Education for JD programs in the United States.[4] Compliance with Department of Education regulations ensures that the Council engages in the same thorough and neutral examination process for all law schools, and that all law schools meet the same rigorous standards for legal education.

The Council's work thus has developed a national standard of quality legal education across every United States jurisdiction, which in turn allows law degrees to be portable and confers the benefits described below.[5]

A. Benefits of portable law degrees to the state and state bar admitting authorities

Tennessee benefits from the portability of law degrees when graduates from out-of-state law schools—whether Tennessee residents or non-Tennessee residents—decide to practice law in Tennessee. Tennessee also benefits when graduates of Tennessee law schools—again, whether Tennessee residents or not—decide to practice out of state. By recognizing degrees from Council-accredited law schools, Tennessee is not limited to admitting graduates from only Tennessee law schools: the state can recruit and retain the best talent from law schools throughout the United States, including from neighboring states.

Portability also benefits state bar admitting authorities by reducing costs and supporting excellence in outcomes. The Council's accreditation work is funded entirely by an annual fee that law schools pay to the Council based on the size of their student populations.[6] Consequently, Tennessee and its taxpayers do not incur any additional costs to fund its own accreditation system, including setting its own standards and systems for

---

[2] See Susan K. Boyd, The ABA's First Section: Assuring a Qualified Bar 21-27 (1993).

[3] See https://reports.ncbex.org/comp-guide/charts/chart-3/ In their recent orders related to accreditation, the Texas and Florida Supreme Courts continued to recognize the Council-accredited law schools in their states, https://www.txcourts.gov/media/1461882/269002.pdf; https://flcourts-media.flcourts.gov/content/download/2483731/opinion/Opinion_SC2025-2064.pdf

[4] See https://www.ed.gov/laws-and-policy/higher-education-laws-and-policy/college-accreditation/institutional-accrediting-agencies

[5] Section Bylaws Article I, Section 2.

[6] https://www.americanbar.org/groups/legal_education/accreditation/schedule-of-law-school-fees/

enforcement. With a national system, the states also do not need to become experts in the many aspects of accreditation. Instead, each state can confidently rely on processes that have been developed over close to a century to help ensure the licensure of competent lawyers.[7]

The excellence fostered by a national accreditation system is reflected in the strong outcomes achieved by graduates from Council-accredited law schools. For example, the graduating class of 2024 (the most recent class with available statistics) demonstrated a record high level of employment in jobs requiring bar admission – 82.2%.[8] Bar exam outcomes also reflect that the Standards require a rigorous program of legal education, preparing students for admission to the bar and protecting the public.[9] In 2024, the overall bar exam passage rates for Council-accredited law schools was 67%, compared to 23% for non-Council-accredited law schools.[10] Students graduating from non-Council-accredited law schools in California experience more attrition and lower bar exam pass rates.[11]

California's difficulties in developing its own bar exam in February 2025 demonstrated the genuine risks of a state moving away too quickly from nationally developed, time-tested processes and institutional expertise.[12] California's attempt to develop its own bar exam will likely cost the state bar over 6 million dollars to ameliorate the harm caused to bar takers, and the state returned to the NCBE-created exam in July 2025.[13]

B. Benefits of portable law degrees to law students and graduates

Prospective law students depend on the portability of their law degree. They are often not sure where they want to practice when they enter law school, and value highly the

---

7 The first Standards (and list of complying law schools) were created in 1921. https://www.americanbar.org/groups/legal_education/resources/standards/standards_archives/?com. The Department of Education first recognized the Council as an accreditor for JD programs in 1952, and has received recognition continuously since then. See https://ope.ed.gov/dapip/#/agency-list.

8 This percentage constitutes the total percentage of all graduates (including known and unknown status employed in bar-required/anticipated jobs). See https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2024/class-of-2024-online-table.pdf

9 Section Standard 301.

10 https://thebarexaminer.ncbex.org/wp-content/uploads/Persons-Taking-and-Passing-the-2024-Bar-Examination-by-Source-of-Legal-Education.pdf

11 State Bar of California, Profile of California Law Schools, Executive Summary (2022) https://publications.calbar.ca.gov/law-school-profile/executive-summary ("Analyses of student outcomes show that students who pursue JDs at the state's unaccredited law schools face significant challenges in their aspirations to become licensed attorneys, with over half experiencing attrition after their first year of school and extremely low bar exam pass rates among those who do graduate."). Attrition rates for first-year law students at Council-accredited law schools was 8%, California-accredited was 42%, and unaccredited was 51%. Bar passage exam rates for 2022 at Council-accredited law schools was 67%, California-accredited was 21%, and unaccredited was 9%.

12 See, e.g., Reuters, "California's February Bar Exam Mess is Costing Millions to Clean Up" (June 6, 2025) https://www.reuters.com/legal/government/californias-february-bar-exam-mess-is-costing-millions-clean-up-2025-06-06/; L.A. Times, "'Utterly Botched:' Glitchy rollout of new California bar exam prompts lawsuit and legislative review" (Feb. 28, 2025) https://www.latimes.com/california/story/2025-02-28/utterly-botched-chaotic-roll-out-of-new-california-bar-exam.

13 See https://www.calbar.ca.gov/sites/default/files/portals/0/documents/admissions/Examinations/July-2025-Bar-Exam-Admittance-Ticket-Bulletin.pdf?utm.com, at 2.

flexibility to practice in any state upon graduation and throughout their legal career.[14] If Tennessee moves away from recognizing the Council as an accreditor, prospective students may refrain from applying to or accepting offers of admission to Tennessee's law schools simply because those prospective students are unsure where they will practice after law school and want to invest in the most portable degree possible.

Approximately four years typically pass between applying to law school and admission to the bar. Even more time can pass before graduates are settled in a job. In that time, future lawyers may change their intentions as to where to practice, due to the employment market, a job opportunity, or family circumstances. Recently, law students completing Rural Judicial Fellowships in Tennessee as part of the Tennessee Bar Association's Young Lawyers Division reported a desire to continue serving rural communities in the state.[15] Degree portability is essential to this community service commitment. The law students and recent law school graduates who may be searching for another legal position depend on the portability of their law degree when matriculating at a Council-accredited law school.

In Tennessee, 30.9% of first-time bar exam test takers in July 2025 were from out-of-state Council-accredited law schools.[16] In the most recent reporting year, the percentage of graduates of Tennessee law schools who took the bar exam out of state (by law school) was 33.8%, ranging from 7.4% at University of Memphis to 76.2% at Vanderbilt.[17] If a degree from a Council-accredited law school were denied recognition, students might be faced with additional or different requirements to practice in Tennessee as compared to elsewhere. The state's adoption of additional or different requirements—whether of its own or an alternate accreditor—would thus impose more burdens on students and recent graduates.[18]

Portability of the JD degree has been enhanced by the portability of the bar exam, which law graduates have relied on for almost fifteen years.[19] The Uniform Bar Examination ("UBE") and the Next Gen UBE bar exam are premised on the importance of portability, specifically the portability of a bar exam score. The UBE has been adopted by 41 jurisdictions, including Tennessee.[20] As an indication of the high demand for portability, 11,082 UBE scores were transferred among states in 2024.[21] Tennessee also has

---

[14] For example, during the 2024-2025 application cycle, applicants submitted 69.5% of their applications in states other than where they are permanent residents; 47.8% of matriculants enrolled at out-of-state schools. [Data provided by LSAC]

[15] Tennessee Bar Association Justice on the Backroads: The TBA YLD's Answer to the Rural Attorney Shortage - Articles

[16] https://www.tnble.org/wp-content/uploads/2025/10/July-2025-TN-UBE-Exam-Statistics-FOR-POST.pdf?.com

[17] Accreditation Council, 2026 Bar Admissions Questionnaire

[18] Indirect costs also may be incurred by law schools, which would be required to create additional/different curricular offerings and more extensive academic advising and bar support programs to comply with the requirements of multiple accreditors.

[19] The UBE was first administered in 2011. The UBE from Early Concept to the Present: A Timeline - National Conference of Bar Examiners

[20] https://www.ncbex.org/exams/ube/list-ube-jurisdictions; https://thebarexaminer.ncbex.org/2024-statistics/the-uniform-bar-examination-ube/#step4. Tennessee first administered the UBE in 2019.

[21] https://thebarexaminer.ncbex.org/2024-statistics/the-uniform-bar-examination-ube/#step4.

adopted the MPRE exam.[22]

Extending its commitment to portability even further, Tennessee is one of 48 jurisdictions that has decided to adopt the NextGen UBE Bar Exam.[23] If Tennessee moves away from Council accreditation, it would disadvantage law students and graduates by making its degrees less portable, which seems hard to reconcile with its consistent efforts to make its bar exam more portable.[24]

II. The Standards enable high-quality, cost-effective and innovative legal education that serves excellence and access to justice

The Standards set forth minimum requirements related to admissions, student services, curriculum, faculty, resources, and facilities.[25] The Standards are rigorous yet attainable for all law schools. The Council accredits a wide range of law schools, including public and private law schools, regional and national law schools, and independent law schools. The Council accredits law schools with differing missions and approaches to education, including law schools with a public service mission and law schools with various different religious missions.[26]

A. Enforcing Minimum Requirements

The Council affords law schools wide latitude in constructing their curricula and requirements for graduation. The Standards prescribe only a very small portion of curricular offerings in law schools, which enables innovation consistent with a law school's mission and goals. When they do specifically identify particular courses or extracurricular offerings, the Standards are careful not to prescribe the particular form or content of any offering, recognizing that such matters are left up to the academic freedom of each law school.[27]

Because the Standards only prescribe minimum requirements, they do not create tuition cost obligations. Annual tuition costs vary widely among Council-accredited law schools, from under $12,000 to over $85,000 annually.[28] In Tennessee, tuition at Council-accredited law schools ranges from $16,696 (University of Tennessee/resident) to $76, 440 (Vanderbilt/resident and non-resident).[29]

---

[22] https://www.ncbex.org/exams/nextgen

[23] See https://www.ncbex.org/exams/nextgen Tennessee's first administration of the NextGen UBE Bar Exam will be in July 2027. https://tncourts.gov/news/2018/04/18/tennessee-adopts-uniform-bar-exam?utm.com

[24] See, e.g., https://www.ncbex.org/news-resources/official-name-nextgen-bar-exam-announced?.com; https://www.ncbex.org/exams/ube/ube-score-portability; https://jdadvising.com/does-it-matter-where-to-take-the-ube/#:~:text=The%20Uniform%20Bar%20Exam%20(UBE,UBEs%20more%20appealing%20to%20you.

[25] See Standards, Chapters 1-7.

[26] See https://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools/

[27] See, e.g., Standard 303(a)(1) (professional responsibility); Standard 303(a)(2) (various writing experiences); Standard 303(b)(3) & Interpretation 303-5(formation of professional identity); Standard 303(c) & Interpretations 303-7, 8 (education on bias, cross-cultural competency and racism); Standard 508 (financial aid and debt counseling).

[28] https://www.abarequireddisclosures.org/requiredDisclosure

[29] https://www.abarequireddisclosures.org/requiredDisclosure

B. Considering Burdens and Benefits

In revising the Standards or adopting new Standards, the Council strives to consider the burdens on law schools as compared to the benefits it is trying to secure. For example, revisions to the library Standards no longer require a particular kind or quantity of library materials, allowing law schools to reduce their library space footprint or transform the space into more multipurpose uses. In another recent example, in adopting new Standard 208 requiring law schools to protect academic freedom and freedom of expression, the Council weighed the burden on law schools of promulgating and enforcing policies. The Council concluded that "[e]ffective legal education and the development of the law require the free, robust, and uninhibited sharing of ideas reflecting a wide range of viewpoints" and that "[b]ecoming an effective advocate or counselor requires learning how to conduct candid and civil discourse in respectful disagreement with others while advancing reasoned and evidence-based arguments."[30] Each school has discretion as to how to enforce these requirements. This new Standard was praised by groups representing a wide range of perspectives.[31]

The Council and its Standards Committee have recently launched a comprehensive review to ensure that our Standards are consistent with our Core Principles and Values, including the reduction of burdens.

C. Promoting Compliance with Applicable Laws

The Council is committed to adopting and enforcing Standards in a manner that allows law schools to comply with both the Standards and applicable laws.[32] For example, the Council has suspended Standard 206 (on diversity and inclusion) until August 31, 2027,[33] and has recently proposed repeal of Standard 206, with public comments being accepted until April 13, 2026.[34] The rationale for repeal is that enacted and proposed laws at the state level have made it impossible for the Council to have a meaningful Standard 206 that can apply to accredited schools across the country.[35] In addition, Standard 205 (on non-discrimination) is applied consistently with a law school's mission (including any religious affiliation or purpose).[36]

---

[30] Interpretation 208-6.

[31] See https://fedsoc.org/commentary/fedsoc-blog/cultivating-controversy-proposed-aba-standard-would-link-freedom-of-expression-to-law-school-accreditation; https://www.law.com/njlawjournal/2023/09/03/proposed-law-school-accreditation-standard-of-free-speech-and-disruptive-behavior-is-needed/; https://www.bloomberglaw.com/bloomberglawnews/us-law-week/X5N04TKK000000?bna_news_filter=us-law-week#jcite; https://www.nationalreview.com/corner/the-american-bar-association-gets-something-right/

[32] Standard 107, Rule 28.

[33] https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/2026/notice-comments/2026-february-standard-206-repeal-notice-comment-memo.pdf

[34] Id.

[35] Id.

[36] Standard 205: Standard 205 Guidance Memo https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/guidance-memos/2025/standard-205-guidance-memo-march-2025.pdf

D. Enabling Innovation

The Council enables innovation under its Standards and Rules in a number of ways. If a law school faces extreme hardship in complying with a Standard, or if it seeks to deviate from a Standard to explore experimental or innovative ideas, it can apply for a variance, once certain criteria are met.[37] This mechanism has allowed, for example, the careful exploration of the expansion of distance learning in legal education, while ensuring that standards of excellence continue to be met. The Council has a track record of modernizing our Standards and supporting innovation through the variance process to ensure we are serving the profession and being responsive to advances in legal education.

The Council continues to evaluate whether to allow a wholly online program of legal education at a school with no brick or mortar presence, based in part on the data and information it is gathering from existing online education offerings at accredited law schools. Twenty-two of these online programs have been acquiesced in by the Council, including a part-time hybrid program in Tennessee at Lincoln Memorial.[38]

The Council understands that the legal profession and legal education continue to change and that there are many challenges and opportunities ahead. The best path forward for improving legal education is for the state supreme courts, the Council, and law schools to work collaboratively on solutions that will be in the interests of our students, graduates and the public. For example, the Council's current comprehensive review includes the participation of an Advisory Committee, consisting of supreme court justices, deans, and other experts in legal education.[39] The Council has and will continue to engage with the Conference of Chief Justices' and the Conference of State Court Administrators' CLEAR committee -- including its newly appointed working group on accreditation – to ensure that accreditation serves the public.[40]

Finally, the Council has and continues to welcome feedback and questions from all constituencies (including the courts, law schools, practicing bar and the public). Specifically, the Council welcomes feedback through its Notice and Comment process for all Standards revisions; through roundtables, programs, and town halls; through open session discussions with affiliate organizations; and through its annual call-out for agenda items related to Standards revisions. Based on feedback received, the Council has paused, modified and prioritized certain Standards revisions, including those on learning outcomes for law schools and whether to require a law school admissions test.

---

[37] Standard 107, Rule 28.

[38] See https://www.americanbar.org/groups/legal_education/accreditation/approved-law-schools/distance-education/distance-education-jd-programs/

[39] https://www.americanbar.org/news/abanews/aba-news-archives/2025/12/legal-ed-council-names-special-adv-committee/#:~:text=The%20Council%20of%20the%20ABA%20Section%20of,*%20Prioritize%20which%20standards%20should%20be%20reviewed

[40] https://www.americanbar.org/news/abanews/aba-news-archives/2025/12/legal-ed-council-names-special-adv-committee/#:~:text=The%20Council%20of%20the%20ABA%20Section%20of,*%20Prioritize%20which%20standards%20should%20be%20reviewed

III. The Council fulfills its national accreditation function in the most effective and efficient manner for law schools and the states.

As an integral part of its mission, the Council provides "a fair, effective and efficient accrediting system for American law schools."[41] To effectuate this purpose, the Council performs three critical accreditation functions: 1) creation and revision of its Standards and Rules; 2) ongoing accreditation reviews of 197 individual law schools; and 3) data collection. In particular, the Council's data collection helps assess law schools' compliance with the Standards and provides important consumer information to prospective law students and others interested in legal education on topics including law school admission, bar admission, and law graduate employment.

A. Council Membership and Responsibilities

The Council consists of 21 voting members, including judges, practitioners, non-attorney public members, and a law student.[42] The members are all volunteers who are chosen based on the following criteria: "persons of integrity and intelligence who have evidenced interest in legal education or admission to the bar and whose participation is likely to be guided by the interests of the public and by high standards of the legal profession, rather than any personal interest."[43] In order to ensure that legal education receives perspectives from outside of its own quarters, Section Bylaws specify that "[n]o more than fifty percent of the voting members of the Council may be persons whose current primary professional employment is as a law school dean, faculty or staff member."[44]

Council members attend quarterly two to three-day meetings, undergo annual training, participate in committee work between Council meetings, and read hundreds of pages of law school accreditation materials to prepare for each quarterly meeting. A significant portion of this work is done transparently through public sessions at each quarterly meeting. Other portions of the work are done in closed session to comply with Department of Education regulations and to protect the confidentiality interests of individual law schools, their employees, and their students.

B. Independence from the General ABA

The Council's extensive work in accreditation matters (called the "Accreditation Project") is separate and independent from the general ABA. This separate and independent status is required by the Department of Education and is evidenced in many ways.[45]

As mentioned earlier, Council members are chosen primarily for their commitment to legal education and the legal profession. No current member of the ABA Board of Governors or Officer may serve as a member of the Council or on any Accreditation Project-related

---

[41] Section Bylaws, Article I, Section 2.

[42] Section Bylaws, Article IV, Section 3 (requiring this variety of membership).

[43] Section Bylaws, Article IV, Section 2.

[44] Section Bylaws, Article IV, Section 3.

[45] 34 CFR section 602.14. See also Section IOP 1.

Committee of the Section.[46] Overall, the general ABA has no role in recommending, appointing, or removing members of the Council.

The Council has final decision-making authority over all Standards and Rules revisions.[47] The general ABA does not have authority to approve or reject Standard and Rule revisions: The ABA House of Delegates only has a limited ability to provide input by concurring or referring back.[48] Under these rules, the Council can and does adopt Standards and Rules changes despite the opposition of the ABA House. The general ABA is not involved in Council enforcement actions and cannot access any confidential accreditation-related information. The policies, statements, and resolutions of the general ABA are not representations of the Council. Recent proposals will separate the Bylaws of the Accreditation Council and make the House process more efficient.[49]

The Accreditation Project is separate and independent from the general ABA in other important ways: For example, the Council's budget and finances are independent, and the general ABA has no review authority or control over the Council's funds that are generated through law school fees. In addition, the Council's personnel costs are fully paid for and funded by the Council, and the Council pays fair market value for joint use of ABA services.

This separate and independent status allows the Council to focus on its mission of ensuring quality education in law schools that prepares graduates for practice and admission to the bar.[50]

C. Accreditation Reviews

The Council undertakes comprehensive accreditation reviews of each accredited law school every 10 years.[51] This comprehensive review requires extensive narrative explanations and documentation from each law school;[52] an in-person Site Visit by a team of 6-7 volunteers who are generally from higher or legal education or the legal profession (including lawyers, judges, and university administrators);[53] a Site Visit Report written by

---

[46] Section Bylaws, Article IV, Section, 2, 3.

[47] Section Rule 54.

[48] Section Rule 55.

[49] https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/2026/council-meeting/2026-january-council-open-session-minutes.pdf

https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/jan26/2026-january-rule-55-revisions-for-notice-comment.pdf
https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/jan26/2026-january-bylaws-accreditation-council-section-recommended-amendments.pdf

[50] Section Bylaws, Article I, Section 2; Standard 301.

[51] Section Rule 4(b)(1).

[52] Section Standard 204; Rule 4(f).

[53] Section Rule 4(e)(2); IOP 3. The peer reviews include participation of law school faculty and staff, practitioners, and judges.

the Site Visit team;[54] and Council review of these extensive materials. Upon review of these materials, the Council can find a law school in compliance or ask it for additional information to determine its compliance with the Standards.[55] The Council also can find a law school out of compliance with the Standards and require it to return to compliance within two years, while also requiring regular reports so that the Council can monitor the law school's progress towards compliance.[56]

In addition, the Council regularly monitors Standards compliance for each law school through three questionnaires that every accredited law school must complete annually: the general annual questionnaire, bar admissions questionnaire, and employment questionnaire. Based on a review of questionnaire responses, the Council will notify law schools through its interim monitoring process if any possible Standards compliance issues are found, request information, and take action if needed.[57]

D. Staffing of the Accreditation Project

The Managing Director's Office supports the Council in fulfilling each of these core functions. The Managing Director for Legal Education and Accreditation leads the Managing Director's Office and the staff of 18 employees.[58] Both the Council and Managing Director's Office staff rely heavily on approximately 200 volunteer Site Visit team members each year. These dedicated volunteers carefully review hundreds of pages of law school materials in advance of each Site Visit; conduct a multi-day visit to the law school with dozens of interviews of faculty, staff, and students; and write a report of their findings.

The collective work of this team is comprehensive, including (in the last year alone) 230 accreditation letters drafted and approved by the Council; 20 law school regular site visits and 11 targeted fact-finding visits; 591 annual questionnaires administered and collected from law schools (3 for each school); and the Council's review of substantive changes, distance education programs, provisional accreditation applications, and complaints.[59] It would be difficult to replicate this level of oversight without an investment of duplicative resources and coordination across multiple accreditors.

Conclusion

The Council welcomes this opportunity to explain the scope and value of its work, and the importance of retaining the Council as the accreditor for Tennessee law schools to ensure a national accreditation system with portable law degrees that benefit all. We encourage the Tennessee Supreme Court to continue working with the Council as a national

---

[54] Section Rule 4(h).

[55] Section Rules 11, 12.

[56] Section Rule 13.

[57] Section Rule 5, 6. See generally https://www.americanbar.org/groups/legal_education/accreditation/schools-seeking-aba-approval/#:~:text=After%20a%20law%20school%20is,Rule%205%20on%20Interim%20Monitoring.

[58] Six staff members hold J.D. degrees and two hold Ph.D. degrees in Communication and History.

[59] Specifically, in the last year the Council has addressed: 12 Variances; 28 Substantive Changes; 18 Annual Reports on Law School Distance Education Programs; 1 Application for Provisional or Full Approval; 41 Complaints against Law Schools.

accreditor, while also innovating and serving the state's specific needs particularly as related to access to justice.

The Council would be honored to engage in further dialogue with the Supreme Court of Tennessee to assist in your deliberations and also to improve the work of the Council.

Sincerely,

Daniel Thies
Council Chair

Jennifer Rosato Perea
Managing Director

MaryBeth Lindsey

From: appellatecourtclerk
Sent: Tuesday, March 17, 2026 9:57 AM
To: MaryBeth Lindsey; Kim Meador
Subject: FW: Comments of the Accreditation Council to Order of Supreme Court of Tennessee
Attachments: AccreditationCouncilTennesseeCommentMarch162026Final.docx

Please process the attached comment.

Jim

James M. Hivner
Clerk of the TN Appellate Courts
Phone: (615) 741-1314
Email: jim.hivner@tncourts.gov
Address: 401 7th Ave. N., Nashville, TN 37219

From: Jenn Rosato Perea <Jenn.RosatoPerea@americanbar.org>
Sent: Monday, March 16, 2026 5:02 PM
To: appellatecourtclerk <appellatecourtclerk@tncourts.gov>
Cc: Daniel Thies <danielthies@webberthies.com>; Melissa Hart <mhartcolorado@gmail.com>; Jenn Rosato Perea <Jenn.RosatoPerea@americanbar.org>
Subject: Comments of the Accreditation Council to Order of Supreme Court of Tennessee

Warning: Unusual sender <jenn.rosatoperea@americanbar.org>
You don't usually receive emails from this address. Make sure you trust this sender before taking any actions.

Dear Mr. Hivner:

Attached please find a Comment of the Accreditation Council to the September 16, 2025 Order the Supreme Court of Tennessee.

Please let me know if you have any questions.

All my best, Jennifer Rosato Perea

Jennifer Rosato Perea
Managing Director
American Bar Association
Section of Legal Education and Admissions to the Bar

321 North Clark Street
Chicago, IL 60654-7598
(312) 988-5103

Jenn.RosatoPerea@americanbar.org

STATE OF TENNESSEE

Office of the Attorney General

JONATHAN SKRMETTI
ATTORNEY GENERAL AND REPORTER

P.O. BOX 20207, NASHVILLE, TN 37202
TELEPHONE (615)741-3491
FACSIMILE (615)741-2009

March 16, 2026

James Hivner, Clerk
Re: Regulatory Reform
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219
Email: appellatecourtclerk@tncourts.gov

Re: No. ADM2025-01403; Recommendation to Revise Rule 7, Article II to Eliminate Reliance on ABA Accreditation for Law Schools

Honorable Justices of the Tennessee Supreme Court:

Our office welcomed this Court's Order soliciting comments on its regulation of the legal profession. While all seven issues raised by the Order are important for the profession and the public, our comment addresses the first issue presented: "Whether the Court should modify, reduce, or eliminate its reliance on the ABA accreditation in setting minimum educational requirements for applicants to the Tennessee Bar." We respectfully recommend that the Court revise Rule 7, Article II, of the Supreme Court Rules to eliminate reliance on American Bar Association ("ABA") accreditation in setting minimum educational requirements for applicants to the Tennessee Bar. This revision is necessary to restore credibility to the accreditation process and protect the public interest.

Introduction

The education of future lawyers is of critical importance not just to our profession but to the people of Tennessee, our constitutional republic, and the rule of law. Today's law students will one day soon serve as officers of the court, advocating for clients in life-changing cases, and even wielding the awesome power of the State as judges, prosecutors, and attorneys general. Given the stakes, the entity trusted to set the standard for their legal education is naturally also of critical importance.

Unfortunately, the American Bar Association is no longer equipped to serve this important function. It has abdicated its role as an objective, unbiased accrediting body. It has traded legal rigor and a commitment to institutionalism for activist advocacy of aggressively left-leaning

positions. As demonstrated below, the organization has been ideologically captured for decades, and its persuasiveness as a voice on behalf of the rule of law has progressively diminished.

As set out in detail below, the ABA has consistently weighed in on highly contentious legal issues, often on the losing side, usually on the opposite side of Tennessee, and predictably on the side of left-leaning conventional wisdom.[1] The ABA has yet to comply with an unequivocal decision of the United States Supreme Court highlighting the illegality of racial discrimination in education, instead insisting that law schools continue to take race into account and then later equivocating about appropriate policies—a failure that by itself disqualifies the organization from any oversight role in legal education. Finally, the ABA as an organization continues to push the bizarre theory that the Equal Rights Amendment was ratified and is part of the United States Constitution.[2] If the ABA cannot get the contents of the Constitution right, how can anyone have confidence in the organization's oversight of legal education?

Tennessee cannot and should not rely on the ABA to guarantee the competence and ethics of future lawyers. Reliance on such an organization for such a pivotal role ultimately erodes public trust in the profession and the judicial system. Outsourcing significant authority to a biased and activist private organization hostile to the policies of our State is inconsistent with the judiciary's obligation to preserve the independence, neutrality, and credibility of the legal system and our constitutional order. Oversight of accreditation by an activist group is especially untenable at a moment when the rule of law is undermined by impetuous trial judges playing policymaker, while the public remains largely ignorant of the proper judicial role and the interplay between popular sovereignty and a constitution. It's time for Tennessee to hand the indispensable job of setting educational standards for our future lawyers to a body demonstrably committed to intellectual rigor and neutrality.

The Purpose of Accreditation

The purpose of accreditation is simple: to establish and verify minimum standards of legal education so that graduates are prepared to practice law competently and ethically in order to effectively represent clients and protect the public interest. Accreditation is quality assurance for consumer protection and the administration of justice. The integrity of legal education has implications beyond the profession. Without appropriate minimum standards, the overall quality of the bar would drop, the daily work of the courts would be more complicated, and unsophisticated clients could find themselves more likely to be poorly represented. The bar exam provides a threshold check on rudimentary knowledge, but the law is a *profession*—the necessary judgment develops over time not just through reading, but via a process of acculturation over the course of years. In the past a robust apprenticeship system could provide the foundation for a legal career.[3]

---

[1] *See infra.*

[2] *See, e.g.*, ABA, *Equal Rights Amendment*, https://tinyurl.com/3bhnhdkz (last visited Mar. 16, 2025).

[3] We appreciate the Court's openness to revisiting apprenticeship and recognize that a well-designed apprenticeship system could effectively supplement the provision of legal services in rural or impoverished areas. Our office would certainly be open to participating in an apprenticeship program. We see continued success in our internship program for law students as well as our fellowship program for select recent law school graduates, both of which are somewhat analogous to time spent in apprenticeship. Many of our attorneys have benefitted from judicial clerkships which can also be seen as apprenticeship analogues. We believe that some measure of formal legal education should be a

These days, it is years in law school that reroute the channels of the nascent attorney's brain and prepare them to take their first steps into practice. Law students learn not only doctrines and cases and the basics of legal writing and statutory interpretation, but also the attitude of appropriate rigor, respect, and detachment. They learn a commitment to the overall system of dispute resolution that is more important than the outcome in any given case.

The ABA has Failed in its Duty as an Accrediting Body

Historically, the ABA reflected a commitment to institutionalism and meaningfully contributed to promoting the appropriate formation of law students through their legal education. But regrettably, the ABA, which developed the national accreditation system for law schools, now fails to accomplish the basic purpose of an accrediting body.[4] With respect to accreditation and to its role representing the interests of the entire legal profession, the organization is simply different than what it used to be. Over a century ago, the ABA standardized legal education across the United States.[5] It created a national ethics code.[6] It pioneered pro bono practice and championed access to justice.[7] But it has since changed its course, deviating from its core mission of advancing the profession and the rule of law to pursue instead activist posturing.[8] The value of accreditation in large part depends on the accrediting body's neutrality. When accreditation becomes intertwined with ideological advocacy, it risks losing its legitimacy. The ABA has abandoned its laudable legacy by forsaking its high responsibility as an objective professional accrediting body, and has, as a result, squandered its credibility as an accreditor.

How the ABA has Failed

First, it has adopted legally suspect and politically charged accreditation standards

The ABA has conclusively demonstrated such failure through (1) its unlawful requirements for law school accreditation, and (2) its advocacy for consistently left-wing causes, usually adverse to the position of the State of Tennessee and often unpersuasive in the courts. First, the ABA has adopted at least two standards that are inconsistent with its obligation to maintain professional objectivity and ideological neutrality: Standard 206 and Standard 303(c). Standard 206, now

---

necessary prerequisite for the practice of law and have not explored the relevant tradeoffs sufficiently to offer any feedback beyond this amorphous encouragement.

[4] We leave it to other commenters to address the other pernicious effects of the ABA's monopoly on accreditation: artificial price increases, lack of innovation, and onerous regulations driving up the cost of legal education to ever more jarring heights. These are the predictable outcomes of monopolies in other contexts.

[5] ABA, *ABA Timeline*, https://tinyurl.com/yc7t65mn (last visited Mar. 16, 2026).

[6] *Id.*

[7] *Id.*

[8] Granted, many local, state, and specialty bar associations have remained committed to a broader view of the profession and faithfully uphold the best of the ABA's storied heritage. The ABA's Antitrust Law Section, for example, provides thoughtful programming elucidating the workings of a sophisticated subdiscipline of the law. And while the Standing Committee on the Federal Judiciary has been the subject of intense controversy at times, we have also had positive encounters with attorneys working hard in good faith to advance the highest ideals of the ABA through their service on that committee. The ABA is not monolithic, and it remains a locus for advancing the profession in many respects. But those bright spots do not offset the failings of the broader organization set out herein with respect to the ABA's credibility as an accreditor.

suspended but not rescinded, mandated illegal racial preferences in admissions and hiring.[9] Even after the Supreme Court of the United States emphasized that racial discrimination in higher education admissions was against the law, the ABA required law schools to consider skin color in whom they admitted as students and whom they hired as faculty and staff.[10] A professional accrediting body should never place law schools in the position of choosing between compliance with accreditation requirements and compliance with federal constitutional law. That holds especially true when the body is accrediting schools for legal education. Under external pressure, the ABA eventually sounded a tactical retreat and has now suspended Standard 206 through August 2027.[11] Presumably the suspension will turn into a rescission. But it has taken a long time to get to this point. Given its purported role as the gatekeeper for our nation's legal education, the ABA's failure to immediately eliminate and completely disavow its racial discrimination mandate is as nonplussing as it is telling.

Standard 303(c), however, is still on the books.[12] It effectively mandates DEI curriculum in law schools. There are, of course, neutral methods for ensuring that our nation's law students understand the gravity of their imminent professional obligations and the odiousness of racism. But in the context of the Kendiist excesses of the COVID era, Standard 303(c) smacks of ideological coercion. The crabbed view of human identity inflicted on law students from the outset of their legal education chills actual diversity of thought. Even when well-intentioned, such mandates move accreditation away from evaluating competence and toward prescribing ideological uniformity. Law schools are free to include a heavy dose of critical race theory if they choose, but mandating and prioritizing this indoctrination for all law schools diminishes the centrality of careful legal analysis to a budding lawyer's formation and thus works against the primary goal of a legal education.

Again, the ABA's standards are not mere well-meaning suggestions. They are compulsory for law schools to maintain accreditation, and the ABA wields its power to enforce compliance. An accreditor that *forces* schools to steer resources toward a preoccupation with race is necessarily steering them away from study of the law. That is counterproductive and demonstrates that the accreditor's highest priority is something other than ensuring students are educated in the law.

Meanwhile, the ABA's accrediting regime ensures that law schools deviating from the ideological orthodoxy get bludgeoned. Just last year, the ABA targeted St. Thomas University College of Law, a private Catholic law school in Florida, for alleged violations of Standard 205(c) on nondiscrimination.[13] Reportedly, the ABA took issue with the law school's refusal, consistent with its explicit religious mission, to fund an LGBTQ student group's participation in a Pride

---

[9] Tennessee sent a letter on behalf of a 21-state coalition explaining the legal defects in Standard 206. Letter from Attorney General Jonathan Skrmetti, et al. to Council of the ABA (June 3, 2024), https://tinyurl.com/5fzwyx8n.

[10] *Id.*

[11] Julianna Hill, *Legal Ed Council Moves Forward Proposals to End Diversity Standards, Allow Alternative Bar Pathways*, ABA (Feb. 23, 2026, at 9:52 AM CST), https://tinyurl.com/mw9w2yef.

[12] Standards and Rules of Procedure for Approval of Law Schools 2025-26, *ABA Standard 303: Curriculum (c)*, ABA, https://tinyurl.com/5djbnfw6 (last visited Mar. 16, 2026).

[13] Julianne Hill, *St. Thomas College of Law Out of ABA Accreditation Compliance*, ABA (Sept. 23, 2025, at 12:44 PM CDT), https://tinyurl.com/y347282k.

Parade.[14] And this despite the standard's ostensible protection for religiously affiliated law schools.[15] After Florida Attorney General James Uthmeier accused the ABA of religious discrimination,[16] the ABA seemingly reversed course and declared the school compliant.[17] When an accrediting regime pushes schools to the left and punishes schools that stray to the right, its neutrality, and thereby its legitimacy, evaporates.

Second, the ABA has engaged in persistent left-wing policy advocacy

The same ideological tides that have led the ABA to adopt politically charged and legally suspect accreditation standards are reflected by the organization's actions in the broader legal arena. The ABA has entrenched itself as a policy advocacy organization with a reflexive left-wing bias. This is the second dispositive demonstration of its failure to instantiate the ideal of an accrediting entity. For decades, the ABA has staked out controversial positions about immigration, firearms, sexual orientation, gender identity, abortion, and climate change, each articulating a reliably left-wing point of view driven by policy preference.[18]

The most jarring example is the ABA's inexplicable insistence that the Equal Rights Amendment is part of the United States Constitution.[19] That is, even according to prominent ERA champion Justice Ruth Bader Ginsburg, nonsense.[20] Multiple federal appellate courts have agreed.[21] But how damning for an organization whose raison d'être is setting the standard for legal education to get the law so wrong. Getting the text of the Constitution wrong is a colossal mistake for the organization that wants to continue determining whether legal education is appropriately rigorous. The ABA has also joined countless amicus briefs in a variety of high-profile and controversial cases, primarily and predictably advancing the cause of the left, whatever that cause may be in a given case.[22]

In *United States v. Skrmetti*, the ABA weighed in against evidence-based medicine to oppose Tennessee's prohibition on irreversible pediatric gender transition procedures, a law passed by a

---

[14] Kyle Nazareth, *Ending the ABA's Inclusion Trap*, Catholic League for Religious and Civil Rights (Feb. 25, 2026), https://tinyurl.com/5h28s4mr.

[15] ABA, *Standards and Rules of Procedure for Approval of Law Schools*, https://tinyurl.com/bdz2fcpj (last visited Mar. 16, 2026).

[16] Letter from Attorney General James Uthmeier to Daniel Thies, Chairman of the Counsil of the Section of Legal Education, and Council Members of the Section of Legal Education (Nov. 6, 2025), https://tinyurl.com/y3nmpzrv.

[17] ABA, Council Decision: *Notice of Law School Demonstrating Compliance with Standards 202 and 205* (Dec. 5, 2025), https://tinyurl.com/3w9ewu7k.

[18] ABA, *Reproductive Rights at the U.S. Supreme Court*, https://tinyurl.com/mwv8zu79 (last visited Mar. 16, 2025); ABA, *Standing Committee on Gun Violence*, https://tinyurl.com/63hmsukv (last visited Mar. 16, 2025); ABA, *ABA names recipients of 2026 Stonewall Award honoring LGBTQ+ advancements in legal profession* (Feb. 27, 2026), https://tinyurl.com/fypfd4t3; ABA Commission on Sexual Orientation and Gender Identity, *Policy and the law*, https://tinyurl.com/48erks2b (last visited Mar. 16, 2025); ABA, *Immigration*, https://tinyurl.com/4cwzwzvh (last visited Mar. 16, 2025); ABA, *Climate Change Takes Center Stage* (Oct. 17, 2019), https://tinyurl.com/ywukd3p8.

[19] Adopted, House of Delegates Resolution 601 (2024) (ABA Annual Meeting), https://tinyurl.com/ys9v9vfz.

[20] *See* Jospeh Guzman, *Did Ruth Bader Ginsburg just kill the Equal Rights Amendment?*, The Hill (Feb. 12, 2020), https://tinyurl.com/yap2c2bx.

[21] *Valame v. Trump*, 157 F.4th 1172, 1173 (9th Cir. 2025); *Illinois v. Ferriero*, 60 F.4th 704, 713 (D.C. Cir. 2023).

[22] *See* ABA, *Amicus Library*, https://tinyurl.com/mw4senzs (last visited Mar. 16, 2026).

bipartisan supermajority of Tennessee legislators.[23] The Supreme Court of the United States rejected the ABA's position and gave Tennessee a landmark victory.[24] Why should Tennessee trust the ABA to tell law schools how to operate when the ABA is dedicating resources to undermining Tennessee's exercise of self-government?

The ABA's engagement in other amicus efforts yields similar results. In *Students for Fair Admissions*, the ABA unsuccessfully argued in favor of race-conscious decision-making by institutions of higher education.[25] It is difficult to have confidence in an accreditor that is fighting in favor of illegal racial discrimination in the schools it oversees. In *303 Creative*, the ABA opposed a Coloradan's First Amendment right against compelled speech.[26] Tennessee, under Attorney General Herbert Slatery, joined an amicus brief supporting First Amendment protections.[27] The Court rejected the ABA's position and held that Colorado's effort to compel speech ran afoul of the First Amendment.[28]

In another example, *SEC v. Jarkesy*, the ABA filed an amicus brief that celebrated the role of administrative law judges as "functionally comparable to federal district court judges" and insisted on the need to channel cases through administrative law judges instead of the federal courts.[29] Tennessee joined an amicus brief emphasizing the importance of keeping the judicial power in the judicial branch.[30] The Supreme Court of the United States agreed and held that the constitutional demand of separation of powers requires the right of a jury trial before a neutral adjudicator.[31]

The ABA and Tennessee find themselves on opposite sides of another case, *Trump v. Barbara*, that the Court has yet to resolve. The ABA filed a brief in support of an expansive reading of the Fourteenth Amendment's citizenship clause, arguing that "Courts and policymakers in the political branches have recognized and applied that rule consistently since the adoption of the Fourteenth Amendment."[32] Tennessee filed a brief on behalf of twenty-five states and Guam identifying numerous instances where nineteenth-century judges and policymakers read the constitutional rule to reject the mere-presence understanding advocated by the ABA and others.[33] The Court may resolve the issue either way, or may avoid the constitutional argument altogether in light of other issues presented, but once again the organization entrusted with accrediting legal education in Tennessee is injecting itself into a controversial case and taking a position against Tennessee's.

---

[23] Brief for ABA as Amicus Curiae Supporting Petitioner, *United States v. Skrmetti*, 605 U.S. 495 (2025), 2024 WL 4122044.

[24] *Skrmetti*, 605 U.S. at 510. In a scathing concurrence, Justice Thomas excoriated efforts of the "expert class" to undermine popular sovereignty and hijack constitutional law. *Id.* at 530-31. His critique parallels our concern with the ABA acting in the dual role of activist and accreditor.

[25] Brief for ABA as Amicus Curiae Supporting Respondents, *Students for Fair Admissions, Inc., v. Harvard*, 600 U.S. 181 (2023), 2022 WL 3108796.

[26] Brief for ABA as Amicus Curiae Supporting Respondents, *303 Creative LLC, v. Elenis*, 600 U.S. 570 (2023), 2022 WL 3648205.

[27] Brief for Arizona, et al. as Amici Curiae Supporting Petitioners, *303 Creative, LLC v. Elenis*, 600 U.S. 570 (2023), 2020 WL 525392.

[28] *303 Creative, LLC*, 600 U.S. at 603.

[29] Brief for ABA as Amicus Curiae Supporting Petitioner, *SEC v. Jarkesy*, 603 U.S. 109 (2024), 2023 WL 5826734 at *5.

[30] Brief for West Virginia, et al. Supporting Respondents, *SEC v. Jarkesy*, 603 U.S. 109 (2024), 2023 WL 6974422.

[31] *Jarkesy*, 603 U.S. at 120-21.

[32] Brief for ABA as Amicus Curiae Supporting Respondents, *Trump v. Barbara*, 2026 WL 597500, at *4 (2026).

[33] Brief for Tennessee, et al. as Amici Curiae Supporting Petitioners, *Trump v. Barbara*, 2026 WL 289030 (2026).

All of this is the ABA's *right*. The organization is free to pick sides in controversial cases. And in our adversarial system, everyone benefits when the courts are presented with the best possible arguments on each side of a case. But the ABA's exercise of its right to take sides in controversial cases directly and needlessly undermines its *duty* to neutrally regulate the accreditation of law schools for the good of the bar, the public, and the rule of law. When a regulatory body engages in persistent policy advocacy, it can create the appearance that the standards it administers further ideological commitments rather than neutral education criteria. This appearance of bias is reinforced by the decisions the ABA has made in its role as accreditor that are consistent with its left-leaning public activism.

We Recommend that the Court Eliminate Reliance on ABA Accreditation

Through its activism, the ABA has disqualified itself as an appropriate accrediting body for law schools. This Court should therefore eliminate its reliance on the ABA in setting educational standards for Tennessee lawyers. When the ABA was an organization focused on establishing professional standards, it made sense for the ABA to serve as the nation's law school accreditor. As the organization became more and more focused on picking winners in policy debates, that justification eroded. It has now reached the end of the line.

The ABA's control over legal education gives significant control over the profession. Today's law students are tomorrow's lawyers, judges, and law professors. They must be inculcated into a culture of constructive disagreement, rigorous advocacy, and professional detachment. The ABA of old was a perfect vehicle to advance those causes. But today's ABA has chosen to become something different from what it once was. It can absolutely do so, but there are consequences. The ABA's advocacy on hotly contested political issues is incompatible with the regulatory neutrality necessary to ensure a robust future for our adversarial system of justice. Accordingly, we recommend that this Court revise Rule 7, Article II, and all other references within the Supreme Court Rules that accord the ABA any role in determining qualification directly or indirectly for the Tennessee Bar.

Alternatives to ABA Accreditation

Abandoning the ABA as the exclusive accrediting authority does not require abandoning quality standards in legal education. On the contrary, it allows the Court to design a system that ensures licensing standards remain fair, neutral, and focused on professional and ethical competence. For Tennessee law schools, independent accreditation by the Tennessee Board of Law Examiners has already proven successful in the Nashville School of Law.[34] That institution demonstrates unequivocally that effective legal training does not depend on ABA accreditation.

For non-Tennessee law schools, new accrediting bodies, such as the Commission for Public Higher Education, could expand their scope to include law schools. Texas provides an alternative example: the Texas Supreme Court ended its reliance on the ABA in January 2026 and assumed

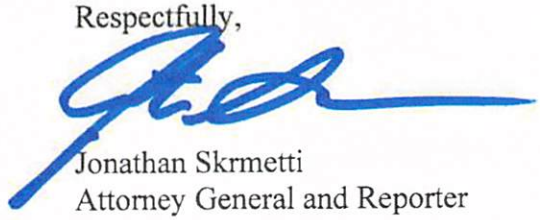
[34] The Nashville School of Law produces competent and ethical graduates who have gone on to distinguished careers, including some who now sit on the bench and others who serve in this Office.

approval for accreditation.[35] Likewise, the Florida Supreme Court amended its rules in January 2026 to allow for additional accrediting bodies, effective October 2026.[36] The best option(s) may only be revealed in time. But it is clear that it is time to consider alternative options and move on from the current arrangement.

Conclusion

The ABA's activist posture is incompatible with service as an accreditor, but we respect that the ABA is honest about its intentions. The ABA has taken positions against the State of Tennessee time and again and has even resisted complying with a clear holding of the Supreme Court of the United States. The ABA has wielded its purportedly neutral technocratic judgment as a fig leaf for its activism. But the fig leaf has wilted. Many have worked and waited for the ABA to abandon its ideological crusade and reclaim its legacy of universal professionalism. But protecting the integrity of the profession and public trust in our judicial system requires an objective, nonpartisan, nonideological arbiter of legal education standards in the State of Tennessee. That is no longer the ABA. It's time to move on.

Respectfully,



Jonathan Skrmetti
Attorney General and Reporter

---

[35] *Final Approval of Amendments to Rule 1 of the Rules Governing Admission to the Bar of Texas*, Order, No. 26-9002 (Tex. Jan. 6, 2026), https://tinyurl.com/3j6s498b.

[36] *In Re: Amendments to Rules Regulating the Florida Bar and Rules of the Supreme Court Relating to Admissions to the Bar*, No. SC2025-2064 (Fla. Jan. 15, 2026), https://tinyurl.com/3dm9wcmz.

MaryBeth Lindsey

From: appellatecourtclerk
Sent: Tuesday, March 17, 2026 10:10 AM
To: MaryBeth Lindsey; Kim Meador
Subject: FW: No. ADM2025-01403; Recommendation to Revise Rule 7, Article II to Eliminate Reliance on ABA Accreditation for Law Schools
Attachments: 2026.03.16 ABA Letter.pdf

Please process the attached comment.

Jim

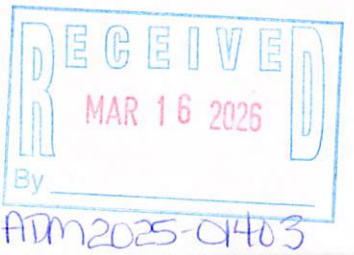
James M. Hivner
Clerk of the TN Appellate Courts
Phone: (615) 741-1314
Email: jim.hivner@tncourts.gov
Address: 401 7th Ave. N., Nashville, TN 37219

From: Tammy Fulwider <Tammy.Fulwider@ag.tn.gov>
Sent: Monday, March 16, 2026 5:48 PM
To: appellatecourtclerk <appellatecourtclerk@tncourts.gov>
Subject: Re: No. ADM2025-01403; Recommendation to Revise Rule 7, Article II to Eliminate Reliance on ABA Accreditation for Law Schools

Attached please find a letter from the Tennessee Attorney General's Office Re: No. ADM2025-01403; Recommendation to Revise Rule 7, Article II to Eliminate Reliance on ABA Accreditation for Law Schools. Please let us know if you need any other information. Thank you!

MaryBeth Lindsey

From: Katja Hedding <katja@katjaheddinglaw.com>
Sent: Monday, March 16, 2026 9:30 PM
To: appellatecourtclerk
Subject: Comments on docket No. ADM2025-01403



Dear Sir or Madam:

I would like to comment on the the proposed rule of permitting non attorneys/paraprofessionals to practice law in Tennessee.
As an immigration attorney this would have disastrous consequences on the immigrant community. Immigration law is very complex and not just filling out forms. Even form filling is very detailed and one incorrectly checked box can lead to deportation and removal from the United States. Giving paraprofessionals permission to practice law is not only going to hurt the immigrant but will have long term effects on his or her entire family.

I have filed several complaints against these paraprofessionals to the Tennessee AG's office. The notarios have completely messed up the immigrants' rights to stay in the United States.

I've studied law for many years and I have practiced immigration law since 2011. I obtained my first law license from Finland, then Sweden and finally Tennessee. It takes many years to gain the knowledge and understand the legal thinking needed to practice law. If someone wants to practice law then I do think the proper way is to go to law school and then take the bar exam. Paraprofessionals might fit into the medical field but certainly not into the legal field especially not practicing immigration law.

My comment is that the courts of Tennessee should not adopt the proposed rule allowing non-attorney ownership of law firms and unsupervised paraprofessional insertion into the extraordinarily detailed, picky and consequential work of immigration attorneys.

Thank you!

Respectfully submitted,

Katja Hedding
KATJA HEDDING
Attorney at Law
IMMIGRATION LAW
p: (615) 962-7441
a: 632 N. Walnut St., Murfreesboro, TN 37130
w: www.katjaheddinglaw.com e: katja@katjaheddinglaw.com

KATJA HEDDING LAW

MaryBeth Lindsey

From: appellatecourtclerk
Sent: Tuesday, March 17, 2026 10:02 AM
To: MaryBeth Lindsey; Kim Meador
Subject: FW: Comments on docket No. ADM2025-01403
Attachments: Comments on docket No. ADM2025-01403

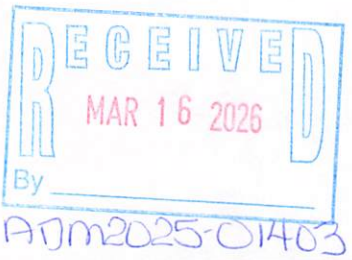
Please process the attached comment.

Jim

James M. Hivner
Clerk of the TN Appellate Courts
Phone: (615) 741-1314
Email: jim.hivner@tncourts.gov
Address: 401 7th Ave. N., Nashville, TN 37219

MaryBeth Lindsey

From: Will York <will@ozmentlaw.com>
Sent: Monday, March 16, 2026 10:49 PM
To: appellatecourtclerk
Subject: Public Comment No. ADM2025-01403



Dear Clerk Hivner:

Please accept this public comment for filing and consideration in No. ADM2025-01403.

I. Introduction

I respectfully submit this comment in opposition to any proposal to modify, reduce, or eliminate Tennessee's restrictions on non-lawyer ownership of law firms or fee sharing with non-lawyers, as addressed in Question 7 of the Court's Order. I also urge the Court to proceed with great caution before adopting reforms that would materially reduce the educational and training requirements for admission to the practice of law, as addressed in Questions 1 through 4. I write separately below to express support for certain reforms the Court has identified, including thoughtful revision of interstate admission requirements under Question 5, and a carefully bounded supervisory role for paraprofessionals under Question 6—though not the independent practice pathway that Question 6 might otherwise contemplate.

I wish to acknowledge at the outset the seriousness of the concerns that have prompted this inquiry. The Court's Order documents a genuine and pressing problem. Ninety-two percent of the civil legal needs of low-income Tennesseans go unmet. More than 1.2 million Tennesseans—nearly one in five residents—qualify for LSC-funded legal aid, yet funding reaches only a fraction of those eligible. Twenty Tennessee counties have fewer than ten lawyers each. These are not abstract statistics. They describe a system that is failing real people in real emergencies, and the Court is right to examine whether current regulatory structures unnecessarily compound that failure.

I write not in opposition to innovation, but from the conviction that reforms affecting the independence, competence, and accountability of legal practitioners must be approached with particular care, because those features of the profession exist first and foremost for the protection of the public—and most acutely for the protection of those who cannot easily protect themselves.

My perspective is informed both by private practice—including immigration law, a field in which the consequences of inadequate legal representation can be catastrophic and irreversible—and by service. I have been recognized as one of the Court's Attorneys for Justice for pro bono work. I

do not approach this issue from a position of indifference to unmet legal need. It is precisely because I have seen firsthand how badly Tennesseans need timely and competent legal assistance that I believe the Court should resist reforms that expand the appearance of access while diminishing the quality and reliability of the services provided.

II. Question 7: Non-Lawyer Ownership and Fee Sharing

The prohibition on non-lawyer ownership and fee sharing is not merely a matter of professional tradition or market structure. It reflects a foundational principle: a lawyer's professional judgment must remain independent of persons whose duties, incentives, and obligations are not aligned with those owed by counsel to the client and to the legal system. A lawyer is not simply a vendor of services. The lawyer occupies a fiduciary and quasi-public role, bound by duties of loyalty, confidentiality, candor, competence, and independent judgment. Those duties often require a lawyer to subordinate financial considerations to the client's interests, to advise against a course that may be profitable but imprudent, to decline a matter that cannot be handled competently, or to take positions that are ethically necessary even when economically inconvenient.

Introducing non-lawyer ownership into that structure would create unavoidable tension between professional judgment and commercial incentives. Even assuming the best of intentions, outside ownership necessarily carries with it pressures relating to revenue, efficiency, market share, growth, staffing, case selection, and return on investment. Those pressures may affect how much time is devoted to client counseling, how cases are screened, whether difficult but meritorious matters are accepted, whether settlement is encouraged for institutional rather than client-centered reasons, and whether lawyers retain genuine freedom to exercise judgment contrary to business preferences.

That risk is especially acute because legal services are not consumer goods that can be evaluated easily by price or superficial measures of efficiency. In many legal matters, the client cannot accurately assess the quality of representation at the time services are rendered, and in some cases cannot fully appreciate the consequences of inadequate representation until the harm has become irreversible. This is particularly true in matters involving family integrity, housing, domestic violence, public benefits, criminal exposure, employment loss, immigration consequences, and personal safety—precisely the matters affecting the populations whose access to justice concerns the Court most.

Nor is the argument for ownership reform strengthened merely by invoking access to justice. Access is not satisfied by making some legal assistance more available in name while weakening the conditions that make the assistance trustworthy. The public interest is not served by substituting financial inaccessibility with a system in which the independence of counsel is diluted, professional loyalty is complicated by outside ownership, and the quality of representation is rendered more vulnerable to institutional market pressures. Any reform worthy of adoption should improve access without impairing the structural safeguards that protect clients who are least able to protect themselves. For these reasons, I urge the Court to preserve Tennessee's current restrictions under Tennessee Rule of Professional Conduct 5.4 in their essential form.

III. Questions 1–4: Educational Requirements and Pathways to Licensure

There is room for thoughtful discussion about apprenticeship models, supervised practice, and experiential training as methods of reducing the cost of entering the profession while preserving or even improving competence. But the Court should be wary of equating lower cost with equal readiness. The responsibilities entrusted to licensed counsel are extensive and consequential. A lawyer must do more than know rules in the abstract. A lawyer must identify issues in incomplete factual records, interpret statutes and evolving precedent, understand procedural consequences, manage ethical conflicts, advise clients under pressure, preserve claims and defenses, and anticipate downstream collateral effects across multiple bodies of law. Those skills are developed through rigorous education, disciplined training, and supervised practice.

To reduce those requirements substantially without a demonstrated substitute of equal rigor would risk shifting costs away from institutions and onto clients. The savings would be immediate and visible; the harms would be delayed, diffuse, and borne by those least able to absorb them. Missed legal issues, poor counseling, inadequate record development, procedural defaults, and avoidable errors are not merely technical failures. In many cases they alter lives permanently. The public is not protected when admission becomes cheaper at the cost of preparedness.

This is not to say that the current system is beyond improvement. Tennessee may reasonably consider expanded supervised-practice or apprenticeship pathways tied to clearly defined competency benchmarks, and may streamline certain admissions processes where public protection will not be compromised. I would support reform in that direction—provided that any reduced-cost pathway is accompanied by rigorous and demonstrated measures of substantive readiness, not merely reduced hours of formal instruction.

IV. Question 5: Interstate Admission and Mobility

I write separately to express support for reasonable reform in the area of interstate admission. The Court's current barriers to admission for attorneys licensed in other states can impede the flow of competent practitioners into Tennessee communities with the greatest unmet need, including the rural counties identified in the Order as attorney deserts. Thoughtful reciprocity reform—appropriately calibrated to ensure familiarity with Tennessee law and procedure—could meaningfully expand the supply of qualified legal services without compromising public protection. I encourage the Court to act with relative confidence on this question.

V. Question 6: Paraprofessional Roles

I am not categorically opposed to a role for trained paraprofessionals in the delivery of legal services. However, any such role must be defined with great precision and must not extend to unsupervised practice in any matter where legal judgment is implicated—including, and perhaps especially, matters that appear routine to an untrained eye. The central danger of independent paraprofessional practice is not confined to obviously complex litigation. It is most acute in matters that superficially appear ministerial but conceal significant legal complexity beneath an accessible surface.

Asylum practice illustrates this problem with particular clarity, and the population of asylum seekers makes it especially concerning. These are already among the most vulnerable individuals who come before any legal system: people who have frequently fled persecution, violence, or oppression; who may have limited English proficiency or literacy in any language; who are unfamiliar with American legal institutions; and who are, by the circumstances that brought them here, predisposed to place their trust in any person or office that presents even a minimal veneer of official authority or state blessing. Throughout the country, individuals holding themselves out as "paralegals" or notarios regularly assist asylum seekers with their claims—often with genuine intent to help, and often causing serious, irreversible harm.

What a well-meaning non-lawyer may approach as a form-completion exercise is, in the hands of a competent immigration attorney, an assessment that begins well before a single page is filed—one that involves identifying available pathways, weighing competing options, evaluating risk, and balancing legal interpretations that may vary by circuit. Consider a client who lacks a formal entry document. A paralegal may conclude, at a glance, that the client cannot satisfy the "inspected and admitted" requirement of Immigration and Nationality Act ("INA") § 245(a), 8 U.S.C. § 1255(a), and is therefore ineligible to adjust status. An attorney familiar with *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010), knows to ask a different and more specific question: how, precisely, did this person enter? If the client presented at a port of entry and was waved through—even without valid documents, even without being questioned—that entry may constitute a procedurally regular admission sufficient for § 245(a) purposes. The door the paralegal closed was never actually closed. Opportunities like this are not exotic edge cases. They are the everyday substance of immigration practice, and they require an attorney who knows what questions to ask and what precedent to apply—including precedent that varies by circuit and continues to develop. The evaluation of a single client's case may require weighing multiple potential pathways simultaneously, accounting for circuit-specific authority that diverges on controlling questions, and assessing the relative risks of pursuing one theory over another. That is not form-filling. It is legal judgment.

The stakes attached to that judgment are substantial and, under current policy, have become more consequential than ever. The USCIS filing fee for a Form I-485 Application to Register Permanent Residence is $1,440—nonrefundable—and a client whose application is filed prematurely, on inadequate grounds, or without proper assessment of threshold eligibility may lose that amount entirely, in addition to any associated fees for supporting applications. For matters adjudicated before the Executive Office for Immigration Review ("EOIR"), the fees are higher still. The One Big Beautiful Bill Act, Pub. L. No. 119-21, 139 Stat. 72 (2025) ("OBBBA"), established new EOIR fees on top of any preexisting fees, setting the total EOIR fee for an I-485 adjudicated in Immigration Court at $2,940 for FY 2025. See OBBBA § 100013(a), 8 U.S.C. § 1812(a); EOIR PM 25-36, Statutory Fees Under the One Big Beautiful Bill Act (July 17, 2025) (amended), rescinded by EOIR PM 26-01 (Jan. 2, 2026). Importantly, OBBBA mandates that EOIR-collected fees be adjusted annually for inflation based on the Consumer Price Index for All Urban Consumers, with adjustments published by Federal Register notice each fiscal year. See Inflation Adjustment for EOIR OBBBA Fees; Fiscal Year 2026, 91 Fed. Reg. 2561 (Jan. 21, 2026). The fee schedule is therefore not a fixed reference but a moving target that changes by

operation of law each year—adding another dimension of substantive complexity that only a practitioner actively monitoring regulatory developments can reliably navigate.

Compounding these financial risks is the enforcement environment created by USCIS Policy Memorandum PM-602-0187, *Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens*, issued February 28, 2025. Under that policy, where USCIS issues an unfavorable decision on a benefit request and the applicant is not lawfully present in the United States at the time of denial, USCIS will issue a Notice to Appear, placing the applicant in formal removal proceedings before an Immigration Judge. A denial, in other words, is no longer simply a denial. Under current policy, it may be the first step toward deportation. The calculus of whether to file—and when, and on what theory—is therefore not merely a question of fee risk. It is a question of whether filing exposes the client to consequences far graver than the cost of a lost application. An attorney conducting proper pre-filing analysis understands this calculus and advises the client accordingly. A paralegal operating without attorney supervision may not even know the question needs to be asked.

Recent precedent sharpens this concern in two additional and compounding ways. In *Matter of C-A-R-R-*, 29 I&N Dec. 13, 15 (BIA 2025), the Board of Immigration Appeals held that Immigration Judges need not consider the merits of a Form I-589 Application for Asylum and Withholding of Removal that is incomplete. In *Matter of H-A-A-V-*, 29 I&N Dec. 233 (BIA 2025), the Board held that an Immigration Judge may pretermit—dismiss without a full evidentiary hearing—any application for asylum, withholding of removal, or protection under the Convention Against Torture whose factual allegations, viewed in the light most favorable to the applicant, do not establish prima facie eligibility for relief. Together, these decisions create a two-front risk: a filing may be disposed of summarily because it is procedurally incomplete, or because it is legally insufficient, or both—in each case without the applicant receiving a meaningful hearing on the merits.

What makes this especially consequential in the context of paraprofessional practice is that neither standard is fixed. The definition of a "complete" application is not a static checklist but an evolving regulatory standard shaped by agency rulemaking, administrative interpretation, and Board precedent. The standard for legal sufficiency depends on circuit-specific case law that continues to develop. A paralegal operating without attorney supervision has no professional obligation—and often no practical mechanism—to remain current with these developments. The practitioner who learned what a complete application required in one year may be operating under superseded standards in the next, with no reliable means of knowing that the rules have changed. That is not a failure of individual diligence. It is a structural consequence of practice outside a profession built on the obligation of continuing competence.

The same principle applies across the other practice areas this Court is considering. Housing, public benefits, family law, and criminal matters similarly present hidden legal complexity—and similarly shifting legal standards—that practitioners must be trained to surface and track. The access-to-justice crisis reflects in part a failure to reach people before their legal problems become irreversible. Unsupervised paraprofessionals, however well-intentioned, are particularly ill-positioned to recognize that moment—and under precedents like *Matter of C-A-R-R-* and *Matter*

of H-A-A-V-, and policies like USCIS PM-602-0187, the cost of missing it falls entirely on the client.

For these reasons, I urge the Court to approach Question 6 with great caution and to resist framing the inquiry as one of identifying tasks sufficiently routine to be safely delegated to independent practitioners. Legal complexity and shifting legal standards are not reliably visible from the surface of a matter. Any paraprofessional role should be structured as supervised assistance to licensed attorneys—not as an independent practice pathway—and should be accompanied by robust accountability mechanisms, including clear lines of attorney responsibility for all work performed. Within those constraints, and with genuine, documented attorney oversight, there may be appropriate and carefully bounded uses for trained paraprofessionals in high-volume settings where legal strategy and judgment have been exercised by the supervising attorney before any paraprofessional involvement begins.

VI. Conclusion

The access-to-justice crisis documented in the Court's Order is real, and it demands a serious response. But the severity of the problem does not justify weakening the professional safeguards that exist to protect those in greatest need of competent and independent counsel. The public is not protected when admission becomes cheaper at the cost of preparedness. Access is not meaningfully expanded when the independence of counsel is diluted by outside commercial ownership. And clients are not better served when those assisting them lack the training, the supervisory accountability, and the ongoing professional obligation to know what they do not know.

I respectfully urge the Court to decline to modify the essential restrictions of Tennessee Rule of Professional Conduct 5.4 (Question 7); to pursue alternative pathways to licensure cautiously and only with demonstrated competency benchmarks (Questions 1–4); to act with relative confidence on interstate admission reform (Question 5); and to authorize paraprofessional roles only within a framework of direct and genuine attorney supervision, without creating independent practice pathways (Question 6). These recommendations reflect not opposition to the Court's goals, but a judgment about how best to advance them without shifting the inevitable costs of error onto those least able to bear them.

The Court may also reasonably consider additional targeted measures that do not implicate the structural concerns raised here: strengthened incentives for service in underserved communities, expanded and better-funded legal aid organizations, rural-practice loan forgiveness or subsidy programs, and reforms to court procedures that reduce the need for legal assistance in lower-stakes matters. These approaches address the access-to-justice gap directly, without compromising the integrity of the profession on which those who most need justice must ultimately depend.

Thank you for the opportunity to submit this comment and for the Court's consideration of these difficult and important issues.

Respectfully submitted,

William P. York II
Attorney
Ozment Law PLC
1214 Murfreesboro Pike
Nashville, TN 37217

MaryBeth Lindsey

From: appellatecourtclerk
Sent: Tuesday, March 17, 2026 10:01 AM
To: MaryBeth Lindsey; Kim Meador
Subject: FW: Public Comment No. ADM2025-01403
Attachments: Public Comment No. ADM2025-01403

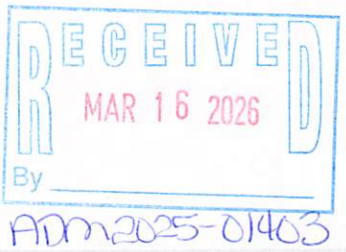
Please process the attached comment.

Jim

James M. Hivner
Clerk of the TN Appellate Courts
Phone: (615) 741-1314
Email: jim.hivner@tncourts.gov
Address: 401 7th Ave. N., Nashville, TN 37219

MaryBeth Lindsey

From: Ashley Jones <AJones2@wfgtitle.com>
Sent: Monday, March 16, 2026 10:49 PM
To: appellatecourtclerk
Subject: No. ADM2025-01403 Request for Comments



Warning: Unusual sender <ajones2@wfgtitle.com>
You don't usually receive emails from this address. Make sure you trust this sender before taking any actions.

Hello,

I am the Chair of the Tennessee Bar Association's Real Estate Section for this year. I sent a survey to the Real Estate Section members, requesting comments, and the results are pasted below.

Thank you,
Ashley Jones

- **(1)Please review the attached order prior to responding to the following questions. (1) Whether the Court should modify, reduce, or eliminate its reliance on ABA accreditation in setting minimum educational requirements for applicants to the Tennessee Bar? ***
  - **60% of the Tennessee Bar Association Real Estate Section members who completed the survey voted YES to this question.**

- **(2) Whether there are any practicable alternatives to ABA accreditation that the Court should consider? If yes, please provide a detailed response. ***
  - **Suggestions included:**
    - **A five member panel (two of whom should be attorneys with more than twenty years practice experience) should be appointed, and paid a reasonable salary, to make a thorough study of each TN school and compare them to other recognized quality schools in the adjoining states. After the study, the Panel should recommend qualification required of TN law schools, by the Rule making process.**
    - **The Court can set standards that if someone graduates from a licensed law school that they should be able to sit for the Bar.**
    - **Coordinating with other states with similar programs to determine what options have worked in those states.**

- **(3) Whether there are less costly alternatives to the traditional three-year law school curriculum that would adequately prepare individuals for the practice of law? If yes, please provide a detailed response. ***
  - **Suggestions included:**

- Paid apprenticeships or clerkships
- Shorter law school programs

- (4) Whether the Court should consider adopting alternative pathways for admission to the Tennessee Bar—for example, by allowing applicants to satisfy the minimum educational requirements and/or examination requirement in part by completing an apprenticeship or serving with a legal aid organization? *
  - 80% of the Tennessee Bar Association Real Estate Section members who completed the survey voted YES to this question.

- (5) Whether the Court should consider modifying requirements for admission to the Tennessee Bar for those licensed in other States to promote interstate practice and mobility? *
  - 60% of the Tennessee Bar Association Real Estate Section members who completed the survey voted NO to this question.

- (6) Whether any legal services currently provided by lawyers could be competently provided by paraprofessionals and, if so, what qualifications, limitations, or subject matter restrictions the Court should consider imposing? *
  - Suggestions included:
    - No. This has already been shown to be unsuccessful by allowing title insurance agencies to be operated by non-lawyer parties and to be run by affiliate entities such as banks and real estate agencies. There are numerous examples of how transactions are prepared erroneously, purchasers, borrowers and insureds are advised improperly and are not advised of various risks regarding title and how title insurance could protect against them and items that need to be removed from title insurance policies. The same issues have been seen when bankruptcy paraprofessionals attempt to assist in bankruptcy cases. These actions have caused numerous and extensive losses and costs to the recipient of those services.
    - Any legal service performed by a paraprofessional should be reviewed and approved, in writing, by a licensed attorney.
    - No, and if there were, there is no supervising body for the paraprofessionals Until the court decides to regulate the unauthorized practice of the law there, should be no other authorization.
    - The person would have to be supervised by a TN licensed attorney.

- (7) Whether the Court should modify, reduce, or eliminate regulations prohibiting non-lawyer ownership of law firms or fee sharing with non-lawyers? *
  - 80% of the Tennessee Bar Association Real Estate Section members who completed the survey voted NO to this question.

Ashley Jones
Tennessee State Counsel

Cell: 901 706 0906 | AJones2@wfgtitle.com | wfgtitle.com

MaryBeth Lindsey

From: appellatecourtclerk
Sent: Tuesday, March 17, 2026 9:59 AM
To: MaryBeth Lindsey
Cc: Kim Meador
Subject: FW: No. ADM2025-01403 Request for Comments
Attachments: No. ADM2025-01403 Request for Comments

Please process the attached comment.

Jim

James M. Hivner
Clerk of the TN Appellate Courts
Phone: (615) 741-1314
Email: jim.hivner@tncourts.gov
Address: 401 7th Ave. N., Nashville, TN 37219