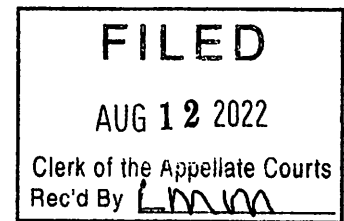


From: "Alexis I. Tahinci" <alexis@tahincilaw.com>
To: <lisa.marsh@tncourts.gov>
Date: 8/12/2022 9:28 AM
Subject: TN Courts: Submit Comment on Proposed Rules

Submitted on Friday, August 12, 2022 - 9:28am
Submitted by anonymous user: [10.170.198.251]
Submitted values are:

Your Name: Alexis I. Tahinci
Your Address: 1227 Volunteer Pkwy, Suite 528, Bristol, TN 37620
Your email address: alexis@tahincilaw.com
Your Position or Organization: Tahinci Law Firm PLLC
Rule Change: ADM2022-00522 Public comment order regarding SCT Rule 7, Section 5.01(c) *Comment(s) due 7-25-22
Docket number: No. ADM2022-00522
Your public comments: I wholeheartedly support the Network of Enlightened Women's Petition to amend Rule 7, Section 5.01(c) to allow part-time attorneys admission to the Tennessee bar without examination. The American Bar Association Model Rule on Admission by Motion does not mandate full-time work. Tennessee's current full-time work requirement for comity admission is a barrier to entry for qualified part-time lawyers seeking admission to practice in Tennessee.

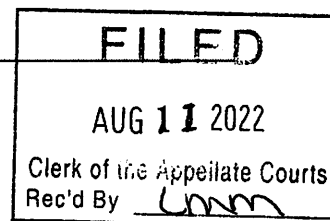
The results of this submission may be viewed at:
<https://www.tncourts.gov/node/602760/submission/47565>



ADM2022-00522

Lisa Marsh - Comments on ADM2022-00522

From: Alicia Plemmons <alicia.plemmons@mail.wvu.edu>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 8/11/2022 3:55 PM
Subject: Comments on ADM2022-00522



To: Tennessee Supreme Court Justices

RE: ADM2022-00522

I write you today to express support for amending Section 5.01(c)(1) of Tennessee Supreme Court Rule 7 and to provide insight into the potential intended and unintended consequences of the non-amended policy. Many residents may have extenuating circumstances that only allow for them to practice law on a part-time basis. They may be a law professor working within a university, an analyst, or an entrepreneur. They may have family obligations or health concerns. Regardless of circumstances, lawyers with part-time hours are experienced and educated in the legal profession.

Sitting for an examination can be cost intensive by requiring travel, fees, months of preparation, and specialized courses. Requiring this additional step for lawyers with part-time hours creates access barriers to labor markets for members of marginalized communities, women, parents, and persons with disabilities.

Allowing part-time attorneys and legal professors to actively practice law for the purpose of comity expands resources for legal representation and access to jobs.

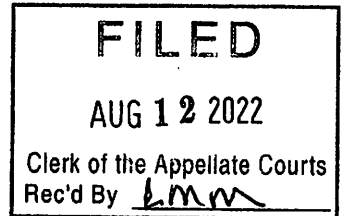
Sincerely,

Alicia Plemmons, PhD
Research Fellow, Knee Center for the Study of Occupational Regulation



August 12, 2022

Mr. James Hivner
Clerk of the Appellate Courts
Supreme Court of Tennessee
401 Seventh Avenue North
Nashville, TN 37219



Re: ADM2022-00522 Public Comment Regarding SCT Rule 7, Section 5.01(c) (via email to appellatecourtclerk@tncourts.gov)

To Whom it May Concern:

We write to submit a comment in support of proposed changes to “active practice of law” requirements under Tennessee Rule 7, section 5.01(c)(1)(A). It is not the previous “full-time” practice of law that should matter when welcoming lawyers already admitted elsewhere to practice in Tennessee, but having some experience as a lawyer, and more importantly, having the requisite character and fitness to practice law. The legal profession is a demanding one, and lawyers who have needed flexibility for a period of years—whether that be to care for children, ailing parents, for personal medical reasons, or for any other myriad challenges life creates—should not be penalized for practicing law part-time.

The suggested changes, replacing “full-time private or public practice as a licensed attorney” in section 5.01(c)(1)(A) with “representation of one or more clients in private or public practice as a licensed attorney,” and by deleting “full-time” from “teaching law full-time at a law school approved by the ABA” in section 5.01(c)(B), would make a notable difference. These changes will not dilute or lower important standards for individuals who apply for comity admission.

That full-time work requirements are not necessary to maintain high standards among those admitted to practice in Tennessee is evidenced by the ABA model rule’s lack of inclusion of such a requirement. It is further evidenced by the number of sister states that manage to admit comity applicants to practice law without a full-time work requirement. Tennessee should not continue to be one of very few states creating unique barriers for already licensed attorneys to practice law by maintaining a full-time work requirement.



Sincerely,

A handwritten signature in black ink, appearing to read "Justin D. Owen".

Justin D. Owen, Esq.
President & CEO
Beacon Center of Tennessee

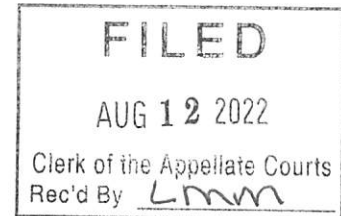
Meggan S. DeWitt
Attorney
Beacon Center of Tennessee



August 12, 2022

VIA EMAIL: appellatecourtclerk@tncourts.gov

James M. Hivner
Clerk, Tennessee Appellate Courts
Supreme Court of Tennessee
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407



In re: ADM2022-00522: Petition concerning Supreme Court Rule 7, Section 5.01(c)

Dear Mr. Hivner,

I write in support of the Network of enlightened Women's petition asking the Court to amend Tennessee Rule 7 (Docket No. ADM2022-00522). Tennessee should remove its full-time work requirement for comity.

The Tennessee Supreme Court requires that a lawyer be practicing full-time for five of the seven previous years to be admitted to practice without examination. The American Bar Association Model Rule on Admission by Motion does not mandate full-time work.

The difference between a lawyer practicing full-time and part-time is the number of hours worked, not expertise or skill.

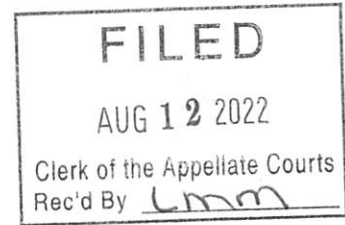
The full-time work requirement for comity makes it more difficult for part-time lawyers to practice law. Many of those adversely affected by the full-time requirement are women. Overall, women make up two-thirds of voluntary part-time workers. About one in five working women worked part-time voluntarily in 2016. Women now earn half (or more) of law degrees each year. Of the 6.2 percent of lawyers at law firms working part-time, more than 70 percent are women.

Thank you for your consideration of this important issue.

Sincerely,

Julie Cornell, Knoxville, Tennessee
Jessica Costescu, Cypress, California
Lelsey Davenport, Chattanooga, Tennessee
Erin England, Jackson, Tennessee
Kristen Fossler, San Diego, California
Karin Lips, Washington, DC
Kimberly Messmore, Germantown, Tennessee

William Myers, Smyrna, Tennessee
Tula Nicholson, Northvale, New Jersey
Abigail Schwartz, Rochester, New York
Alice Seeley, Front Royal, Virginia
Brandon Smith, Nashville, Tennessee
Addie Toy, Christiana, Tennessee
Shoshana Weissmann, Washington, DC



August 12, 2022

The Honorable James Hivner
Tennessee Supreme Court
401 7th Avenue North
Nashville, TN 37219

Dear Mr. Hivner:

The Tennessee Bar Association ("TBA") respectfully submits the following Comment on the proposed amendments to Tenn. Sup. Ct. R. 7, sec. 5.01, concerning comity admission to practice law in Tennessee, filed by the Network of Enlightened Women ("Petitioner"). The Tennessee Supreme Court has invited comments from interested parties and has given a deadline of August 12, 2022.

Petitioner has asked the Court to amend Tenn. Sup. Ct. R. 7, sec. 5.01, concerning comity admission to practice law in Tennessee. Rule 7 authorizes admission without examination of lawyers licensed in other U.S. jurisdictions who comply with certain requirements. One requirement is that the applicant "have been primarily engaged in the active practice of law, as defined [in section 5.01(c)], in one or more states or territories of the United States, or the District of Columbia, for five of the seven years immediately preceding the date upon which the application is filed." Tenn. Sup. Ct. R. 7, sec. 5.01(a)(3). Section 5.01(c) defines the "active practice of law." Petitioner's proposed revisions are intended to broaden the existing definition by eliminating the requirement that the applicant have maintained a "full time" law practice or "full time" teaching position during the relevant period of time.

The TBA Committee on Ethics and Professional Responsibility ("the committee") discussed the petition during their meeting on July 7, 2022. Committee members expressed support for the concept of revising the definition of "active practice of law" to make the comity admission rule more inclusive. The committee recommended that the TBA file a comment with the Court in favor of expanding the comity rule along the lines suggested in the petition, along with a suggested improvement in the definition of the enumerated examples of the "active practice of law" in section 5.01(c) be replaced with those found in the American Bar Association Model Rule on Admission on Motion (as amended August 6, 2012). The TBA Executive Committee agrees with the Committee's recommendations.

The TBA agrees with Petitioner that "full time" should be removed from sections 5.01(c)(1)(A) and (c)(1)(B). A key purpose of the requirements in section 5.01(a) is to ensure the competence of a comity applicant. It seems difficult to imagine a material difference in competence between a licensed lawyer in good standing in another jurisdiction who practices law or teaches law for 40 hours per week and one who engages in the same activity



for fewer hours weekly. Further, the current rule does not impose a “full time” requirement for applicants who served as judicial law clerks or staff attorneys, or as registered In-House counsel or Military Spouses. See Tenn. Sup. Ct. R. 7, sec. 5.01(c)(1)(C) and (c)(1)(D).

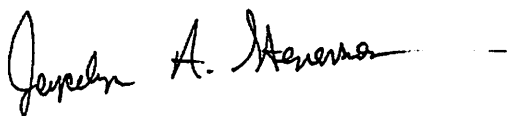
The TBA notes that eliminating the “full time” requirements in the rule would give the Board of Law Examiners and the Supreme Court greater flexibility to take individual circumstances (such as disability or family needs) into account when considering a comity application.

Additionally, the TBA believes that Petitioners’ proposed language can be improved in the following respect. The Court may wish to consider that the enumerated examples of the “active practice of law” in section 5.01(c) be replaced with those found in the American Bar Association Model Rule on Admission on Motion (as amended August 6, 2012). The Model Rule appears to encompass a wider range of activities that constitute the active practice of law than does the revision proposed in the petition, which focuses on “representation of . . . clients” and does not specifically address other forms of “service as a lawyer” with agencies or the military. Under the ABA Model Rule, the “active practice of law” is defined to include the following:

- (a) Representation of one or more clients in the private practice of law;
- (b) Service as a lawyer with a local, state, territorial or federal agency, including military service;
- (c) Teaching law at a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association;
- (d) Service as a judge in a federal, state, territorial or local court of record;
- (e) Service as a judicial law clerk; or
- (f) Service as in-house counsel provided to the lawyer’s employer or its organizational affiliates.

Thank you for your consideration. Please let us know if you have any questions.

Sincerely,



Joycelyn A. Stevenson
Executive Director

cc: TBA Executive Committee
Tim Chinaris, Chair, TBA Committee on Ethics and Professional Responsibility
Berkley Schwarz, Director of Public Policy & Government Affairs
Service List

appellatecourtclerk - ADM2022-00522

From: Julie Cornell <julie.cornell.law@gmail.com>
To: <appellatecourtclerk@tncourts.gov>
Date: 7/26/2022 3:25 PM
Subject: ADM2022-00522

FILED**JUL 26 2022**Clerk of the Appellate Courts
Rec'd By _____

I am writing today to express my support of amending Section 5.01(c)(1) of the Tennessee Supreme Court Rule 7 to allow part-time lawyers and legal professors to be actively practicing lawyers for purposes of comity.

I took the Washington State bar examination in 2010 and then took the Tennessee State bar examination in 2013 because I did not meet the requirements to waive in. Both exams required many hours of study over a period of a few months. Luckily for me, I did not have children or elderly parents to care for at the time and could dedicate the time required to pass both bar exams. After the birth of my 2nd child I began practicing law on a part-time basis. I would be discouraged from practicing law in a state where I had to take another bar exam due to my working part-time instead of full time. I hate to think of other qualified lawyers in a similar position to me moving to Tennessee who would say the same.

Sincerely,
Julie Cornell



MOUNTAIN STATES LEGAL
FOUNDATION
FREE COUNTRY. FREE PEOPLE.

2596 South Lewis Way | Lakewood, CO 80227 | Tel: 303.292.2021

FILED

JUL 27 2022

Clerk of the Appellate Courts
Rec'd By _____

Tennessee Supreme Court Justices:

I write today on behalf of myself and the Goldwater Institute to express my support for amending Section 5.01(c)(1) of Tennessee Supreme Court Rule 7 to let part-time attorneys and legal professors be considered “actively practicing” lawyers for purposes of comity.

The practice of law is demanding, regardless of how many hours per week one works, and a part-time attorney is no less competent or hardworking than one who works full-time. In fact, attorneys who work part-time often do so because they have other responsibilities, such as raising children or taking care of a sick or elderly relative. These individuals should not be penalized for choosing to work part time to meet their familial obligations. But that is just what Section 5.01(c)(1) does.

As it’s currently written, Rule 7 severely disadvantages lawyers who want to relocate to the state if they have worked part-time for more than two of the seven years prior to filing a comity application. Rule 7 forces them to wait up to five years to waive into Tennessee, despite actively practicing law part-time, or take the Tennessee bar exam (costing hundreds or thousands of dollars and months of studying), even though they have already passed a bar exam.

This falls especially hard on women. Studies show that, on the whole, women value flexibility in work more than men do. In the past several decades, the number of women-owned businesses has increased by 3,000 percent. And women are increasingly choosing to take on work as independent contractors, or to work part-time jobs, so that they can better control their schedules. One of the primary reasons is that flexible work has allowed them to balance a fulfilling career with childcare. In fact, 70 percent of female freelancers are the primary caregivers in their homes.

Tennessee’s full-time work requirement isn’t just harmful—it also violates the principles enshrined in the state Constitution and the recently adopted Right to Earn a Living Act. This Court has long recognized that the Tennessee Constitution protects the right to earn a living free from unreasonable or arbitrary restrictions. *See, e.g., Campbell v. McIntyre*, 52 S.W.2d 162, 164 (Tenn. 1932); *Wright v. Wiles*, 117 S.W.2d 736, 738–39 (Tenn. 1938); *Livesay v. Tenn. Bd. Of Exam’rs in Watchmaking*, 322 S.W.2d 209, 213 (Tenn. 1959). In 2016, the Tennessee legislature reaffirmed that the right to earn a living is a *fundamental* right that should be impaired only if necessary to protect the health, safety, and welfare of Tennesseans. But prohibiting part-time attorneys from practicing in Tennessee is arbitrary and does not protect the public. Attorneys who work part-time have met all the qualifications required to practice law. This Court should amend Section 5.01(c)(1) with this principle in mind and afford attorneys who work part-time the same benefit of motion without examination.



**MOUNTAIN STATES LEGAL
FOUNDATION**
FREE COUNTRY. FREE PEOPLE.

2596 South Lewis Way | Lakewood, CO 80227 | Tel: 303.292.2021

Lawyers should have the flexibility to work part-time if the necessities of life dictate. Rule 7 prevents this kind of flexibility and drives these qualified lawyers to other states with less stringent requirements. For these reasons, the Court should amend this rule to allow part-time attorneys and law professors to be actively practicing lawyers for purposes of comity.

Sincerely,

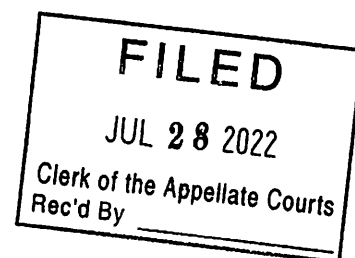
Kaitlyn Schiraldi

Kaitlyn D. Schiraldi (TN Bar No. 039737)
MOUNTAIN STATES LEGAL FOUNDATION
2596 S. Lewis Way
Lakewood, CO 80227
Phone: (303) 292-2021
kschiraldi@mslegal.org



INSTITUTE FOR JUSTICE

July 28, 2022



Mr. James M. Hivner
Clerk
Tennessee Appellate Courts
100 Supreme Court Building
401 Seventh Avenue North
Nashville, Tennessee 37219-1407
appellatecourtclerk@tncourts.gov

Re: No. ADM2022-00522

Honorable Justices of the Supreme Court of Tennessee:

The Institute for Justice (“IJ”) submits these comments in support of the April 25, 2022 Petition of the Network of Enlightened Women (“Petitioner”), *In re: Amendment of Rule 7, Section 5.01(c), Rules of the Tennessee Supreme Court*. IJ is a national, nonprofit, public interest law firm that litigates, provides research, and advocates in the areas of law that provide the foundation for a free society, including economic liberty and private property.¹ Economic liberty is the right to earn a living free from unreasonable or arbitrary government interference. IJ’s efforts to protect economic liberty have included petitioning other state supreme courts to amend their rules to afford attorneys greater flexibility.²

Tennessee Supreme Court Rule 7, section 5.01(c) governs the admission of attorneys licensed in other jurisdictions to the Tennessee bar without examination, otherwise known as admission by comity. The current rules require such applicants to have practiced full-time for five of the previous seven years in order to qualify. The Petition proposes ending the full-time requirement for comity and instead adopting language that requires applicants to have engaged in “the representation of one or more clients in the private or public practice as a licensed attorney.”³ IJ submits these comments because granting the Petition is in line with the constitutionally recognized right to earn a living. Granting the Petition would also benefit Tennesseans by bringing the state’s rules on admission by comity into greater uniformity with the majority of other jurisdictions.

¹ *About Us*, INST. FOR JUST., <https://ij.org/about-us/> (last visited July 18, 2022); *Four Pillars Plaque*, INST. FOR JUST. (Oct. 1, 2008), <https://ij.org/ll/four-pillars-plaque/>.

² See, e.g., Petition for Rulemaking from Five Licensed Attorneys, *In re: Changes to the Rule Regulating Quantity of On-demand Continuing Legal Education Course Approval*, No. ADM09-8008 (Minn. Aug. 1, 2019).

³ Pet. at Ex. A.

I. Tennessee Law Includes a Constitutional and Statutory Right to Earn a Living, Which Supports Granting the Petition.

The right to earn a living has long been protected by the Tennessee Constitution (and caselaw interpreting it), and it is also protected by a more recently codified statute. Adopting Petitioner's proposed amendment is both supported by—and would align this Court's rules with—this liberty interest. This, in turn, would increase the economic liberty afforded to Tennesseans and allow them greater freedom to make career decisions that are best for themselves and their families.

The Tennessee Constitution guarantees a right to earn a living. Article I, section 8 states “[t]hat no man shall be . . . disseized of his . . . liberties or privileges . . . or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land.”⁴ This provision has long been interpreted by this Court to encompass “the right to use one’s faculties in all lawful ways, . . . to pursue any lawful calling, vocation, trade, or profession, . . . and to enjoy the legitimate fruits thereof.”⁵ This is not only a matter of personal liberty, but an outgrowth of property rights as well: “Labor is property, and, as such, merits protection. The right to make it available is next in importance to the rights of life and liberty. It lies, to a large extent, at the foundation of most other forms of property, and of all solid individual and national prosperity.”⁶

Granted, these are not “unlimited rights” but rather “are subject to the law’s control, and may at any time be abridged or enlarged, or even destroyed, within constitutional bounds”; that is, “by ‘due process of law’ or ‘the law of the land’ . . . two phrases [that] have exactly the same import.”⁷ To that end, this Court has held that “interference with an individual’s inherent property right to pursue [an] occupation is not constitutionally permissible except in so far as such interference may be justified by the police power of the State. Beyond that limitation it is the taking, in effect, of property belonging to another.”⁸ This Court has found the police power “embraces all matters reasonably expedient for the safety, health, morals, comfort and general well-being of its people” but that “[i]f a given legislative enactment is to be justified by reason of the inherent police power of the sovereign, it, the legislation in question, must at least exhibit a real tendency to effect that end.”⁹

On the other hand, this Court has found that “[r]egulation of technical occupations is not ipso facto valid because of its purpose to protect the citizen.”¹⁰ Rather, if “this Court is entirely unable to imagine how such requirements at all promote the general welfare or protect the public morals, health or safety, or have any real tendency to those ends,” then “its plain duty is to adjudge this statute unconstitutional because it may deny some citizens their inherent right to earn their

⁴ TENN. CONST. art. I, § 8.

⁵ *Harbison v. Knoxville Iron Co.*, 53 S.W. 955, 957 (Tenn. 1899).

⁶ *Id.* (internal quotation marks omitted).

⁷ *Id.*

⁸ *Livesay v. Tenn. Bd. of Exam’rs*, 322 S.W.2d 209, 211 (Tenn. 1959).

⁹ *Id.*

¹⁰ *Id.* at 213 (quoting R.D. Hursh, Annotation, *Regulation or Licensing of Watchmaking, Watch Repairing, and the Like*, 34 A.L.R.2d 1326 § 1 (1954)).

livelihood in a private field of work, thus depriving them of a valuable property right without due process of law.”¹¹

This Court has set the bar for the exercise of the police power very high. The Court has gone so far as to declare that:

[I]f the opportunity for a dishonest person in pursuit of a private occupation to defraud his customer is to become a justification for the regulation under the police power rule of an otherwise private occupation, then the Legislature may well regulate every conceivable business, and the claim of the police power rule would become a delusive name for the supreme sovereignty of the state to be exercised free from constitutional restraint.¹²

This high bar comports with this Court’s determination that “[t]he right to engage in work of one’s own choosing is a fundamental one.”¹³ Indeed, this economic liberty right is so fundamental that it dates back to Magna Carta.¹⁴ These deeply rooted origins in English common law influenced such Founding Fathers as Thomas Jefferson¹⁵ and James Madison¹⁶ as they laid the foundations of the United States. The Virginia Declaration of Rights, written by George Mason, contained in its very first section the recognition “[t]hat all men . . . have certain inherent rights, of which . . . they cannot, by any compact, deprive or divert their posterity; namely, . . . the means of acquiring and possessing property.”¹⁷ Jefferson would draw upon the Virginia Declaration in writing the Declaration of Independence,¹⁸ in which he would reference the right to earn a living as the right to the “pursuit of Happiness.”¹⁹

The majority of states (as well as the District of Columbia) do not impose full-time requirements for attorneys to qualify for admission by comity, and such practice is the national

¹¹ *Id.* (internal quotation marks omitted).

¹² *Id.* (cleaned up).

¹³ *Id.* (quoting Hursh, *supra* note 10).

¹⁴ Bruce F. Broll, *The Economic Liberty Rationale in the Dormant Commerce Clause*, 49 S.D. L. REV. 824, 826 (2004).

¹⁵ Timothy Sandefur, *State Powers and the Right to Pursue Happiness*, 21 TEX. REV. L. & POL. 323, 324–25 (2017).

¹⁶ Bernard H. Siegan, *Protecting Economic Liberties*, 6 CHAP. L. REV. 43, 81–84 (2003) (quoting Madison as saying, “I own myself the friend to a very free system of commerce, and hold it as a truth, that commercial shackles are generally unjust, oppressive, and impolitic.”).

¹⁷ VA. DECL. OF RIGHTS § 1 (1776); *see also* Sandefur, *supra* note 15, at 323 n.2 (“The Virginia Declaration of Rights made the point most succinctly in connecting the natural equality of mankind with individual freedom, including the freedom to obtain, use, and enjoy property so as to flourish as individuals.”).

¹⁸ *The Virginia Declaration of Rights*, NAT’L ARCHIVES (Sept. 29, 2016), <https://www.archives.gov/founding-docs/virginia-declaration-of-rights>.

¹⁹ Sandefur, *supra* note 15, at 324.

standard advocated for by the American Bar Association (“ABA”) in its model rules.²⁰ In fact, some state supreme courts have questioned their ability regulate certain types of attorney conduct against the right to earn a living.²¹ Given these facts, it stands to reason that Tennessee’s current full-time requirement does not protect health and safety or the general welfare.

The right to earn a living also receives statutory protection under Tennessee law. In 2016, the General Assembly passed the Right to Earn a Living Act—a sunset act—which codified into statute the Tennessee Constitution’s right to earn a living. The text of the Act makes its overall aim clear. First, the Act affirms that “the right of individuals to pursue a chosen business or profession, free from arbitrary or excessive government interference, is a *fundamental* civil right.”²² Second, it cites the glut of rules regulating entry into specific lines of work—known as entry regulations—that “have exceeded legitimate public purposes and have had the effect of arbitrarily limiting entry and reducing competition,” noting that “the burden of excessive regulation is borne most heavily by individuals outside the economic mainstream, for whom opportunities for economic advancement are curtailed.”²³ Therefore, the Act concludes that:

[I]t is in the public interest to ensure the right of all individuals to pursue legitimate entrepreneurial and professional opportunities to the limits of their talent and ambition . . . and to ensure that regulations of entry into businesses, professions, and occupations are *demonstrably necessary and narrowly tailored to legitimate health, safety, and welfare objectives*.²⁴

The Act thus clearly draws on the language of this Court’s caselaw which has found the right to earn a living to be a “fundamental one”²⁵ that may only be “reasonably” regulated in terms of “safety, health, . . . and general well-being.”²⁶ Although the statute only applies to executive branch authorities,²⁷ this Court should nevertheless find its principles instructive in considering the Petition with an eye towards promoting greater economic liberty and property rights.

²⁰ See *infra* pp. 5–6 and notes 29–31.

²¹ See, e.g., *In re Palazzola*, 853 S.E.2d 99, 111 (Ga. 2020) (Peterson, J., concurring specially) (questioning the extent of “the inherent authority to regulate the practice of law that the Georgia Constitution vests in this Court” since “the Georgia Constitution’s Due Process Clause guarantees the people of Georgia the ‘right to work in one’s chosen profession free from unreasonable government interference’” and noting that the further from the aim of protecting the public a regulation strays, “the greater the risk that our reach exceeds our power.” (quoting *Jackson v. Raffensperger*, 843 S.E.2d 576, 578 (Ga. 2020)).

²² Right to Earn a Living Act, 2016 Pub. Acts ch. 1053 (emphasis added) (codified as amended at TENN. CODE ANN. §§ 4-5-501 to -502).

²³ *Id.*

²⁴ *Id.* (emphasis added).

²⁵ *Livesay v. Tenn. Bd. of Exam’rs*, 322 S.W.2d 209, 213 (Tenn. 1959) (quoting Hursh, *supra* note 10).

²⁶ *Id.* at 211.

²⁷ TENN. CODE ANN. § 4-5-501(2).

II. Granting the Petition Would Bring Tennessee's Rules on Admission by Comity into Greater Conformity with Other Jurisdictions, Benefitting the State's Growing Population.

Adopting Petitioner's proposed amendment would also bring Tennessee's rules on admission by comity into greater uniformity with the national standard adopted by most other jurisdictions. As the Petition notes, the current language of this Court's rules requires attorneys applying for admission by comity to have been engaged in "full-time private or public practice as a licensed attorney"—i.e., forty or more hours per week—in another jurisdiction for at least five of the last seven years.²⁸ By contrast, the ABA's Model Rule on Admission by Motion ("ABA Model Rule") does not include any such requirement in its definition of the "active practice of law."²⁹ The ABA Model Rule also "urges jurisdictions that have not adopted [it] to do so, and urges jurisdictions that have adopted admission by motion procedures to eliminate any restrictions that do not appear in the [ABA Model Rule]."³⁰

Accordingly, most jurisdictions admit attorneys by comity without any requirements beyond those listed in the ABA Model Rule, and very few carry a full-time requirement. Indeed, Tennessee is an outlier. Only seven states—Maine, Maryland, Mississippi, Missouri, Ohio, Tennessee, and Virginia—have a full-time requirement.³¹ Thirty-five states and the District of

²⁸ TENN. S. CT. R. 7, art. V, § 5.01(c)(1)(A), (a)(1)(3), <https://www.tncourts.gov/rules/supreme-court/7>; Pet. at 1–2.

²⁹ Pet. at 1; MODEL RULE ON ADMISSION BY MOTION, at 1 (AM. BAR ASS'N Aug. 6, 2012), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/model_rule_admission_motion.pdf.

³⁰ MODEL RULE ON ADMISSION BY MOTION, at 2.

³¹ MAINE BAR ADMISSION R. 11A(a)(2), <https://mainebarexaminers.org/wp/wp-content/uploads/2017/09/Fully-amended-MBAR-0517-TOC-amended-0917.pdf> (defining the "active practice of law" as requiring "a full time basis"); MD. R. ATTORNEYS 19-215(b), [https://govt.westlaw.com/mdc/Document/NE4E3EE60A41A11EB87D1C73F16553F81?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/mdc/Document/NE4E3EE60A41A11EB87D1C73F16553F81?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)) (defining "[t]he professional experience required for admission under this Rule" to "be on a full time basis"); MISS. BD. OF BAR ADMISSIONS R. VI cmt., https://courts.ms.gov/research/rules/msrulesofcourt/rules_admission_msbar.pdf ("An attorney's five (5) years of prior practice must have constituted a full-time or regular undertaking . . ."); MO. BD. OF LAW EXAM'RS R. 8.10(a)(4), <https://www.mble.org/rule-8> (requiring applicants to have worked full-time in private practice, as a lawyer for the U.S. government, as in-house counsel, or as an instructor at an ABA-approved law school for five of the last ten years); OHIO S. CT. R. I, § 10(A)(2)(c), <https://www.supremecourt.ohio.gov/LegalResources/Rules/govbar/govbar.pdf#Rule1> (requiring practice "on a fulltime basis" to be eligible for admission without examination); TENN. S. CT. R. 7, art. V, § 5.01(c)(1)(A), <https://www.tncourts.gov/rules/supreme-court/7> (defining the "active practice of law" as, *inter alia*, "full-time private or public practice as a licensed attorney"); VA. S. CT. R. 1A:1 cmt., <https://barexam.virginia.gov/pdf/Rule1A-1.pdf> ("For purposes of admission without examination, 'full-time' means practicing law for a minimum of 32 hours per week.").

Columbia, or over 68% of jurisdictions, do not impose a full-time requirement on attorneys seeking admission by comity. The remaining eight states do not allow admission by comity.³² Thus, a large majority of jurisdictions do not carry a full-time requirement. This should bolster the Court's confidence that adopting Petitioner's proposed amendment will not harm the quality of legal services available to the public in Tennessee.

Finally, greater conformity with the majority, ABA-approved national standard is increasingly important as Americans continue to relocate in response to the COVID-19 pandemic. According to a study released by United Van Lines, which surveys its customers annually to determine where they are moving, Tennessee was the sixth most moved-to state in 2021.³³ UCLA economics and public policy professor Michael Stoll notes that this trend is generally reflective of the broader realignment of American life away from high density regions, which is "indicative of COVID-19's impact on domestic migration patterns" and of adaptation to more flexible work environments.³⁴ In the face of this continuing demographic shift, which inevitably impacts both the supply and demand for legal services, it would benefit both the people of Tennessee and those attorneys moving to the state for the rules to conform to the more permissive national standard on admission by comity.

CONCLUSION

In summary, IJ respectfully requests that this Court grant the Petition to amend Rule 7, section 5.01(c). Doing so is supported by, and would respect, the Tennessee Constitution's deeply rooted principles, as well as the will of the General Assembly to increase economic liberty in the state. Amending section 5.01(c) would also bring this Court's rules into greater conformity with the national standard adopted by the majority of other jurisdictions. This shows that such a change would have little to no downside, illustrating that the current full-time requirement is not necessary for health, safety, or welfare objectives. Finally, greater conformity with the national standard

³² *Attorney Applicants*, THE STATE BAR OF CAL., <https://www.calbar.ca.gov/Admissions/Requirements/Attorney-Applicants>; *Frequently Asked Questions*, DE. CTS.: BD. OF BAR EXAM'RS, <https://courts.delaware.gov/bbe/faqs.aspx> (click "I am admitted in another state. Do I have to take the Delaware Bar Exam to be admitted in Delaware?"); *Frequently Asked Questions*, FL. BD. OF BAR EXAM'RS, <https://www.floridabarexam.org/web/website.nsf/faq.xsp#10D6>; *Frequently Asked Questions*, HAW. STATE BAR ASS'N, https://hsba.org/Supreme_Court_HSBA_2020/Public/FAQ.aspx#Reciprocity; LA. S. CT. R. XVII, § 11, https://www.lasc.org/Supreme_Court_rules/?p=RuleXVII; *Admission Requirements*, STATE BAR OF NEV., <https://nvbar.org/licensing-compliance/admissions/admission-requirements/#reciprocity>; *Admission to the Rhode Island Bar: Attorney Admission on Examination*, R.I. JUDICIARY, <https://www.courts.ri.gov/AttorneyResources/baradmission/Pages/Attorney%20on%20Admission.aspx>; *Admission to Practice Law in South Carolina*, S. CT. OF S.C.: OFF. OF BAR ADMISSIONS, <https://barapplication.sccourts.org/admissionToPractice.cfm>.

³³ Elliott Davis Jr., *Americans Moved South in 2021, Often Influenced by the Pandemic*, U.S. NEWS & WORLD REP. (Jan. 3, 2022, 3:39 PM), <https://www.usnews.com/news/best-states/articles/2022-01-03/americans-moved-south-in-2021-a-study-finds>.

³⁴ *Id.*

Mr. James M. Hivner
July 28, 2022
Page 7 of 7

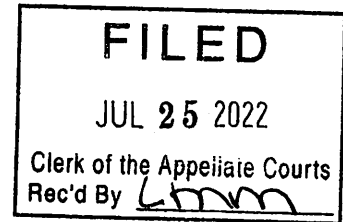
would allow attorneys more flexibility as they adapt to changing demands for legal services in Tennessee created by the state's growing population. For these reasons, the Petition should be granted.

Respectfully submitted,

INSTITUTE FOR JUSTICE

/s/ Jaimie Cavanaugh
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Testimony from:
Shoshana Weissmann, Fellow, R Street Institute
In SUPPORT of Amending Tennessee Rule 7 to allow part-time lawyers to be admitted to practice law

July 25, 2022

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

Dear Mr. Hivner,

We at the R Street Institute, a nonprofit, nonpartisan public policy organization focused on advancing limited, effective government in a variety of areas, write in support of the Network of Enlightened Women's petition asking the Court to amend Tennessee Rule 7 (Docket No. ADM2022-00522).

Among R Street's policy missions is ensuring that occupational licensing regulations serve their goal to protect the public and minimize harm caused by preventing people from working or keeping labor supply out of the workforce. Unfortunately, we are concerned that, as written, Rule 7 violates these principles.

The Tennessee Supreme Court, unlike most other state supreme courts, requires that in order to be admitted to practice law in the state without examination, the lawyer must have practiced full-time for five of the seven previous years.¹ As the Network of Enlightened Women notes, "The American Bar Association Model Rule on Admission by Motion does not mandate full-time work."² Furthermore, if the applicant meets the other requirements, in particular that the applicant maintains "good standing in all jurisdictions where admitted" and "is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any other jurisdiction," the additional requirement of full-time work fails to serve a purpose and may ultimately punish working parents.³

Thank you very much for your consideration,



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Free Markets. Real Solutions.
www.rstreet.org

Shoshana Weissmann
Fellow
R Street Institute
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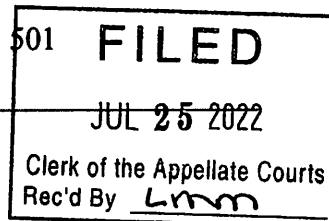
¹ "Rule 7: Licensing of Attorneys," Tennessee State Courts, last accessed July 21, 2022.
<https://www.tncourts.gov/rules/supreme-court/7>.

² "Submit a Comment to the Supreme Court of Tennessee," Network of Enlightened Women, last accessed July 21, 2022. <https://enlightenedwomen.org/qualified-but-barred/petition-tennessee-supreme-court>; "Model Rules of Professional Conduct," American Bar Association, last accessed July 21, 2022.
https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct.

³ "Rule 7: Licensing of Attorneys." <https://www.tncourts.gov/rules/supreme-court/7>.

appellatecourtclerk - CORRECTED Comment to Amendment of Tenn. Sup. Ct. R. 7, Sec. 501

From: Melanie Grand <info@law-nashville.org>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 7/25/2022 11:44 AM
Subject: CORRECTED Comment to Amendment of Tenn. Sup. Ct. R. 7, Sec. 501
Cc: Shellie Handelsman <shellie@handelsmanlaw.com>



Dear Jim,

Below, please find the corrected Comment of LAW sent earlier. -

The Lawyers' Association of Women - Marion Griffin Chapter ("LAW") respectfully requests the Honorable Court to consider amendment of Tenn. Sup. Ct. R. 7, Sec. 501 relative to full time work requirements mandated for comity eligibility to account for familial responsibilities, and other considerations, that disproportionately affect female attorneys seeking to practice in the state of Tennessee. In order to be admitted to practice law in Tennessee without examination, an attorney licensed in another jurisdiction must be engaged in the full-time practice of law for five of the seven preceding years from the date in which the application for comity is filed. This requirement fails to consider personal circumstances that may warrant a brief sabbatical from the practice of law, which automatically renders an applicant ineligible for comity pursuant to the five-year requirement described above.

The most common circumstance that impacts women applying for comity in the state of Tennessee is the act of taking maternity leave during any period of the five years preceding application. While maternal leave policies are crucial to ensuring that female attorneys are afforded the ability to balance caring for their children and maintaining their legal career, this period of inactive practice unduly impacts women in the legal profession, in comparison to their male counterparts. LAW was recently made aware of a painful illustration of the application of this rule regarding a member of the Nashville legal community. A female attorney licensed in New York accepted a job in Tennessee, and had taken maternity leave during her move to Nashville. While she had actively practiced law in New York during the period necessary for comity, she was required to take the Tennessee bar examination shortly after the birth of her child, as her maternity leave rendered her ineligible under Section 5.01(c)(1)(A).

Further, the requirements of Section 5.01(c) fail to account for circumstances in which the part time practice of law may be necessary. Many female legal professionals elect to work on a part time basis to accommodate childcare responsibilities, or life events such as caring for an ill or elderly family member. The Court's assessment of the competence to practice law should be derived from an attorney's expertise, experience, and skill, as described in Section 4.01, not the arbitrary status of part time or full-time work. Tennessee is one of the very few states in the nation that has implemented a full-time work requirement for an attorney to be admitted without examination. In addition, the American Bar Association Model Rule on Admission by Motion ("Model Rule") does not associate full time work status with eligibility. In the alternative, the Model Rule defines the "active practice of law," as, "representation of one or more clients in the private practice of law," among other categories. The Model Rule also dictates that an applicant has "been primarily engaged in the active practice of law in one or more states, territories or the District of Columbia for three of the five years immediately preceding the date upon which the application is filed." In an effort to accommodate the nuanced familial responsibilities and life circumstances that adversely impact female attorneys, LAW respectfully recommends amendment of Rule 7, Sec. 501, in a manner

similar to the ABA Model Rule, which allows the Tennessee Board of Law Examiners to consider exceptions to the full-time work requirement, and the length of active practice, to preserve eligibility for comity in Tennessee.

The Lawyers' Association of Women - Marion Griffin Chapter respectfully requests the Honorable Court to consider amendment of Tenn. Sup. Ct. R. 7, Sec. 501 relative to *full- time* work requirements, and allow part-time work, in determining comity eligibility to account for familial responsibilities, and other considerations, that disproportionately affect female attorneys seeking to practice in the state of Tennessee.

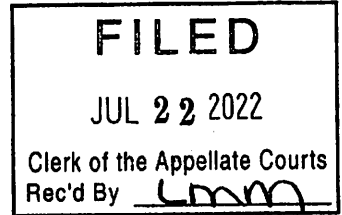


Melanie Gober Grand, Executive Director

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www.law-nashville.org



July 22, 2022

Public Comment
Tennessee Proposed Rule Change

ADM2022-00522

The Independent Women's Forum (IWF) is a nonprofit organization (501c3) dedicated to developing and advancing policies that aren't just well intended, but actually enhance people's freedom, opportunities, and well-being. IWF's Center for Economic Opportunity (CEO) focuses on expanding opportunity for women and opposes policies that run counter to that goal such as excessive and burdensome occupational licenses.

We are submitting the following comments in reference to the proposed rule change ADM2022-00522.

Tennessee is one of the few states that require lawyers in private or public practice to work full-time for five of the previous seven years to be admitted without examination.

This is an onerous requirement for all lawyers who move from another state to Tennessee, but especially burdensome for legal professionals who have worked part time prior to relocating to the state. They are required to re-take the bar examination to be licensed in the state. Burdensome occupational licensing regulations such as this one create barriers to employment, especially for women.

Occupational licenses have proliferated over the past six decades from just five percent of workers in the 1950s to one in four workers today. In 2021, nearly two out of three legal occupations (64 percent) carry a license or certification.

Advocates argue that occupational licenses provide public safety and health safeguards, or serve as a signal of a worker's competence and experience. However, some licenses simply serve to protect established businesses against new competition. The requirements of an occupational license should at least match the qualifications needed to perform a job.

Women are more likely to be hindered by excessive or unnecessary occupational licensing rules such as this Tennessee law. States vary in the requirements for a given occupation such as the legal field, and that creates significant challenges for workers who cross state lines or move frequently to be gainfully employed and to keep their licenses in good standing.

Military spouses are uniquely affected by occupational licensure. Nearly all of the 600,000 military spouses in the U.S. are women. Most of them are highly educated (89 percent have some college education) and just over a third work in an occupation requiring a license. Despite, competence and education, they experience a high 13 percent unemployment rate and an astoundingly high 33 percent underemployment rate. This is due to military families moving so frequently—on average, every two to four years—and the difficulty that women find in transferring their licenses from state to state.

Part-time workers are unfairly singled out by Tennessee's requirement and that will have a big impact on female legal professionals. Women often seek flexible work arrangements that allow them to earn income while balancing other priorities such as caregiving for children, aging parents, and sick spouses. Part-time employment offers that flexibility and increasingly, more women and workers overall are shifting towards part-time status. About a quarter of American women work part-time, compared with about 12 percent of men according to the Bureau of Labor Statistics. Over the past year, there has been a slight increase in part-time workers for economic reasons, because full-time work was not available, and as workers, especially mothers, cut back on their hours. Women in the legal field should not be penalized for working part-time in a different state if they move to Tennessee and seek to work there.

Many states have recognized how onerous occupational licensure has imposed burdens on workers that limit opportunity. They are scaling back or repealing licensing requirements to strike the right balance needed to protect consumers and promote opportunity. Tennessee has an opportunity to join other states in knocking down an employment barrier for professional women. There are other avenues to ascertain whether professionals hold the experience and competence needed to practice in the state.

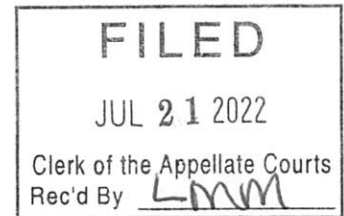
The proposed rule change takes a common sense approach to licensing requirements and will make Tennessee a more welcoming place for experienced and talented attorneys from the rest of the country. IWF and the CEO recommend that this rule change be adopted.



July 21, 2022

VIA EMAIL: appellatecourtclerk@tncourts.gov

James M. Hivner
Clerk, Tennessee Appellate Courts
Supreme Court of Tennessee
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407



In re: ADM2022-00522: Petition concerning Supreme Court Rule 7, Section 5.01(c)

To the Honorable Justices of the Supreme Court:

Nationwide, 42 states and the District of Columbia allow an avenue for admission to practice law without examination for attorneys who are licensed to practice in another jurisdiction. The various states' rules for licensing without examination are commonly known as admission on motion, admission without examination, comity, and reciprocity. See enclosed State by State Comparison of Eligibility for Admission on Motion for Part-time Private Practice Attorneys.¹

Twenty-three states and the District of Columbia have not mandated a minimum number of yearly practice hours to be admitted on motion: Alabama, Arizona, Arkansas, Colorado, Connecticut, Georgia, Idaho, Kansas, Kentucky, Massachusetts, Michigan, Mississippi, North Carolina, North Dakota, Nebraska, New Hampshire, New Jersey, New York, Oklahoma, South Dakota, Washington, West Virginia, Wisconsin, and DC. Many of these states' rules require an attorney seeking admission on motion to have engaged in the "active" practice of law elsewhere for a certain number of years preceding the attorney's application for admission.

Of the remaining 19 states that do require a minimum number of yearly hours of practice, two states require fewer than 20 hours of practice per week: Alaska (approximately 15 hours/week) and Wyoming (approximately 6 hours/week); eight states require approximately 20 hours of practice per week: Illinois, Indiana, Iowa, Minnesota, Montana, New Mexico², Oregon, and Utah; and four states require more than 20 hours but fewer than 40 hours per week: Pennsylvania (more than 20 hours/week), Texas (30 hours/week), Vermont (25 hours/week), and Virginia (32 hours/week).

Only five states require attorneys seeking admission on motion to practice full-time (i.e. 40 hours per week) for a requisite number of years preceding their application. The five states requiring full-time practice as a prerequisite for admission are Maine, Maryland, Missouri, Ohio, and Tennessee.

¹ For this summary and the chart, an online review of state rules on admission on motion was conducted.

² New Mexico and Utah require full-time work but define full-time as less than 40 hours a week.

The eight states that do not permit admission on motion are California, Delaware, Florida, Hawaii, Louisiana, Nevada, Rhode Island, and South Carolina.

Thus, while Tennessee has joined the majority of states that allow admission on motion for attorneys licensed elsewhere, Tennessee remains in the distinct minority of states that do not permit attorneys who have reduced their practice load to fewer than 40 hours per week admission on motion.

Many attorneys who reduce their workload to fewer than 40 hours per week do so to meet familial obligations. I urge Tennessee to adopt the American Bar Association's model rule which recognizes the contributions of and competence of experienced attorneys who have been engaged in the active practice of law elsewhere for at least three of the preceding five years.

Sincerely,

A handwritten signature in black ink that reads "Karin Lips". The signature is written in a cursive, flowing style.

Karin Lips

Encl: State by State Comparison of Eligibility for Admission on Motion for Part-time Private Practice Attorneys

State by State Comparison of Eligibility for Admission on Motion for Part-time Private Practice Attorneys

Legend: Red = full-time 40 hours/week requirement; Green = Allows part-time lawyers; Grey = Must take the bar exam					
State	Full-time work requirement?	Hours requirement	Approximate or exact per week	Relevant Language	Reference Link
AK	No	At least 750 hours per year for 5 of the last 7 years	Approx. 15 hours per week	(c) For the purposes of this section, the "active practice of law" shall mean at least 750 hours per year in one or more of the following activities: (1) engaged in representing one or more clients in the private practice of law, which may include pro bono legal services as described in the Alaska Rules of Professional Conduct 6.1(a) and (b)(1)-(2); (2) serving as an attorney in governmental employment, or as a law clerk for a judicial officer, provided graduation from an ABA or AALS accredited law school is a required qualification of such employment; (3) serving as counsel for a non-governmental corporation, entity or person and performing legal services of a nature requiring a license to practice law in the jurisdiction(s) in which performed; (4) teaching law at one or more accredited law schools in the United States, its territories, or the District of Columbia; (5) serving as a judge in a court of the United States, its states, its territories, or the District of Columbia; or (6) employed by a Legal Services Corporation program or a not-for-profit law firm, performing legal services of a nature requiring a license to practice law in the jurisdiction(s) in which performed.	https://admissions.alaskabar.org/alaska-bar-rules.pdf
AL	No	No hours requirement	N/A	(2) For the purposes of this rule, the "active practice of law" under paragraph A(1)(c) shall include the following activities, if performed in a jurisdiction in which the applicant is admitted, or if performed in a jurisdiction that affirmatively permits such activity by a lawyer not admitted to practice; however, in no event shall activities listed under A(2)(e) and (f) that were performed within Alabama in advance of Bar admission here be accepted toward the durational requirement: (a) Representation of one or more clients in the practice of law; (b) Service as a lawyer with a local, state, territorial, or federal agency, including military service; (c) Teaching law at a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association; (d) Service as a judge in a federal, state, territorial, or local court of record; (e) Service as a judicial law clerk; or (f) Service as corporate counsel.	https://www.alabar.org/assets/2021/01/2021-AdmitRule3.pdf
AR	No	No hours requirement	N/A	2. For the purposes of this rule, the "active practice of law" shall include the following activities, if performed in a jurisdiction in which the applicant is admitted, or if performed in a jurisdiction that affirmatively permits such activity by a lawyer not admitted to practice; however, in no event shall activities listed under (2)(e) and (f) that were performed within Arkansas in advance of bar admission here, be accepted toward the durational requirement: (a) representation of one or more clients in the practice of law; (b) service as a lawyer with a local, state, territorial or federal agency, including military service; (c) teaching law at a law school approved by the American Bar Association; (d) service as a judge in a federal, state, territorial or local court of record; (e) service as a judicial law clerk; or, (f) service as corporate counsel.	https://www.arcourts.gov/sites/default/files/In_re_Rules_Governing_Admission_to_the_Bar-Rule_XVI.pdf
AZ	No	No hours requirement	N/A	2. For the purposes of this rule, the "active practice of law" shall include the following activities, if performed in a jurisdiction in which the applicant is admitted, or if performed in a jurisdiction that permits such activity by a lawyer not admitted to practice; however, in no event shall any activities that were performed in advance of bar admission in some state, territory or the District of Columbia be accepted toward the durational requirement: A. representation of one or more clients in the practice of law; B. service as a lawyer with a local, state, or federal agency, including military service; C. teaching law full-time at a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association; D. service as a judge in a federal, state, territorial, or local court of record; E. service as a judicial law clerk; F. service as corporate counsel; or G. service as corporate counsel in Arizona before January 1, 2009 or while registered pursuant to Rule 38(h). Active practice performed within Arizona pursuant to Rule 38(h) may be applied to meet active practice requirements found in Rule 34(f)(1)(A)(ii) provided all other requirements of Rule 34(f) are met.	https://www.azcourts.gov/Portals/26/admission/2017/RulesOfAdmission_2017.pdf?ver=2017-01-26-132310-033
CA	N/A	Must take the bar exam	N/A	Must take the bar exam	http://www.calbar.ca.gov/Admissions/Requirements/Attorney-Applicants
CO	No	No hours requirement	N/A	(2) For purposes of this rule, the "active practice of law" shall include the following activities, if performed in a jurisdiction in which the applicant is admitted and authorized to practice law, or if performed in a jurisdiction that affirmatively permits such activity by a lawyer not admitted in that jurisdiction; however, in no event shall any activities performed pursuant to any rule regarding the practice of law pending admission or in advance of bar admission in another jurisdiction be accepted toward the durational requirement: (a) Representation of one or more clients in the private practice of law; (b) Service as a lawyer with a local, state, territorial or federal agency, or governmental branch, including military service; (c) Teaching law at a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association; (d) Service as a judicial officer in a federal, state, territorial or local court of record; (e) Service as a judicial law clerk; or (f) Service as legal counsel to the lawyer's employer or its organizational affiliates.	https://coloradosupremecourt.com/PDF/8/E/Rules%20Governing%20Admission%20to%20Practice%20Law%20in%20Colorado.pdf

CT	No	No hours requirement	N/A	For the purpose of this rule, the "practice of law" shall include the following activities, if performed after the date of the applicant's admission to the jurisdiction in which the activities were performed, or if performed in a jurisdiction that permits such activity by a lawyer not admitted to practice: (1) representation of one or more clients in the practice of law; (2) service as a lawyer with a state, federal, or territorial agency, including military services; (3) teaching law at an accredited law school, including supervision of law students within a clinical program; (4) service as a judge in a state, federal, or territorial court of record; (5) service as a judicial law clerk; (6) service as authorized house counsel; (7) service as authorized house counsel in Connecticut before July 1, 2008 or while certified pursuant to Section 2-15A; or (8) any combination of the above.	https://www.jud.ct.gov/cbec/AdwoexamRequirements.htm#Requirements	
DC	No	No hours requirement	N/A	Rule 46(e)(3)(A) (3) Admissions Requirements. An applicant may, upon proof of good moral character as it relates to the practice of law, be admitted to the Bar of this court without examination in this jurisdiction, provided that the applicant: (A) Has been a member in good standing of a Bar of a court of general jurisdiction in any state or territory of the United States for a period of at least five years immediately preceding the filing of the application	https://www.dccourts.gov/sites/default/files/2017-07/DCCA%20Rule%2046%20Admission%20to%20the%20Bar.pdf	
DE	N/A	Must take the bar exam	N/A	Must take the bar exam	https://courts.delaware.gov/bbe/faqs.aspx	
FL	N/A	Must take the bar exam	N/A	Must take the bar exam	https://www.floridabarexam.org/web/website.nsf/52286AE9AD5D845185257C07005C3FE1/F8F824E0ECACE885257C0B00672021	
GA	No	No hours requirement	N/A	(a) For the purposes of this Rule, the "active practice of law" shall include the following activities, if performed in a jurisdiction in which the applicant is admitted, or if performed in a jurisdiction that affirmatively permits such activity by a lawyer not admitted to practice in that jurisdiction; however, in no event shall any activities that were performed in advance of bar admission in some state, territory, or the District of Columbia be accepted toward the durational requirement: (1) representation of one or more clients in the practice of law; (2) service as a lawyer with a local, state or federal agency, including military service; (3) teaching law at a law school approved by the American Bar Association; (4) service as a judge in a federal, state or local court of record; (5) service as a judicial law clerk; or (6) service as in-house counsel provided to the lawyer's employer or its organizational affiliates.	https://www.gabaradmissions.org/motion_rule	
HI	N/A	Must take the bar exam	N/A	Must take the bar exam	https://hsba.org/HSBA_2020/Public/FAQ.aspx#Reciprocity	
IA	No	At least 1000 hours per year in 5 of the last 7 years	Approx. 20 hours per week	31.12(3) The application and supporting documents must contain specific facts and details as opposed to conclusions and must demonstrate the following: a. The applicant has been admitted to the bar of any other state of the United States, the District of Columbia, or a territory of the United States; has regularly engaged in the practice of law for at least five of the last seven years immediately preceding the date of the application; and still holds a license. For the purposes of this rule, "regularly engaged in the practice of law" means the applicant has practiced law for at least 1000 hours in that year.	https://www.legis.iowa.gov/docs/ACO/CR/LIN/C/03-31-2022.chapter.31.pdf	
ID	No	No hours requirement; reviewed on a case-by-case basis	N/A	Has been substantially engaged in the Active Practice of Law in Idaho or under the authority of another jurisdiction that grants admission to attorneys licensed in Idaho under provisions substantially similar to this rule for no less than three of the five years immediately preceding the Application; however, if the jurisdiction from which the Reciprocal Applicant is seeking admission to the Bar requires at least three years of active practice within the five years immediately preceding the Application, then the Reciprocal Applicant must satisfy the period of time required in that jurisdiction. For purposes of this rule, substantial engagement in the Active Practice of Law includes: (A) Attorneys who are licensed in Idaho as house counsel under Rule 225. Practice of law in Idaho as house counsel without an Idaho house counsel license does not satisfy the requirements of this subsection; (B) Judges, administrative judges or the equivalent thereof in another jurisdiction, of a court of general or appellate jurisdiction of any state or territory of the United States, the District of Columbia or federal court in the United States; or (C) Attorneys who are employed by and teaching full-time in an Approved Law School	https://isb.idaho.gov/wp-content/uploads/lbcr.pdf	
IL	No	Minimum of 80 hours per month and no fewer than 1000 hours per year during 36 of the 60 months immediately preceding the application	Approx. 20 hours per week	h. For purposes of this Rule, the term "active and continuous" shall mean the person devoted a minimum of 80 hours per month and no fewer than 1000 hours per year to the practice of law during 36 of the 60 months immediately preceding the application.	https://www.ilbaradmissions.org/appinfo.action?id=6	
IN	No	At least 1000 hours per year for at least 5 of the last 7 years	Approx. 20 hours per week	(a) The applicant has actively engaged in the practice of law for a period of at least five (5) of the seven (7) years immediately preceding the date of application. "Actively engaged in the practice of law" shall mean: (i) performing legal services for the general public as a lawyer for at least 1,000 hours per year; or (ii) employment by a state or local governmental or business entity as a lawyer performing duties for which admission to the practice of law is a prerequisite for at least 1,000 hours per year; or (iii) performing the duties of a teacher of law on a full-time basis in an ABA accredited law school; or (iv) serving as a judge of a court of record on a full-time basis; or (v) serving on a full-time salaried basis as an attorney with the federal government or a federal governmental agency including service as a member of the Judge Advocate General's Department of one of the military branches of the United States; or (vi) a combination of the above.	https://www.in.gov/courts/rules/ad_dis/index.html#_Toc65593951	

KS	No	No hours requirement	N/A	Active Practice of Law. For purposes of this rule, the active practice of law includes the following activities: (1) representing a client in the practice of law; (2) serving as corporate counsel or as an attorney with a local, state, or federal government body; (3) teaching at a law school approved by the American Bar Association; and (4) serving as a judge or judicial law clerk in a federal, state, or local court, provided that the position required a license to practice law.	https://www.kscourts.org/Rules-Orders/Rules/Rule-719	
KY	No	No hours requirement	N/A	(1) Any person who has been admitted to the highest Court of the District of Columbia or some sister state and who has been engaged in the active practice of law, in a state or jurisdiction which has reciprocity or comity with Kentucky, for five of the seven years next preceding the filing of an application may be admitted to the bar of this state without examination provided the applicant meets all requirements for admission to the bar under these Rules. Active engagement in the teaching of the law shall be considered active engagement in the practice of law.	https://kyoba.org/Views/public/Content.aspx?page_id=204	
LA	N/A	Must take the bar exam	N/A	Must take the bar exam	https://www.lascba.org/Admissions.aspx	
MA	No	No hours requirement	N/A	6.1.1 The petitioner shall have been admitted in another state, district or territory of the United States for at least five years prior to petitioning for admission in the Commonwealth, and shall have engaged in the active practice or teaching of law in a state, district or territory of the United States for five out of the past seven years immediately preceding the filing of the petition for admission by motion.	https://www.mass.gov/supreme-judicial-court-rules/supreme-judicial-court-rule-301-attorneys#section-6-admission-by-motion	
MD	Yes	Full time for 3 of the last 5 years or for more than 10 years	40 hours per week	Having accumulated the professional experience required by Rule 19-215(b) by working for 3 of the most recent 5 years or for more than 10 years overall in A. The full time authorized practice of law in a state or B. Full time employment as a teacher of law at an ABA-approved law school or C. Full time employment as a judge of a court of record of a state or D. A combination of (a) – (c)	https://www.mdcourts.gov/ble/admissionwithoutexam	
ME	Yes	On a full time basis for at least 3 of the last 5 years	40 hours per week	For the purposes of this Rule, the "active practice of law" shall include the following activities, either separately or in the aggregate, when performed on a full time basis: A. Representation of one or more clients in the private practice of law; B. Service as a lawyer with a local, state, territorial or federal agency including military service; C. Teaching law at a law school approved by the American Bar Association; D. Service as a judge in a federal, state, or local court of record; E. Service as a judicial law clerk; or F. Service as in house counsel providing legal services to the lawyer's employer.	https://mainebarexaminers.org/wp/wp-content/uploads/2017/09/Fully-amended-MBAR-0517-TOC-amended-0917.pdf	
MI	No	No hours requirement	N/A	A lawyer licensed to practice in another state of the United States, its territories, or the District of Columbia, who has actively practiced law as a principal business or occupation in the jurisdiction where licensed for three of the five years preceding application to Michigan, who intends to practice law in Michigan, may be eligible for admission without examination.	https://www.michbar.org/professional/woexam	
MN	No	At least 1000 hours per year for at least 36 of the 60 months immediately preceding the application	Approx. 20 hours per week	A. Eligibility by Practice. (1) Requirements. An applicant may be eligible for admission without examination if the applicant otherwise qualifies for admission under Rule 4 (excluding applicants who qualify only under Rule 4A(3)(b)) and provides documentary evidence showing that for at least 36 of the 60 months immediately preceding the application, the applicant: (a) Held a license to practice law in active status; (b) Was in good standing before the highest court of all jurisdictions where admitted; and (c) Was engaged in the lawful practice of law for at least 1000 hours per year as a: i. Lawyer representing one or more clients, including on a pro bono basis; ii. Lawyer in a law firm, professional corporation, or association; iii. Judge in a court of law; iv. Lawyer for any local or state governmental entity; v. House counsel for a corporation, agency, association, or trust department; vi. Lawyer with the federal government or a federal governmental agency including service as a member of the Judge Advocate General's Department of one of the military branches of the United States; vii. Full-time faculty member in any approved law school; and/or viii. Judicial law clerk whose primary responsibility is legal research and writing. (2) Jurisdiction. The lawful practice of law described in Rule 7A(1)(c)(i) through (v) must have been performed in a jurisdiction in which the applicant is admitted, or performed in a jurisdiction that permits the practice of law by a lawyer not admitted in that jurisdiction. Practice described in Rule 7A(1)(c)(vi) through (viii) may have been performed outside the jurisdiction where the applicant is licensed.	https://www.ble.mn.gov/rules/#7A	
MO	Yes	Full-time practice of law for 5 of the last 10 years	40 hours per week	4. For five of the 10 years immediately preceding the date upon which the application under this Rule 8.10 is filed, the person has: (A) Been engaged in the full-time practice of law primarily at or from an office physically located in a state, other than Missouri, or in a territory of the United States or the District of Columbia, while the individual had an active license to practice law in such state, territory or the District of Columbia; or (B) Served full-time as a lawyer with the United States government or its armed forces; or (C) Taught full-time in a law school approved by the American Bar Association; or (D) Been engaged in the full-time practice of law as in-house counsel primarily at or from an office physically located in a state, other than Missouri, or in a territory of the United States or the District of Columbia; or (E) Any combination of the foregoing	https://www.mble.org/rule-8	
MS	No	No hours requirement; reviewed on a case-by-case basis	N/A	The five (5) year practice of law requirement contemplates that the work done by the applicant be of a general legal nature but not work that is very narrow in scope, is of a type which need not be performed by an attorney, or does not generally require the services of an attorney. An attorney's five (5) years of prior practice must have constituted a full-time or regular undertaking and not have been on only an occasional or haphazard basis.	https://courts.ms.gov/research/rules/msrulesofcourt/rules_admission_msbar.pdf	

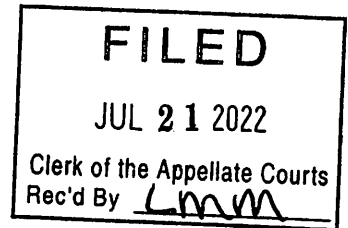
MT	No	At least 1000 hours per year for 5 of the last 7 years	Approx. 20 hours per week	<p>"Active practice of law" means active and continuous engagement or employment in the performance of legal services and includes the following activities if performed or treated as performed while the applicant was admitted in active status:</p> <ul style="list-style-type: none"> a. representation of one or more clients in the practice of law; b. service as a lawyer with a United States local, state, territorial, or federal agency, including military service with any branch of the United States military; c. teaching at a law school formally accredited by the American Bar Association; d. service as a judge in a local, state, territorial, or federal court of record of the United States; e. service as a judicial law clerk in a local, state, territorial, or federal court of record of the United States, which service was performed after admission to practice in the jurisdiction in which the service was performed; f. service as in-house counsel provided to the applicant's employer or its organizational affiliates, which service was performed after admission to practice in the jurisdiction in which the service was performed; g. service as a lawyer in Montana pursuant to temporary admission by order of the Montana Supreme Court; or h. any combination of the above. <p>"Engagement or employment in the performance of legal services" means that during each of the required five years in the durational period, the applicant spent at least one thousand hours per year engaged in one or more of the activities listed in Rule V.D.1.</p>	https://cdn.ymaws.com/montanabar.site-ym.com/resource/resmgr/admissions/11rules_for_admission_10-30-.pdf	
NC	No	No hours requirement	N/A	<p>Prove to the satisfaction of the Board that the applicant is duly licensed to practice law in one or more jurisdictions which are on the list of "approved jurisdictions," or should be on such list, as a comity jurisdiction within the language of the first paragraph of this Rule .0502; that the applicant has been, for at least four out of the six years immediately preceding the filing of this application with the Executive Director, actively and substantially engaged in the practice of law pursuant to the license to practice law from one or more jurisdictions relied upon by the applicant; and that the applicant has read the Rules of Professional Conduct promulgated by the North Carolina State Bar. Practice of law for the purposes of this rule when conducted pursuant to a license granted by another jurisdiction shall include the following activities, if performed in a jurisdiction in which the applicant is admitted to practice law, or if performed in a jurisdiction that permits such activity by a licensed attorney not admitted to practice in that jurisdiction:</p> <ul style="list-style-type: none"> (a) The practice of law as defined by G.S. 84-2.1; or (b) Activities which would constitute the practice of law if done for the general public; or (c) Legal service as house counsel for a person or other entity engaged in business; or (d) Judicial service, service as a judicial law clerk, or other legal service in a court of record or other legal service with any local or state government or with the federal government; or (e) Legal service with the United States, a state or federal territory, or any local governmental bodies or agencies, including military service; or (f) A full time faculty member in a law school approved by the Council of the North Carolina State Bar. 	https://www.ncble.org/rules-governing-admission-to-the-practice-of-law-nc	
ND	No	No hours requirement	N/A	<p>1. Any person who is a licensed member of the bar of another state or the District of Columbia may apply for admission by motion if that person:</p> <ul style="list-style-type: none"> a. meets the requirements of Rules 1 and 2; b. has been a licensed member of the bar of another state or the District of Columbia for at least five (5) years; c. has for at least four (4) of the last five (5) years immediately preceding the application for admission on motion been actively engaged, to an extent deemed by the Board to demonstrate competency in the practice of law, in one or more of the following: <ul style="list-style-type: none"> (1) the private practice of law; (2) service as a judge of a court of record. (3) the teaching of law as an instructor in a law school or schools accredited by the American Bar Association; or (4) the performance of legal work in a legal capacity. 	https://www.ndcourts.gov/legal-resources/rules/admissiontopracticer/	
NE	No	No hours requirement	N/A	<p>(P) Substantially engaged in the practice of law. "Substantially engaged in the practice of law" means primarily engaged in legal work performing any combination of the following:</p> <ul style="list-style-type: none"> (1) The private practice of law as a sole practitioner or as an attorney employee of, or partner or shareholder in, a law firm, professional corporation, legal clinic, legal services office, or similar entity; or (2) Employment as an attorney for a corporation, partnership, trust, individual, or other entity with the primary duties of: <ul style="list-style-type: none"> (a) Furnishing legal counsel, drafting documents and pleadings, and interpreting and giving advice with respect to the law; or (b) Preparing cases for presentation to or trying before courts, executive departments, or administrative bureaus or agencies; (3) Employment as an attorney in the law offices of the executive, legislative, or judicial departments of the United States, including the independent agencies thereof, or of any state, political subdivision of a state, territory, special district, or municipality of the United States, with the primary duties of: <ul style="list-style-type: none"> (a) Furnishing legal counsel, drafting documents and pleadings, and interpreting and giving advice with respect to the law; or (b) Preparing cases for presentation to or trying cases before courts, executive departments, or administrative bureaus or agencies; (4) Employment as a judge, magistrate, hearing examiner, administrative law judge, law clerk, or similar official of the United States, including the independent agencies thereof, or of any state, territory, or municipality of the United States, with the duties of hearing and deciding cases and controversies in judicial or administrative proceedings, provided such employment is available only to an attorney; or (5) Employment as a teacher of law at a law school approved by the American Bar Association throughout the applicant's employment; or (6) In the event that the applicant has not served for a full 3 of the last 5 years with any of the entities listed in subsections (1) through (5) above, for purposes of this section, the applicant may use any combination of subsections (1) through (5) above. 	https://supremecourt.nebraska.gov/supreme-court-rules/chapter-3-attorneys-and-practice-law/article-1-admission-requirements-practice/9-3-119-application-admission-attorney-class-1-1-b-1-c-1-d-motion-applicants	https://supremecourt.nebraska.gov/supreme-court-rules/chapter-3-attorneys-and-practice-law/article-1-admission-requirements-practice/9-3-101-definitions

NH	No	No hours requirement	N/A	<p>(a) Applicant from Reciprocal Jurisdiction.</p> <p>(1) An applicant who meets the Eligibility Requirements set forth in Rule 42(IV)(a), (V), and (VI), and the following additional requirements may, upon motion to the board, be admitted to the bar without examination. The applicant shall:</p> <p>(A) have been admitted by bar examination to practice law in another state, territory, or the District of Columbia; and</p> <p>(B) have been primarily engaged in the active practice of law in one or more states, territories, or the District of Columbia for five of the seven years immediately preceding the date upon which the motion is filed; and</p> <p>(C) have either:</p> <p>i. taken and passed the bar examination in a reciprocal jurisdiction, provided that the applicant is currently a member in good standing of said jurisdiction and authorized to practice law therein; or</p> <p>ii. been primarily engaged in the active practice of law, for five of the seven years immediately preceding the date upon which the motion is filed, in reciprocal jurisdictions, provided that the applicant was a member in good standing of said jurisdictions and authorized to practice law therein throughout the aforesaid five-year period and is currently a member in good standing of said jurisdictions and authorized to practice law therein</p>	https://www.courts.nh.gov/rules-supreme-court-state-new-hampshire#page-id-3891	https://www.courts.nh.gov/lawyers/nh-bar-admissions/admission-motion-without-examination
NJ	No	No hours requirement	N/A	<p>1:24-4. Application for Admission by Motion</p> <p>Applicants may apply for admission to the bar of this State by motion to the Supreme Court. To qualify for application by motion, applicants must:</p> <p>(a) have lawfully practiced law for five of the last seven years within the jurisdiction of the United States;</p> <p>(b) have previously sat for and passed the bar examination in another United States jurisdiction;</p> <p>(c) be admitted in a United States jurisdiction that would extend a reciprocal license by motion to New Jersey lawyers;</p> <p>(d) have completed a course on New Jersey ethics and professionalism; and</p> <p>(e) meet all other application requirements in Rule 1:24-1 above.</p>	https://www.njcourts.gov/attorneys/assets/rules/r1-24.pdf	
NM	Yes	At least 1000 hours per year for 5 of the last 7 years	Approx. 20 hours per week	"Full-time, gainful employment in the performance of legal services" is defined for the purpose of this rule to require that during each of the required five (5) years in the durational period, the applicant spent at least one thousand (1,000) hours per year engaged in one or more of the activities listed above, and derived at least fifty percent (50%) of the applicant's non-investment income from such activity or activities.	https://nmosource.com/nmos/nmra/en/5633/1/document.do	
NV	N/A	Must take the bar exam	N/A	Must take the bar exam	https://nvbar.org/licensing-compliance/admissions/admission-requirements/#?text=Nevada%20has%20NO%20RECIPROCITY%20OR%20student%20practice%2C%20and%20legal%20services	
NY	No	No hours requirement	N/A	<p>(2) (i) while admitted to practice as specified in paragraph (1) of this subdivision, has actually practiced therein, for at least five of the seven years immediately preceding the application:</p> <p>(a) in its highest law court or highest court of original jurisdiction in the state or territory of the United States, in the District of Columbia or in the common law country where admitted; or</p> <p>(b) in Federal military or civilian legal service in a position which requires admission to the bar for the appointment thereto or for the performance of the duties thereof, even if the government service, civilian or military, was not in a jurisdiction in which the applicant was admitted to practice; or</p> <p>(c) in legal service as counsel or assistant counsel to a corporation in the state or territory of the United States where admitted, or in the District of Columbia if admitted therein; or in the common law country where admitted</p>	https://www.nycourts.gov/ctapps/520rules10.htm#10	
OH	Yes	Fulltime basis for at least 5 full years out of the last 10 years	40 hours per week	To confirm that the applicant has engaged in the full-time active practice of law for at least five full years out of the last ten years prior to the applicant's submission of the application, an affidavit from the applicant's employer or employers verifying the applicant's full-time practice of law or, if the applicant has been self-employed, an affidavit from an attorney who is a member of the bar in the jurisdiction in which the applicant practiced and who knows the applicant, verifying the applicant's full-time practice of law. For purposes of this section, judicial law clerks, provided they are admitted to practice law in another jurisdiction and are working full-time, are engaged in the active practice of law.	https://www.supremecourt.ohio.gov/LegalResources/Rules/govbar/govbar.pdf#page=3	
OK	No	No hours requirement	N/A	<p>Section 1. Persons who are graduates of an American Bar Association approved law school, have been lawfully admitted to practice and are in good standing on active status by a reciprocal state, and have engaged in the actual and continuous practice of law under the supervision and subject to the disciplinary requirements of a reciprocal state bar association or supreme court for at least three of five years immediately preceding application for admission under this Rule. The years of practice earned under the supervision and subject to the disciplinary requirements of multiple reciprocal states may be combined. "Practice of Law" shall not be required to occur outside of Oklahoma providing that practice of law within this state did not include work that, as undertaken, would constitute unauthorized practice of law.</p> <p>A. For the purposes of this section, "practice of law" shall mean:</p> <p>(a) Private practice as a sole practitioner or for a law firm, legal services office, legal clinic or similar entity, provided such practice was subsequent to being admitted to the practice of law in the reciprocal state in which that practice occurred;</p> <p>(b) Practice as an attorney for a corporation, partnership, trust, individual or other entity, provided such practice was subsequent to being admitted to the practice of law in the reciprocal state in which the practice occurred and involved the primary duties of furnishing legal counsel, drafting legal documents and pleadings, interpreting and giving advice regarding the law, or preparing, trying or presenting cases before courts, executive departments, administrative bureaus, or agencies;</p> <p>(c) Practice as an attorney for the federal, state, local government (including a territory, district, commonwealth or possession of the United States), branch of the armed services, or sovereign Indian nation with the same primary duties as described in Section 1 (b) above;</p> <p>(d) Employment as a judge, magistrate, referee, law clerk, or similar official for the federal, state or local government (including a territory, district, commonwealth or possession of the United States); provided that such employment is available only to attorneys;</p> <p>(e) Full time employment as a teacher of law at a law school approved by the American Bar Association; or</p> <p>(f) Any combination of the above.</p>	https://www.okbbe.com/Resources/Docs/RGAP2222022.pdf	https://www.okbbe.com/FAQ/default.aspx

OR	No	At least 1000 hours per year for 5 of the last 7 years	Approx. 20 hours per week	See Rule 15.05 (1). Attorneys who have taken and passed the bar examination in another United States jurisdiction, who are active members of the bar in a qualifying jurisdiction, and who have lawfully engaged in the active, substantial and continuous practice of law for no less than five of the seven years immediately preceding their application for admission under this rule may be admitted to the practice of law in Oregon without having to take and pass the Oregon bar examination, subject to the requirements of this rule. See FAQ document. The continuous practice of law means at least 1,000 hours of work per year (RFA 1.05(8)). This work does not need to be five consecutive years, but rather five years within a seven year timeframe. The 1,000 hours, also, does not need to be performed over a calendar year or twelve month period.	https://www.osbar.org/_docs/admissions/reciprocityfaq.pdf	http://www.osbar.org/_docs/rulesregs/admissions.pdf
PA	No	More than 20 hours per week for 5 of last 7 years	More than 20 hours per week	Rule 204(4) requires an applicant to prove that he/she has "for a period of five years of the last seven years immediately preceding the date of filing of the application ... devoted a major portion of time and energy to the practice of law in one or more states." The Board will not count any work towards the practice requirement that is before the date of the applicant's admission to the bar. The Board interprets the phrase "devoted a major portion of time and energy to the practice of law" to mean that the applicant spent more than 50 percent of his/her time engaged in the practice of law. An applicant must demonstrate at least five years' worth of work in which he/she devoted more than 20 hours of work per week to the practice of law.	https://www.pabarexam.org/non_bar_exam_admission/204_interpretation.htm	
RI	N/A	Must take the bar exam	N/A	Must take the bar exam	https://www.courts.ri.gov/Courts/SupremeCourt/Supreme%20Court%20Rules/Supreme-Rules-Article2.pdf	
SC	N/A	Must take the bar exam	N/A	Must take the bar exam	https://barapplication.sccourts.org/admission/ToPractice.cfm	
SD	No	No hours requirement	N/A	provides documentary evidence showing that for three (3) of the last five (5) years immediately preceding the application for admission without examination, the applicant, as principal occupation, has been actively, continuously, and lawfully engaged in the practice of law, in a state or states that allow South Dakota attorneys substantially similar admission without examination, as: 1) a sole practitioner; 2) a member of a law firm, professional corporation or association; 3) a judge in a court of record; 4) an attorney for any local or state governmental entity; 5) inside counsel for a corporation, agency, association or trust department; and/or, 6) an attorney with the federal government or a federal governmental agency including service as a member of the Judge Advocate General Department of one of the military branches of the United States.	https://uis.sd.gov/uploads/barexaminers/RReg.pdf	
TN	Yes	Full-time for 5 of the last 7 years	40 hours per week	(1) For the purposes of this Rule, in addition to the definitions of "Practice of Law" and "Law Business" in section 1.01 of this Rule, the "active practice of law" shall include the following activities, if performed in a jurisdiction in which the applicant is admitted, or if performed in a jurisdiction that permits such activity by a lawyer not admitted to practice: (A) full-time private or public practice as a licensed attorney; (B) teaching law full-time at a law school approved by the ABA; (C) service as a judicial law clerk or staff attorney; and (D) service as a Judge, Attorney General, Public Defender, U.S. Attorney, District Attorney, or duly registered In-House Counsel or Military Spouse.	https://www.tncourts.gov/rules/supreme-court/7	
TX	No	At least 30 hours per week for 5 of last 7 years	30 hours per week	Determining What Counts as the Active, Substantial, and Lawful Practice of Law Rule 1(a)(11) describes the practice of law to include: private practice as a sole practitioner or for a law firm, legal services office, legal clinic, public agency, or similar entity; practice as an attorney for an individual or for a corporation, partnership, trust, or other entity with the primary duties of furnishing legal counsel and advice; drafting and interpreting legal documents and pleadings; interpreting and giving advice regarding the law; or preparing, trying, or presenting cases before courts, departments of government, or administrative agencies; practice as an attorney for a local government or the state or federal government, with the same primary duties described in the preceding subsection; employment as a judge, magistrate, referee, or similar official for a local government or the state or federal government, provided that the employment is open only to licensed attorneys; employment as a full-time teacher of law at an approved law school; any combination of the preceding categories.	https://ble.texas.gov/admission-without-examination	https://ble.texas.gov/faq.action#781
UT	Yes	At least 80 hours per month for 60 of last 84 months	Approx. 20 hours per week	See Rule 14-705. Admission by motion. has been Actively licensed and lawfully engaged in the Full-time Practice of Law as defined in Rule 14-701 in the reciprocal jurisdiction(s) where licensed for 60 of the 84 months immediately preceding the date the application for admission is filed. For purposes of admission under this rule and with the exception of lawyers licensed in Utah as House Counsel, any time practicing at an office located in Utah will not be counted as time practicing in a reciprocal jurisdiction; See Rule 14-701. Definitions. "Full-time Practice" means the Active and lawful Practice of Law for no fewer than 80 hours per month. Time spent on administrative or managerial duties, continuing legal education, or client development and marketing does not qualify as part of the required 80 hours of legal work.	https://www.utcourts.gov/resources/rules/ucja/view.html?title=Rule%2014-705.%20Admission%20by%20motion.&rule=h14/07%20Admissions/USB14-705.html	https://admissions.utahbar.org/getpdf?orm.action?id=1040

VA	No	At least 32 hours per week for 3 of the last 5 years	32 hours per week	<p>(c) Board Review – Upon receipt of a completed application, the Board will determine in accordance with the regulations issued by the Supreme Court of Virginia whether the applicant has established by satisfactory evidence that he or she:</p> <p>Is a proper person to practice law; and</p> <p>Pursuant to Code § 54.1-3931, has been admitted to practice law before the court of last resort of any state or territory of the United States or of the District of Columbia for at least five years; and</p> <p>Has practiced law for at least three of the immediately preceding five years and has made such progress in the practice of law that it would be unreasonable to require the applicant to take an examination. The Board may require the applicant to appear personally before the Board, the Character and Fitness Committee (the Committee) of the Board, or a member of either the Board or the Committee, and furnish any such additional information as may be required. If the applicant's license to practice law in any other jurisdiction is subject to any restriction or condition, the Board shall determine whether the nature of such restriction or condition is inconsistent with the practice of law and, if so, shall deny the application. If the Board determines that the applicant is qualified to be admitted to the practice of law in this Commonwealth without examination, the Board shall approve the application and shall notify the applicant of its decision.</p>	https://www.vsb.org/practice-guidelines/index.php/reciprocity/	https://barexam.virginia.gov/fagall.html
VT	No	At least 25 hours per week for 5 of the last 10 years	25 hours per week	<p>(a) "Actively Engage in the Practice of Law" means: Any of the following qualified work performed for at least 25 hours per week and subsequent to the admission to the practice of law in another U.S. jurisdiction:</p> <p>(1) representing one or more clients in the private practice of law;</p> <p>(2) serving as a lawyer with a local, state, or federal agency, including military service;</p> <p>(3) serving as a judge in a local, state, or federal court of record;</p> <p>(4) serving as a judicial law clerk;</p> <p>(5) serving as in-house corporate counsel (i.e., practice as an employed attorney for an entity or individual, in which the primary duties involve furnishing legal counsel, interpreting and providing advice regarding the law, drafting legal documents, and/or preparing for and prosecuting or defending cases or claims before agencies, boards, bureaus, commissions, panels, executive departments, or courts);</p> <p>(6) teaching law at a law school approved by the American Bar Association;</p> <p>(7) engaging in work as an arbitrator or mediator for which the primary duty is the interpretation of law and the application of legal knowledge and skill, provided that such work is performed in a jurisdiction in which the applicant is admitted to the practice of law; or</p> <p>(8) engaging in any other employment of which the primary duty is the interpretation of law and the application of legal knowledge and skill, provided that such employment is available only to licensed attorneys and is performed in a jurisdiction in which the applicant is admitted.</p>	https://www.vermontjudiciary.org/sites/default/files/documents/900-00014_6.pdf	
WA	No	No hours requirement	N/A	<p>(1) "Active legal experience."</p> <p>(A) When used to describe a requirement for admission or licensure as, or otherwise regarding, a lawyer means experience in the active practice of law as a lawyer, including practice as a pro bono status lawyer licensed under APR 3(g), or as a teacher at an approved law school, or as a judge of a court of general or appellate jurisdiction or any combination thereof, in a state or territory of the United States or in the District of Columbia or in any jurisdiction where the common law of England is the basis of its jurisprudence</p>	https://www.courts.wa.gov/court_rules/pdf/APR/GA_APR_03_00_00.pdf	https://www.courts.wa.gov/court_rules/pdf/APR/GA_APR_01_00_00.pdf
WI	No	No hours requirement	N/A	<p>SCR 40.05 Legal competence requirement: Proof of practice.</p> <p>(1) An applicant shall satisfy the legal competence requirement by presenting to the clerk certification of the board that the applicant has provided all of the following:</p> <p>(a) Proof of admission to practice law by a court of last resort in any other state or territory or the District of Columbia.</p> <p>(b) Proof that the applicant has been substantially engaged in the practice of law in a state or territory, the federal government, the District of Columbia, or a federally recognized Indian tribe for 3 years within the last 5 years prior to filing application for admission. A lawyer may satisfy this requirement by proof of practice in more than a single jurisdiction and under more than one provision of this rule.</p> <p>(2) Legal service as corporate counsel or legal service as a trust officer, or lawfully before the courts or administrative agencies of a state or territory, the federal government, the District of Columbia, or a federally recognized Indian tribe, if conducted in compliance with the rules where the applicant was admitted to practice law, is the practice of law for the purposes of this section.</p> <p>(2m) Legal service as corporate counsel in Wisconsin under SCR 10.03(4)(f) is the practice of law for the purposes of sub. (1)(b). Provided a timely registration is filed, all such service conducted prior to filing the registration may be counted for purposes of sub. (1)(b).</p> <p>(3) The following activities, whether or not conducted in a state or territory, the federal government or the District of Columbia where the applicant was admitted to practice law, may be deemed to be the practice of law for the purposes of sub. (1)(b):</p> <p>(a) Service as a judge of a court of record of the United States, any state or territory or the District of Columbia.</p> <p>(b) Legal service with any local or state government or with the federal government.</p> <p>(c) Legal service in the armed forces of the United States.</p> <p>(d) Teaching in any law school approved by the American bar association.</p> <p>(e) Legal service in any federally recognized Indian tribe.</p> <p>(f) Service as a judge for any federally recognized Indian tribe.</p> <p>(4) An applicant who has failed the Wisconsin bar examination shall not be eligible for admission on proof of practice elsewhere.</p>	https://www.wicourts.gov/sc/rules/chap40.pdf	

WV	No	No hours requirement	N/A	Engagement in the active practice of law for the purpose of these rules shall mean practice on a substantial basis motivated by a desire to earn a livelihood from that practice. Practice for the required period must have been active and continuous. A lawyer in military or government service shall be considered to have been engaged in the active practice of law only for the period of time when he or she was engaged primarily in the performance of legal services or duties. A lawyer employed as a judge, magistrate, hearing examiner, administrative law judge, or similar official of the United States, including independent agencies thereof, or of any state, territory or municipality of the United States with duties of hearing and deciding cases and controversies in judicial or administrative proceedings, shall be considered to have been engaged in the active practice of law, provided such employment is available only to a lawyer. A lawyer employed as a full-time teacher in any approved law school shall be considered to have been engaged in the active practice of law.	http://www.courts.wv.gov/legal-community/rules-for-admission.html#rule4	
WY	No	At least 300 hours per year for 5 of last 7 years	Approx. 6 hours per week	Has engaged in the active, authorized practice of law for a minimum of 300 hours per year for five of the seven years immediately preceding the date of application, and is an active member in good standing of the bar of a UBE jurisdiction or a jurisdiction (or jurisdictions) that grants bar admission without examination to attorneys licensed in Wyoming on the basis of practice in Wyoming	https://www.courts.state.wy.us/wp-content/uploads/2017/03/RULES_AND_PROCEDURES_GOVERNING_ADMISSION_TO_THE_PRACTICE_OF_LAW.pdf	



Comments RE: ADM2022-00522 / Petition for the Adoption of Amended Tennessee Supreme Court Rule 7, Section 5.01(c)(1)

To Whom it May Concern—

This letter is intended to express my support for amending Rule 7, Section 5.01(c)(1). This amendment would allow lawyers with part-time experience to be admitted to practice law in Tennessee without examination.

At first glance, Rule 7 may seem innocuous, but the requirement effectively makes it harder for lawyers with part-time hours to practice in Tennessee. Preparing and sitting for the bar exam is a significant burden for existing lawyers: as you know, students regularly spend months preparing for the exam and even take out loans to cover the thousands of dollars in forgone income, bar prep courses, exam fees, travel, and lodging necessary to successfully complete the exam.

The existing rule hits working mothers especially hard: of the 21.4 million voluntary part-time workers in 2016, 67 percent were women. Among these women, the most common reason for part-time work was family or personal obligations. LexisNexis previously found that most part-time lawyers were women, specifically mothers with children.

Tennessee's licensing rule holds some of these women back and contributes to the fear that many women have that they will be penalized for going part time or taking leave from work while their children are young. This is truly unfortunate and ensures that the legal profession misses out on legal talent.

Lisa Blatt, described as a "legendary high court litigator" with "an unmatched win record" and one of the most successful lawyers today, relates the following story about how part-time work made her career possible in Reflections of a Lady Lawyer:

"...I was ready to quit practicing law entirely to spend more time at home. I also was mentally exhausted. Paul [Clement] suggested that, instead of quitting, I take a leave of absence. And he said something I will never forget: he told me I was good at my job. I took Paul up on his offer, took a half-year off, and returned to the office six months later, still on a part-time basis. Paul's flexibility and understanding of the challenges facing working mothers saved my career. For the last eighteen years, I have remained part-time."

As Ms. Blatt tells it, maintaining a part-time schedule was vital to her professional and personal success for many years. Indeed, part-time work allows working parents to balance work and family obligations, as parents have continued to prioritize flexible work. Part-time work also keeps the door open to women in a profession that still skews male.

In summary, the current requirement produces an unnecessary obstacle to work for otherwise qualified and experienced lawyers, and, as written, the rule discourages competent legal talent from relocating to Tennessee.

However, removing the full-time work requirement will allow for greater flexibility for mothers, parents, and any other lawyer working part time in the years to come, while ensuring that the state remains competitive, and that Tennessee's legal community has access to a wide pool of talent.

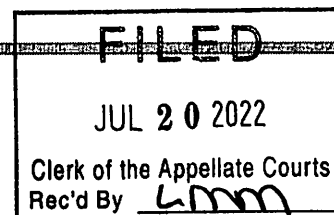
Sincerely,

Vanessa Brown Calder

Director of Opportunity and Family Policy Studies

Lisa Marsh - ADM2022-00522

From: Loretta Calvert <lcalvertjd@gmail.com>
To: <appellatecourtclerk@tncourts.gov>
Date: 7/20/2022 9:47 AM
Subject: ADM2022-00522



Mr. Hivner,

I'm contacting you regarding the requirement that women work full-time in the practice of law in order to be admitted. I wanted to share with you my experiences in the legal field and also those of my peers. In NY, a 40 hour work week was considered part-time and the "mommy track." I never had children but my friends who did had grueling schedules. Either they had to put in the normal 60 hours of work per week most law associates at law firms did or scale back to 40 hours of work per week and be considered part-time and lose their chances of ever becoming partner.

Additionally, many government agencies in NY, CA, and TN consider a 35 hour work week full-time. This is because they give paid lunch hours as one of the benefits for doing those low paying jobs.

I would ask that the Supreme Court of Tennessee consider what level of hours qualifies someone for admission by motion. Define full-time and please define it broadly. Additionally, consider that many women become caretakers for their elderly parents and will sometimes go down to a 25 hour work week. Can we really disqualify someone to practice because they have less hours on the clock?

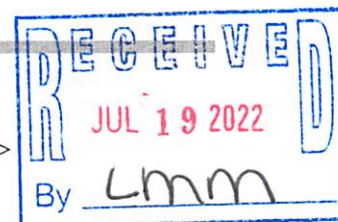
Thank you for your consideration,
Loretta Calvert
Attorney at Law



Virus-free. www.avast.com

Lisa Marsh - ADM2022-00522

From: Zale Dowlen <zale.dowlen@outlook.com>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 7/19/2022 8:57 AM
Subject: ADM2022-00522



To the Honorable Tennessee Supreme Court Justices:

Thank you for your service.

It seems as though this particular regulation [5.01(c)(1)(A)] disproportionately effects women, **especially minority women**. I believe we need all the qualified attorneys available to assist us with the overall caseload in Tennessee. Specifically, we need **diverse viewpoints and life experiences in our courtrooms** so that we can truly find justice within our system.

Hence, I **support this petition**.

Zale Dowlen, JD, MBA
PO Box 335
Goodlettsville, Tennessee 37070-0335
(615) 497-0763
www.ZaleDowlen.com

I love helping people to **LIVE WELL** and
BE REMEMBERED as **HEROES**.

Commit to the LORD whatever you do,
and He will establish your plans.
Proverbs 16:3 (NIV)

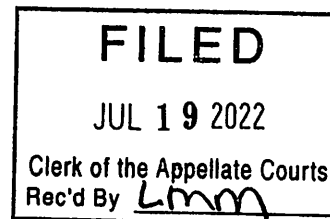
Lisa Marsh - No. ADM2022-00522

From: Martha Emeson <martha@zendylaw.com>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 7/19/2022 5:22 PM
Subject: No. ADM2022-00522

I am writing in support of the petition filed by The Network of Enlightened Women asking the Court to amend the definition of "active practice of law" under Tennessee Rule 7, section 5.01(c) (1). All of the reasons stated in the petition are valid. The existing requirement of full time work for comity is an unnecessary burden that falls largely upon women, who often work part time so as to be able to also raise and care for their children.

Sincerely,

Martha Zendlovitz Emeson
Attorney at Law
4235 Hillsboro Pike, Suite 300
Nashville, TN 37215
Tel.: 615-403-3205
Fax: 615-369-8653
E-mail: martha@zendylaw.com

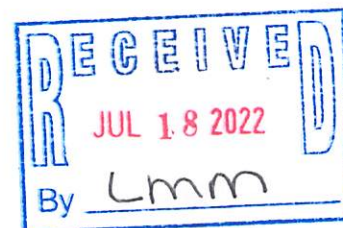


Lisa Marsh - Comment Supporting the Network of Enlightened Women (NeW)' s Petition Seeking an Admission by Motion Rule Change Regarding the Full-time Work Requirement

From: "Dr. Carol M. Swain" <carolmswain@gmail.com>
To: Carol Swain <carol@unitytrainingsolutions.com>, <appellatecourtclerk@tnc...
Date: 7/18/2022 3:56 PM
Subject: Comment Supporting the Network of Enlightened Women (NeW)' s Petition Seeking an Admission by Motion Rule Change Regarding the Full-time Work Requirement

July 18, 2022

James M. Hivner, Clerk,
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407
appellatecourtclerk@tncourts.gov



In response to the issue raised in ADM2022-00522, we understand that the ABA's Model Rule on Admission by Motion does not mandate full-time work, but Tennessee is one (1) of the few states with full-time work requirements for lawyers to be admitted without examination.

It seems logical that requirement makes it more difficult for part-time attorneys to practice law, and many of those adversely affected by the full-time requirement are women. Furthermore, the current Tennessee rule disproportionately affects Black female attorneys based on recent data:

1. **Black women have the highest labor force participation rate of all women.** Typically, Black women have higher labor force participation rates than other women, meaning a higher share of Black women are either employed or unemployed and looking for work. For instance, in 2019, Black women's labor force participation rate was 60.5%, compared with 56.8% for white women. Even in 2020, amid the pandemic, their labor force participation rate was 58.8%, compared to 56.2% for women overall.
2. **Black women have also experienced high unemployment, especially during the pandemic.** In 2020, Black women's unemployment rate was 10.9%, compared to 7.6% for white women and 8.3% for all women. This is no doubt reflective of the steep job losses and slow job recovery experienced by this group since early 2020, though even before the pandemic, their unemployment was relatively high (5.6%) compared with white (3.2%), Asian (2.7%) and Hispanic (4.7%) women.
3. **Black moms, too, have relatively high labor force participation rates.** Black mothers – two-thirds of whom are equal, primary or sole earners in their households – have higher labor force participation rates than other moms. This has historically been the case, and 2020 was no exception: 76.0% were in the labor force, compared with 71.3% of white moms, 62.8% of Hispanic moms, and 64.3% of Asian moms.
<https://blog.dol.gov/2021/08/03/5-facts-about-black-women-in-the-labor-force>

Therefore, we agree with and support the petition filed by NeW (Network of Enlightened Women).

Cordially yours,

Dr. Carol M. Swain

Founder/CEO

Carol Swain's REAL Unity Training Solutions



Dr. Carol M. Swain

Distinguished Senior Fellow for Constitutional Studies, Texas Public Policy Foundation

Executive Assistant: Sandy Norris | sandy@carolmswain.com

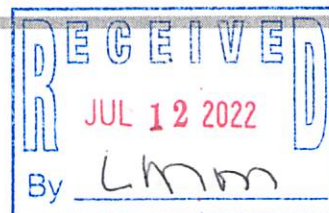
(615) 210-5979 | carolmswain.com | bethepeoplenews.com

carolmswain@gmail.com | P.O. Box 1385 Brentwood, TN 37024



Lisa Marsh - ADM2022-00522 comment

From: Cherrie Moe <cherriemoe@gmail.com>
To: <appellatecourtclerk@tncourts.gov>
Date: 7/12/2022 8:15 PM
Subject: ADM2022-00522 comment

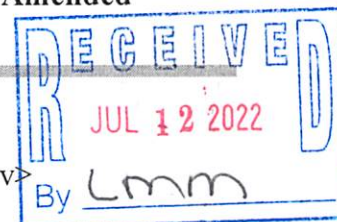


I support the position to amend the current TN requirement regarding full-time work for lawyers to be admitted without examination. This requirement makes it more difficult for part-time lawyers to practice law, and many of those adversely affected by the full-time requirement are women. The rule does not advance the legal profession in the state.

Thank you,
Cherrie Moe

Lisa Marsh - Comments RE: ADM2022-00522 / Petition for the Adoption of Amended Tennessee Supreme Court Rule 7, Section 5.01(c)(1)

From: Vanessa Calder <vcalder@cato.org>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 7/12/2022 1:56 PM
Subject: Comments RE: ADM2022-00522 / Petition for the Adoption of Amended Tennessee Supreme Court Rule 7, Section 5.01(c)(1)



Comments RE: ADM2022-00522 / Petition for the Adoption of Amended Tennessee Supreme Court Rule 7, Section 5.01(c)(1)

To Whom it May Concern—

This letter is intended to express my support for amending Rule 7, Section 5.01(c)(1). This amendment would allow lawyers with part-time experience to be admitted to practice law in Tennessee without examination.

At first glance, Rule 7 may seem innocuous, but the requirement effectively makes it harder for lawyers with part-time hours to practice in Tennessee. Preparing and sitting for the bar exam is a significant burden for existing lawyers: as you know, students regularly spend months preparing for the exam and even take out loans to cover the thousands of dollars in forgone income, bar prep courses, exam fees, travel, and lodging necessary to successfully complete the exam.

The existing rule hits working mothers especially hard: of the 21.4 million voluntary part-time workers in 2016, 67 percent were women. Among these women, the most common reason for part-time work was family or personal obligations. LexisNexis previously found that most part-time lawyers were women, specifically mothers with children.

Tennessee's licensing rule holds some of these women back and contributes to the fear that many women have that they will be penalized for going part time or taking leave from work while their children are young. This is truly unfortunate and ensures that the legal profession misses out on legal talent.

Lisa Blatt, described as a "legendary high court litigator" with "an unmatched win record" and one of the most successful lawyers today, relates the following story about how part-time work made her career possible in Reflections of a Lady Lawyer:

*"...I was ready to quit practicing law entirely to spend more time at home. I also was mentally exhausted. Paul [Clement] suggested that, instead of quitting, I take a leave of absence. And he said something I will never forget: he told me I was good at my job. I took Paul up on his offer, **took a half-year off, and returned to the office six months later, still on a part-time basis.** Paul's flexibility and understanding of the challenges facing working mothers **saved my career.** For the last eighteen years, **I have remained part-time.**"*

As Ms. Blatt tells it, maintaining a part-time schedule was vital to her professional and personal success for many years. Indeed, part-time work allows working parents to balance work and family obligations, as parents have continued to prioritize flexible work. Part-time work also keeps the door open to women in a profession that still skews male.

In summary, the current requirement produces an unnecessary obstacle to work for otherwise qualified and experienced lawyers, and, as written, the rule discourages competent legal talent from relocating to Tennessee.

However, removing the full-time work requirement will allow for greater flexibility for mothers, parents, and any other lawyer working part time in the years to come, while ensuring that the state remains competitive, and that Tennessee's legal community has access to a wide pool of talent.

Sincerely,

Vanessa

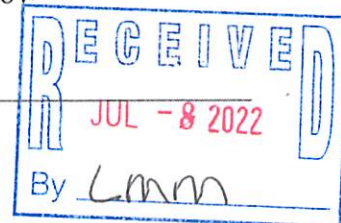
Vanessa Brown Calder

Director of Opportunity and Family Policy Studies

Cato Institute | vcalder@cato.org | [@vanessabcalder](https://twitter.com/vanessabcalder)

Lisa Marsh - Comments re: docket number ADM2022-00522

From: Andrew Wilson <Andrew.Wilson2@uga.edu>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 7/8/2022 8:05 PM
Subject: Comments re: docket number ADM2022-00522



Dear Mr. Hivner,

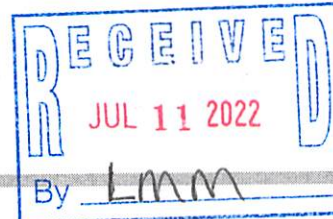
I am a recent graduate of the University of Georgia School of Law who will be sitting for Tennessee's bar exam later this month and beginning work at Nashville firm Manier & Herod shortly thereafter. I write to offer feedback on the Tennessee Supreme Court's solicitation of comments on the Tennessee rule that establishes full-time work requirement for lawyers to be admitted without examination to the Tennessee bar. As the spouse of a medical student, I will likely have to move multiple times to follow her through residency and fellowships. My wife and I have discussed me practicing part time to devote more time to caring for our children during the more demanding stages of her training.

Full-time work requirements for waiving the bar examination erect a barrier to lawyers like myself who are well-trained but contemplate periods of part-time practice to accommodate family needs such as caring for children or elderly parents. My own example demonstrates that this barrier is not limited to women. However, women do a disproportionate amount of care labor in our society. By making it more likely that they will have to retake a bar examination, this rule has the effect of compounding existing societal burdens on working mothers and discouraging them from practicing law. I respectfully recommend allowing lawyers who have worked part-time for the necessary time period prior to practicing in Tennessee to waive the Tennessee bar examination.

Regards,

Andy Wilson
University of Georgia School of Law
J.D. '22

Lisa Marsh - re: docket number ADM2022-00522



From: Kristin Fecteau Mosher <kristin@fecteaulaw.com>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 7/11/2022 2:39 PM
Subject: re: docket number ADM2022-00522

Mr. Hivner,

I would like to comment on the proposed change to the rule that lawyers wanting to waive into the Tennessee State Bar not be required to work full time. With downturns in the economy and the burnout rate for litigators, especially, lawyers like me often don't work full time consecutively, so as to try to preserve their law career. I can imagine other lawyers being caught in similar circumstances, and thus, then being denied waiving into the Bar in Tennessee. I do not think it is fair nor promote the best lawyers practicing to have this arbitrary rule. Therefore, I would respectfully request that Tennessee abolish the requirement for working "full time" for a set number of consecutive years, in order to be admitted here from another jurisdiction.

thanks,
Kristin Mosher

The Law Office of Kristin Fecteau, PLLC

5543 Edmonson Pike, Suite 229

Nashville TN 37211

(615) 496-5747

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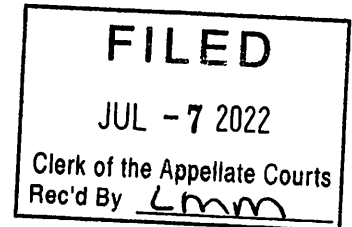
Brian Kelsey
State Senator
District 31: Cordova,
East Memphis, and Germantown

Senate Chamber
State of Tennessee

425 Fifth Avenue North, Suite 714
Nashville, TN 37243-0231
1-800-449-8366 ext. 13036
(615) 741-3036
fax (615) 253-0266
sen.brian.kelsey@capitol.tn.gov
www.briankelsey.org

July 7, 2022

Mr. James Hivner
Clerk of the Appellate Courts
Supreme Court of Tennessee
401 Seventh Avenue North
Nashville, TN 37219



ADM2022-00522 Public Comment Regarding SCT Rule 7, Section 5.01(c)
via email to appellatecourtclerk@tncourts.gov

To Whom it May Concern:

I'm writing in support of the Network of Enlightened Women's petition to amend the definition of "active practice law" under Tennessee Rule 7, section 5.01(c)(1)(A). I am told that Tennessee is one of few states that requires a lawyer to practice full-time for five of the seven previous years to be admitted to practice without examination. The American Bar Association Model Rule on Admission by Motion does not mandate full-time work, instead, requiring only that an applicant has "been primarily engaged in the active practice of law". Tennessee should revise its standards to follow the Model Rule, making it easier for part-time lawyers to get licensed. The number of hours a lawyer works is not an accurate measure of the lawyer's expertise, and this rule inadvertently keeps high-caliber lawyers from serving Tennesseans.

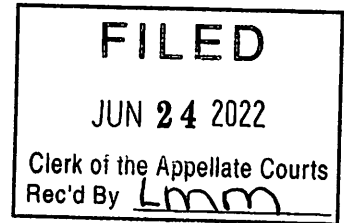
It also has come to my attention that this rule disproportionately affects working mothers, who may prefer to reduce their workload to care for their families. As the rule is currently written, these women are not eligible for admission without examination, regardless of their qualifications and career history. By examining how its licensing restrictions affect women, Tennessee can increase opportunities for women in the workforce.

Sincerely,

Brian Kelsey

TO: Tennessee Supreme Court Justices

RE: ADM2022-00522



I write today to express my support for amending Section 5.01(c)(1) of Tennessee Supreme Court Rule 7 to allow part-time attorneys and legal professors to be actively practicing lawyers for purposes of comity. The practice of law is demanding, regardless of how many hours per week spent practicing, and an attorney who works part-time is no less competent or hardworking than one who works full-time. In fact, attorneys who work part-time often do so because they have other responsibilities, such as raising children or taking care of a sick or elderly relative. These individuals should not be penalized for this.

As it's currently written, Rule 7 severely disadvantages out-of-state lawyers who have chosen (or been forced) to work part-time for more than two years in the seven years prior to filing a comity application. This not only affects parents of young children; it also affects middle-aged attorneys who do not have the luxury of working full-time because they care for their elderly parents. Raising small children, caring for an ill family member, and supporting elderly parents often take more than two years, and depending on how long an individual has chosen to work part-time, Rule 7 would force him or her to wait up to five years to waive into Tennessee, despite actively practicing law part-time, or take the Tennessee bar exam (costing hundreds or thousands of dollars and weeks of studying), even though he or she has already passed a bar exam.

This antiquated requirement discourages qualified lawyers from waiving into the Tennessee bar. Many of these qualified lawyers are women, who work part-time to balance raising their children with supporting their families financially. In my life, seeing my mother work part-time and visiting her office after school instilled a sense of duty and hard work in me, and there is mounting evidence that children of working mothers, especially daughters, are more likely to have higher paying, supervisory jobs later in life because of seeing their mothers working.

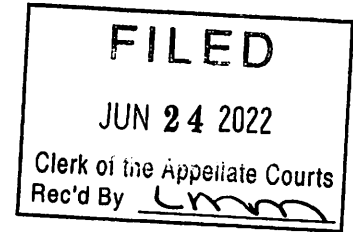
At the same time, however, women (and all parents) should have the flexibility to work part-time if the necessities of life dictate and if they so choose. Rule 7 prevents this kind of flexibility and drives these qualified lawyers to other states with less stringent requirements. For these reasons, the Tennessee Supreme Court should amend this rule to allow part-time attorneys and legal professors to be actively practicing lawyers for purposes of comity.

Sincerely,

Kymerly S. Kester

TO: Tennessee Supreme Court Justices

RE: ADM2022-00522



I strongly support amending Section 5.01(c)(1) of Tennessee Supreme Court Rule 7 to allow part-time attorneys and legal professors to be actively practicing lawyers for purposes of comity. The practice of law is demanding, regardless of how many hours per week spent practicing, and an attorney who works part-time is no less competent or hardworking than one who works full-time. Of course, attorneys who work part-time often do so because they have other responsibilities, such as raising children or taking care of a sick or elderly relative. These individuals should not be penalized for this.

As it's currently written, Rule 7 severely disadvantages out-of-state lawyers who have chosen (or been forced) to work part-time for more than two years in the seven years prior to filing a comity application. This not only affects parents of young children; it also affects middle-aged attorneys who do not have the luxury of working full-time because they care for their elderly parents. Rule 7 would force such attorneys to choose between waiting up to five years to waive into Tennessee, despite actively practicing law part-time, or take the Tennessee bar exam, a costly and time-consuming hurdle. This antiquated requirement discourages qualified lawyers from waiving into the Tennessee bar. Many of these qualified lawyers are women, who work part-time to balance raising their children with supporting their families financially.

I will share that, when I was a junior associate, part-time positions, while available, were not a secure path to partnership. This led to many females (especially with families) burning out early and leaving the legal market, which obviously deprives our market of immense talent and perspective. Gladly, part-time/flex positions are becoming more commonplace, and firms are getting smart and structuring part-time schedules in a way that recognizes and rewards the value part-time attorneys bring to the table. Let's not hamper this trend by throwing up a roadblock to attorneys who have taken advantage of this tool.

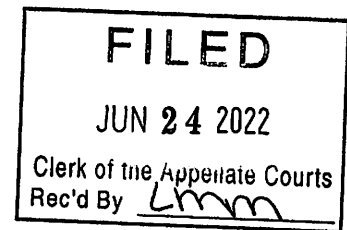
All attorneys should have the flexibility to work part-time if the necessities of life dictate and if they so choose. Rule 7 prevents this kind of flexibility and drives these qualified lawyers to other states with less stringent requirements. For these reasons, the Tennessee Supreme Court should amend this rule to allow part-time attorneys and legal professors to be actively practicing lawyers for purposes of comity.

Sincerely,

Sarah K. Laird

TO: Tennessee Supreme Court Justices

RE: ADM2022-00522



I write today to express my support for amending Section 5.01(c)(1) of Tennessee Supreme Court Rule 7 to allow part-time attorneys and legal professors to be actively practicing lawyers for purposes of comity. The practice of law is demanding, regardless of how many hours per week spent practicing, and an attorney who works part-time is no less competent or hardworking than one who works full-time. In fact, attorneys who work part-time often do so because they have other responsibilities, such as raising children or taking care of a sick or elderly relative. These individuals should not be penalized for this.

As it's currently written, Rule 7 severely disadvantages out-of-state lawyers who have chosen (or been forced) to work part-time for more than two years in the seven years prior to filing a comity application. This not only affects parents of young children; it also affects middle-aged attorneys who do not have the luxury of working full-time because they care for their elderly parents. Raising small children, caring for an ill family member, and supporting elderly parents often take more than two years, and depending on how long an individual has chosen to work part-time, Rule 7 would force him or her to wait up to five years to waive into Tennessee, despite actively practicing law part-time, or take the Tennessee bar exam (costing hundreds or thousands of dollars and weeks of studying), even though he or she has already passed a bar exam.

This antiquated requirement discourages qualified lawyers from waiving into the Tennessee bar. Many of these qualified lawyers are women, who work part-time to balance raising their children with supporting their families financially.

I strongly believe that women (and all parents) should have the flexibility to work part-time if the necessities of life dictate and if they so choose. Rule 7 prevents this kind of flexibility and drives these qualified lawyers to other states with less stringent requirements. For these reasons, the Tennessee Supreme Court should amend this rule to allow part-time attorneys and legal professors to be actively practicing lawyers for purposes of comity.

Sincerely,

Brittany S. Macon

Brittany S. Macon

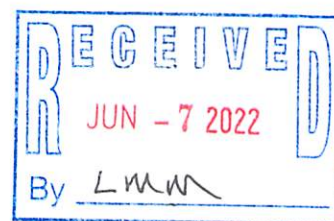
appellatecourtclerk - Comment for Rule 7, Section 5.01(c) ADM2022-00522

From: Heather Scott <heather.scott@heatherscottlaw.com>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 6/7/2022 3:01 PM
Subject: Comment for Rule 7, Section 5.01(c) ADM2022-00522

The Supreme Court should adopt the proposed amendment by the Network of Enlightened Women to Rule 7, Section 5.01(c), Rules of the Tennessee Supreme Court.

Regards,

Heather Scott
Attorney
102 Richland Dr.
Shelbyville, TN 37160
615-604-0996
heather.scott@heatherscottlaw.com



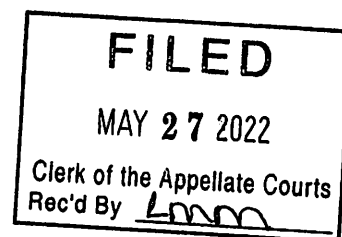
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appellatecourtclerk - Docket No. ADM2022-00522

From: Van Bunch <vbunch@BFFB.com>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 5/27/2022 8:50 AM
Subject: Docket No. ADM2022-00522

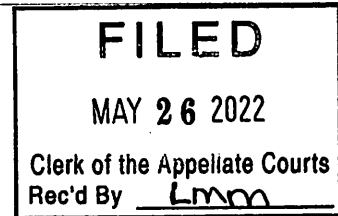
As an attorney admitted by comity in TN, by examination in AZ and later in WV (which at the time did not permit comity admission), I wholeheartedly endorse the proposed amendment.

Van Bunch
Bonnett,Fairbourn,Friedman&Balint,P.C.
2325 E Camelback Road
Suite 300
Phoenix, AZ 85016-3422
602-274-1100
vbunch@bffb.com



TBA 12874
AZ 009630
WV 10608

From: Edgar Rothschild <edgarrothschild@gmail.com>
To: <appellatecourtclerk@tncourts.gov>
Date: 5/26/2022 5:58 PM
Subject: Comments on proposed change in comity requirements



ADM2022-00522

Dear Sir/Madam:

I am an inactive, retired attorney but still a member of the TBA. I plan on staying retired, so please take my comments as a disinterested person. With many people practicing law part-time and wanting to take cases across state borders, it makes sense to me that the current rule requiring a lawyer to maintain a full-time practice is too restrictive and the rule should be amended, and comity provided to those with a part-time practice as well.

Sincerely,

Edgar Rothschild
BPR# 04750

Sent from my iPhone

Edgar Rothschild
479 Broadwell Dr
Nashville, TN 37220
(615) 406-9398
edgarrothschild@gmail.com

appellatecourtclerk - ADM2022-00522

From: Julie Cornell <julie.cornell.law@gmail.com>
To: <appellatecourtclerk@tncourts.gov>
Date: 7/26/2022 3:25 PM
Subject: ADM2022-00522

FILED**JUL 26 2022**Clerk of the Appellate Courts
Rec'd By _____

I am writing today to express my support of amending Section 5.01(c)(1) of the Tennessee Supreme Court Rule 7 to allow part-time lawyers and legal professors to be actively practicing lawyers for purposes of comity.

I took the Washington State bar examination in 2010 and then took the Tennessee State bar examination in 2013 because I did not meet the requirements to waive in. Both exams required many hours of study over a period of a few months. Luckily for me, I did not have children or elderly parents to care for at the time and could dedicate the time required to pass both bar exams. After the birth of my 2nd child I began practicing law on a part-time basis. I would be discouraged from practicing law in a state where I had to take another bar exam due to my working part-time instead of full time. I hate to think of other qualified lawyers in a similar position to me moving to Tennessee who would say the same.

Sincerely,
Julie Cornell



MOUNTAIN STATES LEGAL
FOUNDATION
FREE COUNTRY. FREE PEOPLE.

2596 South Lewis Way | Lakewood, CO 80227 | Tel: 303.292.2021

FILED

JUL 27 2022

Clerk of the Appellate Courts
Rec'd By _____

Tennessee Supreme Court Justices:

I write today on behalf of myself and the Goldwater Institute to express my support for amending Section 5.01(c)(1) of Tennessee Supreme Court Rule 7 to let part-time attorneys and legal professors be considered “actively practicing” lawyers for purposes of comity.

The practice of law is demanding, regardless of how many hours per week one works, and a part-time attorney is no less competent or hardworking than one who works full-time. In fact, attorneys who work part-time often do so because they have other responsibilities, such as raising children or taking care of a sick or elderly relative. These individuals should not be penalized for choosing to work part time to meet their familial obligations. But that is just what Section 5.01(c)(1) does.

As it’s currently written, Rule 7 severely disadvantages lawyers who want to relocate to the state if they have worked part-time for more than two of the seven years prior to filing a comity application. Rule 7 forces them to wait up to five years to waive into Tennessee, despite actively practicing law part-time, or take the Tennessee bar exam (costing hundreds or thousands of dollars and months of studying), even though they have already passed a bar exam.

This falls especially hard on women. Studies show that, on the whole, women value flexibility in work more than men do. In the past several decades, the number of women-owned businesses has increased by 3,000 percent. And women are increasingly choosing to take on work as independent contractors, or to work part-time jobs, so that they can better control their schedules. One of the primary reasons is that flexible work has allowed them to balance a fulfilling career with childcare. In fact, 70 percent of female freelancers are the primary caregivers in their homes.

Tennessee’s full-time work requirement isn’t just harmful—it also violates the principles enshrined in the state Constitution and the recently adopted Right to Earn a Living Act. This Court has long recognized that the Tennessee Constitution protects the right to earn a living free from unreasonable or arbitrary restrictions. *See, e.g., Campbell v. McIntyre*, 52 S.W.2d 162, 164 (Tenn. 1932); *Wright v. Wiles*, 117 S.W.2d 736, 738–39 (Tenn. 1938); *Livesay v. Tenn. Bd. Of Exam’rs in Watchmaking*, 322 S.W.2d 209, 213 (Tenn. 1959). In 2016, the Tennessee legislature reaffirmed that the right to earn a living is a *fundamental* right that should be impaired only if necessary to protect the health, safety, and welfare of Tennesseans. But prohibiting part-time attorneys from practicing in Tennessee is arbitrary and does not protect the public. Attorneys who work part-time have met all the qualifications required to practice law. This Court should amend Section 5.01(c)(1) with this principle in mind and afford attorneys who work part-time the same benefit of motion without examination.



**MOUNTAIN STATES LEGAL
FOUNDATION**
FREE COUNTRY. FREE PEOPLE.

2596 South Lewis Way | Lakewood, CO 80227 | Tel: 303.292.2021

Lawyers should have the flexibility to work part-time if the necessities of life dictate. Rule 7 prevents this kind of flexibility and drives these qualified lawyers to other states with less stringent requirements. For these reasons, the Court should amend this rule to allow part-time attorneys and law professors to be actively practicing lawyers for purposes of comity.

Sincerely,

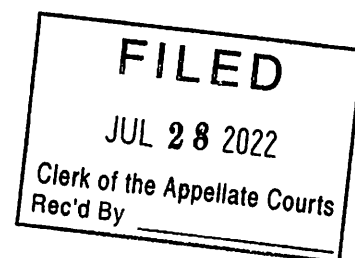
Kaitlyn Schiraldi

Kaitlyn D. Schiraldi (TN Bar No. 039737)
MOUNTAIN STATES LEGAL FOUNDATION
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Lakewood, CO 80227
Phone: (303) 292-2021
kschiraldi@mslegal.org



INSTITUTE FOR JUSTICE

July 28, 2022



Mr. James M. Hivner
Clerk
Tennessee Appellate Courts
100 Supreme Court Building
401 Seventh Avenue North
Nashville, Tennessee 37219-1407
appellatecourtclerk@tncourts.gov

Re: No. ADM2022-00522

Honorable Justices of the Supreme Court of Tennessee:

The Institute for Justice (“IJ”) submits these comments in support of the April 25, 2022 Petition of the Network of Enlightened Women (“Petitioner”), *In re: Amendment of Rule 7, Section 5.01(c), Rules of the Tennessee Supreme Court*. IJ is a national, nonprofit, public interest law firm that litigates, provides research, and advocates in the areas of law that provide the foundation for a free society, including economic liberty and private property.¹ Economic liberty is the right to earn a living free from unreasonable or arbitrary government interference. IJ’s efforts to protect economic liberty have included petitioning other state supreme courts to amend their rules to afford attorneys greater flexibility.²

Tennessee Supreme Court Rule 7, section 5.01(c) governs the admission of attorneys licensed in other jurisdictions to the Tennessee bar without examination, otherwise known as admission by comity. The current rules require such applicants to have practiced full-time for five of the previous seven years in order to qualify. The Petition proposes ending the full-time requirement for comity and instead adopting language that requires applicants to have engaged in “the representation of one or more clients in the private or public practice as a licensed attorney.”³ IJ submits these comments because granting the Petition is in line with the constitutionally recognized right to earn a living. Granting the Petition would also benefit Tennesseans by bringing the state’s rules on admission by comity into greater uniformity with the majority of other jurisdictions.

¹ *About Us*, INST. FOR JUST., <https://ij.org/about-us/> (last visited July 18, 2022); *Four Pillars Plaque*, INST. FOR JUST. (Oct. 1, 2008), <https://ij.org/ll/four-pillars-plaque/>.

² See, e.g., Petition for Rulemaking from Five Licensed Attorneys, *In re: Changes to the Rule Regulating Quantity of On-demand Continuing Legal Education Course Approval*, No. ADM09-8008 (Minn. Aug. 1, 2019).

³ Pet. at Ex. A.

I. Tennessee Law Includes a Constitutional and Statutory Right to Earn a Living, Which Supports Granting the Petition.

The right to earn a living has long been protected by the Tennessee Constitution (and caselaw interpreting it), and it is also protected by a more recently codified statute. Adopting Petitioner's proposed amendment is both supported by—and would align this Court's rules with—this liberty interest. This, in turn, would increase the economic liberty afforded to Tennesseans and allow them greater freedom to make career decisions that are best for themselves and their families.

The Tennessee Constitution guarantees a right to earn a living. Article I, section 8 states “[t]hat no man shall be . . . disseized of his . . . liberties or privileges . . . or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land.”⁴ This provision has long been interpreted by this Court to encompass “the right to use one’s faculties in all lawful ways, . . . to pursue any lawful calling, vocation, trade, or profession, . . . and to enjoy the legitimate fruits thereof.”⁵ This is not only a matter of personal liberty, but an outgrowth of property rights as well: “Labor is property, and, as such, merits protection. The right to make it available is next in importance to the rights of life and liberty. It lies, to a large extent, at the foundation of most other forms of property, and of all solid individual and national prosperity.”⁶

Granted, these are not “unlimited rights” but rather “are subject to the law’s control, and may at any time be abridged or enlarged, or even destroyed, within constitutional bounds”; that is, “by ‘due process of law’ or ‘the law of the land’ . . . two phrases [that] have exactly the same import.”⁷ To that end, this Court has held that “interference with an individual’s inherent property right to pursue [an] occupation is not constitutionally permissible except in so far as such interference may be justified by the police power of the State. Beyond that limitation it is the taking, in effect, of property belonging to another.”⁸ This Court has found the police power “embraces all matters reasonably expedient for the safety, health, morals, comfort and general well-being of its people” but that “[i]f a given legislative enactment is to be justified by reason of the inherent police power of the sovereign, it, the legislation in question, must at least exhibit a real tendency to effect that end.”⁹

On the other hand, this Court has found that “[r]egulation of technical occupations is not ipso facto valid because of its purpose to protect the citizen.”¹⁰ Rather, if “this Court is entirely unable to imagine how such requirements at all promote the general welfare or protect the public morals, health or safety, or have any real tendency to those ends,” then “its plain duty is to adjudge this statute unconstitutional because it may deny some citizens their inherent right to earn their

⁴ TENN. CONST. art. I, § 8.

⁵ *Harbison v. Knoxville Iron Co.*, 53 S.W. 955, 957 (Tenn. 1899).

⁶ *Id.* (internal quotation marks omitted).

⁷ *Id.*

⁸ *Livesay v. Tenn. Bd. of Exam’rs*, 322 S.W.2d 209, 211 (Tenn. 1959).

⁹ *Id.*

¹⁰ *Id.* at 213 (quoting R.D. Hursh, Annotation, *Regulation or Licensing of Watchmaking, Watch Repairing, and the Like*, 34 A.L.R.2d 1326 § 1 (1954)).

livelihood in a private field of work, thus depriving them of a valuable property right without due process of law.”¹¹

This Court has set the bar for the exercise of the police power very high. The Court has gone so far as to declare that:

[I]f the opportunity for a dishonest person in pursuit of a private occupation to defraud his customer is to become a justification for the regulation under the police power rule of an otherwise private occupation, then the Legislature may well regulate every conceivable business, and the claim of the police power rule would become a delusive name for the supreme sovereignty of the state to be exercised free from constitutional restraint.¹²

This high bar comports with this Court’s determination that “[t]he right to engage in work of one’s own choosing is a fundamental one.”¹³ Indeed, this economic liberty right is so fundamental that it dates back to Magna Carta.¹⁴ These deeply rooted origins in English common law influenced such Founding Fathers as Thomas Jefferson¹⁵ and James Madison¹⁶ as they laid the foundations of the United States. The Virginia Declaration of Rights, written by George Mason, contained in its very first section the recognition “[t]hat all men . . . have certain inherent rights, of which . . . they cannot, by any compact, deprive or divert their posterity; namely, . . . the means of acquiring and possessing property.”¹⁷ Jefferson would draw upon the Virginia Declaration in writing the Declaration of Independence,¹⁸ in which he would reference the right to earn a living as the right to the “pursuit of Happiness.”¹⁹

The majority of states (as well as the District of Columbia) do not impose full-time requirements for attorneys to qualify for admission by comity, and such practice is the national

¹¹ *Id.* (internal quotation marks omitted).

¹² *Id.* (cleaned up).

¹³ *Id.* (quoting Hursh, *supra* note 10).

¹⁴ Bruce F. Broll, *The Economic Liberty Rationale in the Dormant Commerce Clause*, 49 S.D. L. REV. 824, 826 (2004).

¹⁵ Timothy Sandefur, *State Powers and the Right to Pursue Happiness*, 21 TEX. REV. L. & POL. 323, 324–25 (2017).

¹⁶ Bernard H. Siegan, *Protecting Economic Liberties*, 6 CHAP. L. REV. 43, 81–84 (2003) (quoting Madison as saying, “I own myself the friend to a very free system of commerce, and hold it as a truth, that commercial shackles are generally unjust, oppressive, and impolitic.”).

¹⁷ VA. DECL. OF RIGHTS § 1 (1776); *see also* Sandefur, *supra* note 15, at 323 n.2 (“The Virginia Declaration of Rights made the point most succinctly in connecting the natural equality of mankind with individual freedom, including the freedom to obtain, use, and enjoy property so as to flourish as individuals.”).

¹⁸ *The Virginia Declaration of Rights*, NAT’L ARCHIVES (Sept. 29, 2016), <https://www.archives.gov/founding-docs/virginia-declaration-of-rights>.

¹⁹ Sandefur, *supra* note 15, at 324.

standard advocated for by the American Bar Association (“ABA”) in its model rules.²⁰ In fact, some state supreme courts have questioned their ability regulate certain types of attorney conduct against the right to earn a living.²¹ Given these facts, it stands to reason that Tennessee’s current full-time requirement does not protect health and safety or the general welfare.

The right to earn a living also receives statutory protection under Tennessee law. In 2016, the General Assembly passed the Right to Earn a Living Act—a sunset act—which codified into statute the Tennessee Constitution’s right to earn a living. The text of the Act makes its overall aim clear. First, the Act affirms that “the right of individuals to pursue a chosen business or profession, free from arbitrary or excessive government interference, is a *fundamental* civil right.”²² Second, it cites the glut of rules regulating entry into specific lines of work—known as entry regulations—that “have exceeded legitimate public purposes and have had the effect of arbitrarily limiting entry and reducing competition,” noting that “the burden of excessive regulation is borne most heavily by individuals outside the economic mainstream, for whom opportunities for economic advancement are curtailed.”²³ Therefore, the Act concludes that:

[I]t is in the public interest to ensure the right of all individuals to pursue legitimate entrepreneurial and professional opportunities to the limits of their talent and ambition . . . and to ensure that regulations of entry into businesses, professions, and occupations are *demonstrably necessary and narrowly tailored to legitimate health, safety, and welfare objectives*.²⁴

The Act thus clearly draws on the language of this Court’s caselaw which has found the right to earn a living to be a “fundamental one”²⁵ that may only be “reasonably” regulated in terms of “safety, health, . . . and general well-being.”²⁶ Although the statute only applies to executive branch authorities,²⁷ this Court should nevertheless find its principles instructive in considering the Petition with an eye towards promoting greater economic liberty and property rights.

²⁰ See *infra* pp. 5–6 and notes 29–31.

²¹ See, e.g., *In re Palazzola*, 853 S.E.2d 99, 111 (Ga. 2020) (Peterson, J., concurring specially) (questioning the extent of “the inherent authority to regulate the practice of law that the Georgia Constitution vests in this Court” since “the Georgia Constitution’s Due Process Clause guarantees the people of Georgia the ‘right to work in one’s chosen profession free from unreasonable government interference’” and noting that the further from the aim of protecting the public a regulation strays, “the greater the risk that our reach exceeds our power.” (quoting *Jackson v. Raffensperger*, 843 S.E.2d 576, 578 (Ga. 2020)).

²² Right to Earn a Living Act, 2016 Pub. Acts ch. 1053 (emphasis added) (codified as amended at TENN. CODE ANN. §§ 4-5-501 to -502).

²³ *Id.*

²⁴ *Id.* (emphasis added).

²⁵ *Livesay v. Tenn. Bd. of Exam’rs*, 322 S.W.2d 209, 213 (Tenn. 1959) (quoting Hursh, *supra* note 10).

²⁶ *Id.* at 211.

²⁷ TENN. CODE ANN. § 4-5-501(2).

II. Granting the Petition Would Bring Tennessee's Rules on Admission by Comity into Greater Conformity with Other Jurisdictions, Benefitting the State's Growing Population.

Adopting Petitioner's proposed amendment would also bring Tennessee's rules on admission by comity into greater uniformity with the national standard adopted by most other jurisdictions. As the Petition notes, the current language of this Court's rules requires attorneys applying for admission by comity to have been engaged in "full-time private or public practice as a licensed attorney"—i.e., forty or more hours per week—in another jurisdiction for at least five of the last seven years.²⁸ By contrast, the ABA's Model Rule on Admission by Motion ("ABA Model Rule") does not include any such requirement in its definition of the "active practice of law."²⁹ The ABA Model Rule also "urges jurisdictions that have not adopted [it] to do so, and urges jurisdictions that have adopted admission by motion procedures to eliminate any restrictions that do not appear in the [ABA Model Rule]."³⁰

Accordingly, most jurisdictions admit attorneys by comity without any requirements beyond those listed in the ABA Model Rule, and very few carry a full-time requirement. Indeed, Tennessee is an outlier. Only seven states—Maine, Maryland, Mississippi, Missouri, Ohio, Tennessee, and Virginia—have a full-time requirement.³¹ Thirty-five states and the District of

²⁸ TENN. S. CT. R. 7, art. V, § 5.01(c)(1)(A), (a)(1)(3), <https://www.tncourts.gov/rules/supreme-court/7>; Pet. at 1–2.

²⁹ Pet. at 1; MODEL RULE ON ADMISSION BY MOTION, at 1 (AM. BAR ASS'N Aug. 6, 2012), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/model_rule_admission_motion.pdf.

³⁰ MODEL RULE ON ADMISSION BY MOTION, at 2.

³¹ MAINE BAR ADMISSION R. 11A(a)(2), <https://mainebarexaminers.org/wp/wp-content/uploads/2017/09/Fully-amended-MBAR-0517-TOC-amended-0917.pdf> (defining the "active practice of law" as requiring "a full time basis"); MD. R. ATTORNEYS 19-215(b), [https://govt.westlaw.com/mdc/Document/NE4E3EE60A41A11EB87D1C73F16553F81?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/mdc/Document/NE4E3EE60A41A11EB87D1C73F16553F81?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)) (defining "[t]he professional experience required for admission under this Rule" to "be on a full time basis"); MISS. BD. OF BAR ADMISSIONS R. VI cmt., https://courts.ms.gov/research/rules/msrulesofcourt/rules_admission_msbar.pdf ("An attorney's five (5) years of prior practice must have constituted a full-time or regular undertaking . . ."); MO. BD. OF LAW EXAM'RS R. 8.10(a)(4), <https://www.mble.org/rule-8> (requiring applicants to have worked full-time in private practice, as a lawyer for the U.S. government, as in-house counsel, or as an instructor at an ABA-approved law school for five of the last ten years); OHIO S. CT. R. I, § 10(A)(2)(c), <https://www.supremecourt.ohio.gov/LegalResources/Rules/govbar/govbar.pdf#Rule1> (requiring practice "on a fulltime basis" to be eligible for admission without examination); TENN. S. CT. R. 7, art. V, § 5.01(c)(1)(A), <https://www.tncourts.gov/rules/supreme-court/7> (defining the "active practice of law" as, *inter alia*, "full-time private or public practice as a licensed attorney"); VA. S. CT. R. 1A:1 cmt., <https://barexam.virginia.gov/pdf/Rule1A-1.pdf> ("For purposes of admission without examination, 'full-time' means practicing law for a minimum of 32 hours per week.").

Columbia, or over 68% of jurisdictions, do not impose a full-time requirement on attorneys seeking admission by comity. The remaining eight states do not allow admission by comity.³² Thus, a large majority of jurisdictions do not carry a full-time requirement. This should bolster the Court's confidence that adopting Petitioner's proposed amendment will not harm the quality of legal services available to the public in Tennessee.

Finally, greater conformity with the majority, ABA-approved national standard is increasingly important as Americans continue to relocate in response to the COVID-19 pandemic. According to a study released by United Van Lines, which surveys its customers annually to determine where they are moving, Tennessee was the sixth most moved-to state in 2021.³³ UCLA economics and public policy professor Michael Stoll notes that this trend is generally reflective of the broader realignment of American life away from high density regions, which is "indicative of COVID-19's impact on domestic migration patterns" and of adaptation to more flexible work environments.³⁴ In the face of this continuing demographic shift, which inevitably impacts both the supply and demand for legal services, it would benefit both the people of Tennessee and those attorneys moving to the state for the rules to conform to the more permissive national standard on admission by comity.

CONCLUSION

In summary, IJ respectfully requests that this Court grant the Petition to amend Rule 7, section 5.01(c). Doing so is supported by, and would respect, the Tennessee Constitution's deeply rooted principles, as well as the will of the General Assembly to increase economic liberty in the state. Amending section 5.01(c) would also bring this Court's rules into greater conformity with the national standard adopted by the majority of other jurisdictions. This shows that such a change would have little to no downside, illustrating that the current full-time requirement is not necessary for health, safety, or welfare objectives. Finally, greater conformity with the national standard

³² *Attorney Applicants*, THE STATE BAR OF CAL., <https://www.calbar.ca.gov/Admissions/Requirements/Attorney-Applicants>; *Frequently Asked Questions*, DE. CTS.: BD. OF BAR EXAM'RS, <https://courts.delaware.gov/bbe/faqs.aspx> (click "I am admitted in another state. Do I have to take the Delaware Bar Exam to be admitted in Delaware?"); *Frequently Asked Questions*, FL. BD. OF BAR EXAM'RS, <https://www.floridabarexam.org/web/website.nsf/faq.xsp#10D6>; *Frequently Asked Questions*, HAW. STATE BAR ASS'N, https://hsba.org/Supreme_Court_HSBA_2020/Public/FAQ.aspx#Reciprocity; LA. S. CT. R. XVII, § 11, https://www.lasc.org/Supreme_Court_rules/?p=RuleXVII; *Admission Requirements*, STATE BAR OF NEV., <https://nvbar.org/licensing-compliance/admissions/admission-requirements/#reciprocity>; *Admission to the Rhode Island Bar: Attorney Admission on Examination*, R.I. JUDICIARY, <https://www.courts.ri.gov/AttorneyResources/baradmission/Pages/Attorney%20on%20Admission.aspx>; *Admission to Practice Law in South Carolina*, S. CT. OF S.C.: OFF. OF BAR ADMISSIONS, <https://barapplication.sccourts.org/admissionToPractice.cfm>.

³³ Elliott Davis Jr., *Americans Moved South in 2021, Often Influenced by the Pandemic*, U.S. NEWS & WORLD REP. (Jan. 3, 2022, 3:39 PM), <https://www.usnews.com/news/best-states/articles/2022-01-03/americans-moved-south-in-2021-a-study-finds>.

³⁴ *Id.*

Mr. James M. Hivner
July 28, 2022
Page 7 of 7

would allow attorneys more flexibility as they adapt to changing demands for legal services in Tennessee created by the state's growing population. For these reasons, the Petition should be granted.

Respectfully submitted,

INSTITUTE FOR JUSTICE

/s/ Jaimie Cavanaugh
Jaimie Cavanaugh
Attorney
520 Nicollet Mall
Suite 550
Minneapolis, MN 55402
jcavanaugh@ij.org

Elliott Lawson
& Minor

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August 8, 2022

VIA EMAIL: appellatecourtclerk@tncourts.gov

James M. Hivner
Clerk, Tennessee Appellate Courts
Supreme Court of Tennessee
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407



In re: ADM2022-00522: Petition concerning Supreme Court Rule 7, Section 5.01(c)

To the Honorable Justices of the Supreme Court:

I write to share how Tennessee's current Rule 7, Section 5.01(c)(1)'s full-time work requirement impacted me personally. It imposed a high cost on me and limited, if any, benefit to the state of Tennessee.

In 2009, I graduated from The University of Virginia School of Law and passed the Texas bar exam. I then clerked for a federal district judge in the Southern District of Texas, one of the busiest dockets in the nation. Following my clerkship, I practiced as an associate for the Houston office of a large, national firm focusing primarily on complex commercial litigation. After my first son was born, I stepped out of practice to care for him and then my second son during their early childhood. In 2017, when my youngest was a toddler, I returned to practice on a part-time basis to continue to be available for the needs of my family and, specifically, my young children.

In fall 2019, my family left Texas. In 2020, I passed the Virginia bar exam and began practicing law at a firm in Bristol, Virginia. Because the City of Bristol lies partially in Tennessee, I also needed to be licensed in Tennessee.

Tennessee's current rules would not recognize my competence to practice based on my career to date because my full-time years of practice were more than seven years before the date of my application for licensure, and Tennessee deemed my part-time years within the seven-year period a nullity.

Notably and inconsistently, Tennessee does not require all foreign-licensed applicants to have at least five years of full-time practice before being admitted to Tennessee without exam. Under Rule 7, Section 3.05, Tennessee allows recent bar examinees from approximately 38 states and the District of Columbia with *no prior practice experience* to simply port their Uniform Bar

Exam scores for admission. Tennessee, however, would not recognize my Virginia bar exam score because Virginia does not administer a Uniform Bar Exam.

Thus, despite having practiced full-time during my early career, having practiced in recent years part-time, and having additionally demonstrated my ability to pass multiple bar exams, I was faced with having to take a third state's—Tennessee's—bar exam.

All lawyers know the ordeal of preparing for a bar exam. For most, their first (and often only) bar exam is taken immediately after graduating law school. They devote the summer after graduation to treating the bar exam like a job—studying from 9 a.m. to 5 p.m. Many, if not most, recent law school graduates do not also have a job, children, or a household to run at the same time as preparing for the exam.

To prepare for a third bar exam while simultaneously practicing law and being a wife and a mother is an exponentially greater challenge—a barrier to entry. After my children were in bed, I would try in two to three hours to catch up on a day's worth of studying for the multi-state exam and the essay exam. Because my weekends were wholly devoted to study my children began to call Saturdays and Sundays "Daddy days." I missed my oldest son's July birthday to study for the exam. My mother and mother-in-law helped clean, cook, and do laundry. Without my network of support, I could not have adequately prepared for the exam. Additionally, I had to pay hundreds of dollars in application fees and thousands of dollars to an exam preparation company. I had less time to devote to my client's issues; my firm could not staff me on matters near the time of the exam.

While the burden of preparing for Tennessee's bar exam as a practicing lawyer was huge—to both myself and my loved ones—the benefit of this exercise to both Tennessee and to me was negligible. Tennessee learned nothing from my passing exam score beyond what was evident on the face of my application. Tennessee already knew I had demonstrated an ability to pass bar exams. Tennessee knew the details of my legal career, my educational credentials, and my good standing in two other states. Tennessee even knew my work product because I had petitioned the Board of Law Examiners for an exam exemption (which it denied). Finally, because Tennessee's Uniform Bar Exam does not test Tennessee-specific law, having me sit for the exam would not benefit my Tennessee practice, nor would the test show Tennessee I had a basic understanding of its unique legal principles.

In sum, the burden of requiring foreign-licensed attorneys who have practiced part-time in recent years to sit for Tennessee's bar exam substantially outweighs any benefit conferred to Tennessee in judging foreign-licensed attorneys' competence to practiced based on passing bar exam scores. Lawyers don't lose their competence to practice law just because they work fewer than 40 hours per week. For those that do practice part-time, many have already earned their stripes by practicing full-time in their early careers. While recent statistics are few, it is commonly known that many, if not most, part-time attorneys reduce their weekly workload to meet caregiving needs of their loved ones.

August 8, 2022

Page 3

Consequently, I urge the Tennessee Supreme Court to join the majority of other states who allow foreign-licensed attorneys who practice part-time admission on motion¹. I encourage Tennessee to adopt the American Bar Association's Model Rule on Admission by Motion (As amended August 6, 2012) that requires an applicant to have been primarily engaged in the active practice of law in one or more states for three of the five years immediately preceding the date upon which the application is filed and defines "active practice of law" as set forth in section 2 of the Model Rule attached as Exhibit A, none of which requires a 40-hour workweek.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Anne Laningham Bellamy". The signature is fluid and cursive, with the first name "Elizabeth" being the most prominent.

Elizabeth Anne Laningham Bellamy

¹ See Letter Comment from Karin Lips, President of the Network of Enlightened Women to the James M. Hivner, Clerk (July 21, 2022) containing State by State Comparison of Eligibility for Admission on Motion for Part-time Private Practice Attorneys.

AMERICAN BAR ASSOCIATION
COMMISSION ON ETHICS 20/20
STANDING COMMITTEE ON CLIENT PROTECTION
STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY
STANDING COMMITTEE ON PROFESSIONALISM
STANDING COMMITTEE ON SPECIALIZATION
NEW YORK STATE BAR ASSOCIATION
GENERAL PRACTICE, SOLO AND SMALL FIRM DIVISION
SECTION OF INTERNATIONAL LAW
YOUNG LAWYERS DIVISION
NEW YORK COUNTY LAWYERS' ASSOCIATION
SECTION OF BUSINESS LAW
LAW PRACTICE MANAGEMENT SECTION
REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

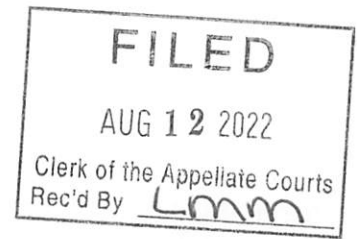
1 RESOLVED, That the American Bar Association amends the *ABA Model Rule for Admission by Motion*,
2 dated August 2012, as follows (additions underlined, deletions ~~struck through~~):
3

4 ABA Model Rule on Admission by Motion
5

- 6 1. An applicant who meets the requirements of (a) through (g) of this Rule may, upon motion,
7 be admitted to the practice of law in this jurisdiction. The applicant shall:
8
9 (a) have been admitted to practice law in another state, territory, or the District of
10 Columbia;
11 (b) hold a J.D. or LL.B. degree from a law school approved by the Council of the Section
12 of Legal Education and Admissions to the Bar of the American Bar Association at the
13 time the applicant matriculated or graduated;
14 (c) have been primarily engaged in the active practice of law in one or more states,
15 territories or the District of Columbia for ~~five~~ three of the ~~seven~~ five years
16 immediately preceding the date upon which the application is filed;
17 (d) establish that the applicant is currently a member in good standing in all jurisdictions
18 where admitted;
19 (e) establish that the applicant is not currently subject to lawyer discipline or the subject
20 of a pending disciplinary matter in any jurisdiction;
21 (f) establish that the applicant possesses the character and fitness to practice law in this
22 jurisdiction; and

105E

- 23 (g) designate the Clerk of the jurisdiction's highest court for service of process.
24
- 25 2. For purposes of this ~~¶~~Rule, the "active practice of law" shall include the following activities,
26 if performed in a jurisdiction in which the applicant is admitted and authorized to practice, or
27 if performed in a jurisdiction that affirmatively permits such activity by a lawyer not
28 admitted in that jurisdiction; however, in no event shall any activities that were performed
29 pursuant to the Model Rule on Practice Pending Admission or in advance of bar admission in
30 some state, territory, or the District of Columbia be accepted toward the durational
31 requirement:
32
- 33 (a) Representation of one or more clients in the private practice of law;
 - 34 (b) Service as a lawyer with a local, state, territorial or federal agency, including military
35 service;
 - 36 (c) Teaching law at a law school approved by the Council of the Section of Legal
37 Education and Admissions to the Bar of the American Bar Association;
 - 38 (d) Service as a judge in a federal, state, territorial or local court of record;
 - 39 (e) Service as a judicial law clerk; or
 - 40 (f) Service as in-house counsel provided to the lawyer's employer or its organizational
41 affiliates.
42
- 43 3. For purposes of this ~~¶~~Rule, the active practice of law shall not include work that, as
44 undertaken, constituted the unauthorized practice of law in the jurisdiction in which it was
45 performed or in the jurisdiction in which the clients receiving the unauthorized services were
46 located.
47
- 48 4. An applicant who has failed a bar examination administered in this jurisdiction within five
49 years of the date of filing an application under this ~~¶~~Rule shall not be eligible for admission
50 on motion.
51
- 52 FURTHER RESOLVED: That the American Bar Association urges jurisdictions that have not
53 adopted the Model Rule on Admission by Motion to do so, and urges jurisdictions that have
54 adopted admission by motion procedures to eliminate any restrictions that do not appear in the
55 Model Rule on Admission by Motion.



August 12, 2022

James M. Hivner
Clerk, Tennessee Appellate Courts
Supreme Court of Tennessee
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

In re: ADM2022-00522: Petition Concerning Supreme Court Rule 7, Section 5.01(c)

To the Honorable Justices of the Supreme Court of Tennessee,

Alliance Defending Freedom (ADF) is the world's largest legal organization committed to protecting religious freedom, free speech, the sanctity of life, parental rights, and the family.

ADF has a network of over 4,400 attorneys throughout the United States who participate in ADF's work in a variety of ways, including over 80 attorneys licensed in Tennessee.

Tennessee's current Rule 7, Section 5.01(c)(1) requires an attorney who is seeking admission on motion to the Tennessee bar (i.e., without having to take the Tennessee bar exam) to have practiced law in another jurisdiction "full time" for five of the seven years immediately preceding the lawyer's request for admission in Tennessee.ⁱ That rule is both an anomaly among the states and penalizes lawyers who, for a variety of reasons unrelated to their competence as attorneys, have not practiced law full-time in that five-out-of-seven year period. In particular, many lawyers at various times in their careers must engage in part-time law practice due to family obligations, such as raising and caring for children or even taking care of elderly or otherwise infirm family members.

Tennessee's waiver rule affects both male and female attorneys but creates a unique hardship on women. In 2015, before the onset of Covid-19, Pew Research Center noted about data from 2013, that "[w]omen most often are the ones who adjust their schedules and make compromises when the needs of children and other family members collide with work." That data specifically shows that:

Roughly four-in-ten women with children of any age (42%) say that at some point in their working life, they have reduced their hours in order to care for a child or other family member. A similar share of mothers (39%) say they have taken a significant amount of time off from work to care for a family member. Fathers are much less likely to report having done either of these things (28% of fathers have reduced their work hours and 24% have taken a significant amount of time off from work in order to care for a child or other family member).

The pandemic has only exacerbated the challenges that female attorneys face. Tennessee's current rule would disproportionately and quite draconianly deny working moms engaging in part-time legal practice access to the Tennessee bar. In addition, although a majority of attorneys who practice part-time due to child-rearing or other family care obligations are women, men increasingly take on these family responsibilities and are also negatively impacted by the current rule.

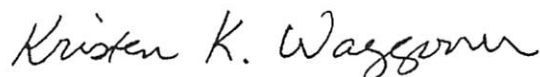
Further, there is no evidence to suggest that attorneys who have been admitted in other jurisdictions but practice law part-time are less qualified or less competent than attorneys who have practiced full-time.

In addition, Tennessee's rule is an embarrassing outlier. The ABA Model Rule on licensing waivers does not require "full-time" practice.ⁱⁱ Indeed, only five states—Tennessee included—require full-time practice to waive into their jurisdictions.ⁱⁱⁱ The vast majority of states have evidently, and rightly, determined that requiring full-time practice is not necessary to protect the integrity of the legal profession in their state. Granting the *Petition* at issue will bring Tennessee into alignment with nearly all of its sister states.

In short, Tennessee's current rule unfairly and without good reason penalizes all attorneys—but predominantly women—who have chosen not to practice law full-time in order to balance work with child-rearing and family responsibilities.

For these reasons, Alliance Defending Freedom supports the *Petition For The Adoption Of Amended Tennessee Supreme Court Rule 7, Section 5.01(c)1* and urges the Supreme Court of Tennessee to grant it.

Respectfully Submitted,



Kristen K. Waggoner
General Counsel for Alliance Defending Freedom

The Honorable Justices of the Supreme Court of Tennessee
August 12, 2022
Page 3

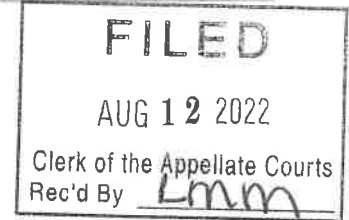
ⁱ Tenn. Sup. Ct. Rule 7, Art. V, Sec. 501(a)(3) and Sec. 501(c)(1)(A).

ⁱⁱ ABA Model Rule on Admission by Motion (as amended August 6, 2012) and ABA Resolution 105E.

ⁱⁱⁱ Comment of *Network of enlightened Women* (July 21, 2022) filed with the Clerk, Tennessee Appellate Courts, in ADM2022-00522.

Lisa Marsh - ADM2022-00522

From: Cheryl Smith <csmith@cherylsmithlaw.com>
To: <appellatecourtclerk@tncourts.gov>
Date: 8/12/2022 4:40 PM
Subject: ADM2022-00522
Attachments: MEMORANDUM OF LAW.revised.docx



IN RE: ADM2022-00522

Dear Attorney Hivner,

I am writing to you in support of the amendment to Supreme Court Rule 7 5.01(c).

I am a women with 22 years experience as an attorney. During the majority of my career I have engaged in the full time practice of law, including serving as a Partner in my law firm in the State of New Hampshire. In 2014, I moved with my family to the State of Tennessee from New Hampshire, where I am also licensed to practice law. At that time I made the decision to continue working part time for my New Hampshire law firm while raising my two young children. In 2017 I applied for admission to the Tennessee State Bar by comity. Despite being an experienced attorney, I was denied solely because I had not worked full time during the preceding 3 years. I appealed the denial and lost on appeal. At the time I was told by the Tennessee Board of Law Examiners that despite my years of experience, they did not have the discretion to approve my application for admission by comity under the Supreme Court Rules as then written.

In February 2020 I sat for the Tennessee bar and passed. I was admitted to practice law in Tennessee in June, 2020.

Tennessee Supreme Court Rule 7 5.01(c) as currently written excludes experienced women attorneys who have worked part time while raising their children from being admitted to the bar under comity.

I am attaching herewith the Memorandum of Law that I submitted to the Tennessee Board of Law Examiners in support of my appeal of the denial

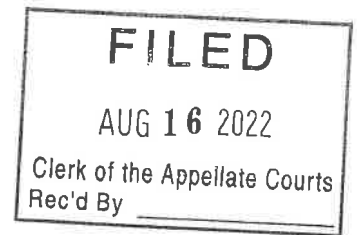
of my application for admission by comity. It contains a thorough review of the timeline of my situation as well as an analysis of the relevant law. Please incorporate this memorandum as an attachment to my comments herein as it is relevant to the matter at hand.

Thank you for your consideration.

Very Truly Yours,

Cheryl N. Smith

MEMORANDUM



TO: The Tennessee Board of Law Examiners

FROM: Cheryl N. Smith

DATE: August 16, 2022

RE: Appeal to Decision Denying Application to the Tennessee Bar by Comity

I. Introduction

Cheryl N. Smith (hereinafter “the Petitioner”), seeks admission to the Bar of the State of Tennessee on a Comity basis. In June, 2017, the Petitioner made application to the Bar of the State of Tennessee by Comity. The Petitioner’s application was denied in August, 2018. The Petitioner seeks to appeal the denial, and herein sets forth the facts, issues and legal discussion of the merits of the Petitioner’s application and the basis on which she appeals the Tennessee Board of Law Examiners’ (hereinafter referred to as “the Board”) decision to deny the Petitioner’s application.

II. Procedural History

On June 30, 2017, the Petitioner filed an application with the Board seeking admission to the Tennessee Bar Without Examination (by “Comity”).

On February 8, 2018, the Board requested additional information pertaining to the Petitioner’s work arrangement with Tower, Crocker & Smith, P.A., and whether or not her work for Tower, Crocker & Smith, P.A. constituted full time employment. On February 10, 2018, the Petitioner responded to the Board’s request, in a letter detailing the nature of the Petitioner’s work arrangement with Tower, Crocker & Smith, P.A. In addition, on March 26, 2018, the managing partner of the Petitioner’s law firm, Jeffrey R. Crocker, submitted a letter detailing the type of work that the Petitioner does on a continual basis for the firm.

On August 8, 2018, the Petitioner received an Order Denying the Petitioner’s application for admittance to the Bar by Comity. On September 20, 2018, the Petitioner filed an

appeal to the Board's Order, and an appeal was granted by the Board on October 19, 2018, with a hearing date scheduled for December 3, 2018. This Memorandum is being submitted in advance of said appeal hearing.

III. Facts

The Petitioner has been continuously and primarily engaged in the active practice of law as a licensed attorney in the Commonwealth of Massachusetts since her admission to the Bar of that state on January 19, 2001. She has also been continuously and primarily engaged in the active practice of law as a licensed attorney in the State of New Hampshire since her admission to the Bar of that state on May 30, 2002. At the time of the Petitioner's application, the Petitioner had been continuously and primarily engaged in the active practice of law as a licensed attorney for sixteen and a half years.

On January 1, 2014, the Petitioner relocated to Tennessee with her family due to her husband's work obligations. At that time, due to family obligations, the high cost of childcare, the cost of applying to the Tennessee Bar and maintaining a Bar membership, and the uncertainty as to whether the Petitioner would remain in Tennessee long term, the Petitioner determined the cost of pursuing a full-time career as an attorney exceeded what her likely income would have been, and for these reasons the Petitioner decided to delay her application to the Tennessee Bar, while continuing to practice law in New Hampshire and Massachusetts.

From January 1, 2014 to the present¹, the Petitioner has worked in an "Of Counsel" capacity to the New Hampshire law firm of Tower, Crocker and Smith, P.A., where she previously held a position as a partner to David Tower and Jeffrey Crocker. During this time, the Petitioner devoted one hundred percent of her time spent working to the practice of law; she was not engaged in any other industry.

During the period from January 1, 2014 through June 30, 2017, while working for Tower, Crocker and Smith, P.A., the Petitioner billed and received Fifty eight thousand four hundred ninety six (\$58,496) dollars in legal fees and had an additional five thousand seven (\$5,007.00) dollars in uncollected receivables, for a total of sixty three thousand five hundred

¹ In October, 2018, the Petitioner transitioned to the law firm of Upton & Hatfield, LLP, successor firm to Tower, Crocker & Smith, P.A., where she will hold an "Of Counsel" position under similar terms to the arrangement with Tower, Crocker & Smith, P.A.

three (\$63,503) dollars receipts and receivables for this period.² A significant amount of the receivables were billed on a transactional or flat fee basis, and are therefore not representative of the time spent on such matter. In all cases where the Petitioner charged a flat fee, the fee charged was less than the hourly equivalent of the work performed. No accurate record of the Petitioner's actual time spent on the practice of law exists.

Subject to some variations due to increased or decreased work load and increased family obligations, the Petitioner generally devoted two days a week, between the hours of 9:30 and 1:30, to work. In addition, the Petitioner made herself available to colleagues and clients outside of these hours as needed. For example, it was not unusual for the Petitioner to accept phone calls from clients or colleagues outside of these hours, often interrupting family or personal matters, and to review and respond to email and text messages from clients and colleagues outside of these hours. As a general rule, the Petitioner did not bill for this time. As needed, the petitioner also worked on time sensitive matters, such as the preparation and filing of tax returns, outside of these hours.

In addition, the Petitioner performed significant tasks which were not billed to any client, including legal research, continuing legal education, business development, researching the requirements and practicalities of establishing a solo practice in Tennessee, consulting with colleagues on various professional matters, consulting with colleagues on various client matters which were not billed, developing legal documents, such as estate planning document templates, attempting to meet and engage with Tennessee attorneys, engaging in office administrative matters, and responding to her clients on an as needed basis, frequently without billing for her time when such need was called upon. During periods when the Petitioner did not have ample work to fill her office hours, the Petitioner has undertaken to educate herself about new areas of the law into which she would like to expand upon being admitted to the Bar of the State of Tennessee, including Special Education Law, Adoption Law and Third Party Reproduction Law. She has also represented herself (on her own behalf and on behalf of her minor children) in Special Education, Adoption, Third Party Reproduction and Real Estate matters.

In January, 2017, the Petitioner contacted the office of the Board by telephone. The Petitioner advised the staff member who answered the phone that she had reviewed Supreme

² See Exhibit A attached, showing the Petitioner's receipts and receivables for the period in question. This is a report generated by Tower, Crocker & Smith, P.A. which was used to determine the Petitioner's income.

Court Rule 7, and that she wanted to know if Section 5.01(c) should be read as requiring an applicant have worked full time, and if so, how such a requirement would apply to Comity applicants who were not employed full-time. She was advised by that staff member that how an applicant's part time work would be counted was at the discretion of the Board, and she was urged to apply. Based on this information the Petitioner decided to move forward with her Comity application, and began the application process.

For purposes of Supreme Court Rule 7 (hereinafter "Rule 7"), Section 5.01 (hereinafter Section 5.01), requiring that applicants to the Tennessee Bar have been engaged in the active practice of law for five (5) of the last seven (7) years, based on the date of the Petitioner's application, the Petitioner's seven year period was set as July 1, 2010 through June 30, 2017. The Board has determined that the Petitioner was engaged in the active practice of law from July 1, 2010 through December 31, 2013, for a total of forty-two (42) months, or three and a half years (3.5). It is the forty-two (42) month period from January 1, 2014 through June 30, 2017, when the petitioner worked for Tower, Crocker and Smith, P.A., in an "of counsel" capacity that is the subject matter of this Appeal. If the forty-two (42) months when the Petitioner worked in an "of counsel" capacity were treated as being engaged in the active practice of law, the Petitioner would meet the requirements of Section 5.01.

IV. Issues

The issue at hand is whether or not the Petitioner meets the requirements for admission to the Tennessee by Comity, and more specifically, whether or not she meets the requirements of Section 5.01(a)(3), which requires that an applicant to the Bar of the State of Tennessee "have been primarily engaged in the active practice of law, as defined below, in one or more states or territories of the United States, or the District of Columbia, for five of the seven years immediately preceding the date upon which the application is filed". Section 5.01(c)(1) goes on to define the active practice of law:

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

- (A) Full-time private or public practice as a licensed attorney;
- (B) Teaching law full-time at a law school approved by the ABA;

- (C) Service as a judicial law clerk or staff attorney; and
- (D) Service as a Judge, Attorney General, Public Defender, U.S. Attorney, District Attorney, or dully registered In-House Counsel or Military Spouse.

The Petitioner has been in the “practice of law” as defined in Rule 7 Section 1.01 continuously for the seven (7) years preceding the Petitioner’s application. The Board has determined, however, that the Petitioner has not been in the “active practice of law” because the Petitioner has not worked full-time during the three and a half years preceding the application. The Petitioner disagrees with the Board’s interpretation and application of Rule 5.01 to the facts and circumstances of the Petitioner’s application.

V. Discussion

Section 5.01(c) as written is problematic because it does not comply with the expressed and implied intent of the Board and the Tennessee Supreme Court (the “Supreme Court”), it is open to misinterpretation, it is ambiguous, it is arbitrary, it is incongruent, it has the potential for unfair bias and is inconsistent with similar rules of most jurisdictions.

A. Purpose of Admission Rules and the Intent of the Board and the Supreme Court

It is the responsibility and intent of the organization governing admittance to the Bar for each state to screen and admit qualified and competent persons so that the public is adequately protected.³ The Supreme Court expresses its intent that the Board admit applicants that possess “the knowledge, skill and abilities basic to competence in the profession.”⁴ The overall tenor of the Board is to admit qualified, competent applicants, and encourage mobility and cross jurisdictional practice, as evidenced by the recent enactment of the Uniform Bar Exam (UBE).⁵ To this end, bar admission requirements should not be so restrictive that they deny admission to qualified, competent applicants.⁶ In fact, the provisions pertaining to admission by transfer of UBE score are significantly less restrictive than Section 5.01, indicating a trend by the Board and

³ “The scrutiny of each applicant’s qualifications is delegated to the Board to ensure that we admit to practice here only those applicants who are versed in our legal rules so that the public may rely on appropriately trained professionals to protect their interests” *Jia v. Board of Bar Examiners*, 696 N.E.2d. 131, 139 (Mass. 1998), “The purpose of the bar and our admission requirements is to protect the public from incompetent legal advice and representation”, *People v. Adams*, 243 P.3d 256, 266 (Colo. 2010).

⁴ Rule 7, Section 5.02

⁵ *Tennessee Adopts Uniform Bar Exam* <http://tncourts.gov/news/2018/04/18/tennessee-adopts-uniform-bar-exam> (April 18, 2018).

⁶ “...admission rules [are] intended to ‘weed’ out unqualified applicants, not to prevent qualified applicants from taking the bar.” *In Re Application of Gluckselig*. 697 N.W.2d. 686, 691 (Neb. 2005).

the Supreme Court to encourage admission of attorneys licensed in other jurisdictions.⁷ Based on the Supreme Court Rules, statements by the Board, and the overall role of organizations governing admittance of attorneys, the Petitioner believes that it is reasonable to state the express and implied intent of the Supreme Court and the Board is to admit qualified, competent attorneys without undue restriction so as to encourage such competent and qualified persons to seek admittance in Tennessee.

The Petitioner has submitted evidence to demonstrate that she possesses the knowledge, skill and abilities basic to competence in the profession. The Board has not questioned the Petitioner's competence to practice law.

B. Interpretation of Supreme Court Rule 7, Section 5.01(c).

1. The Petitioner's Interpretation of Section 5.01(c)

The phrase "active practice of law" is defined in 5.01(c). The Board's denial of the Petitioner's application is based on its interpretation of Section 5.01(c), which differs from the Petitioner's interpretation of Section 5.01(c). The Petitioner contends that the term "active practice of law" expands the definition of the "practice of law" whereas the Board's interpretation of the term "active practice of law" narrows the definition of the "practice of law".

For purposes of Rule 7, the "practice of law" is as defined by reference to Tenn. Code Annotated § 23-3-101 and Tennessee Supreme Court Rule 9, § 10.3(e).⁸ The legislature of the State of Tennessee has defined the practice of law as the "appearance as an advocate in a representative capacity or the drawing of papers, pleadings of documents or the performance of any act in such capacity in connection with proceedings pending or prospective before any court, commissioner, referee or any body, board, committee or commission constituted by law or

⁷ Rule 7, Section 3.05, which has no prior practice requirement, unless the applicant's UBE score has expired, in which case the applicant would need to be in the active practice of law for 3 of the last 5 years. As more states enact the UBE, this will serve to eventually phase out Rule 7, Section 5.01 altogether, except with respect to attorneys licensed prior to the enactment of the UBE, who are at significant disadvantage. It is inconsistent that an attorney with an expired UBE score would only need to have been engaged in the active practice of law for 3 of the last 5 years while a skilled, experienced, knowledgeable and competent attorney seeking admission by Comity would need to be in practice for 5 of the last 7 years.

⁸ Tennessee Supreme Court Rule 7, Section 5.01(c)(1), making reference to Section 1.01

having authority to settle controversies, or the soliciting of clients directly or indirectly to provide such services.”⁹

The Supreme Court has defined the practice of law as, “any service rendered involving legal knowledge or legal advice, whether of representation, counsel, or advocacy, in or out of court, rendered in respect to the rights, duties, regulations, liabilities, or business relations of one requiring the services. It shall encompass all public and private positions in which the attorney may be called upon to examine the law or pass upon the legal effect of any act, document, or law.”¹⁰

Reading Section 5.01(c)(1), together with Tenn. Code Annotated § 23-3-101 and Tenn. Sup. Ct. R. 9, § 10.3(e), Section 5.01(c)(1) would respectively state:

For the purposes of this rule, *in addition to*¹¹ [“appearance as an advocate in a representative capacity or the drawing of papers, pleadings of documents or the performance of any act in such capacity in connection with proceedings pending or prospective before any court, commissioner, referee or any body, board, committee or commission constituted by law or having authority to settle controversies, or the soliciting of clients directly or indirectly to provide such services as a licensed attorney”]¹² and [“any service rendered involving legal knowledge or legal advice, whether of representation, counsel, or advocacy, in or out of court, rendered in respect to the rights, duties, regulations, liabilities, or business relations of one requiring the services. It shall encompass all public and private positions in which the attorney may be called upon to examine the law or pass upon the legal effect of any act, document, or law.”]¹³, the “active practice of law” *shall include* the following activities, if performed in a jurisdiction in which the applicant is admitted, or if performed in a jurisdiction that permits such activity by a lawyer not admitted to practice:

- (A) full-time private or public practice as a licensed attorney;
- (B) teaching law full-time at a law school approved by the ABA;
- (C) service as a judicial law clerk or staff attorney; *and*
- (D) service as a Judge, Attorney General, Public Defender, U.S. Attorney, District Attorney, or duly registered In-House Counsel or Military Spouse. [emphasis added].¹⁴

⁹ Tenn. Code Annotated § 23-3-101.

¹⁰ Tenn. Sup. Ct. R. 9, § 10.3(e).

¹¹ Supreme Court Rule 7 Section 5.01(c)(1)

¹² Tenn. Code Annotated § 23-3-101

¹³ Tenn. Sup. Ct. R. 9, § 10.3(e)

¹⁴ Supreme Court Rule 7 Section 5.01(c)

The definition of “active practice of law” as expressed in Section 5.01(c)(1) consists of (1) the activities described in the practice of law as defined in Tenn. Code Annotated § 23-3-101, (2) the activities described in the definition of practice of law as defined in Tenn. Sup. Ct. R. 9, § 10.3(e), (3) full-time private or public practice as a licensed attorney, (4) teaching law full-time at a law school approved by the ABA, (5) service as a judicial law clerk or staff attorney, and (6) service as a Judge, Attorney General, Public Defender, U.S. Attorney, District Attorney, or duly registered In-House Counsel or Military Spouse.

When read in context, the phrase “in addition to” indicates an intent to add to, or enlarge, the two definitions of practice of law. The phrase “shall include” also indicates an intent to express an enlargement of the activities described in the two definitions of practice by illustrating specific activities included in the general definition of the practice of law.¹⁵ If there were an intent to limit the activities described in the two definitions of the practice of law to only the activities described in Section 5.01(c)(1) subsections (A) through (D), the Supreme Court would not have used expansive language intended to enlarge the definition of practice of law such as “in addition to” followed by “shall include”, but rather would have used exclusive, limiting language such as “shall require” or “shall also demonstrate” preceding subsections (A) through (D). Both “in addition to” and “include” also serve to conjoin the activities described in the two definitions of the practice of law to the activities listed in subsections (A) through (D).¹⁶

More pertinent than the expansive and inclusive language noted above, Section 5.01(c)(1)(D) is directly preceded by the word “and”, which is a conjunction used to connect phrases that refer to the same subject matter, indicating the intent that the activities described in the two definitions of the practice of law and the activities described in subsections (A) through (D) create a conjunctive list, which together refer to the same subject matter, the definition of “active practice of law”.¹⁷ “And” is not a disjunctive term, such as “or”, which is used to express

¹⁵ See *Black's Law Dictionary*, definition of “Include”. See also *Premier Products Co. v. Cameron*, 240 Or. 123, 400 P.2d 227, 228 (1965): Depending on context “Including” can and has been interpreted as a word of enlargement, or of illustrative application”. In this case, because “shall include” follows “in addition to”, context requires an interpretation of enlargement or illustrative application.

¹⁶ In context, the term “include” may have the meaning of “and” or “in addition to”. *Black's Law Dictionary*. In context, because both “in addition to” and “shall include” are used, they serve to join the activities described in the definitions of “practice of law” together with the activities listed in subsections (A) through (D), as a list of activities that together comprise the definition of “active practice of law”.

¹⁷ *Black's Law Dictionary*, see definition of “and”.

an alternative choice among two or more different or unlike things.¹⁸ So the use of the term “and” at the end of Section 5.01(c)(1)(C) *does not* have the effect of establishing subsections (A) through (D) as a list of alternatives, one of which must be true. If the Supreme Court intended to create a disjunctive list, it would have used the disjunctive term “or” rather than the conjunctive term “and”.

The Petitioner’s interpretation of 5.01(c) is that the phrase “active practice of law” includes the statutory definition of the practice of law, the Supreme Court Rule definition of the practice of law, and the four illustrative categories listed in subsections (A) through (D). The result of this interpretation is that an applicant engaging in any of the activities included in the statutory definition of the practice of law, the Supreme Court Rule definition of practice of law and categories listed in subsections (A) through (D) would be in the “active practice of law”.

The Petitioner’s interpretation of Section 5.01(c)(1) is consistent with the rest of Rule 7. The Conjunctive term “and” and the disjunctive term “or” are frequently used throughout Rule 7 and in each instance where a conjunctive list or a disjunctive list are created when read in context the intent of the Supreme Court is clear.¹⁹ The Supreme Court has recently interpreted another

¹⁸ Black’s Law Dictionary, see definition of “or”, see also *In re AMYNN K.*, No. E2017-01866-COA-R3-PT, Court of Appeals of Tennessee, Knoxville (2018), citing “Semantic Canons,” section entitled, “Conjunctive/Disjunctive Canon.” Scalia & Garner, at 116-25. In a disjunctive list of three items, “at least one of the three is required, but any one (or more) of the three satisfies the requirement.” See also *State v. Daniel Cleveland/Matthew Harville*, W2004-02892-CCA-R3-CD (July 18, 2005): “It is a well established rule of construction that when the disjunctive conjunction “or” is used in a statute, the various elements are to be treated separately, with any one element sufficient to meet the objectives outlined in the statute.”

¹⁹ See Supreme Court Rule 7, Sections 1.01 (disjunctive, “no person shall engaged in the practice of law... *unless*” one of three components must be met; the first of the three components contains another, independent conjunctive list where both components must be met to meet the first prong), 1.02 (disjunctive, “the *first of the following*” two components to occur), 1.03 (conjunctive, The Board shall issue a Certificate of Eligibility ... *only after determining* that” all 9 components have been met), 1.07(a) (disjunctive, the “*following types* of applicants”, one of four components must be true), 2.02(b) (disjunctive, “an applicant *must* cause to be filed...a certificate... certifying” one of two components have been met), 2.02(d) (conjunctive, “*provided the attorney satisfies*” all five components), 2.03(a) (conjunctive, “A school *shall adopt* a statement of its mission or objectives, which *shall include*” two components, both of which must be true), 2.03(f)(3) (conjunctive, “school *shall adopt* ... standards ... *including*” two components, both of which must be true), 2.03(g)(2) (conjunctive, “applicant *must have*” four components, all of which must be true) 2.03(h) (conjunctive, “school *shall publish* basic consumer information... *including*” nine components, all of which must be true), 2.03(i)(1) (conjunctive, “The dean and faculty *shall develop* ... written self-study, *including*” eight components, all of which must be true), 2.11(c) (conjunctive, : The Board *shall have*...” six components, all of which must be true), 3.05(a) (conjunctive, “Any applicant ...*may be* admitted to the ... *upon showing* that” all of eight components have been met), 3.05(c) (conjunctive, “An Applicant... *shall*” meet all three components), 3.07(a) (conjunctive, “The Board ... *may request*” components one through five, any one of which *may be* true), 4.07(d) (conjunctive, “an applicant who...[meets all three components] *may provide*...”), 5.01(a) (conjunctive, “applicant *shall*...” meet all six components), 5.01(f) (conjunctive, “applicant... *shall*” meet all three components), 5.01(g) (conjunctive, “*provided that* the lawyer” meet all ten components), 5.01(h) (conjunctive,

section of Rule 7, section 7.01, and the ambiguity found there prompted a revision of to that section of Rule 7.01.²⁰

There is no question that the Petitioner has been engaged in the practice of law as defined in Tenn. Code Annotated § 23-3-101 and Tenn. Sup. Ct. R. 9, § 10.3(e). Based on the fact that the phrasing of Section 5.01(c)(1) creates a conjunctive list including both definitions of the practice of law and the illustrative activities listed in subsections (A) through (D) and not a disjunctive list requiring one of the activities listed in subsections (A) through (D) to be true, the Petitioner has been in “active practice of law” by virtue of meeting the definition of practice of law contained in Tenn. Code Annotated § 23-3-101 and Tenn. Sup. Ct. R. 9, § 10.3(e).

2. The Board’s Interpretation of 5.01(c)

In the Board’s letter to the Petitioner dated February 8, 2018, the Board states,

“Tenn. Sup. Ct. R. 7 Sec. 5.01(b) requires that an applicant demonstrate that he/she has “actively engaged in the practice of law pursuant to a license from one or more states or in the District of Columbia for five of the seven years immediately preceding the application for admission in this state.” It goes on to define “practice of law” as “full-time private or public practice as a licensed attorney.”²¹

In the order denying the Petitioner’s application to the Bar of the State of Tennessee, the Board states the reason for the denial is the fact that the Petitioner’s work at Tower, Crocker & Smith, P.A. “does not count as the full-time practice of law.” Based on these statements, it appears the Board’s interpretation of Rule 7 Sec. 5.01(c) is that subsections (A) through (D) are a disjunctive

“lawyer...shall” meet all three components), 6.03(a) (conjunctive, listing two components, both of which are true), 7.01(b) (conjunctive, “applicant *shall* satisfy the Board that the applicant” has met both of two components. Within 7.01(b), subsection (i) also contains a further conjunctive list requiring an additional three components be met), 7.02 (conjunctive, an applicant “*shall* supplement the application” with two components, both of which must be met), 10.01(a) (conjunctive, “A lawyer... *shall* an application... by *submitting the following*” list of four components, all of which must be true), 10.01(b) (conjunctive, the “following restrictions” components one and two are both true), 10.01(b)(2) (disjunctive, a “lawyer shall not” neither of components one or two may be true), 10.01(f) (disjunctive, a “lawyer’s rights... are terminated when” one of four components is true), 10.01(g) (conjunctive), 10.01(h) (conjunctive), 10.02(a) (conjunctive), 10.03(c) (conjunctive), 10.04(a)(1) (conjunctive), 10.04(a)(1)(E) (disjunctive), 10.06(a) (conjunctive), 10.06(b) (conjunctive), 10.06(d)(2)(B) (conjunctive), 13.02(b) (conjunctive) and 13.02(c) (conjunctive) [emphasis added]. As used herein, “Conjunctive”: refers to all sections where a list is delineated by the word “and” and “disjunctive” refers to all sections where a list is delineated by the word “or”. It is also noteworthy that many of the sections containing a conjunctive list use the term “shall include” or some variation thereof, as does section 5.01(c).

²⁰ *Chong v. Tennessee Board of Law Examiners*, 481 S.W.3d 609, (2015).

²¹ The correct reference is to Supreme Court Rule 7, Section 5.01(a) followed by 5.01(c); the Petitioner assumes this was a typographical error and only makes reference to it for clarification.

list, *requiring* an applicant to fall squarely into one of the listed categories of lawyers. As the petitioner has shown, this is not what 5.01(c) states. Nowhere does 5.01(c) state that an applicant is *required* to fall into one of the categories listed. Further, the use of the word “and” instead of “or” at the end of subsection (C) precludes any implication that there was an intent to create a disjunctive list of alternatives, one of which must be true. If it were the intent of the Supreme Court to require that an applicant fall into one of the categories contained in subsections (A) through (D) it would have used “or” instead of “and”, therefore requiring one of the alternatives to be true, and it would have used words that express an intent to limit the definition of “practice of law”, such as “requires” rather than words that express an intent to enlarge said definition, such as “in addition to” and “shall include”. There is no way to reach the interpretation of Rule 5.01(c) that the Board has applied to the Petitioner’s application without implying words that are not present.²²

3. The Intent of Section 5.01(c)

The Supreme Court has expressed that “Legislative intent or purpose is to be ascertained primarily from the natural and ordinary meaning of the language used, without forced or subtle construction that would limit or extend the meaning of the language.”²³ The natural and ordinary use of disjunctives and conjunctives has been upheld by the Tennessee Court of Appeals.²⁴ “Absent ambiguity, we are bound to the natural and ordinary meaning of the text itself, and must assume the legislature had purpose in expressly [elements] through the use of the conjunctive word “and.” The clear distinction between a conjunctive and a disjunctive construction, as well as the significance this particular distinction plays in statutory interpretation, cannot be ignored.”²⁵ The Tennessee Courts have also refused to use the conjunction “and” and the disjunction “or” interchangeably, citing such an interpretation should only be made when

²² The Supreme Court could have clearly expressed the intent the Board has implied by changing “shall include” to “shall also require” and by changing the “and” to an “or”.

The ABA Model Rule does not contain the ambiguities that are present in Sup. Ct. R. 7, Sec. 5.01(c); it does not make reference to any other definition of the practice of law, and it uses “or” instead of “and” at the end of subsection (e), indicating the intent to make a list of alternatives, one of which must be true.

²³ *Carson Creek Vacation Resorts, Inc. v. State, Dept. of Revenue*, 865 S.W.2d 1, 2 (Tenn.1993).

²⁴ *State Of Tennessee, Ex Rel., Darrell L. Tipton V. City Of Knoxville*, 205 S.W.3d 456, 460 (Tenn.App. 2006).

²⁵ *State v. Daniel Cleveland/Matthew Harville*, W2004-02892-CCA-R3-CD, Court of Criminal Appeals of Tennessee (July 18, 2005).

necessary to give effect to the clear intent of the legislature.²⁶ Accordingly, the Petitioner asserts the Supreme Court would interpret the use of the word “and” as it is ordinarily defined, in the conjunctive, and not in the disjunctive.

Moreover, the Petitioner’s interpretation of Rule 5.01(c) is consistent with the Supreme Court’s intent to grant admittance to qualified individuals, whereas the interpretation the Board has applied to the Petitioner’s application only serves to place undue restrictions on applicants that would preclude admittance of many qualified individuals.²⁷

C. “Full-Time” is Not Defined in Terms of “Full-Time” Employment

While the Petitioner maintains that the Board’s interpretation of Section 5.01(c) is incorrect, in the event such interpretation were upheld by the Supreme Court, the Petitioner asserts that the rule is ambiguous in that Subsection (A) makes reference to “Full-time ... practice of law”, but it does not require the applicant be *employed* full time.²⁸ Accordingly, the full-time practice of law could be interpreted to mean any activity relative to the practice of law, even just maintaining an active license as a member of the legal profession. In any profession where an advanced degree, licensing, and continuing education are required, it is generally accepted an individual is an active, permanent member of that profession so long as they maintain their licensing and continuing education requirements, regardless of employment status as full time or part time. Most, if not all states, require an attorney be in active status in order to engage in the practice of law in that jurisdiction, regardless of the time spent on such practice.²⁹ Professionals in other professions requiring an advanced education and licensing hold themselves out as a member of that profession regardless of their work schedule. For example a doctor that works a

²⁶ “The State also asserts that Tennessee appellate courts have “frequently interchanged the words ‘and’ and ‘or’ in the construction of statutes.” While courts have in the past substituted a disjunctive for a conjunctive construction in ambiguous statutes, such interchanges are far from frequent. Indeed, such interpretations of statutory language are reserved for those rare instances in which the statute was ambiguous and such a change was clearly “necessary to further the intent of the legislature.” *Stewart v. State*, 33 S.W.3d 785, 792 (Tenn. 2000). “In the case at hand, we are unable to conclude that the intent of the legislature was not exactly what it wrote.” *State v. Daniel Cleveland/Matthew Harville*, W2004-02892-CCA-R3-CD, Court of Criminal Appeals of Tennessee (July 18, 2005).

²⁷ The Tennessee Supreme Court has stated that “[t]he most basic principle of statutory construction is to ascertain and give effect to the legislative intent without unduly restricting or expanding a statute’s coverage beyond its intended scope.” *Owens v. State*, 908 S.W.2d 923, 926 (Tenn. 1995); see also *Browder v. Morris*, 975 S.W.2d 308, 311 (Tenn. 1998) (“The cardinal rule of statutory construction is to effectuate the legislative intent, with all rules of construction being aides to that end.”).

²⁸ This is in comparison to Rule 7 Section 5.01(c)(2), which explicitly references full-time *employment*.

²⁹ Massachusetts Supreme Judicial Court Rule 4:02.

part time schedule does not cease being a doctor during the hours they are not physically present in the office. In the same manner an attorney that works a part time schedule does not cease being an attorney during the hours not spent in the office or at court. It is unclear whether the insertion of the term full-time into Section 5.01(c)(1)(A) was intended to require full time employment, or more simply referring to being a member of the profession by being actively engaged in the practice of law, maintaining ones license, representing clients in a legal capacity and maintaining continuing legal education requirements. The Petitioner meets all of these criteria.

D. “Full-Time” is Not Defined in Terms of Hours Worked

Section 5.01(c) is also ambiguous as it does not further define “full-time” in terms of hours worked, quantity of work produced, or otherwise. It is not possible to make a determination as to whether a person is engaged in the full-time practice of law without defining the term “full-time”.

There is no universally accepted definition of full time employment. For purposes of admission to the bar of a given state, two jurisdictions define “full-time” practice of law. The State of New Mexico defines the full-time practice of law as 1,000 hours per year, which equates to approximately 20 hours a week.³⁰ Utah similarly defines the full-time practice of law as 80 hours per month, which also equates to 20 hours a week.³¹ Alaska, Illinois, Indiana, Minnesota, Pennsylvania and Wyoming all have minimum hours worked requirements ranging from 6 to 25 hours per week, but do not use the term full-time.³²

³⁰ “Full-time, gainful employment in the performance of legal services’ is defined for the purpose of this rule to require that during each of the required five (5) years in the durational period, the applicant spent at least one thousand (1,000) hours per year engaged in one or more of the activities listed above, and derived at least fifty percent (50%) of the applicant’s non-investment income from such activity or activities.” New Mexico Rules Governing Admission to the Bar, Rule 15-107 D(2).

³¹ “Full-time Practice’ means the Active and lawful Practice of Law for no fewer than 80 hours per month.” Utah Court Admission Rules, Rule 14-701.

³² *Alaska Bar Rule 2 (2)(c)* requires an applicant have worked 750 hours a year, or roughly 15 hours a week; *Illinois Supreme Court Rule 705 (h)* requires an attorney have worked 80 hours a month, or 20 hours a week; *Indiana Rules of Court Rules of Admission, Rule 6 (1)(a)(1)* requires 1000 hours per year, or 20 hours per week; *Minnesota Rules for Admission to the Bar, Rule 7A(1)(c)* requires 1000 hours per year, or 20 hours per week; *New Mexico Rules Governing Admission to the Bar Rule 15-107 D(2)* requires 1000 hours per year, or 20 hours per week; *Pennsylvania Admission to the Bar Rule 204(4)* requires an applicant devoted a major portion of time and energy to the practice of law. Devoted a major portion of time and energy to the practice of law is interpreted to mean more than 50 percent of his/her time engaged in the practice of law or 20 hours per week.

https://www.pabarexam.org/non_bar_exam_admission/204_interpretation.html; Utah requires an applicant be engaged in the practice of law full-time, but goes on to define full time as 80 hours a month, the equivalent of 20

E. Section 5.01(c) is Silent on Other Work Situations

Section 5.01(c) also creates ambiguity as it fails to make any provision for attorneys that work part time hours, work with an on call arrangement, are establishing a new law practice, are self-employed or independent contractors, work as “of counsel” for one or more law firms, work as a freelance attorney, do not have a consistent client base or have any other type of flexible or variable work situation. All of the aforementioned work situations commonly exist within the legal field, and several apply to the Petitioner. The absence of such guidance on so many different work situations which often occur in the legal field further supports the Petitioner’s assertion that the categories of lawyers listed in subsections (A) through (D) were intended to be illustrative and expand the definition of the “Practice of Law” rather than limit it by establishing an exclusive list of categories of lawyers, one of which an applicant must fit squarely into. Such an exclusive list would operate to preclude all attorneys with flexible work arrangements, regardless of their qualification to practice law. Excluding qualified attorneys is not consistent with the intent of the rules governing admission to the Bar.³³

F. Diligence and Promptness

The Petitioner has stated that she has made herself available both to clients and to colleagues on an “on-call” basis. There is no widely accepted method for how hours spent “on-call” should be counted for determining hours of service in establishing an employee’s status as a full time or part time employee, however, an employer must use a reasonable method for determining how hours spent on-call count towards hours in service.³⁴ The Petitioner’s contention that her time spent “on-call” should be considered towards meeting her work requirement under Supreme Court Rule 7, is based on the fact that the Petitioner, as an

hours a week. *Utah Court Admission Rules Rule 14-701(t)*, *Vermont Rules of Admission Rule 2(a)* requires 25 hours per week; *Wyoming Court Rule 302(f)* requires an applicant “Has engaged in the active, authorized practice of law for a minimum of 300 hours per year for five of the seven years immediately preceding the date of application” which equates to roughly 6 hours a week.

³³ *Gluckselig* at 691.

³⁴ “The Treasury Department and the IRS continue to consider additional rules for determining hours of service for purposes of section 4980H with respect to certain work arrangements, including on-call hours, or categories of employees whose hours of service are particularly challenging to identify or track or for whom the final regulations’ general rules for determining hours of service may present special difficulties. Until further guidance is issued, employers of employees who have on-call hours are required to use a reasonable method for crediting hours of service that is consistent with section 4980H.” 79 FR 8543, 8552.

attorney, is required to represent her clients in a prompt and diligent manner.³⁵ The New Hampshire Rules of Professional Conduct Section 1.3 require that an attorney, “act with reasonable diligence and promptness in representing a client.”³⁶ The Ethics Committee Comments to New Hampshire rule dealing with diligence expand upon the requirements of Section 1.3, advising that attorneys must carry out “representation in the manner and within the time parameters established by the agreement between the client and the lawyer; however the lawyer may not rely upon the terms of an agreement to excuse performance which is not prompt and diligent in light of changes in circumstances, known to the lawyer, which require adjustments to the agreed upon schedule of performance. Additionally, in all other matters of representation, it is to be carried out with avoidable harm neither to the client's interest nor to the lawyer-client relationship.”³⁷

The Model Rules of Professional Conduct, also recited in New Hampshire Rule of Professional Conduct 1.3 further explain the responsibilities of an attorney in meeting the requirements of being diligent and prompt:

[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. ...

[2] A lawyer's work load must be controlled so that each matter can be handled competently.

[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness.³⁸

In order to engage in the practice of law, an attorney must provide prompt service to their clients. The Petitioner interprets this to mean being responsive to clients questions,

³⁵ New Hampshire Rules of Professional Conduct Rule 1.3.

³⁶ *Id.*

³⁷ *Id.*

³⁸ 2004 ABA Model Rules of Professional Conduct, Rule 1.3.

concerns and needs in a timely manner, sometimes within hours, by checking and responding to email, answering phone calls when possible, returning phone calls in a timely manner, and in general making oneself available within 24-48 hours (and often less) of a client communication, as well as communicating regarding important advancements in the client's case, within such timeframe. The petitioner contends that in private practice, it is not possible to be in compliance with the rules concerning diligence and promptness while merely working strictly part time; there needs to be a constant connection to the office and a constant monitoring of client communications.

As an example of the Petitioner's work outside of her normal office hours, in addition to routine communication, the Petitioner has been called upon to handle time sensitive real estate matters, guardianship matters, elder law matters and tax matters as needed by her clients outside of her normal office hours. The petitioner understands this was required of her to provide her clients with prompt and diligent service.

G. Supreme Court Rule 7, Section 5.01(c)(1)(A) and (B) are arbitrary.

Based on the Supreme Court's express intent to admit competent attorneys, the primary goal of the Rules governing admission is to establish the applicant's competence. Conversely, rules that are not relevant to competence should not be applied in a manner that prevents the admission of otherwise qualified and competent applicants. Such rules are arbitrary. The Board's interpretation of Sections 5.01(c)(1)(A) and (B) are arbitrary because they require certain classes of attorneys to be engaged in the full-time practice of law, which is not relevant to an attorney's competence.³⁹

The Petitioner concedes that requirement that an applicant have been engaged in the practice of law for 5 of the 7 years preceding the application is relevant to an attorney's competence, and too long of a gap in the practice of law may certainly have a negative impact on an attorney's level of competence.⁴⁰ Notwithstanding this fact, a requirement that such practice be full time is not relevant so long as the applicant's practice is regular and continuous.

³⁹ If full-time practice *were* relevant to competence, it would be required of *all* applicants seeking admission without examination, however, this is not the case. Section 5.01(c)(1) subsections (C) and (D) do not require an applicant be in the full-time practice of law. See Section H below.

⁴⁰ An extended "gap in practice would be too substantial to offer adequate assurance to bar admission authorities that a lawyer has the requisite competence to practice law in the new jurisdiction." *Resolution 105E Report*, American Bar Association Commission on Ethics, Page 4 (August 2012).

The New Hampshire Rules of Professional Conduct set forth very specific minimum factors to be used in establishing competence:

(b) Legal competence requires at a minimum:

- (1) specific knowledge about the fields of law in which the lawyer practices;
- (2) performance of the techniques of practice with skill;
- (3) identification of areas beyond the lawyer's competence and bringing those areas to the client's attention;
- (4) proper preparation; and
- (5) attention to details and schedules necessary to assure that the matter undertaken is completed with no avoidable harm to the client's interest.⁴¹

Tennessee Rules of Professional Conduct, Rule 8, Section 1.1 defines competence: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation."

The legislature and the Supreme Court have been very thorough and intentional in defining the practice of law, and this intent would be undone by having all of the activities mentioned in the two definitions of the "practice of law" rendered irrelevant merely because an attorney does not work a requisite number of hours. Competence should be determined by the ability to perform the activities outlined in the definitions of the practice of law and as defined in the Rules of Professional Conduct; not by the number of hours one spends performing such activities.

As an attorney need not practice law full time in order to establish that he or she possesses the "legal knowledge, skill, thoroughness, and preparation reasonably necessary" to practice law, and an interpretation of Sup. Ct. R. 7 Sec. 5.01(c) which requires an applicant practice law full time is not relevant to the applicant's competence and is therefore arbitrary. Denying the Petitioner entry to the legal profession because she has worked part time hours for the three and a half years preceding her application, rather than based on her competence to

⁴¹ New Hampshire Rules of Professional Conduct, Rule 1.1; the Petitioner cites New Hampshire Rules as that is where she primarily practiced during the time period in question.

practice law, is arbitrary, unduly restrictive and burdensome.⁴² The Courts will not support an interpretation that renders a rule arbitrary or useless.⁴³

H. Supreme Court Rule 7, Section 5.01(c) is Incongruent.

1. “Full-time” is not Used in All Subsections of 5.01(c)(1).

The Board’s interpretation of Section 5.01(c)(1) is problematic because it creates an unfair and unnecessary distinction among different classes of attorneys. Section 5.01(c)(1) subsections (A) and (B), dealing with licensed attorneys in public and private practice and law school professors, make reference to the position being full-time, while subsections (C) and (D) do not:

- (C) service as a judicial law clerk or staff attorney; and
- (D) service as a Judge, Attorney General, Public Defender, U.S. Attorney, District Attorney, or duly registered In-House Counsel or Military Spouse.

Requiring Attorneys in public or private practice, and law school professors, to have worked full time, but not requiring full time practice of any of the other listed categories of lawyers is inherently prejudicial. The American Bar Association has, with respect to its rule on admission by motion, indicated that different treatment of different categories of lawyers creates an “an unfair and unnecessary distinction” among them.⁴⁴ This incongruence further supports the Petitioner’s assertion that the Board’s interpretation of 5.01 (c)(1) is inconsistent with the intent of the Supreme Court, as it is unlikely the Supreme Court intended to make unfair and unnecessary distinctions among the categories of lawyers contained in the Rule.

2. Military Spouses Are Extended Less Restrictive Admission Than Other Spouses Relocated to Tennessee for Employment.

⁴² Tenn. Code. Ann. Section 4-5-502.

⁴³ The Court has stated it “will not apply a particular interpretation to a statute if that interpretation would yield an absurd result. State v. Flemming, 19 S.W.3d 195, 197 (Tenn. 2000), and “we presume that every word was used deliberately, that each word has a specific meaning and purpose, and that the intent was not to enact a useless or absurd procedural rule.” State v. Brown, 479 S.W.3d 200, 205 (Tenn. 2015).

⁴⁴ “In February 2011, the American Bar Association Section of Legal Education and Admissions to the Bar filed a Resolution with the House of Delegates recommending that the Model Rule be amended to eliminate a provision that prohibited a lawyer’s work as in-house counsel or as a judicial law clerk from being counted as part of the necessary practice experience to qualify for admission by motion. The House agreed that the Model Rule had created “an unfair and unnecessary distinction” between in-house counsel and judicial clerks, on the one hand, and the other categories of lawyers listed in paragraph 2 of the Model Rule on the other, and thus adopted the proposed amendment” *Resolution 105E Report*, American Bar Association Commission on Ethics, Page 2, Footnote 6 (August 2012).

Of particular interest to the Petitioner is subsection (D), which includes persons seeking admission as a Military Spouse. A Military Spouse would presumably be residing in the State of Tennessee due to a service member's military orders, which is essentially the service member's employment. This is not dissimilar from persons such as the Petitioner, who relocated to Tennessee due to their spouse's employment. Under the Board's interpretation of Section 5.01(c)(1), although a Military Spouse could qualify independently under any of the other classes of attorneys listed in subsections (A) through (D), a Military Spouse in the part time private practice of law who, but for the fact that they are a Military Spouse, would be looking to qualify under subsection (A) would qualify by virtue of being a Military Spouse under subsection (D). Under the Board's interpretation of Section 5.01(c)(1), if there are two attorneys, working identical part time positions in the private practice of law, and one is a Military Spouse and the other one is not, the Military Spouse would be eligible for admission by virtue of being a Military Spouse and the other would not. It is incongruent that two persons with the exact same credentials would have a different result on a Bar Application by Comity, the only differing fact being the military employment of the applicant's spouse. This incongruence once again creates a result that cannot be consistent with the Supreme Court's intent as it creates an unfair distinction among classes of lawyers that operates to preclude otherwise qualified applicants from being admitted to the Bar.

I. Supreme Court Rule 7, Section 5.01(c) is Biased against Part Time Workers.

Under the Board's interpretation of Section 5.01(c)(1), subsections (A) and (B) are biased against part time workers as it essentially makes it impossible for such workers who move to the State of Tennessee to become licensed in the state.

The overwhelming majority of part time workers are women with family obligations; it is statistically established that women are significantly more likely to work part time.⁴⁵ The

⁴⁵ Megan Dunn, *Who chooses part-time work and why?* Monthly Labor Review, U.S. Bureau of Labor Statistics, <https://doi.org/10.21916/mlr.2018.8> (March 2018), See Summary. According to the U.S. Bureau of Labor and Statistics, women are 3-5 times more likely to work part time than their male counterparts, with the highest percentage of women concentrated in the 20 to 44 age bracket. *Id* at Figure 12. The petitioner, age 43 at the time of the application, is in the 35-44 age bracket. In this age bracket, 15% of women versus only 3% of men work part time. *Id* at Figure 3 Among the most common reasons identified for women working part time are to provide for childcare and other family obligations, represented by 26 percent of part time workers. *Id* at Table 4. According to the National Association for Law Placement, Inc. (NALP) 70% of part time lawyers are women, usually due to family obligations. *Rate of Part-time Work Among Lawyers Drops for Third Year in 2013, Especially Among*

Petitioner falls into this category. The American Bar Association Commission on Ethics, acknowledges there is a disparity between men and women, who are more likely to spend time caring for family, in its report recommending the broadening of the Model Rule on Admission by Motion, which was adopted in 2012.⁴⁶ The Tennessee Bar Association has acknowledged that there is a disparity between how women in the legal field are treated verses men, and has urged the Tennessee court system to review its rules, policies and procedures to eliminate bias against women, citing the fact that the bias need not be deliberate⁴⁷ and is often subtle.⁴⁸ While the Petitioner is not asserting an intent to create a bias against women, the demographic group most disadvantaged by the Board's interpretation of Section 5.01(c)(1) is inherently women simply due to the reality of our economy and the fact that women are far more likely to work part time, and applying the Petitioner's interpretation of Section 5.01(c)(1) eliminates the risk that such unintentional bias could occur.

Self-employed workers are also statistically more likely to work part time hours than those who are employed by others.⁴⁹ This would include the solo practitioner who does not have the client base to support full time hours, or the aging attorney who may work reduced hours as they near retirement, but wish to stay active in their practice. Both categories include persons that may be well qualified and competent to practice law. Under the Board's interpretation of Section 5.01 (c)(1), subsections (A) and (B) operate to preclude solo practitioners and aging attorneys who work a reduced book of clients from being admitted to the Bar on a Comity basis. The Petitioner also falls into this category as the Petitioner could elect to be treated as self-employed. Although Tower, Crocker & Smith, P.A. voluntarily maintained the Petitioner as a

Women, But Most Working Part-time Are Women, National Association For Law Placement, Inc., Press Release https://www.nalp.org/part_time_pressrel_march2014 (February 27, 2014). In a recent study, women lawyers who work part time after having children were found to be unfairly disadvantaged. *New Study Finds Gender and Racial Bias Endemic in Legal Profession*, American Bar Association, Press Release http://www.abajournal.com/files/Bias_report_news_release.pdf (September 6, 2018), citing Joan C. Williams, Marina Multhaup, Su Li, and Rachel Korn, *You Can't Change What You Can't See*, (2018)

⁴⁶ *Resolution 105E Report*, American Bar Association Commission on Ethics, Page 4 (August 2012).

⁴⁷ *Report of the Commission on Gender Fairness Submitted to the Supreme Court*, Page 8 (January 15, 1997), and, in general, *The Report Of The Committee To Implement The Recommendations Of The Racial And Ethnic Fairness Commission And The Gender Fairness Commission Submitted to the Supreme Court* (October 4, 2000).

⁴⁸ *Report of the Commission on Gender Fairness Submitted to the Supreme Court* at Page 21.

⁴⁹ "Self-employed workers are more likely to work part time voluntarily than workers who are employed by others (19.2 percent versus 13.6 percent)." *Dunn*. See Summary.

W-2 employee for tax purposes, the Petitioner could qualify as an independent contractor, and therefore self-employed, under New Hampshire law.⁵⁰

J. Tennessee Supreme Court Rule 7, Section 5.01(c) Varies in a Material Way From the Model Rules and Similar Rules in Other Jurisdictions.

1. The ABA Model Rule on Admission by Motion

The American Bar Association Model Rule on Admission by Motion defines the term “active practice of law” as follows:

For purposes of this rule, the “active practice of law” shall include the following activities, if performed in a jurisdiction in which the applicant is admitted and authorized to practice, or if performed in a jurisdiction that affirmatively permits such activity by a lawyer not admitted in that jurisdiction; however, in no event shall any activities that were performed in advance of bar admission in some state, territory, or the District of Columbia be accepted toward the durational requirement:

- (a) Representation of one or more clients in the private practice of law;
- (b) Service as a lawyer with a local, state, territorial or federal agency, including military service;

⁵⁰ A person is presumed to be an employee unless they meet the requirements of N.H. R.S.A 281-A:2 (b)(1) which establishes a rebuttal to such presumption if:

- (A) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.
- (B) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer.
- (C) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to completion schedule, range of work hours, and maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.
- (D) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.
- (E) The person holds himself or herself out to be in business for himself or herself or is registered with the state as a business and the person has continuing or recurring business liabilities or obligations.
- (F) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.
- (G) The person is not required to work exclusively for the employer.

Although neither the Petitioner nor Tower, Crocker & Smith, P.A. elected to rebut the presumption of the Petitioner's status as an employee, the Petitioner would have met the criteria of an independent contractor based on the hours worked, the flexibility and choice of time spent working, the independence free from direct supervision and the fact that it was understood the Petitioner may eventually establish a solo practice in Tennessee.

- (c) Teaching law at a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association;
- (d) Service as a judge in a federal, state, territorial or local court of record;
- (e) Service as a judicial law clerk; or
- (f) Service as in-house counsel provided to the lawyer's employer or its organizational affiliates.⁵¹

The "American Bar Association urges jurisdictions that have not adopted the Model Rule on Admission by Motion to do so, and urges jurisdictions that have adopted admission by motion procedures to eliminate any restrictions that do not appear in the Model Rule on Admission by Motion."⁵² The Board's interpretation of Section 5.01(c)(1) is more restrictive than the ABA model rule.

The ABA Model Rule is easily distinguished from Section 5.01(C) in that it (1) does not make reference to additional definitions of the "practice of law", (2) uses the word "requirement" to indicate one of the listed activities is required, (3) makes no reference to full or part time employment, (4) does not make any unfair distinction between different classes of attorneys and (3) lists the required activities in the disjunctive using the word "or".

2. Admission on Motion in Other Jurisdictions

The State of Tennessee is one of six jurisdictions where full-time employment is referenced in the definition of the term "active practice of law".⁵³ Of those six jurisdictions,

⁵¹ *ABA Model Rule on Admission by Motion, Section 2.*

⁵² *Id.*

⁵³ Missouri, Ohio and Virginia are the only states requiring an applicant have been engaged in the practice of law full-time. *Rules Governing Admission to the Bar In Missouri Rule 8.10(a)(4)(A)*, Ohio Gov. Bar R. I Section 9 and *Supreme Court of Virginia Rule 1A:1 Section 3*. The Petitioner distinguishes Missouri's Rule from Rule 7, Section 5.01(c), however, because (1) it consistently uses the term "full-time" in all categories of attorneys and therefore does not have the incongruence and ambiguity found in Section 5.01(c), (2) it uses the disjunctive term "or" rather than the conjunctive "and", and (3) the durational requirement is far more flexible than in Tennessee as it is spread over the ten years preceding the application rather than seven:

- 4. For *five of the ten years* immediately preceding the date upon which the application under this Rule 8.10 is filed, the person has:
 - (A) Been engaged in the full-time practice of law primarily at or from an office physically located in a state, other than Missouri, or in a territory of the United States or the District of Columbia, while the individual had an active license to practice law in such state, territory or the District of Columbia; *or*
 - (B) Served *full-time* as a lawyer with the United States government or its armed forces; *or*
 - (C) Taught full-time in a law school approved by the American Bar Association; *or*

New Mexico and Utah define “full-time” practice of law as the equivalent of 20 hours per week, while Missouri, Ohio, Virginia and Tennessee fail to define “full-time” practice.⁵⁴ Every jurisdiction that admits attorneys on motion requires that the attorney seeking admission have practiced law for a certain number of years prior to making application for admission on motion.⁵⁵ In addition, seven states have specific minimum hours required to have been worked to be considered active practice of law, ranging from 6 to 25 hours per week.⁵⁶

The majority of jurisdictions follow the ABA Model Rule in their definition of “active practice of law” and neither include a requirement that an applicant practice law full time, nor have any minimum hours worked requirement, the “active practice of law” simply means

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- (D) Been engaged in the *full-time* practice of law as in-house counsel primarily at or from an office physically located in a state, other than Missouri, or in a territory of the United States or the District of Columbia; or
 - (E) Any combination of the foregoing; [emphasis added].

While the Missouri Rule also fails to define “Full-time” practice it does go on to explain that “the full-time practice of law [is] such that the applicant's professional experience and responsibilities are sufficient to satisfy the Board that the applicant should be admitted”, giving the Board some discretion in interpretation of the Rule. *Rules Governing Admission to the Bar in Missouri Rule 8.10, Regulations of Board of Law Examiners 1*. Like Missouri, Ohio Gov. Bar. R. I Section 9 (A)(2) also applies the term “full-time” to all attorneys and also has an expanded durational requirement of 5 of the last 10 years. Based on the expanded durational requirement, applicants such as the Petitioner that have worked part time for some of their career would still qualify under the Missouri and Ohio Rules. Mississippi also makes reference to “full-time” practice of law however it is not required and is in the Board’s discretion. The instructional comments to Mississippi Bar Rule VI Section 7 states “practice must have constituted a full-time *or regular* undertaking and not have been on only an occasional or haphazard basis” [emphasis added]. New Mexico and Utah also both require an applicant be practicing full-time, however, both states defined full time work as the equivalent of 20 hours per week. See New Mexico Rules Governing Admission to the Bar Rule 15-107 D(2) and Utah Court Admission Rules Rule 14-701(b) and Rule 14-701(t)

⁵⁴ *Id.*

⁵⁵ See Appendix A.

⁵⁶ *Alaska Bar Rule 2 (2)(c)* requires an applicant have worked 750 hours a year, or roughly 15 hours a week; *Illinois Supreme Court Rule 705 (h)* requires an attorney have worked 80 hours a month, or 20 hours a week; *Indiana Rules of Court Rules of Admission, Rule 6 (1)(a)(1)* requires 1000 hours per year, or 20 hours per week; *Minnesota Rules for Admission to the Bar, Rule 7A(1)(c)* requires 1000 hours per year, or 20 hours per week; *New Mexico Rules Governing Admission to the Bar Rule 15-107 D(2)* requires 1000 hours per year, or 20 hours per week; *Pennsylvania Admission to the Bar Rule 204(4)* requires an applicant devoted a major portion of time and energy to the practice of law. Devoted a major portion of time and energy to the practice of law is interpreted to mean more than 50 percent of his/her time engaged in the practice of law or 20 hours per week.

https://www.pabarexam.org/non_bar_exam_admission/204_interpretation.htm; Utah requires an applicant be engaged in the practice of law full-time, but goes on to define full time as 80 hours a month, the equivalent of 20 hours a week. *Utah Court Admission Rules Rule 14-701(t)*, *Vermont Rules of Admission Rule 2(a)* requires 25 hours per week; *Wyoming Court Rule 302(f)* requires an applicant “Has engaged in the active, authorized practice of law for a minimum of 300 hours per year for five of the seven years immediately preceding the date of application” which equates to roughly 6 hours a week.

“Representation of one or more clients in the private practice of law”.⁵⁷ So long as you are representing at least one client, you are engaged in the active practice of law.

VI. Damages

If the Board denies the Petitioner’s Application to the Tennessee Bar by Comity, the Petitioner will suffer the following damages:

(1) The Petitioner will be denied the entry to the profession she is educated and trained to do.⁵⁸

(2) The Petitioner will be required to take the bar exam in order to gain entry to the legal profession, which is unduly burdensome as the Petitioner’s law school education is remote, having graduated over eighteen years ago.

(3) The Petitioner will have lost at a minimum two and a half years of gainful employment as an attorney in the State of Tennessee. The Petitioner applied to the Bar in June, 2017. If the Petitioner is permitted to take the July 2019 administration of the bar exam, and if the Petitioner is successful on such exam, the earliest the Petitioner would be admitted to the Bar of the State of Tennessee would be late 2019, two and a half years from the Petitioner’s initial application.

(4) The Petitioner will have suffered monetary damages in the amount of the fee paid to the State of Tennessee with her Comity application.

(5) The Petitioner will have suffered monetary damages in the amount of the fee paid to the National Conference of Bar Examiners for the Petitioner’s character and fitness evaluation as required by the Board in connection with her Comity application.

VII. Conclusion

The Petitioner has established that she meets all of the criteria for admission to the Bar of the State of Tennessee. The Board has not cited any issue with the Petitioner’s character, moral fitness, educational record, ability, competence or skill as an attorney. The Petitioner has a law school degree from an accredited law school, having graduated cum laude, has passed the bar on the first attempt in two jurisdictions, has maintained a law license in two jurisdictions, including

⁵⁷ See Appendix A.

⁵⁸The legislature has clearly expressed its intent that entry to a profession should not be denied on an arbitrary basis, and entry should be permitted without unduly restrictive or burdensome entry regulations. Tenn. Code. Ann. Section 4-5-502.

meeting annual continuing education requirements, has been in private practice for 17 years and has varied experience in sophisticated estate planning, probate, tax, business succession and elder law matters. These are all factors that should be used in determining her competence to practice law. A denial will result in all of these factors being rendered irrelevant, and will deprive her of the ability to make a living in the practice law in her home state of Tennessee. The Petitioner's ability to practice law should not hinge on the fact that she has worked a reduced schedule due to family obligations for the three and a half years preceding her application. It should hinge on her knowledge, ability, skill, experience and competence.

Supreme Court Rule 7, Section 5.01(c), in its current form, is subject to misinterpretation. The plain, natural language of Section 5.01(c) does not create a disjunctive list as the Board contends. It is ambiguous as it does not define full time practice of law, it does not state whether the full time practice of law refers exclusively to employment, it imposes unfair and unnecessary distinctions among different classes of lawyers, it creates unnecessary and unintended bias against part time workers and it is significantly more narrow than the ABA Model Rule dealing with admission without examination, as well as the rules in most other jurisdictions which permit admission without examination. These factors should all be considered in interpreting Section 5.01(c) in a manner consistent with the true intent of the Board and the Supreme Court to ensure competent attorneys are admitted to the Bar of the State of Tennessee, rather than interpreting it in a manner which applies unnecessary restrictions that have the effect of precluding otherwise qualified candidates.

VIII. Relief Requested

As a matter of equity and in light of the foregoing, Petitioner respectfully requests that the Board allow an interpretation of Section 5.01(c) that would permit the Board to use its discretion under Section 5.02 to determine that the Petitioner meets the requirements of Section 5.01(a)(3) by virtue of the fact that she has been engaged in the active practice of law continuously for the entire seven (7) years preceding her application, that she should be given full credit for her time working reduced hours while maintaining the promptness and diligence required of the profession to serve her clients, and that her competence, ability, skill, knowledge and dedication to her clients exhibit a full time devotion to the legal field, and therefore issue a Certificate of Eligibility recommending her admission the Bar of State of Tennessee.

In the alternate, the Petitioner requests that she be approved to take the July, 2019 administration of the Bar Exam based on the merits of the current application:

- (1) Without completing a new application,
- (2) Without paying an additional fee,
- (3) Without requiring additional professional references⁵⁹, and
- (4) Without requiring a certified copy of the Applicant's MPRE score.⁶⁰

Respectfully Submitted,

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⁵⁹ The Petitioner may not be able to obtain additional references from attorneys for whom she has worked due to the fact that they are unavailable due to retirement, death or mental incompetence. However, it appears three references from attorneys for whom an applicant has worked are no longer required.

⁶⁰ The Petitioner took the MPRE in 1998 and certified copies of scores are not available from administrations of the exam prior to 1999 from the National Conference of Bar Examiners. The Petitioner does have a photocopy of her score showing a score of 124. The Commonwealth of Massachusetts' and the State of New Hampshire's minimum passing scores were less than the score of 82 currently required in the State of Tennessee.

APPENDIX A

For purposes of Admission on Motion, Admission without examination, Admission by Comity and/or admission by reciprocity, each jurisdiction which permits a form of Admission on Motion available to attorneys in private practice has a rule equivalent to TN Sup.Ct. Rule 7 Section 5.01(c), wherein the term “practice of law”, “active practice of law” in private practice is defined, or wherein comparable requirements are set forth. The following is a summary of each jurisdiction’s definition of “active practice of law” or its equivalent (if such term is defined) as it pertains to private practice of law:

Alabama: “Representation of one or more clients in the practice of law” *Alabama Rules Governing Admission to the Alabama State Bar, Rule III (2)(a)*.

Alaska: “engaged in representing one or more clients on a fee basis in the private practice of law”, *Alaska Bar Rule 2, Section 2(3)(c)(1)*.

Arizona: “representation of one or more clients in the practice of law”, *A.R.S. Sup.Ct.Rules, Rule 34 (f)(2)A*.

Arkansas: “Representation of one or more clients in the practice of law”, *Arkansas Rules of the Judiciary, Rules Governing Admission to the Bar, Rule XVI*.

Colorado: “Representation of one or more clients in the private practice of law” *Colorado Admission Rule 203.2(2)(a)*.

Connecticut: “representation of one or more clients in the practice of law” *Rules of the Superior Court Regulating Admission to the Bar Section 2-13(b)(1)*.

Georgia: “representation of one or more clients in the practice of law” *Supreme Court Of Georgia Rules Governing Admission To The Practice Of Law, Part C Section (3)(a)(1)*.

Illinois: “Practice as a sole practitioner or for a law firm, professional corporation, legal services office, legal clinic, or other entity the lawful business of which consists of the practice of law or the provision of legal services” *Illinois Supreme Court Rule 705 (g)(1)*.

Indiana: “performing legal services for the general public as a lawyer for at least 1,000 hours per year”. *Indiana Rules of Court Rules of Admission, Rule 6 (1)(a)(1)*,

Iowa: “Representation of one or more clients in the practice of law” *Iowa Court Rules, Rule 31.12(6)*.

Kansas: “Representation of one or more clients in the practice of law” *Kansas Supreme Court Rule 708 (7)(i)*.

Kentucky does permit admission on motion but does not define the “active practice of law” separate and apart from the definition of practice of law and does not have any hours worked requirement, *Kentucky Rules of the Supreme Court (SCR), Rule 2.110*.

Maine: “Representation of one or more clients in the private practice of law” *M.B.A.R. 11A(a)(2)*.

Massachusetts does permit admission on motion but does not define “the active Practice of law” separate and apart from the definition of practice of law and does not have any hours worked requirement, *Massachusetts SJC 3.01 Section 6.1*.

Michigan does permit admission on motion but does not define the “active practice of law” separate and apart from the definition of practice of law and does not have any hours worked requirement, *Michigan Supreme Court Board of Law Examiners Rule 5(A)(5)(a)-1*.

Minnesota does permit admission on motion but does not define the “active practice of law” separate and apart from the definition of practice of law, *Minnesota Rules for Admission to the Bar, Rule 7A(1)(c)*.

Mississippi: “partner or associate of a private or public law firm...” *Mississippi Bar Rule VI Section 7*.

Montana: “representation of one or more clients in the practice of law”, *Rules For Admission To The Bar Of Montana Rule V D(1)(a)*.

Nebraska: The private practice of law as a sole practitioner or as an attorney employee of, or partner or shareholder in, a law firm, professional corporation, legal clinic, legal services office, or similar entity” *Nebraska Supreme Court Rule 3, Section 3-101*.

New Hampshire: “Representation of one or more clients in the practice of law”, *New Hampshire Supreme Court Rule 42, XI(d)(a)*.

New Jersey does permit admission on motion but does not define the “active practice of law” separate and apart from the definition of practice of law and does not have any hours worked requirement, *Rules Governing The Courts Of The State Of New Jersey Rule 1:24-4*.

New Mexico: “representation of one or more clients in the private practice of law” *New Mexico Rules Governing Admission to the Bar Rule 15-107 D(1)(a)*.

New York does permit admission on motion but does not define the “active practice of law” separate and apart from the definition of practice of law and does not have any hours worked requirement, *22 CRR-NY 520.10(a)(2)(i)*.

North Carolina makes reference to a broader statutory definition of law *Rules Governing Admission to the Practice of Law in the State of North Carolina, Rule .0502 (3)*. The Petitioner notes that although the North Carolina Board of Law Examiners website indicates an applicant’s practice of law must be full time, the certified copy of the Rules do not contain this requirement. See <https://ncble.org/application-information/Comity-applications/Comity-admission-requirements/> and <https://ncble.org/wp-content/uploads/Rules.pdf>.

North Dakota: “actively engaged, to an extent deemed by the Board to demonstrate competency in the practice of law, in one or more of the following: (1) the private practice of law...” *North Dakota Supreme Court Rules, Admission to Practice Rule 7, Section A(1)(c)*.

Oklahoma: “(a) Private practice as a sole practitioner or for a law firm, legal services office, legal clinic or similar entity, provided such practice was subsequent to being admitted to the practice of law in the reciprocal state in which that practice occurred...” *Oklahoma Rules Governing Admission, Rule 2, Section 1(a)*.

Oregon: “...representation of one or more clients in the private practice of law...”; *Oregon Supreme Court Rules for Admission of Attorneys Rule 1.05 (1)(a)(i)*.

Pennsylvania: “Representation of one or more clients in the private practice of law”, *Pennsylvania Admission to the Bar Rule 204(8)(i)*.

South Dakota: “...actively, continuously, and lawfully engaged in the practice of law, in a state or states that allow South Dakota attorneys substantially similar admission without

examination, as: 1) a sole practitioner; 2) a member of a law firm, professional corporation or association...” *Rules for Admission to Practice Law in South Dakota Section 16-16-12.1.*

Texas: “...private practice as a sole practitioner or for a law firm, legal services office, legal clinic, public agency, or similar entity...” *Rules Governing Admission to the Bar of Texas, Rule 1(A)(11)(a) and Rule 13 Section 1.*

Utah: “‘Active Practice’ means work performed by an attorney holding an ‘active’ status law license and having professional experience and responsibilities involving the Full-time Practice of Law as defined in sections (t) and (ff). The Active Practice of law includes any combination of the following activities provided that such employment is available only to licensed attorneys and the activities are performed in the jurisdiction in which the Applicant is admitted; (b)(1) sole practitioner, or partner, shareholder, associate, or of counsel in a law firm...” *Utah Court Admission Rules Rule 14-701(b)* and “‘Full-time Practice’ means the Active and lawful Practice of Law for no fewer than 80 hours per month. *Utah Court Admission Rules Rule 14-701(t).*

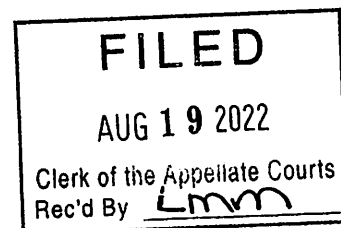
Vermont: “representing one or more clients in the private practice of law” *Vermont Rules of Admission Rule 2 (a)(1).*

Washington: “When used to describe a requirement for admission or licensure as, or otherwise regarding, a lawyer means experience in the active practice of law as a lawyer, or as a teacher at an approved law school, or as a judge of a court of general or appellate jurisdiction or any combination thereof, in a state or territory of the United States or in the District of Columbia or in any jurisdiction where the common law of England is the basis of its jurisprudence.” *Washington Admission and Practice Rules, Rule 1 (e)(1)(a).*

West Virginia: “...practice on a substantial basis motivated by a desire to earn a livelihood from that practice. Practice for the required period must have been active and continuous...” *West Virginia Rules for Admission to the Practice of Law, Rule 4.0(c).*

Wisconsin does permit admission on motion but does not define the “active practice of law” separate and apart from the definition of practice of law and does not have any hours worked requirement, *Wisconsin Supreme Court Rule 40.05.*

Wyoming: “As a significant and primary occupation, serving as an attorney for fees or payment from one or more clients, including individuals, legal service programs, trusts, partnerships and non-governmental corporations”, *Wyoming Court Rule 303 (a)(1).*



IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

**IN RE: AMENDMENT OF RULE 7, SECTION 5.01(c), RULES OF THE
TENNESSEE SUPREME COURT**

No. ADM2022-00522

**TENNESSEE BOARD OF LAW EXAMINERS COMMENT ON
PETITION REGARDING RULE 7, § 5.01(C)**

The Tennessee Board of Law examiners has carefully reviewed the Petition filed by the Network of Enlightened Women (Apr. 25, 2022), which petitions to remove the requirement of “full time” practice of law as a prerequisite for admission without examination under Tennessee Supreme Court Rule 7, § 5.01. The Board has also carefully reviewed the numerous comments on the Petition submitted as of the date of this response, including comments submitted by the Tennessee Bar Association, the Beacon Center of Tennessee, the Mountain States Legal Foundation, the Goldwater Institute, the Institute for Justice, the Independent Women’s Forum, the Cato Institute, the Alliance Defending Freedom, Tennessee State Senator Brian Kelsey, and various other individuals. The comments included detailed analyses, surveys of existing laws across the United States, and public policy arguments. The commentators universally favor amending § 5.01 to remove the full-time practice requirement, which is viewed as an unnecessary obstacle to admission without examination in Tennessee.

Having also independently reviewed the issue, the Board is persuaded by the Petition and the supporting comments that § 5.01(c) should be amended to remove the full-time requirement. The Board agrees that requiring the “full time” practice of law for admission without examination is not necessary to ensure competence among attorneys admitted on motion. In fact,

it appears that a full-time practice requirement (which is not typically required to maintain a law license) can have the undesirable effect of making it unnecessarily difficult for working mothers, for example, to obtain admission to the Tennessee bar without examination. The Board accordingly recommends that the Court amend Rule 7, § 5.01(c) by removing the phrase “full time” from § 5.01(c)(1)(A), § 5.01(c)(1)(B), and § 5.01(c)(2). The Board also believes that, for purposes of clarity, the enumeration of activities that constitute the practice of law in § 5.01(c) should be expanded to match the scope of activities contained in the American Bar Association Model Rule on Admission by Motion (2012), § 2(a). That issue was addressed in one or more comments.

First, removing the full-time requirement is supported by the approach taken by at least 23 other states, including, for example, Georgia, Alabama, and Arkansas, whose rules mirror the ABA Model Rule on Admission by Motion, which requires the primary engagement in law practice but not full-time law practice. *See, e.g.*, ABA Model Rule on Admission by Motion (2012), § 1(c) & 2(a) (“For purposes of this Rule, the ‘active practice of law’ shall include ... (a) Representation of one or more clients in the private practice of law.”); Ga. R. Admission Pt. C, §§ 2(e) & 3(a)(1) (stating that the “active practice of law” shall “include ... representation of one or more clients in the practice of law”); Ark. R. Admis. R. 16(1)(c) & (2)(a) (stating that “the ‘active practice of law’ shall include ... (a) representation of one or more clients in the practice of law”); Ala. St. Bar Admis. Rule III(1)(c) & (2)(a) (“For the purposes of this rule, the ‘active practice of law’ under paragraph A(1)(c) shall include ... (a) Representation of one or more clients in the practice of law.”).¹ As explained by Ms. Karen Lips on behalf of the Network of Enlightened Women, who

¹ *See also, e.g.*, N.H. R. Sup. Ct. 42, XI(d) (“For the purposes of this rule, the ‘active practice of law’ shall include the following activities: ... (1) Representation of one or more clients in the private practice of law.”). Alabama does, however, require law teachers to have been teaching full

provided a national survey, only five states currently require prior full-time practice for purposes of admission on motion without examination.

The already existing requirement that the applicant must “have been *primarily* engaged in the active practice of law,” Tenn. Sup. Ct. R. 7, § 5.01(a)(3) (emphasis added), will continue to place the burden on the applicant to show that the applicant has engaged *primarily* in law practice, even though such practice could be less than full-time. The Board believes that requiring the primary engagement in law practice, even if not full time, would be sufficient to ensure the competence required of licensed Tennessee attorneys. In other words, the Board thinks that an attorney who has, for the required time period, been practicing less than full-time but who has been “primarily” engaged in the practice of law as a licensed attorney in another jurisdiction, and has maintained that license in good standing, is likely to possess the competence required to begin practicing law in Tennessee without having to re-take a bar exam. Such an attorney will in addition likely have had to complete annual continuing-education courses to maintain a law license in the jurisdiction or jurisdictions in which the attorney is already licensed. And, of course, the applicant must still meet the standards for character and fitness for admission to the Tennessee bar.

The Board disagrees with the Petitioner on another point concerning defining law practice. The Petitioner has recommended that the Court revise Rule 7, § 5.01(c)(1)(A) by replacing “(A) full-time private or public practice as a licensed attorney” with “representation of one or more clients in the private practice of law,” as recommended by the ABA Model Rule. *See* ABA Model Rule on Admission by Motion (2012), § 2(a). The Board thinks it would be sufficient and

time. Certain other states continue to require full-time practice. *See, e.g.,* Mo. R. Bar Rule 8.10(a)(4).

preferable merely to remove the phrase “full time” from Rule 7, § 5.01(c)(1)(A), thereby causing that portion of § 5.01 to state as follows: “private or public practice as a licensed attorney.”

The phrase “representation of one or more clients in the private practice of law,” while technically accurate for depicting private law practice in generic terms, might suggest to applicants that the mere representation of a single client in a small matter necessarily suffices to establish the “active practice of law,” which the Board believes would not be in keeping with the intent of Rule 7, § 5.01 (or even the ABA Model Rule, for that matter). Applicants might interpret the phrase “representation of one or more clients in the private practice of law,” for example, as watering down the requirement that the applicant must have been “primarily engaged” in the active practice of law, suggesting perhaps that the mere occasional representation of a single client, secondarily to other endeavors, might suffice to constitute primary engagement in the practice of law.

Instead, the Board recommends that simply requiring “private or public practice as a licensed attorney” would less likely suggest to applicants that merely secondary practice could rise to the level of the “primary” engagement in the practice law. By definition, being “primarily” engaged in law practice still requires that the applicant be engaged “essentially; mostly; chiefly; principally” in the practice of law, and so doing more than mere “dabbling.” *See Dictionary.com* (defining “primarily”). It will remain the applicant’s burden to show with sufficient proof that the applicant has been engaged “primarily” in the active practice of law, which will depend on the circumstances of each applicant. The applicant will not, however, have to show that the applicant practiced full-time. When it comes to determining whether an applicant has been primarily engaged in the practice of law, the Board will consider all the relevant facts and circumstances based on the applicant’s submissions, just as it does currently.

Second, the activities enumerated as qualifying for law practice in § 5.01(c)(1) should be expanded and clarified to match the scope recommended by the American Bar Association's Model Rule, § 2. As currently drafted, for example, § 5.01(c) does not expressly reference service for an agency, and though it currently expressly references being a "Military Spouse," it does not expressly reference military service. This addition should be made for purposes of clarity.

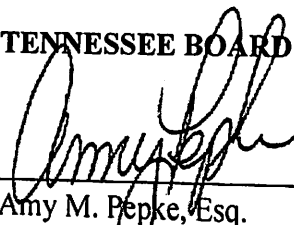
Third, the Board recommends making a few additional edits for clarity to section 5.01, as set out in the attached redline.

A redline comparison of the Board's proposed revisions is attached in Exhibit A for the Court's consideration.

In, sum, for the reasons stated above and as urged by the Petitioner and the supporting commentors, the Board respectfully recommends that the Court delete the full-time requirement from § 5.01 and revise that section as suggested in the attached redline comparison.

Respectfully submitted,

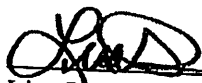
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CERTIFICATE OF SERVICE

The undersigned certifies that a Notice of Filing of the foregoing Petition to Amend Tennessee Supreme Court Rule 7 Governing Licensing of Attorneys has been served upon the Petitioner and the Tennessee Bar Association c/o Joycelyn Stevenson, Executive Director, by email on this 19th day of August, 2022.

A handwritten signature in black ink, appearing to read 'Lisa Perlen', is written over a horizontal line.

Lisa Perlen, Executive Director

Exhibit A

Sec. 5.01. Minimum Requirements for Admission Without Examination of Persons Admitted in Other Jurisdictions.

(a) **Requirements.** An applicant who meets the requirements of (1) through (7) of this paragraph may be admitted to the practice of law in this jurisdiction without examination (comity). The applicant shall:

- (1) meet the educational requirements imposed under sections 2.01 and 2.02 of this Rule;
- (2) have been admitted by bar examination to practice law in one or more states or territories of the United States, or the District of Columbia;
- (3) have been primarily engaged in the active practice of law, as defined below, in one or more states or territories of the United States, or the District of Columbia, for five of the seven years immediately preceding the date upon which the application is filed;
- (4) establish that the applicant is currently a member in good standing in all jurisdictions where admitted;
- (5) establish that the applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any other jurisdiction;
- (6) establish that the applicant meets the Character and Fitness Standard under section 6.01 required of all applicants for admission to practice law in this jurisdiction; and
- (7) submit an application under paragraph (e) of this section before establishing an office or other systemic and continuous presence in this jurisdiction for the practice of law pursuant to Tenn. Sup. Ct. R. 8, RPC 5.5(b)(1).

(c) Active Practice of Law.

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

- (A) ~~full-time~~ private or public practice of law as a licensed attorney;
- (B) teaching law ~~full-time~~ at a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association ABA;
- (C) service as a judicial law clerk or staff attorney; ~~and~~
- (D) service as a Judge in a federal, state or local court of record;
- (E) service as Attorney General or assistant Attorney General, Public Defender, U.S. Attorney, District Attorney, or an attorney or general counsel for a local, state, or federal agency, including military service;
- (F) service as duly registered In-House Counsel in-house counsel, provided that the attorney is duly registered under a rule similar to section 10.01 if required in the jurisdiction in which the services were provided; ~~and or~~
- (G) practice as a Military Spouse under a license approved similar to that awarded under section 10.06 in the jurisdiction in which the services were provided.

(2) For the purposes of this Rule, in addition to the definitions of "Practice of Law" and "Law Business" in section 1.01 of this Rule, the "active practice of law" may be construed in the Board's discretion as being actively engaged in other ~~full-time~~ employment requiring interpretation of law and application of legal knowledge if performed in a jurisdiction in which the applicant is admitted, or if performed in a jurisdiction that permits such activity by a lawyer not admitted to practice; however, in no event shall any activities ~~that were performed pursuant to a provision similar to section 10.04 or section 10.07 of this Rule before in advance of~~ bar admission in a state or territory of the United States or the District of Columbia be accepted toward the durational requirement.

(3) The Board shall consider such evaluative criteria as time devoted to legal work, the nature of the work, whether legal training or a law license was a prerequisite of employment, and other similar ~~matters~~ factors.

(34) For work to meet the requirement of "active practice of law," the lawyer must have been licensed, in active status and in good standing in at least one jurisdiction at the time the work was performed, unless the work was performed pursuant to paragraph (c)(1)(B).