

**IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE**

<b>FILED</b>
JUL 18 2018
Clerk of the Appellate Courts Rec'd By <u>CV</u>

**IN RE: AMENDMENTS TO** )  
**TENNESSEE SUPREME COURT** ) **No. ADM2018-00713**  
**RULE 6** )

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**COMMENT OF THE TENNESSEE BAR ASSOCIATION  
IN RESPONSE TO THE PETITION FOR AMENDMENT  
OF TENN. S. CT. R. 6**

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The Tennessee Bar Association (“TBA”), submits the following comment regarding the proposed amendments to Tenn. S. Ct. R. 6, filed April 19, 2018. The TBAs President appointed an ad hoc committee on the Uniform Bar Exam to conduct an extensive study of the Court’s proposed amendment of Tenn. S. Ct. R. 6 and specifically whether to implement a “Tennessee Component” to be administered in conjunction with or in addition to the UBE, and if so, whether such component should be pre-admission or post-admission. The ad hoc committee has made a report and recommendation to the TBA Executive Committee of the Board of Governors urging the TBA to oppose the proposed amendment of Tenn. S. Ct. R. 6 and to instead urge the Court to implement a pre-admission Tennessee Component. After much research and discussion, the TBA Executive Committee of the Board of Governors adopts the ad hoc committee’s recommendation and reverses its previous Comment filed in support of post-admission testing on Tennessee law. The TBA urges the Supreme Court of Tennessee (“the Court”) to reject the proposed changes to Tenn. S. Ct. R. 6 and to instead amend Tenn. S. Ct. R. 7, Article 1, to require all applicants to the Tennessee Bar to demonstrate competency or familiarity with Tennessee law by completing a course on Tennessee law prior to their admission (“Tennessee Law Course”).

Requiring all lawyers to complete a course on Tennessee law within one year after their admission to the bar does not accomplish the purpose of demonstrating basic competence or familiarity with Tennessee law and would not be of value to either the candidates or to the profession as a whole. Further, the TBA is concerned that the proposed amendments to Tenn. S. Ct. Rule 6 would implement an overly complicated and costly administrative procedure for pricing, designing, and delivering the course and enforcing compliance of the rule.

Accordingly, the TBA urges the Court to define in the Supreme Court Rules, the structure, forum, content, cost and delivery of the pre-admission Tennessee Law Course, and that applicants be required to certify, under penalty of perjury, completion of the Tennessee Law Course.

#### **I. Background**

On October 18, 2017, the Tennessee Board of Law Examiners ("the TBLE") filed a petition seeking to amend Tenn. S. Ct. R. 7 by adopting the Uniform Bar Examination ("UBE") as the standard for applicants to demonstrate the knowledge and skills for licensing and admission in Tennessee. On October 20, 2017, the Court issued an Order soliciting comments on the amendments proposed by the TBLE. The TBA formed an ad hoc committee on the Uniform Bar Exam to review the proposed rules and provide any comments or recommendations. On March 1, 2018, the TBA filed its Comment in support of the Court's proposed amendments of Tenn. S. Ct. R. 7 in order to effectuate the adoption of the UBE. The TBA also supported the proposed requirement that newly-admitted members of the bar undertake coursework in some form that would allow them to demonstrate understanding of Tennessee-specific elements of the law and legal practice. In addition, the TBA also suggested in its Comment that the Court convene a group to investigate and make recommendations to the Court as to the appropriate structure and implementation of a post-admission requirement.

By Order dated April 18, 2018, The Supreme Court of Tennessee adopted the Uniform Bar Examination to be administered as the licensing examination for admittance to the Tennessee Bar beginning in February 2019. As a result, Tennessee will soon only administer a nationally-prepared examination consisting of essay questions, writing prompts, and multiple-choice questions relating to uniform law. There will be no Tennessee-specific component of the UBE.

Nationally, the UBE has received a widely-positive reception. Currently, 29 jurisdictions are already administering the UBE in lieu of a jurisdiction-specific bar exam, and 5 jurisdictions (in addition to Tennessee) have adopted the UBE to be administered in the future. With Tennessee's adoption of the UBE, and under certain conditions, candidates who take the UBE in a jurisdiction other than Tennessee will be able to "port" their UBE scores to Tennessee, and candidates who take the UBE in Tennessee will be able to "port" their scores to other UBE-jurisdictions. Tennessee will still determine the qualifications for admission, the minimum passing UBE score, and all candidates must undergo and satisfactorily complete a character and fitness investigation. Notable for Tennessee attorneys, Alabama, Missouri, New York, North Carolina, and South Carolina already administer or will soon administer the UBE as their licensing exam.

#### **A. Tennessee Component of the UBE**

The Court is considering whether to implement a "Tennessee Component" to be administered in conjunction with or in addition to the UBE, and if so, whether such component should be pre-admission or post-admission. Although not expressly stated in the Court's Order, it is generally understood that the purpose of this Tennessee component would be to compensate for the lack of state-specific testing and ensure that all applicants to the Tennessee Bar have received legal training specific to the practice of law in Tennessee. At least 12 UBE-jurisdictions require a pre-admission component, 9 UBE-jurisdictions require a post-admission component, and 11 states

have no local component at all. Other UBE-jurisdictions are still considering whether to have a local component and, if so, how that component should be administered.

The proposal currently before the Court would require all applicants to the Tennessee Bar to take a “Tennessee Law Course” within one year of admission to the Tennessee Bar. This would include: (1) those who have taken the UBE in Tennessee; (2) those who have taken the UBE in another jurisdiction and are seeking to port their UBE score to Tennessee; (3) those who have practiced for at least five years in another jurisdiction and are seeking admission to the Tennessee Bar by motion; and (4) military spouses who are seeking temporary admission to the Tennessee Bar under Tenn. S. Ct. R. 7, Sec. 10.06.

The proposed course would be administered by the Administrative Office of the Courts, and candidates would be required to pay a fee to attend the course in an amount set by the Board of Law Examiners. Candidates would not receive CLE credit for completing the Tennessee Law Course,<sup>1</sup> and failure to complete the course within one year of admission would result in the candidate facing discipline.

The scope and form of the Tennessee Law Course are not defined by the proposed rule. Rather, the content shall “be determined by the Tennessee Supreme Court and may include, but not be limited to, instruction on areas of Tennessee civil law and criminal procedure, real estate, wills, estates, and trusts, business organizations, family law, and administrative law.”

The proposed rule does not specify whether the course would be conducted electronically or in-person, whether it would be administered at a designated time or self-study, or whether the course would involve any testing, evaluation, or other performance component.

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<sup>1</sup> The Commission on Continuing Education awards CLE credit to members of the Tennessee Bar who have taken a bar examination in the past year. *See* Tenn. R. S. Ct. 21, § 2.03.

## **B. TBA Ad Hoc Committee's Scope of Study**

After being appointed, the TBA ad hoc Committee on the Uniform Bar Exam (“the Committee”) reviewed the Court Order soliciting comments and the proposed rule. The Committee also reviewed the Court Order soliciting comments concerning whether to adopt the UBE, the comments submitted to the Court concerning the UBE, and the Court Order adopting the UBE. The Committee has conducted a literature review, including online research concerning various approaches to local components and a review of other jurisdictions that utilize a local component. Additionally, committee member John Rice served on the former TBA Ad Hoc Committee on the UBE and is familiar with the research that committee conducted.

Further, the TBA circulated a survey soliciting feedback on the Court’s proposed amendments to Rule 6 and received several comments from members of the TBA. Generally speaking, these comments reflect the following points:<sup>2</sup>

- Some TBA members have taken a similar state-specific law course or a “bridge the gap” course in other jurisdictions. Some have been administered in-person and some have been remote. There has been a general preference or desire expressed for remote programming that can be completed on a flexible or individually-determine timeline.
- There is a strong preference for a Tennessee Law Course that would provide instruction on Tennessee-specific law.

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<sup>2</sup> The TBA summarizes these comments only for the purpose of making the Court aware of the feedback that has been received. The TBA does not necessarily endorse these comments.

- Some members expressed a preference that applicants have the option to complete the course prior to admission to the Tennessee Bar.
- The Tennessee Law Course should not be so stringent, costly, or burdensome such as to result in a chilling effect to new admissions.
- Graduates and students from different Tennessee law schools believe this course should not be required of applicants who received law degrees from a Tennessee school that includes instruction on Tennessee law. Accordingly, this class of people believes that Tennessee Law Course is duplicative or unnecessary for them.
- Some have expressed opinions that the Tennessee Law Course should include instruction of health and wellness, business development, and accounting and financial skills.
- Because of the disciplinary risks for failure to complete this requirement, some members have expressed strong opinions that the AOC should offer the course on a regular basis, particularly if the course is to be taken in-person or is laborious.
- Some members have expressed skepticism that this Tennessee Law Course is being implemented for the purpose of generating revenue and that this would be an unnecessary hoop for bar applicants to “jump through.”
- Some members have expressed concern that a post-admission requirement would permit a candidate to be admitted to the Tennessee Bar and practicing Tennessee law for up to a year without having demonstrated any competency or familiarity with Tennessee law.
- Some members have expressed an opinion that the Tennessee Law Course should qualify for CLE credit.

Additionally, the Committee communicated with the Knoxville Bar Association (“KBA”) regarding their support of a pre-admission requirement. The Committee also communicated with Lisa Perlen, Executive Director of the Tennessee Board of Law Examiners (“TBLA”).

The Committee understands that the Tennessee Law Course is not intended to be a “bridge-the-gap” program structured to focus on practice skills or professional development. Rather, the Tennessee Law Course is expressly contemplated to focus on substantive law.

**II. All applicants to the Tennessee Bar should be required to demonstrate competency or familiarity with Tennessee law by completing a course on Tennessee law prior to their admission (“Tennessee Law Course”).**

The TBA **does not** support the current form of the proposed rule, and we urge the Supreme Court to not adopt it. The TBA generally supports the principle that candidates seeking admission to the Tennessee Bar should be required to demonstrate a minimal competency or familiarity with Tennessee law. *Compare* Tenn. S. Ct. R. 7, § 4.01 (“The purpose of the [bar] examination is to enable applicants to demonstrate to the Board that they possess the knowledge, skills and abilities ***basic to competence in the profession***, which are subject to testing.” (Emphasis added.)) But, the Tennessee Law Course should only be required if it would be of value to both the candidate for admission and the profession as a whole. The TBA does not support the implementation of a Tennessee Law Course if such would only be an idle ceremony or an administrative “hoop.” If the purpose of requiring all candidates to complete a Tennessee Law Course is to ensure minimal competency or familiarity with Tennessee law, that purpose would not be accomplished by requiring a post-admission Tennessee Law Course. Indeed, that purpose may well be undermined and defeated through implementation of a post-admission Tennessee Law Course.

Further, the TBA appreciates the challenge of developing a post-admission course on Tennessee law which would be of value. This challenge is amplified considering that the course would be universally required of all attorneys admitted to the Tennessee Bar, ranging from those who have recently graduated from law school and Tennessee is their first admission, to those who may have been practicing for years in another jurisdiction and are now seeking admission in Tennessee. These attorneys may range in experience and interest. For example, it is difficult to derive value and meaning in requiring an attorney, with twenty years of practice experience in another jurisdiction, who has come to Tennessee to practice in the area of trusts and estates to take time away from practice to learn about Tennessee criminal law. Although it may make sense and comport with tradition to require that attorney to demonstrate competence in criminal law prior to admission, it appears to be more of a procedural obstacle and devoid of value after that attorney has been admitted to the Tennessee Bar. Neither that individual attorney nor the legal profession is benefited, as intended, through the implementation of a post-admission course. The TBA is also concerned that the administrative cost associated with enforcing this post-admission requirement would be disproportionately high and that the proposed disciplinary process is overly complicated. Under the proposed rule, the pricing, implementation and enforcement of the post-admission requirement is disbursed between three administrative divisions: The TBLE would set the price of the course; the Administrative Office of the Courts (“AOC”) would design and deliver the course; and the Commission on Continuing Legal Education (“CLE”) would enforce compliance. The proposed rule provides that candidates could be admitted to the Tennessee bar and then be permitted to practice for up to a year before completing the Tennessee Law Course. If a lawyer did not complete the Tennessee Law Course within a period of one year after admission, the lawyer would be given notice of non-compliance, assessed a \$100.00 fee, and then be required



to take the course within sixty days. If the lawyer does not complete the course within that sixty days, the lawyer would be assessed an additional \$200.00 fee and the Commission on CLE would prepare a draft Suspension Order for that lawyer. Then, the lawyer would have thirty days in which to complete the Tennessee Law Course and pay all fees, or else the Court would enter the Suspension Order. Any lawyer suspended under this rule would not be eligible for reactivation until after completing the Tennessee Law Course and paying an additional \$500.00 Suspension Fee. These costs and administrative burden would be entirely mitigated if the Tennessee Law Course were to be a condition precedent to admission.

If the Tennessee Law Course is indeed intended to compensate for the lack of testing on state-specific law as part of the bar examination, and if the purpose of requiring the Tennessee Law Course is to demonstrate basic competence and familiarity with Tennessee law, a pre-admission course is desirable and of much greater value. Further, the administration of such a course could be consolidated to one administrative division, rather than spread among three. This would also accomplish the interest of keeping this course within the purview of the Supreme Court of Tennessee. Finally, a pre-admission Tennessee Law Course would be of great value to both candidates for admission to the Tennessee Bar and the profession as a whole as it allows Tennessee to follow the trend of implementing a more national bar exam and enable candidates to move from jurisdiction to jurisdiction as life takes them, while still maintaining the integrity of the profession to ensure that candidates for admission to the Tennessee Bar have demonstrated basic competency and familiarity in Tennessee law prior to being admitted. Additionally, candidates would not be required to wait until after admission to complete the course and could complete the course at any point in time prior to admission—even while the candidate is still in law school.

**III. The structure, forum, content, cost and delivery of the Tennessee Law Course should be structured as follows.**

The TBA recommends that the Tennessee Law Course include the following attributes to best accomplish the understood goal:

- The Tennessee Law Course should be offered as an online course consisting of pre-recorded lectures with a minimal fee, intended to cover the cost of administration and not as a profitable educational source of revenue, and available for completion year-round on a self-paced schedule to candidates for admission. The TBA has reviewed a number of similar courses administered by various jurisdictions and has been most impressed with courses designed as separate online modules consisting of a pre-recorded lecture that can be viewed on a self-paced schedule at any time during the year. This format would be well-suited for the anticipated pre-admission Tennessee Law Course.
- The cost of the Tennessee Law Course should be no greater than necessary to cover administrative costs. Under no circumstances should the Tennessee Law Course be used as a source of revenue.
- The modules and course requirements should be designed such that the entire course can be completed in eight or fewer hours.
- A candidate for admission should be required to complete of a total of six units chosen from the following twelve specific subject areas: Business Associations, Civil Procedure, Conflicts of Law, Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Family Law, Real Property, Secured Transactions, Torts, and Trusts and Estates, and Probate, and that every candidate for admission should be

required to complete a unit on the Tennessee Rules of Professional Conduct. Allowing candidates to select which units to take will permit them to select the modules most closely associated with their intended areas of practice, while also allowing them to gain exposure to other areas of the law. This further ensures that the Tennessee Law Course would be of practical value to both the candidate and the profession as a whole.

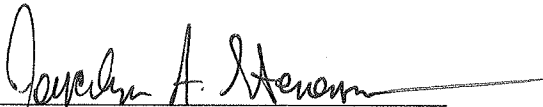
- At the end of each unit presentation, the candidate should be required to correctly answer a reasonable number of multiple choice, true-false, fill-in-the-blank, or short answer questions based only on the material contained within the unit presentation.
- Each candidate should be required to certify, under penalty of perjury that he or she personally reviewed all unit materials and personally completed the questions and answers.


#### **IV. Conclusion**

For the reasons stated above, the TBA respectfully urges the Supreme Court of Tennessee to reject the proposed changes to Tenn. S. Ct. R. 6 and to instead amend Tenn. S. Ct. R. 7, Article 1, to require all applicants to the Tennessee Bar to complete a Tennessee Law Course prior to their admission. The TBA also urges the Supreme Court to structure the Tennessee Law Course as outlined in this Comment.

RESPECTFULLY SUBMITTED,

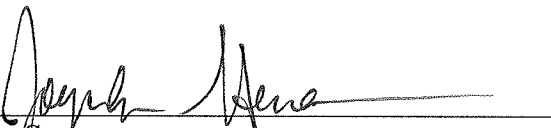
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The undersigned certifies that a true and correct copy of the foregoing has been served upon the individuals and organizations identified in Exhibit "A" by regular U.S. Mail, postage prepaid within seven (7) days of filing with the Court.

  
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FILED

JUL 17 2018

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

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

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

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No. ADM2018-713  
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COMMENT OF THE TENNESSEE BOARD OF LAW EXAMINERS  
AND THE TENNESSEE LAW COURSE COMMITTEE

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

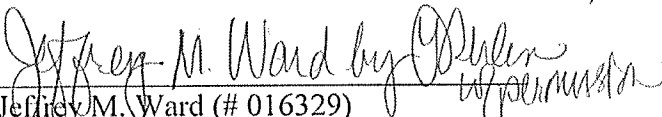
The Board and TLC Committee appreciate the interest of the Court in establishing a Tennessee Law Course in conjunction with adoption of the Uniform Bar Examination. Further, the Board and the TLC Committee have read with interest the comments that have been filed and the Motion of the Knoxville Bar Association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

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

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

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

Respectfully submitted,

  
\_\_\_\_\_  
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\_\_\_\_\_  
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Attachments:

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

**Certificate of Service**

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

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By:  \_\_\_\_\_

LISA PERLEN (#012749)

Executive Director, Tennessee Board of Law  
Examiners

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

2 **PREFACE**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

78 (1) Section 3.01, Admission by Examination,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

151

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

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

2 **PREFACE**

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4 judicial branch of government by the Supreme Court of Tennessee under its inherent authority to  
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7 practice law and acts on the basis of the Board’s Certificate of Eligibility.

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

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

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

13 (a) has been:

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

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

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

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

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

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

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

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

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

32 (c) All background investigations are invalid upon expiration of the two-year period under  
33 section 6.03. If the investigation expires after issuance of the Certificate of Eligibility but  
34 prior to licensing and expiration of scores, the applicant must request a supplemental  
35 background investigation as provided in section 6.03(b).

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37 The Board shall issue a Certificate of Eligibility under section 9.01 of this Rule only after  
38 determining that the applicant:

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42 without examination as hereinafter provided in section 3.05, Article V, or section 10.06;
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44 provided in section 4.07(d);
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46 reasonable basis for substantial doubts that the applicant will adhere to the standards of  
47 conduct required of attorneys in this State;
- 48 (f) has certified that he or she has read and is familiar with the Tennessee Rules of Professional  
49 Conduct;
- 50 (g) has completed the Tennessee Law Course as provided in section 1.07;
- 51 (h) has paid all fees for licensing and admission to this Board, the Clerk of the Appellate Court,  
52 and the Board of Professional Responsibility; and
- 53 (i) has evidenced a commitment to serve the administration of justice in this State.

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55 If an applicant who has been admitted to practice in another state in the United States, the  
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61 All persons admitted to the bar of Tennessee are by virtue of such admission: (a) officers of the  
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64 Rule; and (b) subject to the duties and standards imposed from time to time on attorneys in this  
65 State.

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68 licenses to practice as of the date of its adoption.

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71 Law Course is intended to provide instruction in specific areas of Tennessee law not addressed by the  
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74 admission to the Tennessee bar for the following types of applicants to the bar of Tennessee:

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

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

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

90 (f) The Board shall provide applicants with instructions regarding access to the Tennessee Law Course  
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92 (1) Applicants seeking admission under section 3.01 (by examination) shall receive instructions  
93 upon completion of the bar examination.

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

97 (g) The Tennessee Law Course must be successfully completed within one year of the date that the  
98 applicant completes all other requirements to be eligible for a Tennessee law license. Any applicant  
99 who successfully completes the Tennessee Law Course but does not complete all other requirements  
100 for eligibility to obtain a law license within such one year period must repeat the Tennessee Law  
101 Course prior to admission.

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

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

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

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

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

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

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

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

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

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

122 (7) possesses the moral character and fitness required of all applicants for admission and  
123 licensing in this State;

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

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

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

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

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

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

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

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

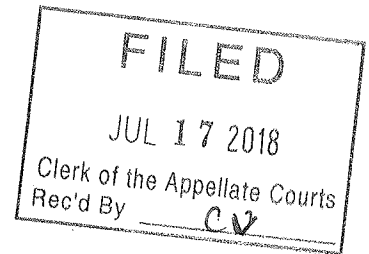
140 (4) submit certificate(s) of good standing from the highest court of each state to which the  
141 applicant has been admitted and disciplinary history(ies) to demonstrate satisfaction of  
142 the requirements of paragraph (a)(5) of this section 10.06;

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

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

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

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE



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

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No. ADM2018-713

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

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

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

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

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

**Tennessee Law Course Objectives and Content**

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

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

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

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

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

### **Course Handbook**

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

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

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

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

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

### **Course Delivery Method**

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

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

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

### **Our Offer to Develop and Teach the Course**

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



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

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

### **Course Timing**

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

### **Course Fees**

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

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

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

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

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

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

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

## **Conclusion**

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

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

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

Dated: July 17, 2018

Respectfully submitted,

Eric Franklin Amarante  
Brad Areheart  
Wendy Bach  
Teri Dobbins Baxter  
Zack Buck  
Judy Cornett  
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July 5, 2018

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

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Tennessee Supreme Court  
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401 Seventh Avenue North  
Nashville, TN 37219-1407

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

Dear Mr. Hivner:

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

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

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

Sincerely,

Keith H. Burroughs, President  
Knoxville Bar Association

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

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June 18, 2018

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

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

Attn: James M. Hivner, Clerk of Appellate Courts

Transmitted via email to [appellatecourtclerk@tncourts.gov](mailto:appellatecourtclerk@tncourts.gov)

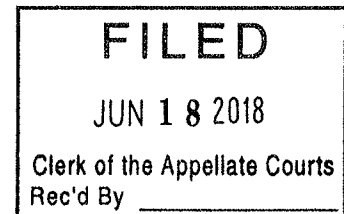
IN RE: AMENDMENT OF RULE 6, RULES OF THE TENNESSEE SUPREME COURT  
No. ADM2018-713

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

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

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

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



a mandatory pre-admission course<sup>1</sup> for the Washington State Bar Association (WSBA) and managed the statewide program implementing this course until January 2008.

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

In its introduction, the *MacCrate Report* explains,

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

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

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

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

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

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

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

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

Perhaps in response to MacCrate and its aftermath, the Tennessee Commission on Continuing Legal Education and Specialization (“Commission”) established the “Mentoring Initiative” in an effort to provide beginning lawyers with access to more resources and to encourage veteran attorneys to help guide and develop new lawyers.<sup>5</sup> A pilot program offering CLE credits began July 1, 2013, but expired December 31, 2016.<sup>6</sup>

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

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

<sup>4</sup> *Twenty Years After the MacCrate Report: A Review of the Current State of the Legal Education Continuum and the Challenges Facing the Academy, Bar, and Judiciary*, Committee on the Professional Educational Continuum, Section on Legal Education and Admissions to the Bar, American Bar Association, March 20, 2013, [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/june2013councilmeeting/2013\\_open\\_session\\_e\\_report\\_prof\\_educ\\_continuum\\_committee.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/june2013councilmeeting/2013_open_session_e_report_prof_educ_continuum_committee.authcheckdam.pdf). (retrieved 2018-06-18).

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

<sup>6</sup> Rule 21, ¶4.07(d) Up to six (6) hours per year of dual credit for participation as a mentor or mentee in a program meeting standards established by the Commission, including programs sponsored by bar associations, law schools, law firms, or other appropriate governmental or organizational sponsors. To help facilitate establishment of mentoring programs, the Commission is authorized to provide for a program of training for mentors, whether through its own auspices or through those of other organizations, and to charge a reasonable fee for such training. With regard to mentors participating in a mentoring program sponsored by a governmental or non-profit organization, the Commission is authorized to provide such training at no charge. This subparagraph (d) shall take effect on July 1, 2013, and shall expire on December 31, 2016, unless affirmatively readopted by the Supreme Court. <http://www.tsc.state.tn.us/rules/supreme-court/21>, (retrieved 2018-06-18).

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

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

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

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

Thank you for the opportunity to comment.

Respectfully,

/s/Yvonne K. Chapman

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



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## ***Fundamental Lawyering Skills***

### **A. Problem Solving**

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

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

### **B. Legal Analysis and Reasoning**

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

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

### **C. Legal Research**

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

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

### **D. Factual Investigation**

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

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

### **E. Communication**

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

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

### **F. Counseling**

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

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

### **G. Negotiation**

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

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

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## **H. Litigation and Alternative Dispute-Resolution Procedures**

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

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

## **I. Organization and Management of Legal Work**

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

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

## **J. Recognizing and Resolving Ethical Dilemmas**

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

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

## ***Fundamental Values of the Profession***

### **A. Provision of Competent Representation**

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

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

### **B. Striving to Promote Justice, Fairness, and Morality**

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

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

### **C. Striving to Improve the Profession**

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

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

### **D. Professional Self-Development**

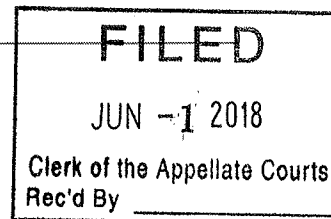
As a member of a learned profession, a lawyer should be committed to the values of:

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

appellatecourtclerk - Tennessee Law Course

ADM 2018-00713

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



Clerk Hivner:

The opportunity to comment is appreciated.

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

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

J. Myers Morton  
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**appellatecourtclerk - RE: Tennessee Law Course**

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

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Clerk Hivner:

Oops! I apologize.

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

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

Amendments to **Rule 6**.

The Tennessee Law Course.

I am also merely a deputy law director.

Thank you for the opportunity to assist.

Myers

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

Director Morton:

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

Jim Hivner

Clerk of the Appellate Courts

>>> Myers Morton <[Myers.Morton@knoxcounty.org](mailto:Myers.Morton@knoxcounty.org)> 6/1/2018 6:03 AM >>>

Clerk Hivner:

The opportunity to comment is appreciated.

**Lisa Marsh - Proposed Rule 6 comments**

ADM2018-713

**FILED**

**MAY 10 2018**

Clerk of the Appellate Courts  
Rec'd By LM

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

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

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

Thank you,

--

Jeremy Gourley  
615-568-0865

**Example is not the main thing in influencing others.**

**It is the only thing. - Albert Schweitzer**

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