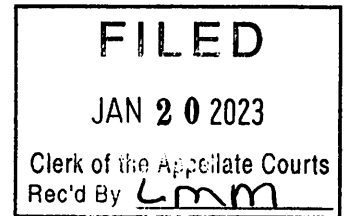




January 20, 2023

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



ADM2022-01449

Re: ADM2022-01449

To the Honorable Justices of the Tennessee Supreme Court:

We write to reaffirm our 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.

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 personal or 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.

Additionally, the Tennessee Board of Law Examiner's proposal to amend Section 7.01 to permit it to make a recommendation to the Court regarding an applicant's record is a move in the right direction, but attorneys who are licensed to practice in other states and are in good standing in those states should be permitted to practice law in Tennessee, regardless of foreign education. Individuals do not lose their skills when they cross state lines.

Lawyers should have the flexibility to work part-time if the necessities of life dictate, and arbitrary barriers should not prevent capable attorneys from working in Tennessee. 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,



Kamron Kompani  
Legal Programs Manager  
Scharf-Norton Center for  
Constitutional Litigation at the  
Goldwater Institute

**FILED**

**JAN 20 2023**

Clerk of the Appellate Courts  
Rec'd By Lmm

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

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**IN RE: AMENDMENT OF RULES 6 AND 7  
RULES OF THE TENNESSEE SUPREME COURT**

**No. ADM2022-01449**

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*Written comment in support of the proposed amendments*

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Further to the Order of the Supreme Court of Tennessee soliciting written comments on the Tennessee Board of Legal Examiners' proposed amendments of Rules 6 and 7, **Laurence Wilkinson** provides this comment **in support** of the proposed amendments with specific reference to the proposed addition of Rule 7, § 7.01(a)(2).

I am a duly qualified lawyer (solicitor) in England who relocated to Tennessee in March 2020 with my American spouse. In March 2021, I sought admission to take Tennessee bar exam in July 2021 under Tennessee Supreme Court Rule 7, § 7.01(a) on the basis that my foreign education was "substantially equivalent" to the requirements of Rule 7, §§ 2.01 and 2.02. I had five years of legal education in a Common Law jurisdiction, including one year at the University of Texas at Austin, which fulfilled the educational requirements for admission to the practice of law in England.

The Tennessee Board of Law Examiners (the "Board") issued two orders denying my application to take the Tennessee bar examination for failure to meet foreign-educated applicant

requirements. The Board's June 11 order stated that I lacked sufficient credit hours to render my foreign education "substantially equivalent" under Rule 7, § 7.01(a). I appealed the June 11 order, clarifying that I did in fact have sufficient credit hours of study, only for the Board to issue another order on November 10 finding that my education was not shown to be "substantially equivalent" to the satisfaction of the Board.

I then petitioned for review of the Board's decision on January 11, 2022. (*Wilkinson v. Tennessee Board of Law Examiners* (Case No. M2022-00080-SC-WR-CV)) My petition was opposed by the Board. This Court denied the petition on February 14, and denied a further petition for rehearing on March 4.

One of the primary points of contention in my appeal was that the Board had demanded a specific delineation of my education in order to satisfy the requirements of Rule 7.<sup>1</sup> This meant that the Board's focus was on how my education had been *classified* in the Foreign Education Report, rather than a full consideration of its substance. As my appeal indicated, a Foreign Education Report would not assess a degree from the United Kingdom to be directly equivalent to an American J.D. Degree because legal education in the United Kingdom is structured differently.

However, I had argued that an analysis of my education as a whole clearly demonstrated "substantial equivalence" to the requirements of both § 2.01 and § 2.02 of Rule 7: I had accumulated a substantial number of credit hours in substantive, procedural, dissertational, seminar, clinical, and professional skill elements from prestigious academic institutions in a Common Law jurisdiction, and had further gone on to qualify and practice law for over 5 years. Nonetheless, the Board determined that my education did not satisfy the specific requirements of "substantial equivalence" under Rule 7, § 7.01(a) at the time. As the Board notes in its Petition to

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<sup>1</sup> The Board had said in its second order that "the same education used to support substantial equivalence to a Bachelor's Degree, such as the Bachelor of Laws from University of Nottingham, *cannot also be used* to support substantial equivalence to the J.D. Degree requirement."

Amend, the only option available to the Board in those circumstances was to deny me as ineligible to sit the bar exam.

I believe that the current wording of Rule 7 forced the Board to adopt a ‘form over substance’ evaluation of my educational credentials, dictated by the limitations of the Foreign Education Report. Had the substance of my education been *delineated* differently, I have no doubt the Board would have concluded that my education was substantially equivalent. This was a deeply unsatisfying outcome, and particularly frustrating given that my application was rejected a mere six and a half weeks prior to the exam date, at which point I had already expended a significant amount of time and money preparing my application and studying for the exam.

My submission is that the proposed addition of Rule 7, § 7.01(a)(2) provides an important opportunity for the Board and this Court to make a full and fair assessment of a foreign applicant’s education credentials, particularly where that foreign education is not precisely delineated into separate degrees that follow the American model (as is the case in the United Kingdom and many other established Common Law jurisdictions.) This will ensure that otherwise qualified applicants are not prevented from seeking admission to the bar purely because of the *form* of their education. And given that the threshold to pass in this context is one of “substantial” equivalence to an American legal education (not “identical” equivalence) it is right that this Court has a clear opportunity to exercise its inherent discretion in borderline cases.



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Laurence James Wilkinson

20 January 2023

**Lisa Marsh - No. ADM2022-01449**

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**From:** Karin Agness Lips <karin@enlightenedwomen.org>  
**To:** appellatecourtclerk <appellatecourtclerk@tncourts.gov>  
**Date:** 1/17/2023 8:28 AM  
**Subject:** No. ADM2022-01449

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Good morning,

I write in support of the Tennessee Board of Law Examiners Petition (No. ADM2022-01449) related to amending Rule 7. I support removing the full-time work requirement for comity.

Best,  
Karin

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**Karin Lips**  
*President*  
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