April 23, 2026

BY EMAIL (appellatecourtclerk@tncourts.gov)

The Honorable Justices of the Tennessee Supreme Court
c/o Hon. James Hivner
Clerk, Tennessee Supreme Court
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1307

In Re: Public Comments on Potential Regulatory Reforms to Increase Access to Quality Legal Representation, No. ADM2025-01403

PROPOSAL REGARDING ARTIFICIAL INTELLIGENCE, UNAUTHORIZED PRACTICE OF LAW, AND ACCESS TO LEGAL ASSISTANCE

To the Honorable Justices of the Tennessee Supreme Court:

We respectfully submit this comment regarding the regulatory treatment of artificial intelligence ("AI") in the delivery of legal information and legal services. As the Court considers reforms to increase access to quality legal representation, the treatment of AI tools—particularly under unauthorized practice of law ("UPL") doctrines—will materially affect whether Tennesseans can obtain meaningful legal help. While the Court's Order does not seek comment on this topic, we believe the Court's consideration of these questions is critical to providing access to legal help critically needed by Tennesseans.

A regulatory framework that allows responsible AI-enabled legal assistance, with appropriate safeguards, can significantly expand access to justice. Conversely, a framework that treats such tools as presumptively unlawful risks reinforcing the very access barriers the Court is seeking to address.

The authors of this comment are part of a group of Tennessee lawyers that began studying and considering legal innovation efforts three years ago, before the Court issued its request for comments. The group consisted of academics and law firm, legal services, and bar association leaders from across Tennessee. Our group reviewed materials and held meetings with people who have led reform efforts in Utah, Arizona, and North Carolina, as well as academics and public interest organizations that have studied and evaluated legal innovation models. Although we were not formally constituted or affiliated, we shared a common interest in exploring opportunities to reform the structure of the legal market to remedy the unavailability of legal services for too many Tennesseans.

When the Court issued its request for comments, our group had a firm foundation to address several aspects of the Court's request. We began further research and drafting to respond to the Court's proposed areas for reform that aligned with our group's prior work. We submit this comment to assist the Court by drawing on the study and conclusions that have been the fruit of our group's work. We hope our work and this comment will help inform the Court's understanding, both now and as the Court proceeds with reform efforts.

A. Expanding access to justice requires expanding the supply of legal help

The Court's Order recognizes the substantial gap between the legal needs of Tennesseans and the supply of affordable legal services. This gap is particularly acute in rural areas and among low- and moderate-income individuals.

This problem is fundamentally one of supply. Where lawyers are too scarce or too expensive, other forms of assistance inevitably emerge.

AI tools are part of that response. Individuals and small businesses are already using such tools to understand legal processes, generate documents, and prepare for legal disputes. These tools are not hypothetical; they are in widespread use and will continue to be used regardless of how they are regulated.

The relevant policy question is therefore not whether AI will be used, but whether it will be governed in a way that improves or impairs access to justice.

B. Overly restrictive or unclear UPL regulation risks reinforcing the justice gap

A consistent theme across discussions of consumer and small business use of AI concerning legal issues and the emergence of AI tools that provide forms of legal help is that uncertainty regarding UPL law—not the prohibition itself—is the central problem.

Developers, legal aid organizations, and responsible providers are often unsure whether AI tools that can assist users with legal matters will be treated as unauthorized practice. This uncertainty discourages innovation and delays the deployment of tools that could provide meaningful assistance to underserved populations.

As a result, consumers are left to rely on general-purpose AI systems not designed or vetted for use as legal help or informal sources that are not designed for legal accuracy. The lack of clarity in the law therefore harms the public by slowing the development of more reliable and purpose-built tools.

A regulatory approach that reduces uncertainty while maintaining appropriate safeguards would better align with the Court's access-to-justice objectives.

April 24, 2026

BY EMAIL (appellatecourtclerk@tncourts.gov)

The Honorable Justices of the Tennessee Supreme Court
c/o Hon. James Hivner
Clerk, Tennessee Supreme Court
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1307

In Re: Public Comments on Potential Regulatory Reforms to Increase Access to Quality Legal Representation, No. ADM2025-01403

PROPOSAL REGARDING ESTABLISHING A COMMUNITY JUSTICE ADVOCATE CERTIFICATIONI PROGRAM

To the Honorable Justices of the Tennessee Supreme Court:

The following proposal addresses Question 6 of the Tennessee Supreme Court's September 16, 2025, Order requesting input regarding whether any legal services currently provided by lawyers could be competently provided by paraprofessionals and, if so, what qualifications, limitations, or subject matter restrictions the Court should consider imposing.

The authors of this comment are part of a group of Tennessee lawyers that began studying and considering legal innovation efforts three years ago, before the Court issued its request for comments. The group consisted of academics and law firm, legal services, and bar association leaders from across Tennessee. Our group reviewed materials and held meetings with people who have led reform efforts in Utah, Arizona, and North Carolina, as well as academics and public interest organizations that have studied and evaluated legal innovation models. Although we were not formally constituted or affiliated, we shared a common interest in exploring opportunities to reform the structure of the legal market to remedy the unavailability of legal services for too many Tennesseans.

When the Court issued its request for comments, our group had a firm foundation to address several aspects of the Court's request. We began further research and drafting to respond to the Court's proposed areas for reform that aligned with our group's prior work. We submit this comment to assist the Court by drawing on the study and conclusions that have been the fruit of our group's work. We hope our work and this comment will help inform the Court's understanding, both now and as the Court proceeds with reform efforts.

I. Establish a Community Justice Advocate Certification Program

Solutions from Other Jurisdictions

Alaska provides the most compelling proof of concept. Beginning in 2019 with Alaska Supreme Court approval, Alaska Legal Services Corporation launched a Community Justice Worker (CJW) program modeled on the state's Community Health Aide Program. CJWs are trained and certified in discrete areas of civil law such as SNAP benefits, debt collection defense, domestic violence protection orders, the Indian Child Welfare Act, and basic estate planning through primarily asynchronous online training complemented by hands-on mentoring under supervising attorneys. As of June 2024, over 400 CJWs had completed or were enrolled in training, working in more than 40 primarily rural and remote Alaska Native communities. Joy Anderson et al., Community Justice Workers: Part of the Solution to Alaska's Legal Deserts, Ala. L. Rev. 10 (2024).

The outcomes in Alaska are remarkable. During Alaska's SNAP crisis when the state's error rate in processing SNAP applications reached 87%, the worst in the nation, CJW volunteers closed nearly 500 cases, recovered .43 million in food security benefits, and achieved a 100% success rate in resolving client SNAP delay issues. Clients typically had benefits approved within ten days. This was accomplished not by licensed attorneys but by trained community members embedded in the communities they served.

Utah's regulatory sandbox has similarly enabled community justice worker programs through unauthorized practice of law (UPL) waivers. The Timpanogos Legal Center launched a Certified Advocate Partner Program embedding trained CJWs within municipal and county law enforcement agencies to help survivors of domestic violence with protective orders. Between June 2021 and June 2024, advocates assisted over 350 clients and provided over 840 services including 225 protective orders with 77% of clients residing in rural areas of Utah. Matthew Burnett & Rebecca L. Sandefur, A People-Centered Approach to Designing and Evaluating Community Justice Worker Programs in the United States, 51 Fordham Urb. L.J. 1509 (2024). This is direct evidence that embedded, community-based advocates can bridge rural justice gaps in precisely the way Tennessee's rural counties need.

Washington State's Limited License Legal Technician (LLLT) program, though ultimately sunset for budgetary and administrative reasons largely unrelated to performance, demonstrated the viability of a more formal paraprofessional licensing model in family law matters. Stanford researchers evaluating the program found that LLLTs provided competent services at critical moments in clients' lives, reduced procedural errors, improved outcomes, and even generated new business for supervising attorneys by capturing a previously untapped market. Jason Solomon & Noelle Smith, The Surprising Success of Washington State's Limited License Legal Technician Program, Stanford Center on the Legal Profession (Apr. 2021). Texas, Oregon, Minnesota, New Hampshire, and other states have since implemented their own paraprofessional licensing frameworks.

Recommendation A Tennessee Community Justice Advocate Certification Program

The Court should establish a Tennessee Community Justice Advocate (CJA) certification program modeled on Alaska's hub-and-spoke approach.

Certification authority. The Tennessee Supreme Court, through the Access to Justice Commission, should certify CJAs who complete approved training in defined subject-matter areas. Initial priority areas should be chosen for their high volume, procedural manageability, and critical importance to vulnerable Tennesseans and should include: public benefits (SNAP, Medicaid, TennCare appeals); eviction defense and housing; domestic violence protection orders; consumer debt and debt collection defense; simple wills and advance directives; and veterans' benefits.

Training and supervision. Training should be primarily asynchronous and online to maximize rural reach, with competency assessments and hands-on mentoring. CJAs must operate in affiliation with an approved legal aid organization or supervising attorney who assumes professional responsibility for oversight. This model which has already been proven to work in Alaska, ensures accountability without requiring physical proximity between supervisor and CJA.

Scope limitations. CJAs should be certified in discrete practice areas, not authorized to practice law generally. Their authorized activities should include providing legal information and advice within their certified subject area, assisting with forms and court filings, representing clients in administrative hearings with supervising attorney approval, and client counseling regarding legal rights.

Disciplinary oversight. CJAs should be subject to the jurisdiction of the Board of Professional Responsibility, and the supervising attorney's professional responsibility rules should extend to CJA conduct. This ensures meaningful public protection without replicating the full bar admission apparatus.

Haywood, Lauderdale, Hardeman, and similar counties have community anchors such churches, health clinics, libraries, county extension offices that could serve as deployment sites for CJAs. These are trusted institutions already embedded in communities that distrust outside intervention. The Faith and Justice Alliance of the Tennessee Supreme Court's Administrative Office of the Court provides a vehicle to expand into the churches that are a key trusted institution in many legal desert communities. A CJA program that recruits and trains local residents to serve their neighbors, supervised remotely by legal aid attorneys in Jackson or Memphis, is a realistic and replicable model for Tennessee.

The Court should consider piloting this program in two or three rural judicial districts in partnership with West Tennessee Legal Services, Legal Aid of East Tennessee, and Legal Aid of Middle Tennessee before statewide rollout, and should authorize the Access to Justice Commission to develop training standards and approve CJA training providers.

II. Expand and Modernize Tennessee's Pro Bono Emeritus Program Under Rule 50A

The Existing Program and Its Untapped Potential

Tennessee's pro bono emeritus attorney program under Supreme Court Rule 50A has existed since January 1, 2011. It allows retired attorneys defined as those who have practiced for at least five of the last ten years or for at least 25 years, to provide pro bono legal services through approved legal assistance organizations without maintaining an active bar license or paying annual dues. It is a sound foundational program.

The TBA's BarBuzz podcast recently highlighted this issue through a conversation among TBA Executive Director Sheree Wright, former TBA President Jim Barry, and retired attorney Carl E. Seely. That conversation illuminated a truth the access-to-justice community has long recognized: Tennessee has thousands of retired attorneys who possess decades of expertise in exactly the practice areas where low-income Tennesseans most need help in the areas of family law, housing, consumer debt, public benefits. Many of them, like Jim Barry and Carl Seely, are eager to remain professionally engaged and to serve their communities. The current Rule 50A, as written, does not make it easy enough for them to do so.

Current Limitations That Constrain Participation

Narrow organizational channel. Rule 50A requires that emeritus attorneys serve through "approved legal assistance organizations," currently defined primarily as LSC-funded entities. Tennessee's three LSC-funded organizations (West Tennessee Legal Services, Legal Aid of Middle Tennessee and the Cumberlands, and Legal Aid of East Tennessee) serve vast geographic areas but have limited capacity to absorb and supervise additional volunteers. Many rural counties lack an accessible LSC office, and the affiliation requirement effectively forecloses participation by retired attorneys who are not proximate to those organizations.

Administrative burden of the petition process. The current rule requires Supreme Court approval, which can be slow and is not electronically accessible. This administrative friction discourages participation by attorneys who might otherwise volunteer. In addition to the administrative burden, the costs of being a retired attorney attempting to provide pro bono or low bono legal assistance are substantial and should be removed.

Absence of CLE pathway. Emeritus attorneys who wish to remain substantively current in a specific practice area in order to serve effectively lack a purpose-built CLE track. Standard active-member CLE requirements are poorly suited to the needs of retired attorneys seeking to maintain competency in one or two focused areas.

Recommended Modifications to Rule 50A

Expand approved organizations. The rule should be amended to authorize emeritus attorneys to affiliate with a broader range of approved entities, including: court-based

self-help centers and access to justice programs; local and county bar associations with established pro bono programs; accredited law school clinics; nonprofit legal services organizations not funded by LSC; and Rule 31 mediation programs in which the emeritus attorney is a listed mediator providing pro bono services. An expedited approval process through the Access to Justice Commission could ensure quality control without creating administrative bottlenecks.

Authorize limited direct service in legal desert counties. In counties with fewer than ten active attorneys per 10,000 residents, the Court should authorize emeritus attorneys to provide limited pro bono or low bono legal services directly to income-eligible clients without mandatory organizational affiliation, subject to notification to the Board of Professional Responsibility and compliance with all applicable ethics rules. This change would directly address the reality that many of Tennessee's most underserved counties have no LSC or other legal services provider office within practical reach.

Streamline and digitize the application process. The Court should delegate initial approval to the Access to Justice Commission with automatic approval absent objection within 30 days and should make the application available electronically through the Tennessee courts portal. The undersigned's experience coordinating pro bono volunteers confirms that administrative friction at the point of entry is a significant deterrent—especially for attorneys who have been out of practice and are uncertain about the process.

Create an emeritus-specific CLE track. The Tennessee Commission on CLE should create a focused emeritus CLE track perhaps 6 hours annually, concentrated in one or two subject-matter areas of the attorney's choosing made available at reduced or waived cost. This would enable retired attorneys to maintain the targeted competency needed to serve effectively without the burden of full active-member CLE compliance.

Retired attorneys represent a significant reservoir of legal talent that Tennessee is currently leaving largely untapped. Modernizing Rule 50A to remove unnecessary barriers to participation could mobilize hundreds of experienced practitioners in service of Tennessee's most vulnerable residents.

The Value of Emeritus Status Attorneys in Closing the Access to Justice Gap

Emeritus status attorneys offer a uniquely valuable resource for addressing the access to justice crisis. Unlike first-year volunteers, they bring decades of substantive legal expertise, professional judgment, and client-handling experience that cannot be replicated by training programs alone. A retired family law attorney who spent thirty years in practice can provide a domestic violence survivor with the same quality of advice that a law firm partner would charge hundreds of dollars per hour to deliver. This depth of experience is precisely what low-income clients need and rarely receive.

Multiple states have recognized this value and have created or expanded emeritus attorney frameworks specifically to harness it. California's State Bar Rule 9.45 allows retired attorneys to provide pro bono services through qualified legal services projects and law school programs, and California has actively promoted the program as a workforce strategy for legal aid organizations. Florida's Rule 4-6.5 similarly authorizes retired attorneys to provide limited legal services through nonprofit programs and court-sponsored clinics. New York has created a Senior Lawyer Pro Bono Initiative, coordinated through the New York State Bar Association, that actively recruits and places retired attorneys in legal services settings throughout the state. Colorado, Illinois, and Virginia have each adopted rules modeled on the ABA Model Rule for emeritus attorneys, with the express purpose of expanding the pipeline of experienced volunteer counsel available to legal aid organizations.

The ABA itself has strongly encouraged states to expand emeritus programs as a strategic access to justice measure. The ABA's Standing Committee on Pro Bono and Public Service has identified emeritus attorneys as one of the most underutilized resources in the pro bono ecosystem and has urged state bars to remove procedural and financial barriers to their participation. The ABA Model Rule on Pro Hac Vice Admission and the Model Rule for Emeritus Attorneys provide a template that Tennessee's Rule 50A reforms could build upon directly.

Tennessee is well positioned to build on these models. The state has a large population of retired attorneys who are concentrated in urban centers like Memphis, Nashville, Knoxville, and Chattanooga but who have professional roots in, and connections to, rural communities across the state. A modernized Rule 50A that removes barriers to participation and provides a clear, simple path to emeritus service could convert that latent talent pool into an active, statewide network of experienced pro bono counsel.

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MaryBeth Lindsey

To: appellatecourtclerk
Subject: RE: Tenn. Reg. Reform - Community Justice Adv Comment FINAL 4-24-26

From: Linda Seely <Linda.Seely@butlersnow.com>
Sent: Friday, April 24, 2026 6:37 AM
To: appellatecourtclerk <appellatecourtclerk@tncourts.gov>
Subject: Tenn. Reg. Reform - Community Justice Adv Comment FINAL 4-24-26

Mr. Hivner,

Attached please find a comment regarding the proposed Regulatory Reform Order of the Court, No. ADM2025-01403.

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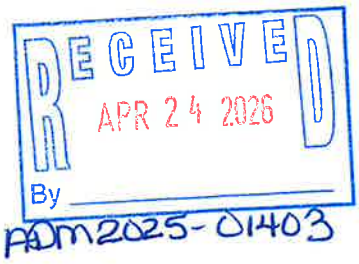

April 23, 2026

Comment of the Law School Admission Council to the Tennessee Supreme Court Order No. ADM2025-01403 on Potential Regulatory Reforms to Increase Access to Quality Legal Representation

The Law School Admission Council (LSAC) appreciates the opportunity to provide information related to the Court's approach to regulation of the legal profession to ensure that all Tennesseans have access to affordable quality legal services. These issues are at the core of LSAC's mission. LSAC is a nonprofit organization that has served legal education for over 70 years. We administer the Law School Admission Test (LSAT), facilitate the application process for prospective law students, support prelaw programs to help broaden access to legal education, and assist more than 200 law schools with the processing of the applications they receive. In the course of our work, we interact with more than 100,000 prospective law students each year. Through in-person regional fairs and national online forums for prospective law students, consumer information tools, educational resources, and a wide range of other services, we help them determine whether a career in law is right for them, with full information and realistic expectations.

We appreciate the Court's encouragement of exploring ways to increase access to quality, affordable legal representation, including access in underserved rural areas. LSAC is currently leading a collaborative nationwide effort to bring together law schools, courts, and others from across the legal community to help understand more deeply the causes and impacts of rural access to justice issues, identify initiatives that are working and can be expanded or replicated, and build a sustainable structure for addressing these issues in the years ahead. As part of this rural access to justice effort, LSAC is working collaboratively on a nationwide survey of law schools this spring and a convening of law schools, courts, and other key players this fall. The remainder of this comment will address the first two topics articulated in your September 16, 2025, order, dealing with law school accreditation.

We recognize that for every prospective student, law school represents an enormous investment of time, energy, and money. Therefore, we all have an obligation to ensure that those who pursue legal education do so on an informed basis and ultimately graduate with a valuable credential. An effective law school accreditation system serves several fundamental goals that are essential to individual students, law schools, and the broader legal profession, as well as to any person or organization that calls on a lawyer to represent them:

- Accreditation must provide **consumer protection for prospective students**, ensuring that programs of legal education represent good value for their substantial

investment and that applicants have access to comprehensive and accurate information when applying to and choosing among law schools.

- Accreditation should, in concert with licensure, provide **consumer protection for the public** by ensuring that new lawyers will competently practice law across different sectors and jurisdictions.
- Accreditation should make legal markets more efficient and **reduce transactional and administrative costs across state boundaries**, ensuring the interstate mobility of legal talent and competition among law schools.

Many of the current national accreditation standards and processes, developed and periodically reviewed and updated by the Council of the ABA Section of Legal Education and Admissions to the Bar, fulfill these key objectives of consumer protection and ensure a baseline quality of education. For example, **Standard 509** requires law schools to disclose key consumer information in a consistent manner, including bar passage rates, employment outcomes, tuition, and financial aid details. **Standards 501 and 503** govern law school admissions, requiring schools to admit only students who appear capable of completing the program and passing the bar exam, and to do so with the aid of a valid and reliable assessment. **Standard 315** mandates ongoing evaluation of a law school's educational program to ensure effectiveness in achieving learning outcomes.

These and other standards create a framework that helps ensure transparency, accountability, and consumer protection without unnecessarily limiting the flexibility law schools need to innovate and serve their unique missions. Additionally, the current accreditation framework includes the opportunity to seek variances to encourage experimentation and innovation by individual schools.

Given LSAC's unique role in supporting prospective law students in their journey from prelaw to law school, we want to stress the critical importance of a consistent national accreditation system. Students rely on national accreditation standards to ensure that their educational investment will provide them with maximum career flexibility and opportunities to practice in the widest variety of legal fields across the nation. The current nationwide accreditation regime ensures that a student who graduates from an ABA-accredited law school in Tennessee will be allowed to sit for the bar exam in any state of the union, and vice versa. A fragmented approach to accreditation, where different states apply varying standards or recognize different accrediting bodies, would create both uncertainty and difficulty for students related to the portability and recognition of their legal education credentials.

As the Court considers potential changes, additions, or alternatives in accreditation, we urge you to bear in mind the critical elements of transparency, accountability, consumer protection, and portability for law students. Thank you for this opportunity to provide comments; we welcome the opportunity to provide additional data or information that may be helpful in your consideration.

Sincerely,

Sudha Setty
President and CEO
LSAC

MaryBeth Lindsey

To: appellatecourtclerk
Subject: RE: Public comment from Law School Admission Council re ADM2025-01403

From: Murray, Mark <MarkMurray@lsac.org>
Sent: Friday, April 24, 2026 12:01 PM
To: appellatecourtclerk <appellatecourtclerk@tncourts.gov>
Subject: Public comment from Law School Admission Council re ADM2025-01403

Dear Mr. Hivner --

The Law School Admission Council appreciates the opportunity to provide information related to the Court's approach to regulation of the legal profession to ensure that all Tennesseans have access to affordable quality legal services.

Please find our comments attached. LSAC would welcome the opportunity to provide additional data or information that may be helpful in the Court's consideration.

Thank you, and please let me know if you have any questions.

Mark

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C. AI-assisted legal help fits within longstanding UPL principles

Existing UPL doctrine already provides a workable framework for evaluating AI tools. Across jurisdictions, the key distinction is between legal information and legal advice. This Court has long been a national leader. The Tennessee Supreme Court Access to Justice Commission has adopted, with this Court's approval, guidelines that draw this distinction: nonlawyers may provide legal information, but may not provide legal advice.[1]

Legal information—such as explaining procedures, identifying forms, or summarizing legal rules—is generally permissible. Legal advice, which applies legal principles to a specific person's circumstances using professional judgment, is restricted to licensed lawyers.

AI tools can be evaluated within this framework. Many tools are designed to provide general legal information, organize user inputs, or assist with document preparation in ways that are analogous to longstanding and accepted technologies such as form books and document automation systems.

UPL doctrine has always been functional and fact-specific. It turns on whether conduct requires the professional judgment of a lawyer. That same inquiry can be applied to AI tools without requiring an entirely new regulatory structure.

D. Other jurisdictions are adopting pragmatic, access-oriented approaches

Several jurisdictions have already taken steps to address the intersection of AI and UPL in ways that promote access while maintaining consumer protection.

In Texas, the legislature amended the UPL statute to clarify that software and similar tools are not the practice of law if they include clear disclosures that they are not a substitute for an attorney.[2] This approach removes uncertainty while preserving transparency and consumer awareness.

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[1] *See* Tenn. Sup. Ct. Access to Justice Comm'n, *General Guidelines for Distinguishing Legal Information from Legal Advice* (2012).

[2] Texas defines the "practice of law" as "the preparation of a pleading or other document incident to an action or special proceeding or the management of the action or proceeding on behalf of a client before a judge in court as well as service rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument;" excluding the "design, creation, publication, distribution, display, or sale…of written books, forms, computer software, or similar products"—including by means of an Internet website—if the product clearly and conspicuously states it is not a substitute for an attorney's advice. *See* Tex. Gov't Code Ann. § 81.101(c) (West 2024). It appears likely that an AI tool providing legal help to consumers would, with appropriate disclaimers, be protected from UPL prosecution by this law.

In Colorado, the Office of Attorney Regulation Counsel has adopted a non-prosecution policy that deprioritizes UPL enforcement against AI tools under defined conditions.[3] The policy includes safeguards such as clear disclosures, user acknowledgments, oversight by lawyers in a supervisory or compliance role, and protections against consumer harm.

These approaches reflect a broader trend toward regulating risk and consumer harm rather than prohibiting technology outright. They demonstrate that courts and regulators can create space for innovation while maintaining appropriate oversight.

E. Tennessee can reduce uncertainty through safe harbors or enforcement guidance

Tennessee has viable options for addressing the uncertainty surrounding AI and UPL.

One option is a narrowly tailored legislative clarification providing that software delivering legal information or assistance is not UPL if it meets defined disclosure and consumer-protection requirements. This approach, modeled on Texas's two decade-old statute, would provide clear guidance to developers and users alike.

Based on the Texas statute, one of the authors of this comment has proposed a statutory exception that could be added to most jurisdictions' UPL laws to exempt software, AI tools, and similar legal-help tools from their prohibition, provided certain identified disclaimers are displayed to users.[4] The City Bar of New York's AI Task Force is currently considering a proposal for this kind of law in New York.

Another option is to adopt or encourage enforcement guidance similar to Colorado's approach. A non-prosecution or enforcement policy could identify the conditions under which AI tools will not be pursued as UPL violations, allowing the Court and other regulators to observe outcomes and refine its approach over time.

Either path would significantly reduce the current uncertainty that discourages responsible innovation.

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[3] Colorado's Office of Attorney Regulation Counsel (OARC), which is charged with UPL enforcement, adopted in September an internal, discretionary non-prosecution policy designed to reframe UPL risk for defined nonlawyer activities while maintaining core consumer-protection guardrails. *See e.g.*, Colo. Office of Att'y Regulation Counsel, *Non-Prosecution Policy Regarding the Unauthorized Practice of Law by Nonlawyers*, at 1-3 (2025), available at https://www.coloradolegalregulation.com/wp-content/uploads/PDF/UPL/UPL Non-Prosecution Policy.pdf (last visited Jan. 27, 2026).

[4] *See* Lucian T. Pera, *AI Is Not UPL: A Simple Law That Would Unshackle AI for Legal*, LAW PRACTICE (ABA Sept. 2025), https://www.americanbar.org/groups/law_practice/resources/law-practice-magazine/2025/september-october-2025/ai-for-legal-use/ (last visited Jan. 27, 2026).

F. Regulation should focus on guardrails rather than prohibition

A more permissive regulatory approach does not mean the absence of safeguards. Instead, regulation should focus on protecting consumers through clear, targeted measures.

Indeed, both the approaches discussed above *increase* existing consumer protection by requiring any provider of AI tools for legal help to adopt specific guardrails where none are required today. This is particularly true as to any general-purpose AI tool, such as OpenAI's ChatGPT, Anthropic's Claude, or Google's Gemini, which are doubtless today used for legal help, but without any clear legal requirement on their providers for any guardrails.

Effective guardrails may include:

- clear and conspicuous disclosures that the tool is not a lawyer and does not provide legal advice
- explanations of the limits of the system's capabilities
- transparency regarding confidentiality and data use
- oversight or quality assurance mechanisms
- prohibitions on misleading claims or guarantees

These measures address actual risks without preventing the development of tools that can improve access to legal help.

In addition, to be very clear, existing legal frameworks beyond UPL law—such as consumer protection laws, contract law, and tort law—already provide remedies for harmful or deceptive conduct. UPL law need not bear the full burden of regulating technology. And if either of the approaches discussed above were put in place to "remove" UPL concerns, these existing consumer protection laws would remain in place.

G. AI can help address legal deserts and unmet legal needs

The Court has recognized the uneven distribution of lawyers across Tennessee, particularly in rural areas. In many communities, individuals face significant barriers to obtaining legal assistance.

AI tools can help mitigate these challenges by providing accessible, scalable support. They can assist individuals in understanding legal processes, preparing documents, and organizing information for use in court or in consultation with a lawyer.

In many cases, the relevant comparison is not between AI and traditional legal representation, but between AI and no assistance at all. For individuals who cannot afford a lawyer or cannot access one geographically, AI tools may provide the only meaningful source of legal guidance.

H. Specific proposals and next steps for the Court

To translate these principles into meaningful reform, we respectfully urge the Court to take several concrete steps designed to reduce uncertainty, promote responsible innovation, and expand access to legal help.

1. Request or support legislative clarification creating a safe harbor for AI-enabled legal tools

Because Tennessee's UPL framework is grounded in statute, the most durable solution is legislative clarification. The Court should consider recommending that the General Assembly adopt a narrowly tailored statutory provision clarifying that software-based legal assistance is not the unauthorized practice of law when appropriate safeguards are present.

A model provision could read as follows:

> "The practice of law shall not include the design, creation, publication, distribution, or provision of software or other technology, including artificial intelligence systems, that provide legal information, generate documents, or assist users in addressing legal issues, provided that such tools clearly and conspicuously disclose that:
>
> (1) the provider is not a lawyer;
> (2) no attorney-client relationship is created;
> (3) communications are not privileged or confidential; and
> (4) the tool is not a substitute for the advice of a licensed attorney."

Such an approach would remove the current uncertainty that chills development of useful tools while preserving consumer protection through disclosure and existing legal remedies.

Importantly, this approach would:

> Impose new, clear requirements on any AI tools—whether a general-purpose AI tool, such as OpenAI's ChatGPT, Anthropic's Claude, or Google's Gemini, or an AI tool built for legal help—that sought protection from UPL enforcement; and
>
> Leave in place all existing consumer protection legal protections for any user—such as consumer protection laws, contract law, and tort law.

2. In the near term, encourage or coordinate adoption of a non-prosecution or enforcement-guidance policy

Recognizing that legislative change may take time, the Court should consider working with appropriate enforcement authorities to adopt interim guidance clarifying how UPL rules will be applied to AI tools. For example, the Court to request that the Tennessee Attorney General lead an effort to adopt a Colorado-style approach under its existing UPL enforcement authority.

A Tennessee approach could mirror Colorado's model by:

- identifying categories of low-risk AI-enabled legal assistance that will not be prioritized for enforcement;
- requiring clear disclosures and user acknowledgments;
- encouraging the involvement of lawyers in design, testing, or compliance oversight; and
- focusing enforcement on cases involving deception, consumer harm, or high-risk subject matter.

This type of policy would not eliminate UPL law but would provide immediate clarity and allow responsible innovation to proceed under monitored conditions. It would also have the benefit of allowing relatively easier modification and refinement, based on observed experience, without the need for legislative enactments.

3. Direct further study and pilot programs focused on AI-enabled access to justice

The Court should consider appointing a working group or task force to:

- evaluate the use of AI tools in legal aid and court-access contexts;
- study outcomes from jurisdictions such as Texas and Colorado;
- recommend guardrails tailored to Tennessee's legal market; and
- develop pilot programs for AI-assisted tools in high-need areas such as housing, debt collection, and family law.

Pilot programs would allow Tennessee to gather empirical data and refine its regulatory approach before adopting broader reforms.

4. Clarify that UPL doctrine should focus on conduct involving legal judgment, not the mere provision of software tools

The Court should provide interpretive guidance—through commentary, reports, or rulemaking where appropriate—that emphasizes a functional approach to UPL:

- the provision of general legal information, document automation, and user-guided assistance should not be treated as UPL;
- enforcement should focus on conduct that involves the exercise of professional legal judgment or the creation of a relationship of reliance equivalent to legal representation.

The Court has done this before in its 2012 approval of guidance on the distinction between legal information and legal advice under Tennessee law.[5]

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5. Encourage development of best practices and guardrails for AI tools

Finally, the Court should encourage the development and adoption of best practices for AI-enabled legal tools, including:

- clear disclosures and user education;
- limitations on high-risk use cases;
- quality assurance and error mitigation processes;
- transparency regarding data use and system limitations.

These measures can enhance consumer protection without restricting beneficial innovation.

Conclusion

Taken together, these considerations support a regulatory approach that is both principled and pragmatic. Artificial intelligence is already being used by Tennesseans to address legal problems, and that use will continue regardless of how the law evolves. The question before the Court is not whether these tools will exist, but whether they will be guided in a way that improves access to justice and protects the public.

A framework that reduces uncertainty, encourages responsible innovation, and focuses on meaningful safeguards can expand the availability of legal help—particularly for individuals who currently have little or no access to it. By contrast, a regulatory posture that treats AI-enabled legal assistance as presumptively unlawful risks reinforcing existing barriers and leaving many Tennesseans without any meaningful support.

For these reasons, we respectfully urge the Court to take concrete steps to clarify and modernize the treatment of AI under Tennessee law. In particular, the Court should consider supporting legislative clarification, encouraging interim enforcement guidance, and directing further study and pilot programs that allow responsible experimentation in this area. These actions would provide clarity to developers and users, reduce the chilling effect of uncertainty, and allow Tennessee to evaluate real-world outcomes before adopting broader reforms.

Tennessee has the opportunity to lead in shaping a modern, balanced approach—one that protects consumers while recognizing that new tools can play an important role in expanding access to justice. Thoughtful regulation that enables responsible use of artificial intelligence can help ensure that these technologies become a complement to the legal system, not a threat to it.

Respectfully submitted,

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MaryBeth Lindsey

To: appellatecourtclerk
Subject: RE: Comment re: Regulatory Reforms, No. ADM2025-01403 – Comment on AI and UPL reform

From: Lucian T. Pera <Lucian.Pera@arlaw.com>
Sent: Thursday, April 23, 2026 9:20 AM
To: appellatecourtclerk <appellatecourtclerk@tncourts.gov>
Subject: Comment re: Regulatory Reforms, No. ADM2025-01403 – Comment on AI and UPL reform

Dear Mr. Hivner:

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Thank you.

Lucian Pera

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April 23, 2026

BY EMAIL (appellatecourtclerk@tncourts.gov)

The Honorable Justices of the Tennessee Supreme Court
c/o Hon. James Hivner
Clerk, Tennessee Supreme Court
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1307

In Re: Public Comments on Potential Regulatory Reforms to Increase Access to Quality Legal Representation, No. ADM2025-01403

PROPOSAL REGARDING ARTIFICIAL INTELLIGENCE, UNAUTHORIZED PRACTICE OF LAW, AND ACCESS TO LEGAL ASSISTANCE

To the Honorable Justices of the Tennessee Supreme Court:

We respectfully submit this comment regarding the regulatory treatment of artificial intelligence ("AI") in the delivery of legal information and legal services. As the Court considers reforms to increase access to quality legal representation, the treatment of AI tools—particularly under unauthorized practice of law ("UPL") doctrines—will materially affect whether Tennesseans can obtain meaningful legal help. While the Court's Order does not seek comment on this topic, we believe the Court's consideration of these questions is critical to providing access to legal help critically needed by Tennesseans.

A regulatory framework that allows responsible AI-enabled legal assistance, with appropriate safeguards, can significantly expand access to justice. Conversely, a framework that treats such tools as presumptively unlawful risks reinforcing the very access barriers the Court is seeking to address.

The authors of this comment are part of a group of Tennessee lawyers that began studying and considering legal innovation efforts three years ago, before the Court issued its request for comments. The group consisted of academics and law firm, legal services, and bar association leaders from across Tennessee. Our group reviewed materials and held meetings with people who have led reform efforts in Utah, Arizona, and North Carolina, as well as academics and public interest organizations that have studied and evaluated legal innovation models. Although we were not formally constituted or affiliated, we shared a common interest in exploring opportunities to reform the structure of the legal market to remedy the unavailability of legal services for too many Tennesseans.

When the Court issued its request for comments, our group had a firm foundation to address several aspects of the Court's request. We began further research and drafting to respond to the Court's proposed areas for reform that aligned with our group's prior work. We submit this comment to assist the Court by drawing on the study and conclusions that have been the fruit of our group's work. We hope our work and this comment will help inform the Court's understanding, both now and as the Court proceeds with reform efforts.

A. Expanding access to justice requires expanding the supply of legal help

The Court's Order recognizes the substantial gap between the legal needs of Tennesseans and the supply of affordable legal services. This gap is particularly acute in rural areas and among low- and moderate-income individuals.

This problem is fundamentally one of supply. Where lawyers are too scarce or too expensive, other forms of assistance inevitably emerge.

AI tools are part of that response. Individuals and small businesses are already using such tools to understand legal processes, generate documents, and prepare for legal disputes. These tools are not hypothetical; they are in widespread use and will continue to be used regardless of how they are regulated.

The relevant policy question is therefore not whether AI will be used, but whether it will be governed in a way that improves or impairs access to justice.

B. Overly restrictive or unclear UPL regulation risks reinforcing the justice gap

A consistent theme across discussions of consumer and small business use of AI concerning legal issues and the emergence of AI tools that provide forms of legal help is that uncertainty regarding UPL law—not the prohibition itself—is the central problem.

Developers, legal aid organizations, and responsible providers are often unsure whether AI tools that can assist users with legal matters will be treated as unauthorized practice. This uncertainty discourages innovation and delays the deployment of tools that could provide meaningful assistance to underserved populations.

As a result, consumers are left to rely on general-purpose AI systems not designed or vetted for use as legal help or informal sources that are not designed for legal accuracy. The lack of clarity in the law therefore harms the public by slowing the development of more reliable and purpose-built tools.

A regulatory approach that reduces uncertainty while maintaining appropriate safeguards would better align with the Court's access-to-justice objectives.

C. AI-assisted legal help fits within longstanding UPL principles

Existing UPL doctrine already provides a workable framework for evaluating AI tools. Across jurisdictions, the key distinction is between legal information and legal advice. This Court has long been a national leader. The Tennessee Supreme Court Access to Justice Commission has adopted, with this Court's approval, guidelines that draw this distinction: nonlawyers may provide legal information, but may not provide legal advice.[1]

Legal information—such as explaining procedures, identifying forms, or summarizing legal rules—is generally permissible. Legal advice, which applies legal principles to a specific person's circumstances using professional judgment, is restricted to licensed lawyers.

AI tools can be evaluated within this framework. Many tools are designed to provide general legal information, organize user inputs, or assist with document preparation in ways that are analogous to longstanding and accepted technologies such as form books and document automation systems.

UPL doctrine has always been functional and fact-specific. It turns on whether conduct requires the professional judgment of a lawyer. That same inquiry can be applied to AI tools without requiring an entirely new regulatory structure.

D. Other jurisdictions are adopting pragmatic, access-oriented approaches

Several jurisdictions have already taken steps to address the intersection of AI and UPL in ways that promote access while maintaining consumer protection.

In Texas, the legislature amended the UPL statute to clarify that software and similar tools are not the practice of law if they include clear disclosures that they are not a substitute for an attorney.[2] This approach removes uncertainty while preserving transparency and consumer awareness.

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In Colorado, the Office of Attorney Regulation Counsel has adopted a non-prosecution policy that deprioritizes UPL enforcement against AI tools under defined conditions.[3] The policy includes safeguards such as clear disclosures, user acknowledgments, oversight by lawyers in a supervisory or compliance role, and protections against consumer harm.

These approaches reflect a broader trend toward regulating risk and consumer harm rather than prohibiting technology outright. They demonstrate that courts and regulators can create space for innovation while maintaining appropriate oversight.

E. Tennessee can reduce uncertainty through safe harbors or enforcement guidance

Tennessee has viable options for addressing the uncertainty surrounding AI and UPL.

One option is a narrowly tailored legislative clarification providing that software delivering legal information or assistance is not UPL if it meets defined disclosure and consumer-protection requirements. This approach, modeled on Texas's two decade-old statute, would provide clear guidance to developers and users alike.

Based on the Texas statute, one of the authors of this comment has proposed a statutory exception that could be added to most jurisdictions' UPL laws to exempt software, AI tools, and similar legal-help tools from their prohibition, provided certain identified disclaimers are displayed to users.[4] The City Bar of New York's AI Task Force is currently considering a proposal for this kind of law in New York.

Another option is to adopt or encourage enforcement guidance similar to Colorado's approach. A non-prosecution or enforcement policy could identify the conditions under which AI tools will not be pursued as UPL violations, allowing the Court and other regulators to observe outcomes and refine its approach over time.

Either path would significantly reduce the current uncertainty that discourages responsible innovation.

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F. Regulation should focus on guardrails rather than prohibition

A more permissive regulatory approach does not mean the absence of safeguards. Instead, regulation should focus on protecting consumers through clear, targeted measures.

Indeed, both the approaches discussed above *increase* existing consumer protection by requiring any provider of AI tools for legal help to adopt specific guardrails where none are required today. This is particularly true as to any general-purpose AI tool, such as OpenAI's ChatGPT, Anthropic's Claude, or Google's Gemini, which are doubtless today used for legal help, but without any clear legal requirement on their providers for any guardrails.

Effective guardrails may include:

- clear and conspicuous disclosures that the tool is not a lawyer and does not provide legal advice
- explanations of the limits of the system's capabilities
- transparency regarding confidentiality and data use
- oversight or quality assurance mechanisms
- prohibitions on misleading claims or guarantees

These measures address actual risks without preventing the development of tools that can improve access to legal help.

In addition, to be very clear, existing legal frameworks beyond UPL law—such as consumer protection laws, contract law, and tort law—already provide remedies for harmful or deceptive conduct. UPL law need not bear the full burden of regulating technology. And if either of the approaches discussed above were put in place to "remove" UPL concerns, these existing consumer protection laws would remain in place.

G. AI can help address legal deserts and unmet legal needs

The Court has recognized the uneven distribution of lawyers across Tennessee, particularly in rural areas. In many communities, individuals face significant barriers to obtaining legal assistance.

AI tools can help mitigate these challenges by providing accessible, scalable support. They can assist individuals in understanding legal processes, preparing documents, and organizing information for use in court or in consultation with a lawyer.

In many cases, the relevant comparison is not between AI and traditional legal representation, but between AI and no assistance at all. For individuals who cannot afford a lawyer or cannot access one geographically, AI tools may provide the only meaningful source of legal guidance.

H. Specific proposals and next steps for the Court

To translate these principles into meaningful reform, we respectfully urge the Court to take several concrete steps designed to reduce uncertainty, promote responsible innovation, and expand access to legal help.

1. Request or support legislative clarification creating a safe harbor for AI-enabled legal tools

Because Tennessee's UPL framework is grounded in statute, the most durable solution is legislative clarification. The Court should consider recommending that the General Assembly adopt a narrowly tailored statutory provision clarifying that software-based legal assistance is not the unauthorized practice of law when appropriate safeguards are present.

A model provision could read as follows:

> "The practice of law shall not include the design, creation, publication, distribution, or provision of software or other technology, including artificial intelligence systems, that provide legal information, generate documents, or assist users in addressing legal issues, provided that such tools clearly and conspicuously disclose that:
>
> (1) the provider is not a lawyer;
> (2) no attorney-client relationship is created;
> (3) communications are not privileged or confidential; and
> (4) the tool is not a substitute for the advice of a licensed attorney."

Such an approach would remove the current uncertainty that chills development of useful tools while preserving consumer protection through disclosure and existing legal remedies.

Importantly, this approach would:

> Impose new, clear requirements on any AI tools—whether a general-purpose AI tool, such as OpenAI's ChatGPT, Anthropic's Claude, or Google's Gemini, or an AI tool built for legal help—that sought protection from UPL enforcement; and
>
> Leave in place all existing consumer protection legal protections for any user—such as consumer protection laws, contract law, and tort law.

2. In the near term, encourage or coordinate adoption of a non-prosecution or enforcement-guidance policy

Recognizing that legislative change may take time, the Court should consider working with appropriate enforcement authorities to adopt interim guidance clarifying how UPL rules will be applied to AI tools. For example, the Court to request that the Tennessee Attorney General lead an effort to adopt a Colorado-style approach under its existing UPL enforcement authority.

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3. Direct further study and pilot programs focused on AI-enabled access to justice

The Court should consider appointing a working group or task force to:

- evaluate the use of AI tools in legal aid and court-access contexts;
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4. Clarify that UPL doctrine should focus on conduct involving legal judgment, not the mere provision of software tools

The Court should provide interpretive guidance—through commentary, reports, or rulemaking where appropriate—that emphasizes a functional approach to UPL:

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5. Encourage development of best practices and guardrails for AI tools

Finally, the Court should encourage the development and adoption of best practices for AI-enabled legal tools, including:

- clear disclosures and user education;
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Taken together, these considerations support a regulatory approach that is both principled and pragmatic. Artificial intelligence is already being used by Tennesseans to address legal problems, and that use will continue regardless of how the law evolves. The question before the Court is not whether these tools will exist, but whether they will be guided in a way that improves access to justice and protects the public.

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MaryBeth Lindsey

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April 23, 2026

BY EMAIL (appellatecourtclerk@tncourts.gov)

The Honorable Justices of the Tennessee Supreme Court
c/o Hon. James Hivner
Clerk, Tennessee Supreme Court
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1307

In Re: Public Comments on Potential Regulatory Reforms to Increase Access to Quality Legal Representation, No. ADM2025-01403

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- prohibitions on misleading claims or guarantees

These measures address actual risks without preventing the development of tools that can improve access to legal help.

In addition, to be very clear, existing legal frameworks beyond UPL law—such as consumer protection laws, contract law, and tort law—already provide remedies for harmful or deceptive conduct. UPL law need not bear the full burden of regulating technology. And if either of the approaches discussed above were put in place to "remove" UPL concerns, these existing consumer protection laws would remain in place.

G. AI can help address legal deserts and unmet legal needs

The Court has recognized the uneven distribution of lawyers across Tennessee, particularly in rural areas. In many communities, individuals face significant barriers to obtaining legal assistance.

AI tools can help mitigate these challenges by providing accessible, scalable support. They can assist individuals in understanding legal processes, preparing documents, and organizing information for use in court or in consultation with a lawyer.

In many cases, the relevant comparison is not between AI and traditional legal representation, but between AI and no assistance at all. For individuals who cannot afford a lawyer or cannot access one geographically, AI tools may provide the only meaningful source of legal guidance.

H. Specific proposals and next steps for the Court

To translate these principles into meaningful reform, we respectfully urge the Court to take several concrete steps designed to reduce uncertainty, promote responsible innovation, and expand access to legal help.

1. Request or support legislative clarification creating a safe harbor for AI-enabled legal tools

Because Tennessee's UPL framework is grounded in statute, the most durable solution is legislative clarification. The Court should consider recommending that the General Assembly adopt a narrowly tailored statutory provision clarifying that software-based legal assistance is not the unauthorized practice of law when appropriate safeguards are present.

A model provision could read as follows:

> "The practice of law shall not include the design, creation, publication, distribution, or provision of software or other technology, including artificial intelligence systems, that provide legal information, generate documents, or assist users in addressing legal issues, provided that such tools clearly and conspicuously disclose that:
>
> (1) the provider is not a lawyer;
> (2) no attorney-client relationship is created;
> (3) communications are not privileged or confidential; and
> (4) the tool is not a substitute for the advice of a licensed attorney."

Such an approach would remove the current uncertainty that chills development of useful tools while preserving consumer protection through disclosure and existing legal remedies.

Importantly, this approach would:

> Impose new, clear requirements on any AI tools—whether a general-purpose AI tool, such as OpenAI's ChatGPT, Anthropic's Claude, or Google's Gemini, or an AI tool built for legal help—that sought protection from UPL enforcement; and
>
> Leave in place all existing consumer protection legal protections for any user—such as consumer protection laws, contract law, and tort law.

2. In the near term, encourage or coordinate adoption of a non-prosecution or enforcement-guidance policy

Recognizing that legislative change may take time, the Court should consider working with appropriate enforcement authorities to adopt interim guidance clarifying how UPL rules will be applied to AI tools. For example, the Court to request that the Tennessee Attorney General lead an effort to adopt a Colorado-style approach under its existing UPL enforcement authority.

A Tennessee approach could mirror Colorado's model by:

- identifying categories of low-risk AI-enabled legal assistance that will not be prioritized for enforcement;
- requiring clear disclosures and user acknowledgments;
- encouraging the involvement of lawyers in design, testing, or compliance oversight; and
- focusing enforcement on cases involving deception, consumer harm, or high-risk subject matter.

This type of policy would not eliminate UPL law but would provide immediate clarity and allow responsible innovation to proceed under monitored conditions. It would also have the benefit of allowing relatively easier modification and refinement, based on observed experience, without the need for legislative enactments.

3. Direct further study and pilot programs focused on AI-enabled access to justice

The Court should consider appointing a working group or task force to:

- evaluate the use of AI tools in legal aid and court-access contexts;
- study outcomes from jurisdictions such as Texas and Colorado;
- recommend guardrails tailored to Tennessee's legal market; and
- develop pilot programs for AI-assisted tools in high-need areas such as housing, debt collection, and family law.

Pilot programs would allow Tennessee to gather empirical data and refine its regulatory approach before adopting broader reforms.

4. Clarify that UPL doctrine should focus on conduct involving legal judgment, not the mere provision of software tools

The Court should provide interpretive guidance—through commentary, reports, or rulemaking where appropriate—that emphasizes a functional approach to UPL:

- the provision of general legal information, document automation, and user-guided assistance should not be treated as UPL;
- enforcement should focus on conduct that involves the exercise of professional legal judgment or the creation of a relationship of reliance equivalent to legal representation.

The Court has done this before in its 2012 approval of guidance on the distinction between legal information and legal advice under Tennessee law.[5]

---

[5] *See supra* n. 1.

5. Encourage development of best practices and guardrails for AI tools

Finally, the Court should encourage the development and adoption of best practices for AI-enabled legal tools, including:

- clear disclosures and user education;
- limitations on high-risk use cases;
- quality assurance and error mitigation processes;
- transparency regarding data use and system limitations.

These measures can enhance consumer protection without restricting beneficial innovation.

Conclusion

Taken together, these considerations support a regulatory approach that is both principled and pragmatic. Artificial intelligence is already being used by Tennesseans to address legal problems, and that use will continue regardless of how the law evolves. The question before the Court is not whether these tools will exist, but whether they will be guided in a way that improves access to justice and protects the public.

A framework that reduces uncertainty, encourages responsible innovation, and focuses on meaningful safeguards can expand the availability of legal help—particularly for individuals who currently have little or no access to it. By contrast, a regulatory posture that treats AI-enabled legal assistance as presumptively unlawful risks reinforcing existing barriers and leaving many Tennesseans without any meaningful support.

For these reasons, we respectfully urge the Court to take concrete steps to clarify and modernize the treatment of AI under Tennessee law. In particular, the Court should consider supporting legislative clarification, encouraging interim enforcement guidance, and directing further study and pilot programs that allow responsible experimentation in this area. These actions would provide clarity to developers and users, reduce the chilling effect of uncertainty, and allow Tennessee to evaluate real-world outcomes before adopting broader reforms.

Tennessee has the opportunity to lead in shaping a modern, balanced approach—one that protects consumers while recognizing that new tools can play an important role in expanding access to justice. Thoughtful regulation that enables responsible use of artificial intelligence can help ensure that these technologies become a complement to the legal system, not a threat to it.

Respectfully submitted,

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MaryBeth Lindsey

To: appellatecourtclerk
Subject: RE: Comment re: Regulatory Reforms, No. ADM2025-01403 – Comment on AI and UPL reform

From: Lucian T. Pera <Lucian.Pera@arlaw.com>
Sent: Thursday, April 23, 2026 9:20 AM
To: appellatecourtclerk <appellatecourtclerk@tncourts.gov>
Subject: Comment re: Regulatory Reforms, No. ADM2025-01403 – Comment on AI and UPL reform

Dear Mr. Hivner:

On behalf Attorney Greg Siskind, Vanderbilt Law Professor Caitlin Moon, and myself, I submit the attached comment on proposed AI and UPL reform aimed at increasing access to quality legal help.

Thank you.

Lucian Pera

LUCIAN T. PERA
Partner

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April 23, 2026

BY EMAIL (appellatecourtclerk@tncourts.gov)

The Honorable Justices of the Tennessee Supreme Court
c/o Hon. James Hivner
Clerk, Tennessee Supreme Court
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1307

In Re: Public Comments on Potential Regulatory Reforms to Increase Access to Quality Legal Representation, No. ADM2025-01403

PROPOSAL FOR TENNESSEE COURT REFORM

To the Honorable Justices of the Tennessee Supreme Court:

In response to the Court's Order dated September 16, 2025, soliciting public input on potential regulatory reforms to increase access to quality legal representation, we submit this comment.

The authors of this comment are part of a group of Tennessee lawyers that began studying and considering legal innovation efforts three years ago, before the Court issued its request for comments. The group consisted of academics and law firm, legal services, and bar association leaders from across Tennessee. Our group reviewed materials and held meetings with people who have led reform efforts in Utah, Arizona, and North Carolina, as well as academics and public interest organizations that have studied and evaluated legal innovation models. Although we were not formally constituted or affiliated, we shared a common interest in exploring opportunities to reform the structure of the legal market to remedy the unavailability of legal services for too many Tennesseans.

When the Court issued its request for comments, our group had a firm foundation to address several aspects of the Court's request. We began further research and drafting to respond to the Court's proposed areas for reform that aligned with our group's prior work. We submit this comment to assist the Court by drawing on the study and conclusions that have been the fruit of our group's work. We hope our work and this comment will help inform the Court's understanding, both now and as the Court proceeds with reform efforts.

We are exceedingly pleased that the Court has taken judicial notice of our State's access to justice crisis as well as the growing problem of legal deserts, and we are also pleased at the suggested solutions offered. That said, we would encourage the Court to consider other options as well, beyond those suggested by the Court's questions in its Order.

In particular, the Tennessee Supreme Court has broad authority to supervise the courts of this State. This authority is both conferred by statute and inherent under the Tennessee Constitution. The Tennessee Constitution vests the "judicial power of this state . . . in one Supreme Court." As the "supreme judicial tribunal of the state" the Court "has broad inherent authority over the Tennessee judicial system." *In re Bell*, 344 S.W.3d 304, 313 (Tenn. 2011).

Accordingly, the General Assembly has recognized that "to ensure the harmonious, efficient, and uniform operation of the judicial system of the state, the supreme court is granted and clothed with general supervisory control over all the inferior courts of the state." Tenn. Code Ann. § 16-3-501; *see also* Tenn. Att'y Gen. Op. 87-02 (Jan. 7, 1987) (recognizing that the "supervisory authority over the Tennessee judicial system is a part of the inherent power of the Tennessee Supreme Court"). The Court has "a broad conference of full, plenary and discretionary power" under Tennessee law. Tenn. Code Ann. § 16-3-504.

Under these powers, this Court should consider adopting court and rules-based solutions to our State's access to justice crisis. Such reforms could be in addition to the reforms listed in the Order, or in lieu of, and would likely represent an easier and more direct route to amelioration.

There are multiple different reforms that could help. IAALS, the Institute for the Advancement of the American Legal system, has run several different projects that could serve as a model, including their Uncomplicated Courts Initiative and their Cases Without Counsel project. The State Justice Institute has likewise compiled a list of promising reforms to help Americans engaged in Self-Represented Litigation. One of the projects they list is currently underway in Hamilton County, Tennessee: an effort to create an online dispute resolution system for medical debt. Likewise, this Court's self-help center and the creation of uniform pleadings for issues like divorce or domestic violence have already made a huge difference for ordinary Tennesseans and should be expanded.

We recommend that this Court create a task force to consider new, statewide Rules for cases in civil sessions court, and also possibly for any family, child support, domestic violence, or probate matters that regularly feature unrepresented litigants. While there are many approaches this taskforce might take, there are three simple things this Court could order that would make a massive difference:

1) This Court could order that when one or both of the sides to a civil litigation is unrepresented, the Sessions Court judges have a duty to explain the process to the unrepresented, to determine the legal basis for the case before them, and to discover the relevant facts at issue from any unrepresented party before deciding any case.
2) This Court could order, that insofar as Sessions Court cases are always heard before a Judge, the Tennessee Rules of Evidence are suspended in these Courts, and Sessions Court Judges should admit all relevant evidence, and then decide on credibility.
3) This Court could also order that when a court clerk explains the law or process of any case regularly heard in civil sessions court they are not providing legal advice and are not subject to any bans on the unauthorized practice of law. As of now, this Court has apparently ordered the opposite. This Court could order clerk's offices to explain their court's processes to unrepresented litigants (and confused lawyers) and what legal documents might be needed to pursue or defend a case.

These reforms sound more radical than they actually are. There are already Sessions Court Judges and Clerks following these procedures and they have been recommended repeatedly by respected organizations like the National Center for State Courts, the SJI, and IAALS.

Benjamin H. Barton, Helen and Charles Lockett Distinguished Professor of Law, The University of Tennessee Winston College of Law

James P. Barry, Past President Tennessee Bar Association

Caitlin "Cat" Moon, Vanderbilt Law School

Greg Siskind, Siskind Susser, PC.

Lucian T. Pera, Adams & Reese, LLP

MaryBeth Lindsey

To: appellatecourtclerk
Subject: RE: Comment re: Regulatory Reforms, No. ADM2025-01403 – Comment on court reform

From: Lucian T. Pera <Lucian.Pera@arlaw.com>
Sent: Thursday, April 23, 2026 9:19 AM
To: appellatecourtclerk <appellatecourtclerk@tncourts.gov>
Subject: Comment re: Regulatory Reforms, No. ADM2025-01403 – Comment on court reform

Dear Mr. Hivner:

On behalf UT Law Professor Ben Barton, Vanderbilt Law Professor Caitlin Moon, Attorney Jim Barry, and myself, I submit the attached comment on proposed court reform in support of increased access to quality legal representation in Tennessee.

Thank you.

Lucian Pera

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Partner

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NASHVILLE BAR ASSOCIATION
Improving the Practice of Law through Education, Service, and Fellowship.

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: PUBLIC COMMENTS ON POTENTIAL REGULATORY REFORMS TO INCREASE ACCESS TO QUALITY LEGAL REPRESENTATION

No. ADM2025-01403

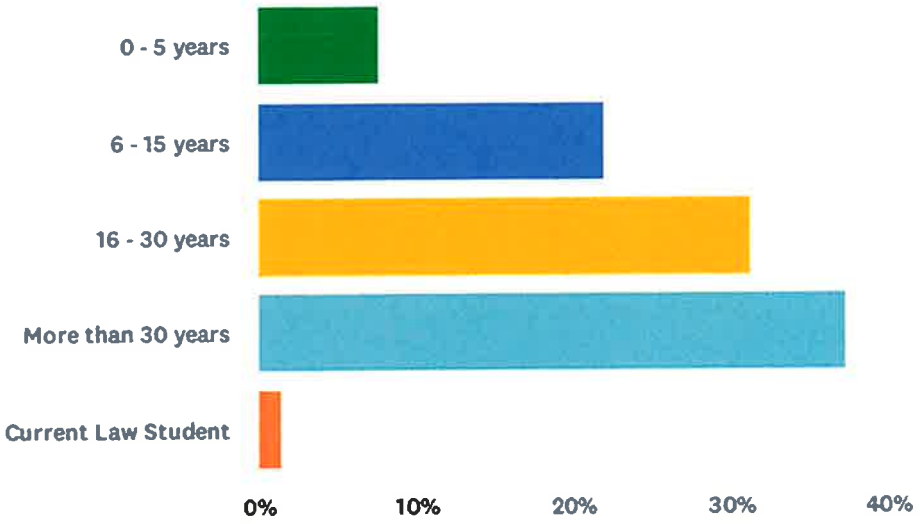
COMMENT OF THE NASHVILLE BAR ASSOCIATION

Please accept this letter as the Nashville Bar Association's written response to the Supreme Court's Order seeking public comments on potential regulation reforms to increase access to quality legal representation. The NBA—with over 2,350 members—is the largest metropolitan bar association in Tennessee.

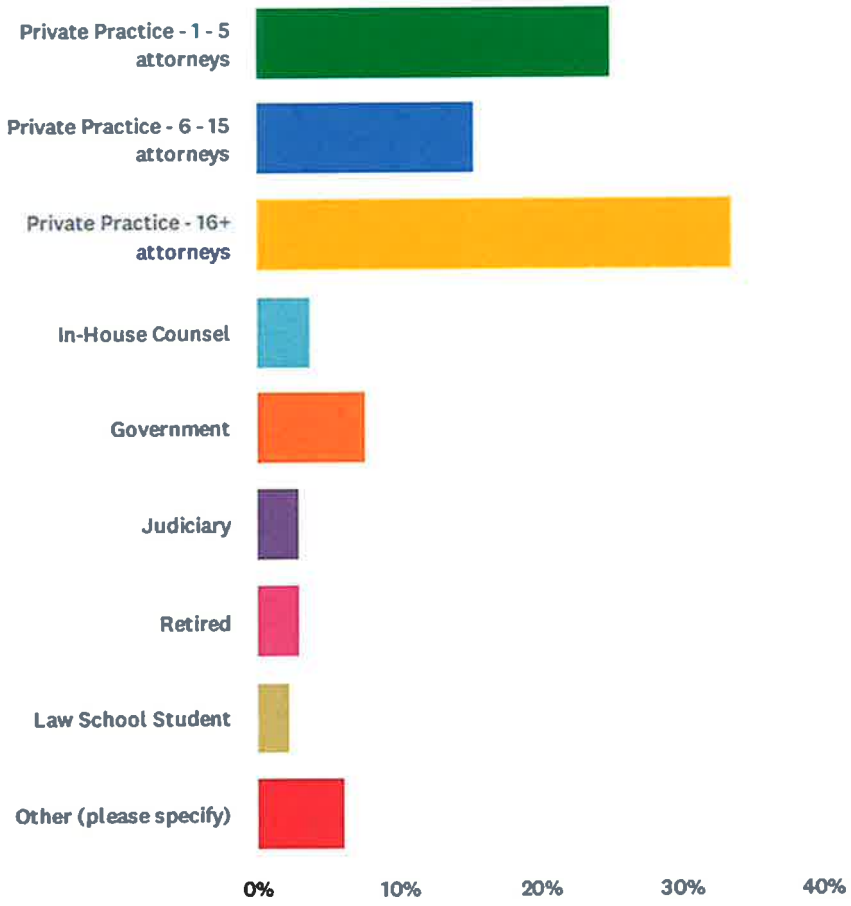
Given the number of proposed reforms and the expected differing viewpoints among our diverse membership, the NBA submitted a survey to our members soliciting their opinions and comments. We received 131 votes regarding agreement or disagreement, as well as approximately 20 comments, for each proposed reform. This letter provides the Court with the survey results and a summary of the comments.

Although we allowed members to submit their responses anonymously, we collected information regarding the length of experience as well as the practice area of respondents:

Years of Practice

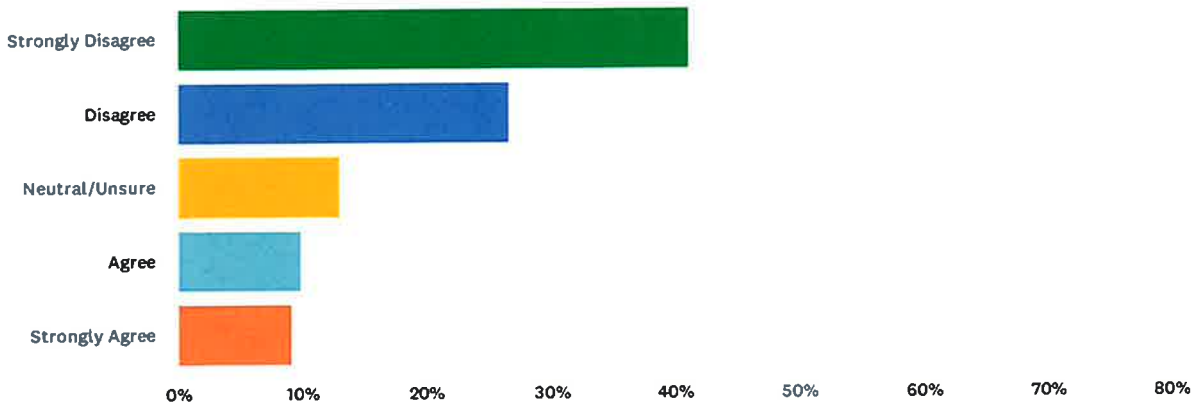


Practice Area



Survey Results and Comments

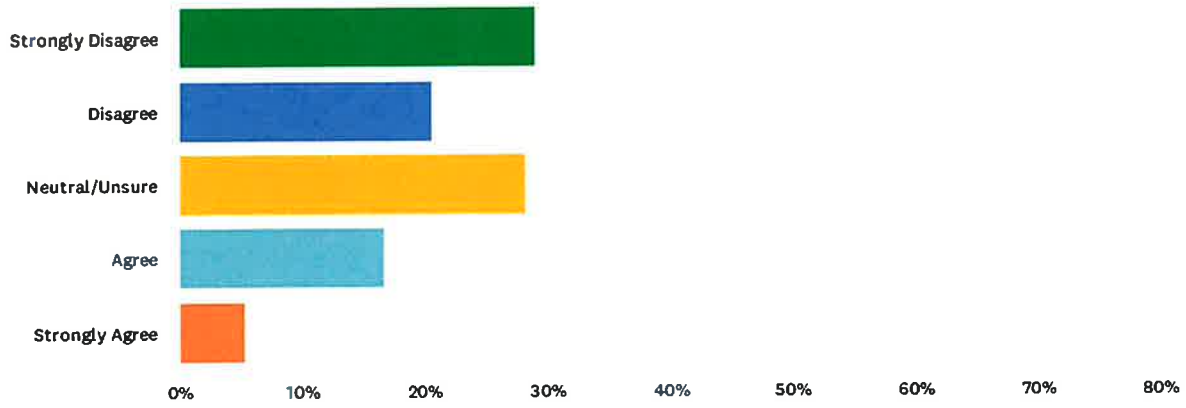
1. The Court should modify, reduce, or eliminate its reliance on ABA accreditation in setting minimum educational requirements for applicants to the Tennessee Bar.



Rating	Percentage	Responses
Strongly Disagree	41.22%	54
Disagree	26.72%	35
Neutral/Unsure	12.98%	17
Agree	9.92%	13
Strongly Agree	9.16%	12

A substantial majority of respondents disagreed with the first proposed reform regarding ABA accreditation. Less than 20% agreed. The written comments reflected a strong presumption in favor of keeping ABA accreditation as the primary benchmark for legal education, even among those who acknowledged its flaws. Many commenters said they did not know of any equally workable alternative and worried that moving away from the ABA would invite low quality or predatory schools, weaken educational standards, and make reciprocity in other states harder for Tennessee lawyers. Several pointed out that Tennessee had already made room for non-ABA accredited programs, such as Nashville School of Law, through the Board of Law Examiners, and suggested that this targeted flexibility was preferable to broadly reducing reliance on ABA standards. Some respondents criticized the ABA as politicized or overly costly, yet still treated it as providing a needed, nationally consistent framework that helped preserve the profession's stature and protect the public.

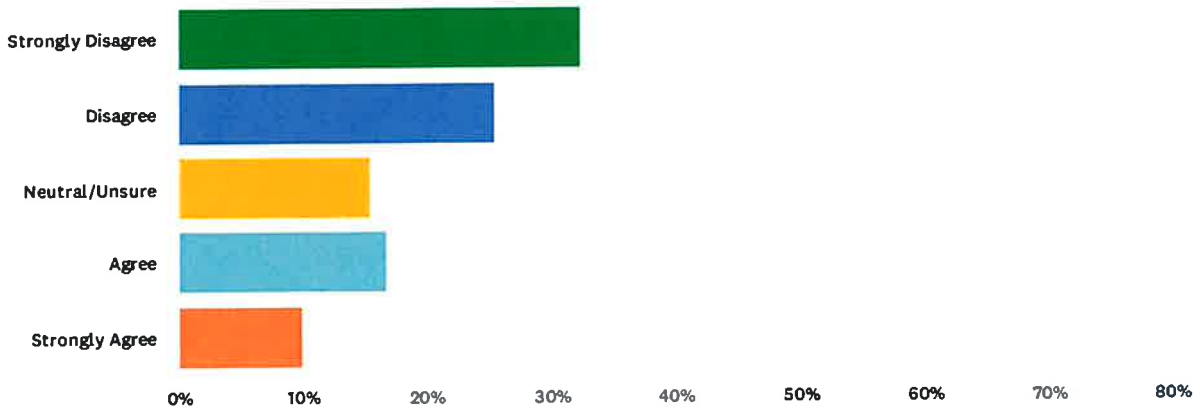
2. There are practicable alternatives to ABA accreditation the Court should consider.



Rating	Percentage	Responses
Strongly Disagree	29.01%	38
Disagree	20.61%	27
Neutral/Unsure	28.24%	37
Agree	16.79%	22
Strongly Agree	5.34%	7

Similarly, many more respondents disagreed than agreed that there are practicable alternatives to ABA accreditation. However, several more reported being "neutral/unsure" than in the previous response. Comments showed both skepticism and conditional openness. Many respondents said they were simply not aware of viable alternative accrediting bodies or doubted that any new system would avoid the same or worse problems than the ABA. Others pointed back to existing Tennessee practice—again citing Nashville School of Law and the Court's own approval mechanisms—as evidence that limited, Court-controlled alternatives were already in place and could be modestly expanded. A smaller group proposed apprenticeships, firm-based training programs, or service in legal aid as complementary pathways, but typically framed those ideas as additions to, not replacements for, a robust accreditation structure overseen by a neutral, credible authority.

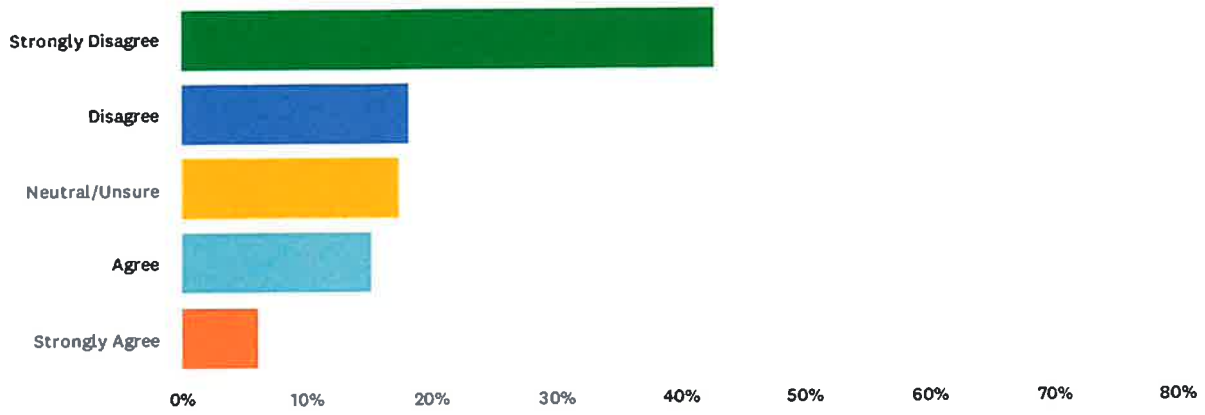
3. There are less costly alternatives to the traditional three-year law school curriculum that would adequately prepare individuals for the practice of law.



Rating	Percentage	Responses
Strongly Disagree	32.31%	42
Disagree	25.38%	33
Neutral/Unsure	15.38%	20
Agree	16.92%	22
Strongly Agree	10.00%	13

A majority of respondents disagreed with the proposition that attorneys can be adequately trained without a traditional law school curriculum. Written feedback reflected the need for lower cost, practice focused models and concern about underprepared lawyers. Some respondents argued that the third year of law school added little practical value and mainly increased student debt and institutional revenue, and they suggested a two-year program followed by a structured apprenticeship or clerkship year as more efficient and effective. Nashville School of Law came up frequently as an example of a more affordable option that allowed students to work while studying. Even those in favor of innovation tended to insist on safeguards, such as formalized apprenticeships, accreditation of paralegal or apprenticeship programs, and continued emphasis on broad legal exposure.

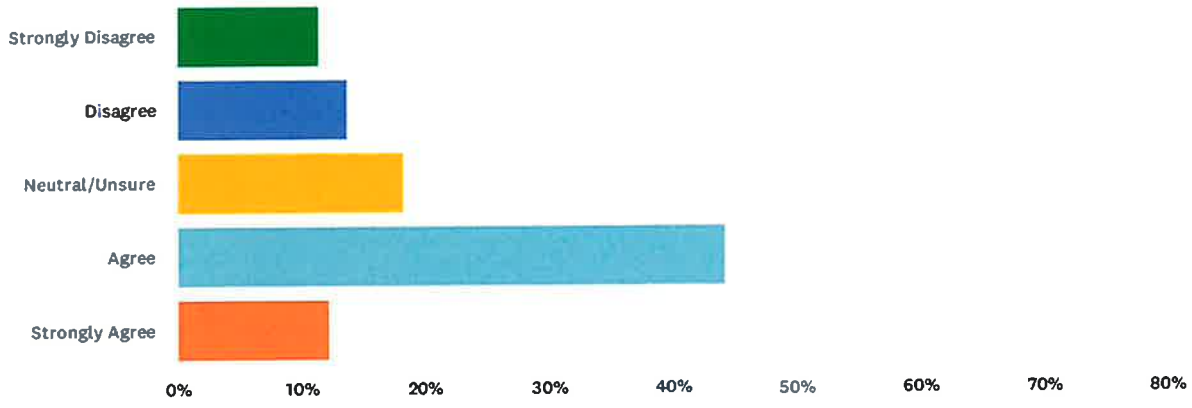
4. **The Court should consider adopting alternative pathways for admission to the Tennessee Bar—for example, by allowing applicants to satisfy the minimum educational requirements and/or examination requirement in part by completing an apprenticeship or serving with a legal aid organization.**



Rating	Percentage	Responses
Strongly Disagree	42.75%	56
Disagree	18.32%	24
Neutral/Unsure	17.56%	23
Agree	15.27%	20

Respondents expressed heavy disagreement with the proposal of allowing attorneys to substitute traditional requirements with an apprenticeship or service with a legal aid organization. Comments were generally cautious, with some supporting carefully structured models while others expressed significant resistance. Several respondents saw value in adding an apprenticeship requirement on top of existing educational standards, comparing it to medical residencies and noting that practical skills were often learned only by doing. Others favored limited or specialized licensure, but warned against creating routes that bypassed foundational legal education or the bar exam altogether. Many expressed concerns about a "race to the bottom," with low quality apprenticeships, inconsistent supervision, and the difficulty of monitoring and verifying such programs. They emphasized that law was too complex to be learned solely on the job without a formal legal education.

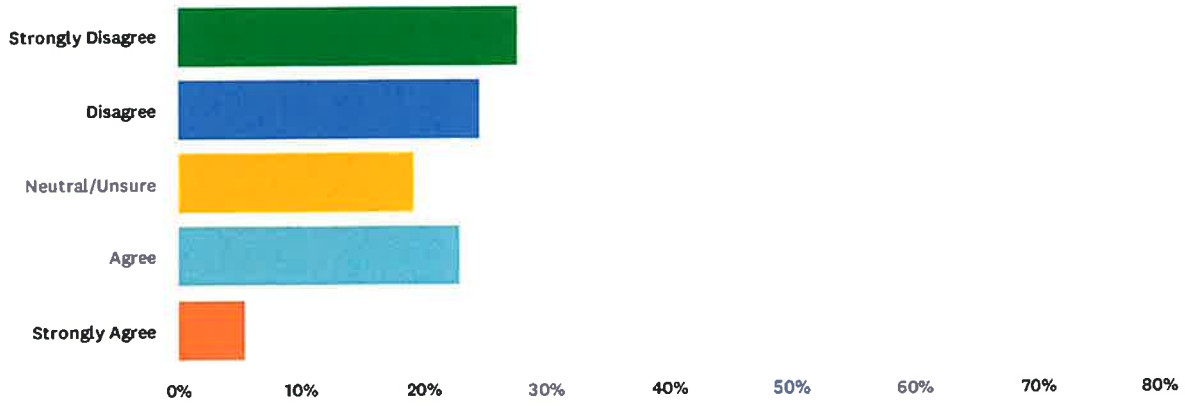
5. The Court should consider modifying requirements for admission to the Tennessee Bar for those licensed in other States to promote interstate practice and mobility.



Rating	Percentage	Responses
Strongly Disagree	11.45%	15
Disagree	13.74%	18
Neutral/Unsure	18.32%	24
Agree	44.27%	58
Strongly Agree	12.21%	16

This was the only proposal with which a majority of respondents agreed. Many supported making it easier and faster for experienced out-of-state attorneys to gain admission, citing burdensome processing times and the realities of multi-jurisdictional practice. They suggested ideas such as streamlined comity, relying on an attorney's home-state CLE compliance, and reciprocity for lawyers from states with comparable standards. At the same time, numerous comments urged Tennessee to remain judicious in granting reciprocity to ensure that incoming attorneys had adequate familiarity with Tennessee law and practice. Some respondents noted that Tennessee already allowed comity and questioned whether further change was necessary, particularly where other states' admission standards were materially lower.

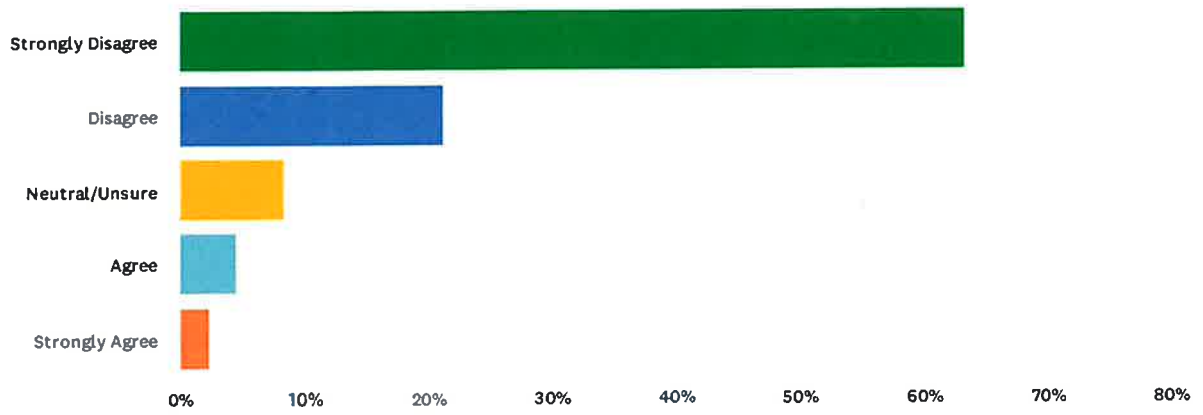
6. **The Court should consider whether there are some legal services currently provided by lawyers that could be competently provided by paraprofessionals. If so, what qualifications, limitations, or subject matter restrictions the Court should consider imposing?**



Rating	Percentage	Responses
Strongly Disagree	27.69%	36
Disagree	24.62%	32
Neutral/Unsure	19.23%	25
Agree	23.08%	30

More than half of respondents disagreed (most strongly) with the proposal to allow paraprofessionals to perform some legal services. A recurring theme in written comments was that paraprofessionals and paralegals were already handling substantial work under attorney supervision. Some commenters suggested that a more formal role could help with access to justice in lower stakes civil matters so long as paraprofessionals worked under the supervision of licensed attorneys, had continuing education requirements, and had limited, clearly defined scopes of work for paraprofessionals. Examples of such services included preparing routine forms and assisting with basic landlord/tenant disputes or certain consumer issues. Many others, however, voiced deep concern that expanding unsupervised or lightly supervised paraprofessional roles would worsen existing competency problems, blur lines of responsibility, and increase the risk of harm to the public. They stressed that any system of paraprofessional practice had to preserve attorney oversight, ethical enforceability, and meaningful educational thresholds. Several commenters concluded that the risks likely outweighed the benefits.

7. **The Court should modify, reduce, or eliminate regulations prohibiting non-lawyer ownership of law firms or fee sharing with nonlawyers.**



Rating	Percentage	Responses
Strongly Disagree	63.36%	83
Disagree	21.37%	28
Neutral/Unsure	8.40%	11
Agree	4.58%	6
Strongly Agree	2.29%	3

The proposal to relax rules on non-lawyer ownership and fee-sharing drew the strongest and most consistent opposition. Respondents repeatedly pointed to what had happened in healthcare—especially with private equity's role in medicine—as a warning that similar corporate control in law would undermine professional independence, drive profit first decision making, and damage both quality and access to legal services. Many saw the idea as fundamentally at odds with lawyers' role as officers of the court and with the profession's responsibility to regulate itself, predicting that non-lawyer ownership would erode ethical decision making and weaken client-focused obligations. Commenters also raised worries about conglomerate ownership, conflicts of interest, and further commoditization of already strained practice settings. Taken together, the narrative feedback treated this proposal as a non-starter and one of the most serious perceived threats among the potential reforms.

Conclusion

The survey responses reflected a bar that was cautious about broad structural change and strongly committed to preserving competence, professional independence, and public protection. Many respondents emphasized that, if anything, Tennessee should *increase* educational and practice requirements rather than dilute standards or open additional pathways that could be difficult to supervise.

Across the survey, respondents repeatedly returned to the same core themes: concern about lowering standards, skepticism of reforms that may be insufficiently defined or hard to monitor, and insistence that any alternative pathway remain anchored in meaningful training, neutral oversight, and ethical accountability. Several comments suggested that the most promising route to improving access to justice is increasing funding and support for indigent criminal defense, legal aid providers, and other organizations that serve low-income and rural communities.

Many commenters were especially wary of changes that could invite corporatization or profit-driven decision-making, drawing direct parallels to what they view as the negative effects of private-equity influence in medicine and warning that similar pressures in law could erode independent judgment, client service, and public trust. Respondents likewise noted that Tennessee already has examples of measured flexibility within the existing system, including Tennessee-specific approval mechanisms, current comity options, and the possibility of supervised apprenticeships or limited paraprofessional roles layered onto—not substituted for—traditional safeguards.

Some NBA members expressed strong opposition to the entirety of the contemplated proposals under the belief they would erode the legal profession and the quality of services provided. Of those open to potential change, there was a consistent theme that any modifications should be carefully overseen and limited to preclude some of the problematic results seen in other industries.

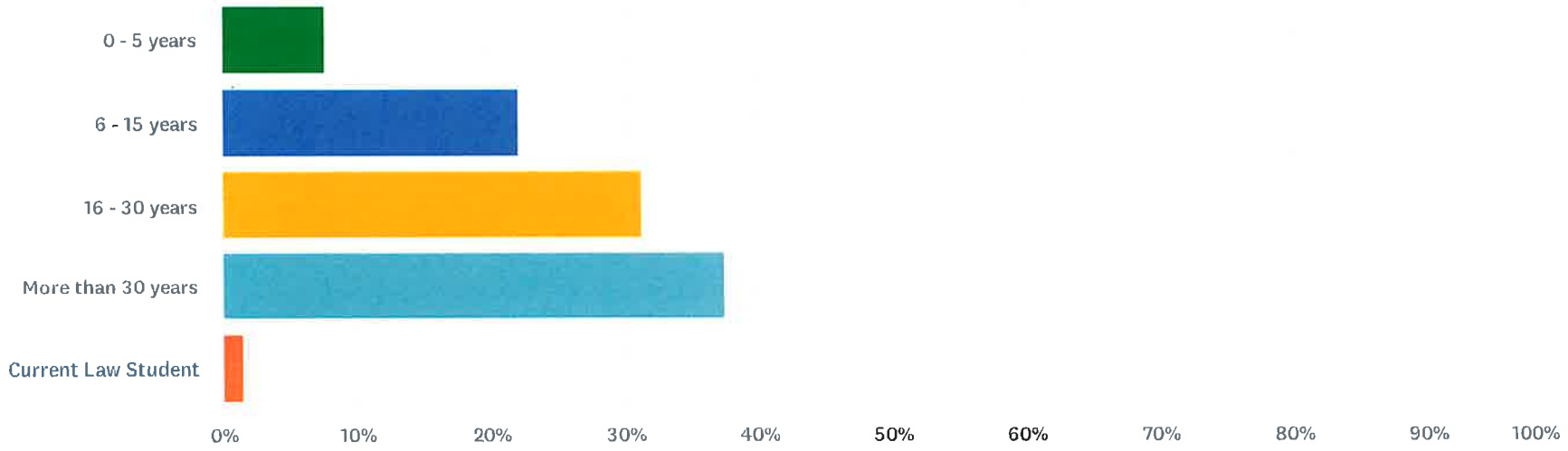
Respectfully submitted,

Sherie Edwards

Sherie Edwards
Nashville Bar Association President

Q1 How long have you been an attorney?

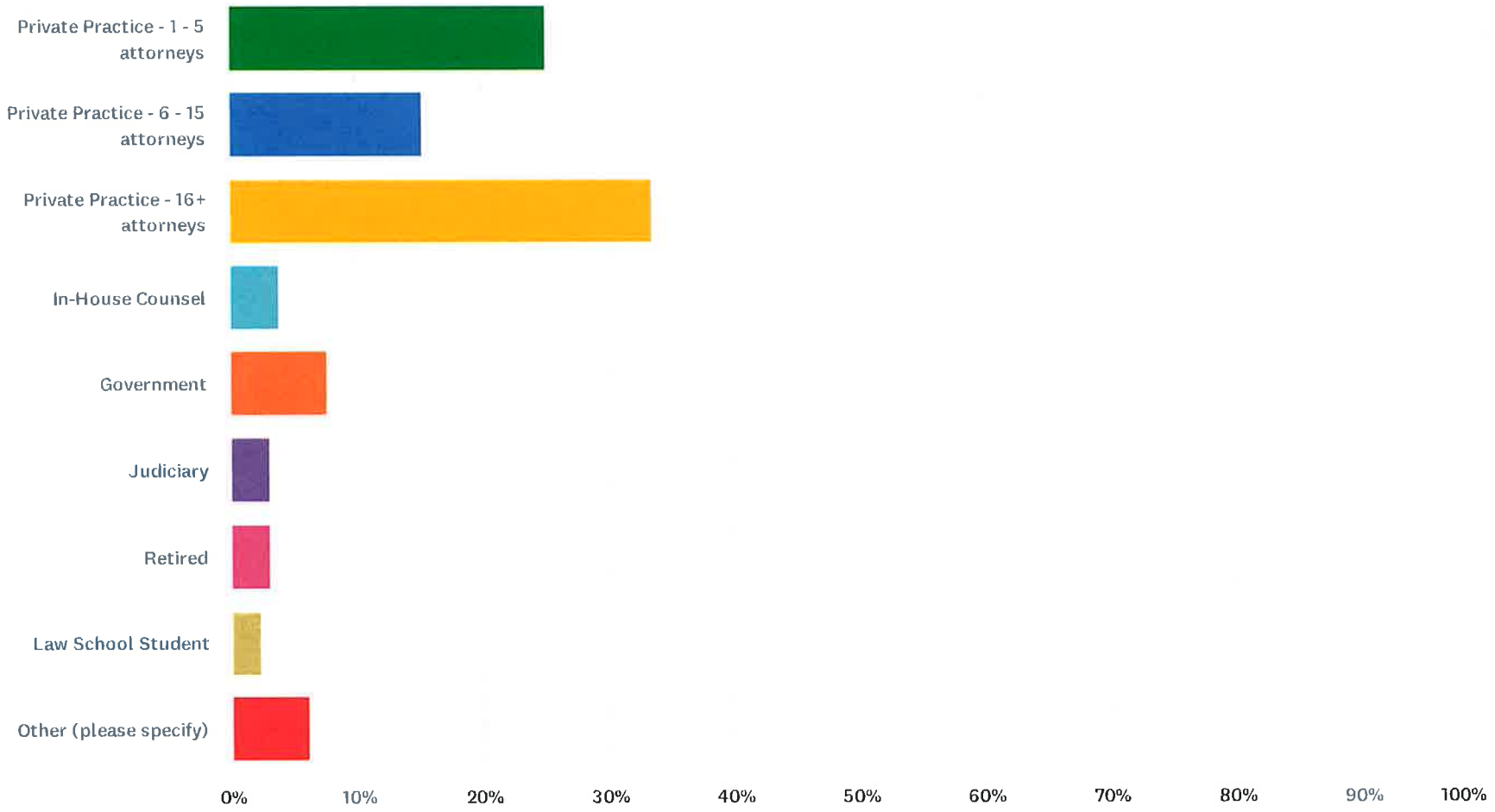
Answered: 131 Skipped: 0



Answer Choices	Percentage	Responses
0 - 5 years	7.63%	10
6 - 15 years	22.14%	29
16 - 30 years	31.30%	41
More than 30 years	37.40%	49
Current Law Student	1.53%	2
Total		**131**

Q2 What best describes you?

Answered: 131 Skipped: 0



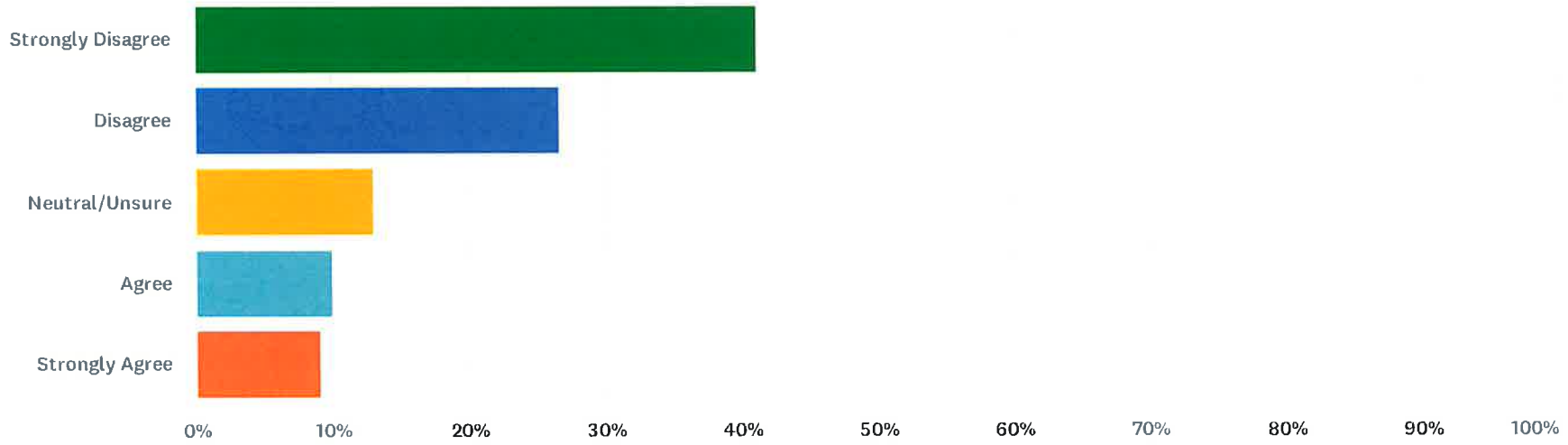
Answer Choices	Percentage	Responses
Total		131

Answer Choices		Percentage	Responses
Private Practice - 1 - 5 attorneys		25.19%	33
Private Practice - 6 - 15 attorneys		15.27%	20
Private Practice - 16+ attorneys		33.59%	44
In-House Counsel		3.82%	5
Government		7.63%	10
Judiciary		3.05%	4
Retired		3.05%	4
Law School Student		2.29%	3
Other (please specify)	Show responses	6.11%	8
Total			**131**

#	OTHER (PLEASE SPECIFY)	DATE
1	retired, mock trial coach and NITA and NAAGTRI faculty	3/13/2026 10:41 AM
2	Law professor	3/5/2026 10:46 AM
3	solo practitioner	3/4/2026 4:01 PM
4	Staff attorney - judiciary	3/4/2026 2:57 PM
5	Public Interest	3/4/2026 2:31 PM
6	Firm Administration	3/4/2026 2:28 PM
7	Retired	3/4/2026 2:26 PM
8	Court administration	3/4/2026 2:25 PM

Q3 The Court should modify, reduce, or eliminate its reliance on ABA accreditation in setting minimum educational requirements for applicants to the Tennessee Bar.

Answered: 131 Skipped: 0



Rating	Percentage	Responses
Strongly Disagree	41.22%	54
Disagree	26.72%	35
Neutral/Unsure	12.98%	17
Agree	9.92%	13
Strongly Agree	9.16%	12
Average 2.19		**131**

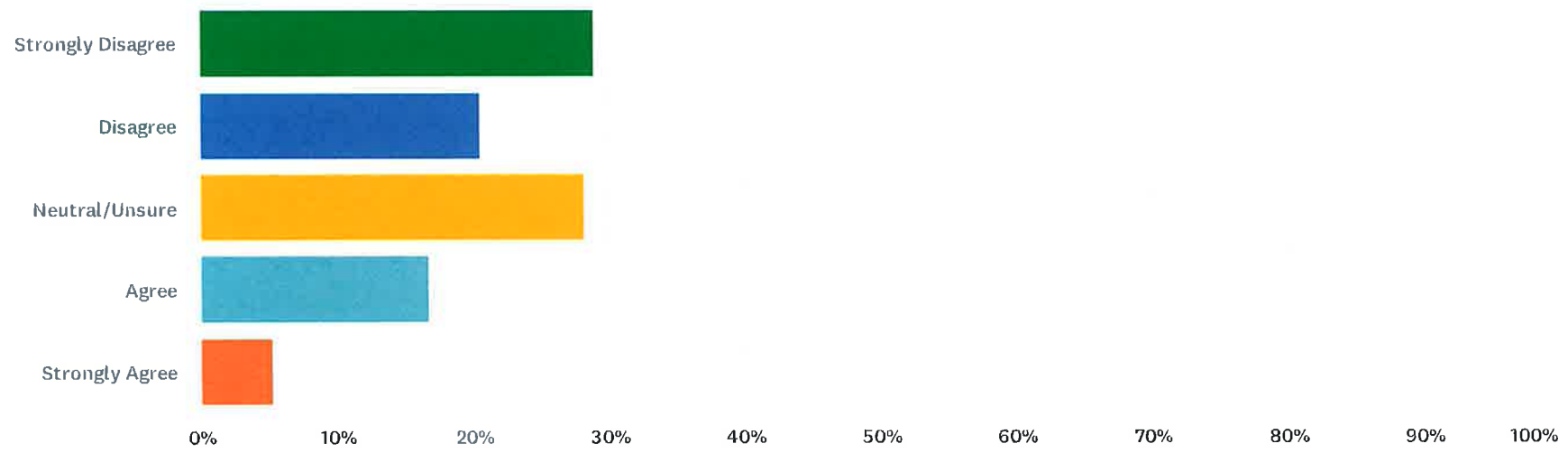
Rating	Percentage	Responses
Show comments		
Average 2.19		131

#	COMMENTS:	DATE
1	I am not aware of any alternative organization or standards for ensuring sufficient educational requirements. I am concerned that existing law schools would lower their standards or that we would see new law schools be created that do not sufficiently educate students. Additionally, I am concerned about the transferability of licensure if we remove the ADA accreditation requirement since I understand most states require that for reciprocity.	3/19/2026 8:46 AM
2	Yes, to the extent the ABA standards require 3 years of law school. The third year does not appreciably improve ability to practice law. It is more academic. The requirement is an unnecessary barrier to entry that increases the cost of law school by 50%.	3/13/2026 10:41 AM
3	The ABA is better equipped to determine appropriate accreditation & standards, including any modifications.	3/11/2026 6:23 AM
4	The ABA accreditation is useful, but the sole deciding factor for educational requirements should not be attending an ABA accredited institution	3/9/2026 11:57 AM
5	The Court does not currently rely on ABA accreditation. It already allows for non ABA education. See Nashville School of Law. However, seeing as the ABA in its other ventures as an association has alienated a great part of the population, it may be wise to separate the ABA accreditation activities from its more politicized activities. There is not much the Court can do there, but look to form additional accreditation standards. If the changes are made without consulting law firms, government agencies, and/or that have ABA school as a requirement for hiring attorneys, any changes made could be detrimental to graduates of law shcools in states that no longer have an ABA requirement for their law schools.	3/6/2026 4:26 PM
6	No reason the ABA should necessarily be the only entity.	3/6/2026 1:49 PM
7	Whether or to what extent reliance on ABA accreditation should be reduced depends on what standards replace the ABA's standards, and whether another body could as efficiently and easily administer and apply the criteria.	3/6/2026 12:01 PM
8	Is there some reason to think the ABA isn't working well? Unless one exists, I don't see the need to change anything.	3/5/2026 11:58 AM
9	ABA accreditation is important	3/5/2026 11:08 AM
10	It depends on what viable alternatives there might be.	3/5/2026 10:46 AM
11	Familiarity with unaccredited in-state law schools (such as Nashville School of Law) justifies allowing degrees from those schools to constitute appropriate education. But there are too many non-ABA accredited schools to allow dropping ABA accreditation as a guideline.	3/4/2026 5:17 PM
12	I'm concerned about the potential consequences of doing so.	3/4/2026 4:29 PM
13	the aba has done this successfully for decades. they have the skill and expertise and contacts to continue. the effort to remove them is political, by right wing extremists. the aba is a neutral organization that knows about attorneys.	3/4/2026 4:01 PM
14	For purposes of law school recruitment of out of state students, ABA accreditation should remain a priority. However, this State and S. the Ct through the TN Board of Law Examiners has approved Nashville School of Law graduates as eligible to sit for the bar exam. There is a place in this state for non-ABA accredited schools/programs; however, eliminating the ABA accreditation process or lowering the standards for TN Board of Law Examiners approval would likely only harm the public and tarnish the reputation of the profession.	3/4/2026 3:58 PM
15	ABA accreditation requirements contain many things that have zero bearing on the quality of legal education that is	3/4/2026 3:47 PM

	provided by any given institution, thus making its necessity dubious as a proxy for quality.	
16	The ABA has in recent years been transformed into a very political organization, and some of the philosophies seem to permeate every aspect of the ABA, likely including accreditation. It no longer deserves to have a monopoly on accreditation.	3/4/2026 3:18 PM
17	ABA accreditation should still be required if applicants to the Tennessee Bar are using the law school > Bar Exam licensure pathway. If not ABA, then there needs to be some sort of standard accreditation that is required. I believe the standard accreditation should remain national in scope as well, not as a state-run entity, so long as the Tennessee Bar uses the UBE because the standards of the UBE and law school accreditation should work congruently. Additionally, without oversight from a neutral party, law schools could be overtaken by for-profit entities. I also worry that political bias could become more prevalent if law schools are not held to a neutral standard of teaching the practice and history of law.	3/4/2026 3:09 PM
18	I will feel this way until I see some viable options.	3/4/2026 3:00 PM
19	But maintain minimum educational requirements; simply eliminate reliance on the ABA.	3/4/2026 2:57 PM
20	The ABA accreditation standards provide a framework for uniformity between states that is helpful to maintain not merely the quality, but the perception of the stature of members of the Tennessee Bar.	3/4/2026 2:50 PM
21	I believe the ABA has its place in setting a coherent standard for legal educational institutions and preventing predatory "schools" from becoming a problem in law as they have elsewhere. However, I do not think the ABA needs to have the final say on what educational requirements are appropriate for practice in Tennessee or by Tennessee institutions. This is a worthwhile area for the Court to explore.	3/4/2026 2:36 PM
22	The practice of law already includes individuals who struggle with navigating unfamiliar areas of law and/or new concepts. The effective practice of law requires a complete understanding of the area of law in which one practices, not just a superficial knowledge. Any watering down of the accreditation to practice law is a move in the wrong direction.	3/4/2026 2:34 PM
23	Having a standard minimum educational requirement across all states ensures a standardization of the profession as well as a focus on quality of professional.	3/4/2026 2:20 PM

Q4 There are practicable alternatives to ABA accreditation the Court should consider.

Answered: 131 Skipped: 0



Rating	Percentage	Responses
Strongly Disagree	29.01%	38
Disagree	20.61%	27
Neutral/Unsure	28.24%	37
Agree	16.79%	22
Strongly Agree	5.34%	7

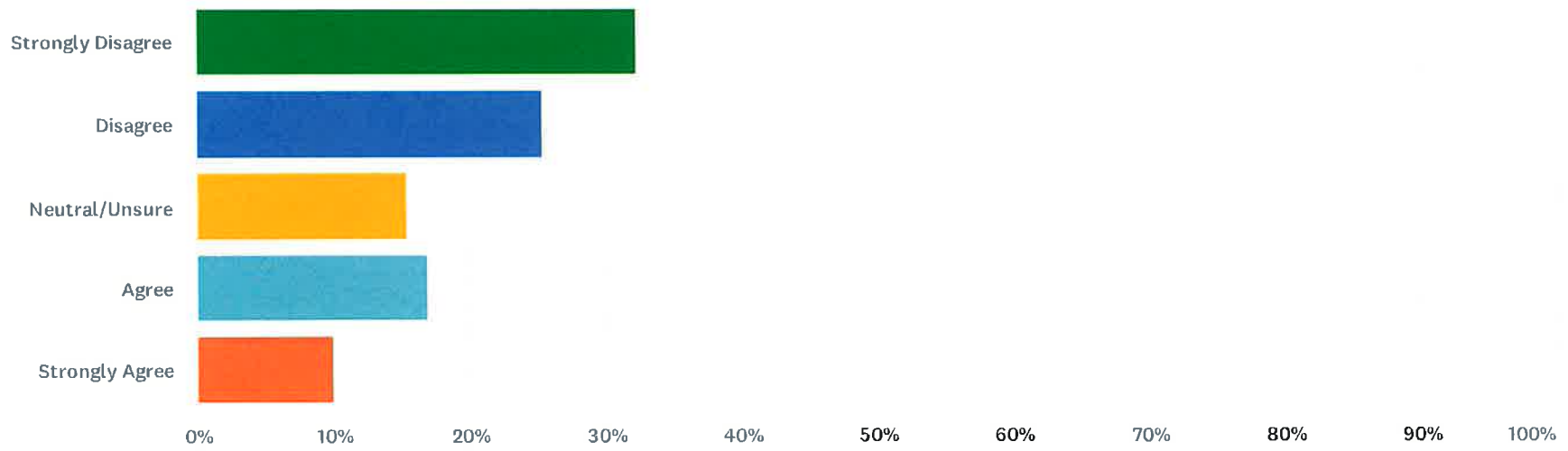
Show comments

Average 2.49 **131**

#	COMMENTS:	DATE
1	I am not aware of any alternatives, let alone practicable ones.	3/19/2026 8:46 AM
2	Law firms and other entities that employ lawyers in a professional capacity (government, banks, corporations) should be required to make apprentice programs available to aspiring lawyers. Lawyers should have internship and residency programs similar to the medical profession that would much better prepare new lawyers to practice law.	3/13/2026 10:41 AM
3	see above	3/11/2026 6:23 AM
4	We already have this in Tennessee. See Nashville School of Law. The Court already decides who meets the requirements of those education is not ABA accredited. They could look to expand on this.	3/6/2026 4:26 PM
5	I am unaware of any.	3/5/2026 11:58 AM
6	Not sure what those are that would not suffer from similar issues as the ABA.	3/5/2026 10:46 AM
7	What are they?	3/4/2026 5:17 PM
8	Perhaps on a multi-year trial basis.	3/4/2026 4:29 PM
9	no, there are not any such alternatives. like what? the federalist society? that is what right wing people want but it would be so inappropriate.	3/4/2026 4:01 PM
10	The Nashville School of Law is a great alternative. However, NSL should be the exception rather than the rule.	3/4/2026 3:58 PM
11	I believe that apprenticeships and/or service with legal aid would suffice. I also believe that there should be more pathways for paralegals to advance their careers into working as lawyers, so long as they meet a standard length of time for practice under a lawyer and pass the Bar Exam.	3/4/2026 3:09 PM
12	Again show me the options and I might think differently.	3/4/2026 3:00 PM
13	Apprenticeships are an alternative. Some other states and Western Countries utilize this approach.	3/4/2026 2:57 PM
14	As above, the ABA has a well-founded purpose, but the Court should consider whatever alternatives may be available to best help the people of Tennessee and facilitate increased access to motivated individuals in becoming attorneys through appropriate education and qualification.	3/4/2026 2:36 PM
15	I'm not familiar with what those alternatives might be, but any accreditation that makes it easier to practice law is not a good idea.	3/4/2026 2:34 PM
16	If a lawyer passes the bar examination, why should it matter whether their law school was ABA accredited?	3/4/2026 2:20 PM
17	I am unaware of any.	3/4/2026 2:20 PM

Q5 There are less costly alternatives to the traditional three-year law school curriculum that would adequately prepare individuals for the practice of law.

Answered: 130 Skipped: 1



Rating	Percentage	Responses
Strongly Disagree	32.31%	42
Disagree	25.38%	33
Neutral/Unsure	15.38%	20
Agree	16.92%	22
Strongly Agree	10.00%	13
Average **2.47**		**130**

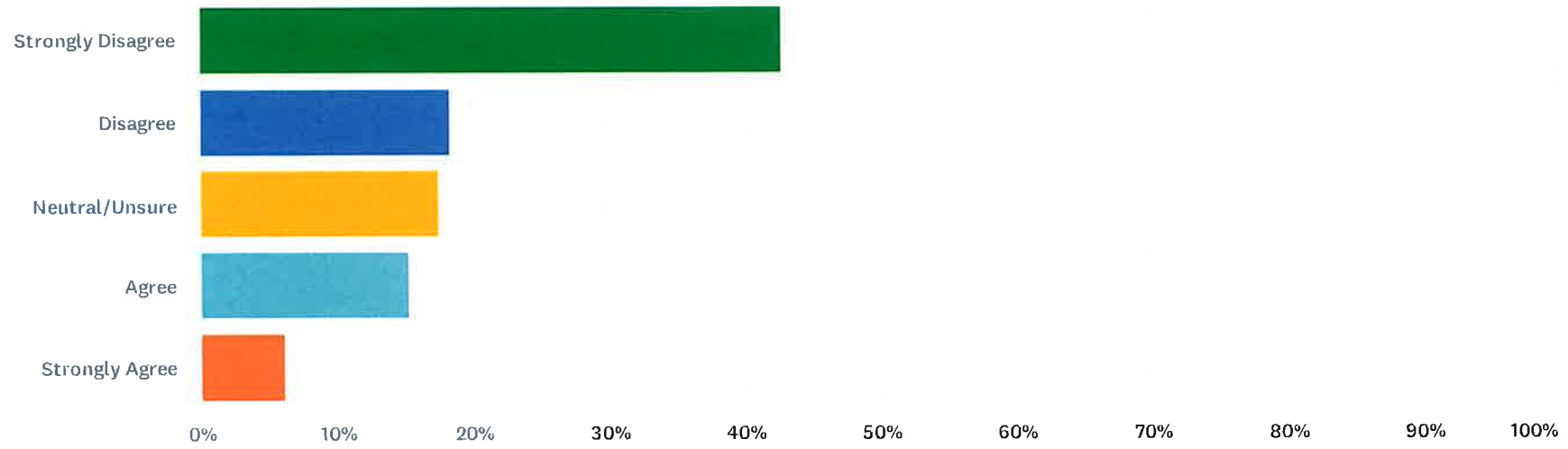
Rating	Percentage	Responses
Show comments		
Average 2.47		130

#	COMMENTS:	DATE
1	I am not aware of any alternatives (regardless of cost) which would prepare individuals for the practice of law. Should any alternatives arise, we could consider them at that point.	3/19/2026 8:46 AM
2	maximum of two years of law school with a required internship or residency/apprenticeship would better prepare persons for the practice of law.	3/13/2026 10:41 AM
3	Partial-licensures, such as an "RN" or "PA" equivalent where limited legal advice under the review of a licensed attorney could be useful	3/9/2026 11:57 AM
4	Again, look at Nashville School of Law. If more of this type program were allowed, it could be very beneficial. Attorneys would not be saddled with extreme debt and could afford to go into more rural areas. The ABA accreditation process has become extremely expensive to maintain. Public law schools that cost more than $100,000 a year to attend is a bit extreme. Private shcools costing upwards of $200,000 is simply ridiculous. A lot of those costs are due to the ABA accreditation and the standards it sets.	3/6/2026 4:26 PM
5	New lawyers are woefully under prepared to practice. If anything, we should add a requirement for an apprenticeship.	3/6/2026 2:27 PM
6	The third year of law school is unnecessary, as demonstrated by the types of work rising 3Ls receive in their summer placements. A third year of law school enriches administratively bloated universities and forestalls new attorneys' development in practical legal skills. The profession says it wants practice-ready lawyers it doesn't have to train, but the profession still has to train people with three years of law school. The profession could get starting-salary relief from doing what it's already doing if law students didn't have to go a third year.	3/6/2026 12:01 PM
7	A two-year program with a third-year apprenticeship could work in some settings.	3/6/2026 11:56 AM
8	Graduates must be adequately prepared	3/5/2026 11:08 AM
9	What are they?	3/4/2026 5:17 PM
10	Certainly, some non-lawyer judges performed very well.	3/4/2026 4:29 PM
11	like what? attorneys need basic education on the law and the legal system.	3/4/2026 4:01 PM
12	The Nashville School of Law is a great alternative. However, NSL should be the exception rather than the rule.	3/4/2026 3:58 PM
13	The Nashville School of Law	3/4/2026 3:41 PM
14	Work as an apprentice or as a paralegal for a requisite number of years in lieu of typical law school would adequately prepare individuals. I believe that the paralegal programs should also be ABA accredited, and that law offices or government agencies that offer apprenticeships should have some sort of approval or accreditation from an outside source, such as TN courts or the ABA.	3/4/2026 3:09 PM
15	NSL is a shining example.	3/4/2026 2:57 PM
16	Talented individuals can learn to practice law through self-study and apprenticeship. History has proven that. But the structure of the now traditional law school education system is necessary to preserve the professionalism, public respect and base of knowledge a graduate school legal education provides. We live in an increasingly complex legal environment	3/4/2026 2:50 PM

	and practice in a multi-state and frequently international environment. We water down our bar admission requirements at our peril.	
17	Strongly agree. The traditional law school experience has becoming a money-making scheme for what are seemingly legitimate institutions. This is an area in which the ABA has failed to adequately protect students, allowing the traditional schooling system to be the exclusive avenue for becoming an attorney, all the while the institutions perpetually increase prices astronomically while providing no increase in value or education toward actually practicing law. By providing less costly alternatives, institutions would be forced to re-examine their tuition prices and the value actually gleaned from such an education (other than name recognition) or fail.	3/4/2026 2:36 PM
18	I attended the four-year Nashville School of Law - an option that was affordable and allowed me to work full-time throughout.	3/4/2026 2:34 PM
19	Example: 1 year of school plus 3 years of clerkship or 2 years of school plus 2 years of clerkship. We could learn from how we train doctors (4 years medical school, 1 year residency, often 1 or 2 years fellowship).	3/4/2026 2:20 PM
20	I am unaware of the costs of alternative programs, but I do believe Nashville School of Law has an adequate 4-year program. I do not know its cost compared to 3-year programs.	3/4/2026 2:20 PM
21	A two year program would suffice with a year internship.	3/4/2026 2:12 PM

Q6 The Court should consider adopting alternative pathways for admission to the Tennessee Bar —for example, by allowing applicants to satisfy the minimum educational requirements and/or examination requirement in part by completing an apprenticeship or serving with a legal aid organization.

Answered: 131 Skipped: 0



Rating	Percentage	Responses
Strongly Disagree	42.75%	56
Disagree	18.32%	24
Neutral/Unsure	17.56%	23
Agree	15.27%	20
Average **2.24**		**131**

Rating	Percentage	Responses
Strongly Agree	6.11%	8

Show comments

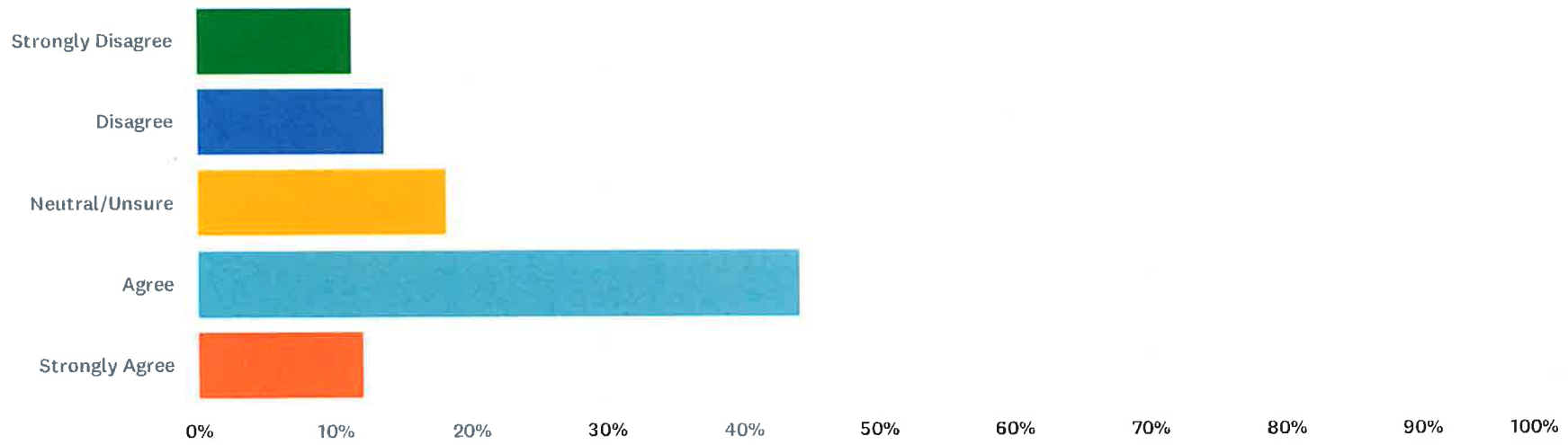
Average	2.24	131

#	COMMENTS:	DATE
1	I am open to the possibility of creating a limited licensure where a person could train in a particular area and be allowed to practice in only that area. For example, I could see a situation where someone could adequately work in a legal aid organization with targeted training; that person would not necessarily need to know other areas of law taught in law school such as criminal law or corporations, and it would allow for more people to represent underserved communities. However, I am very concerned about creating a "race to the bottom" in certain areas in which high quality representation is needed, such as criminal defense. Additionally there is a risk of saturating the market with lower quality attorney equivalents in areas such as personal injury where the law can be very complex and mistakes can greatly impact a case. Any approach towards such a proposal would require very close attention and consideration of the needs of each practice area.	3/19/2026 8:46 AM
2	only if OK'd by the ABA	3/11/2026 6:23 AM
3	Concern where apprenticeship is through nepotism or the supervising attorney lacks interest or knowledge	3/9/2026 11:57 AM
4	I think some form of apprenticeship is a great idea even if added onto additional requirements. The practicalities of actually practicing law are not taught in law shcool and can only be learned by doing.	3/6/2026 4:26 PM
5	These should be in addition to the current education requirements. Similar to medicine.	3/6/2026 2:27 PM
6	The bar exam is nothing more than a massive memorization test. Nobody knows more law than they do right before they take the test, and our rules of professional conduct give us express outs from taking on representation in areas outside our competence.	3/6/2026 12:01 PM
7	The law is too complex to allow admission without a basic grounding that traditional law schools offer. No apprenticeship provider could suffice to equip a candidate with an adequate educational background.	3/4/2026 5:17 PM
8	I'm concerned about the real issue being addressed. More lawyers or more lawyers who will accept matters for less money?	3/4/2026 4:29 PM
9	this is crazy to me. how about we have doctors who learn by shadowing other doctors? would you want such a person to operate on you? i would not want such a person giving me legal advice either.	3/4/2026 4:01 PM
10	Apprenticeship sounds great in theory but expensive in practice. I also am not in favor of lowering the bar to become an attorney in Tennessee. Accordingly, I am in favor of passing the bar exam as a prerequisite to becoming an attorney.	3/4/2026 3:58 PM
11	It would be problematic to simply allow someone to take on a full-service role practicing in all areas of the law even though the experience or apprenticeship was in a very specialized area. So any consideration of change should be somehow tailored in a way that takes into account the high degree of specialization these days and that even multiple years of experience in a narrow practice area would not translate into knowledge about all other areas of the law.	3/4/2026 3:18 PM
12	As above. I believe that there should be alternate pathways, but these pathways must also be approved and monitored by a neutral, national party.	3/4/2026 3:09 PM
13	I still believe that minimum educational requirements should apply. Perhaps they may be modified to include an apprenticeship or service with a legal aid organization. I do not believe the traditional law school curriculum should be eliminated altogether. Being exposed to different areas of the law is invaluable.	3/4/2026 2:57 PM
14	I have always been surprised this was ever eliminated. It appears to have been done simply to funnel money into the hands of educational institutions and monopolize the pathway toward becoming an attorney.	3/4/2026 2:36 PM

15	The practice of law already includes individuals who struggle with navigating unfamiliar areas of law and/or new concepts. The effective practice of law requires a complete understanding of the area of law in which one practices, not just a superficial knowledge. Any watering down of the accreditation to practice law is a move in the wrong direction.	3/4/2026 2:34 PM
16	The caliber of attorneys coming from ABA accredited law schools is continually diminishing. The solution to this is not to make it even easier to become an attorney. Rather, the Court may consider requiring or encouraging some type of apprenticeship IN ADDITION to the current educational requirements to allow new attorneys to be more practice ready and cutting down costs for law firms to trains such new attorneys.	3/4/2026 2:24 PM
17	These programs are very difficult to monitor and verify.	3/4/2026 2:21 PM
18	While law school does not prepare for the specifics of how to practice law, its purpose is to prepare individuals to think like attorneys. It prepares individuals for creative problem-solving, issue spotting, and conflict resolution.	3/4/2026 2:20 PM

Q7 The Court should consider modifying requirements for admission to the Tennessee Bar for those licensed in other States to promote interstate practice and mobility.

Answered: 131 Skipped: 0



Rating	Percentage	Responses
Strongly Disagree	11.45%	15
Disagree	13.74%	18
Neutral/Unsure	18.32%	24
Agree	44.27%	58
Strongly Agree	12.21%	16
Average 3.32		**131**

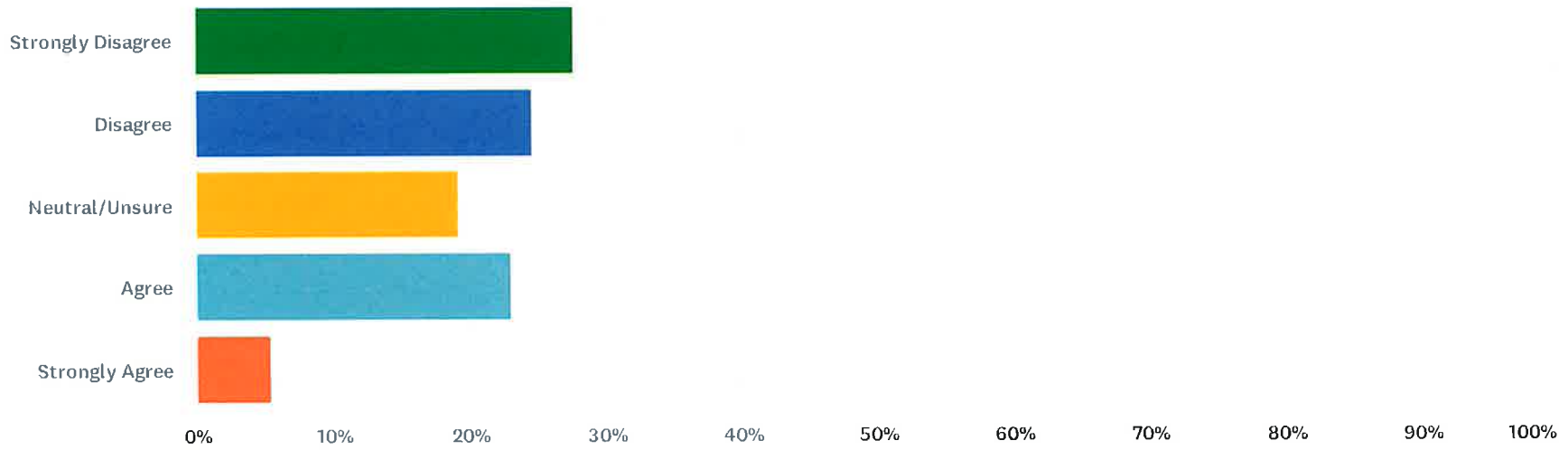
Rating	Percentage	Responses
Show comments		
Average 3.32		131

#	COMMENTS:	DATE
1	I do no think there are currently any problems with admission to the Tennessee Bar.	3/19/2026 8:46 AM
2	The balkanization of law practice is a result of turf protection by the bars of the several states. More mobility could be achieved without abandoning appropriate requirements for familiarity with the law of the state in question. For example, one wanting to practice in Louisiana should have to demonstrate an understanding of the civil law system as applied in that state.	3/13/2026 10:41 AM
3	Courts in all states should make this easier. One thing that could be done is having a rule that states if the attorney meets the CLE requirements in their home state, they meet the requirements here and only need to file a letter of good standing each year. It also takes an inordinate amount of time for applications to be processed. Something could be done about that as well. Other industries have figured it out. There is no reason lawyers can't do the same thing.	3/6/2026 4:26 PM
4	I mostly agree with this with the hope that making it easier for out-of-state attorneys to be admitted here will make it easier for me to become licensed in other states by reciprocity.	3/6/2026 12:01 PM
5	I'm not for lowering the standards. I am for hiring enough people to review waiver applications in less then three years.	3/6/2026 11:56 AM
6	there should be an easier pathway for people who want to move here to work, we should not create a system where people living out of state can easily get licensed here.	3/5/2026 11:58 AM
7	Contingent on pre-requisites of standards	3/5/2026 11:08 AM
8	I agree subject to monitoring other states' admission requirements to be sure that they are at least approximately equivalent to Tennessee's.	3/4/2026 5:17 PM
9	It depends upon what the requirements are in the other state.	3/4/2026 4:51 PM
10	So long as the other states reciprocate.	3/4/2026 4:29 PM
11	seems like we have protections here since there is a minimum amount of time practicing required.	3/4/2026 4:01 PM
12	IF Nashville School of Law graduates are also given reciprocity by the other states	3/4/2026 3:41 PM
13	There may need to be a middle ground between total acceptance of licensing from other states and limiting practicing to pro hac vice admission for a single case. Perhaps there could be some type of method to receive a certification that would allow an out-of-state attorney to handle matters in certain practice areas in Tennessee but not have blanket authority to handle all legal matters. There are some practice areas that are quite conducive to a "national practice" while others, such as domestic relations law would be difficult to handle from another state.	3/4/2026 3:18 PM
14	The public might not hire in-state or local lawyers. Practices and rules differ from place to place in the United States. That rule change would chill the small law firm's existence and eliminate the Local Counsel and Pro Hoc Association practices.	3/4/2026 2:57 PM
15	I agree insofar as there is reciprocation. Though, I do feel that the lack of interstate practice options is simply based on protectionism for the state bar, rather than any inherent inability for someone out-of-state to learn Tennessee laws and practice norms.	3/4/2026 2:36 PM
16	I'm not sure what those requirements are now, but the state should be judicious with granting reciprocity. The practice of law varies greatly state to state.	3/4/2026 2:34 PM

17	At this point, Tennessee permits score transfers and comity, and admits people who have graduated from non-ABA law schools	3/4/2026 2:21 PM
18	Only with those States that have similar admission requirements as the State of Tennessee.	3/4/2026 2:13 PM

Q8 The Court should consider whether there are some legal services currently provided by lawyers that could be competently provided by paraprofessionals. If so, what qualifications, limitations, or subject matter restrictions the Court should consider imposing?

Answered: 130 Skipped: 1



Rating	Percentage	Responses
Strongly Disagree	27.69%	36
Disagree	24.62%	32
Neutral/Unsure	19.23%	25
Agree	23.08%	30
Average 2.54		**130**

Rating	Percentage	Responses
Strongly Agree	5.38%	7

Show comments

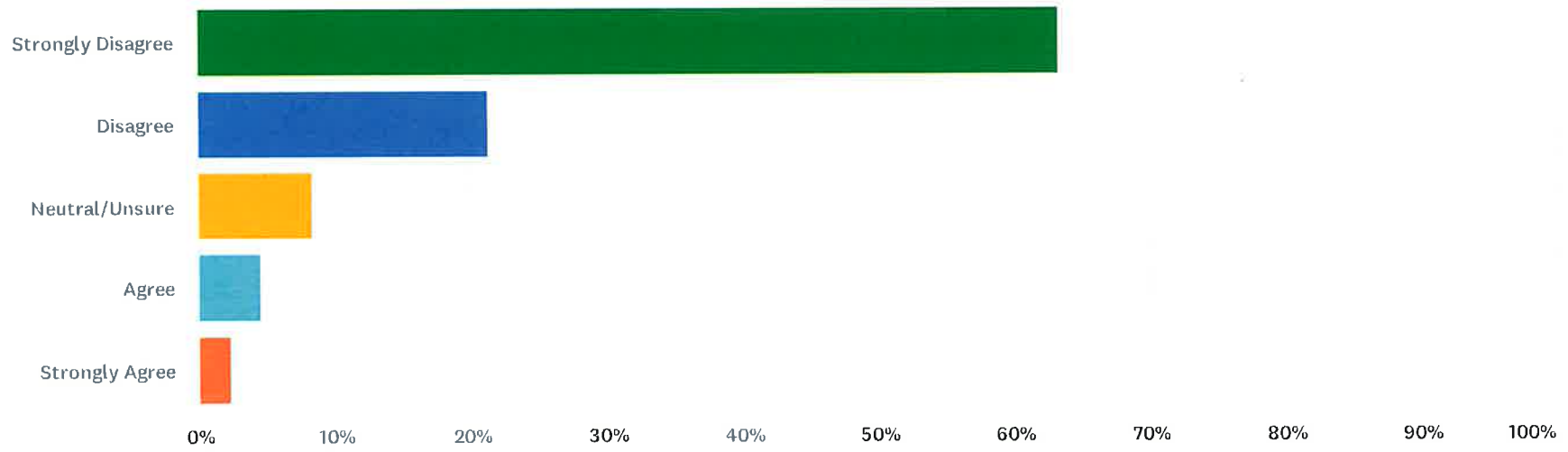
Average	2.54	130

#	COMMENTS:	DATE
1	It is fine to consider this area, but any changes should be closely scrutinized. I think legal aid services is an area where there is lots of demand, not enough attorneys, and a subject matter that is not as focused in things taught in law school. For something like that, I think the Court should work closely with attorneys in that field to see what they think. But I am concerned about pretty much every other area of law. There are already competency issues with some licensed attorneys, and lowering the standards would make that problem worse. I am concerned that any attempt to do this would be either unworkable or result in rules that are inadequate to protect the public and the competence of the legal profession.	3/19/2026 8:46 AM
2	Paraprofessionals should be subject to licensure and disciplinary sanctions for violation of standards of competence and ethical standards. State bars should not contemplate or support a "wild west" of paraprofessionals providing legal services without adequate supervision for protection of the public.	3/13/2026 10:41 AM
3	The paraprofessional should be supervised by a Tennessee licensed attorney.	3/11/2026 6:23 AM
4	Some limited practice, but it should be under the supervision of a licensed attorney	3/9/2026 11:57 AM
5	This more or less happens in many practices already. I can't tell you how many attorneys of record I never speak to as their paralegal handles everything. That being said, it is not a good idea. There is too much that can go wrong.	3/6/2026 4:26 PM
6	This strikes me as a down-the-road conversation that should follow the legal-education-accreditation-requirements and bar-exam-requirements conversations. So, I disagree that anything should be done right now.	3/6/2026 12:01 PM
7	Only under proper Supervision of the practicing licensed attorney	3/5/2026 11:08 AM
8	I agree subject to the establishment of licensing for paraprofessionals, analogous to licensing of nurse practitioners in the medical field.	3/4/2026 5:17 PM
9	training and experience requirements.	3/4/2026 4:51 PM
10	Form documents, administrative matters of a certain monetary threshold, entity representation in General Sessions.	3/4/2026 4:29 PM
11	not sure on this one. it would be great to make legal services less expensive, but we need to be careful. we all went to law school for a reason.	3/4/2026 4:01 PM
12	There should be some method for a paraprofessional to be allowed to handle certain types of legal matters that do not justify lawyer rates -- but there should be clear parameters with something similar to lawyer certifications (not necessarily licensing) so that a paraprofessional might be qualified and certified to play an enhanced role similar to a lawyer for certain types of work but not for others.	3/4/2026 3:18 PM
13	I believe that there should be a pathway for paraprofessionals to go through certain certificate programs or CLE programs beyond their paraprofessional training in order to provide services for specific instances that are more prevalent within legal aid societies, like reviewing basic contracts, landlord/tenant disputes, or certain low-level employment law disputes. I think that legal services provided solely or primarily by paraprofessionals should be limited to civil matters and should never include criminal matters, unless they are fully supervised by an attorney.	3/4/2026 3:09 PM
14	Many such services are already provided by paraprofessionals, but under the supervision of qualified attorneys. Continuation of the requirement of attorney oversite protects the public from harm.	3/4/2026 2:50 PM
15	Legal services should always be overseen by a licensed attorney. This seems like it would welcome a slew of issues	3/4/2026 2:36 PM

	related to liability and malpractice.	
16	There is too much nuance in the practice of law to rely on the training of a paraprofessional to properly identify potential issues in the law. An ethical obligation that has potential effect on licensure and livelihood must be at stake.	3/4/2026 2:34 PM
17	Paralegals with accredited degrees working under supervision by licensed TN attorneys could serve common consumer, landlord tenant, and certain general sessions cases.	3/4/2026 2:28 PM
18	Depends on what services you are referring to.	3/4/2026 2:28 PM
19	Many attorneys in some areas of law are already delegating tasks that should be done be attorneys to paraprofessionals and the quality of work and lack of communication is evident to opposing counsel when dealing with such attorneys. This only slows down cases and hinders timely resolution.	3/4/2026 2:24 PM
20	minimum education requirements, continuing education	3/4/2026 2:21 PM
21	This is a bad idea unless paraprofessionals get at least 1 year of law school, but if they do, they might as well get a degree and be lawyers.	3/4/2026 2:20 PM

Q9 The Court should modify, reduce, or eliminate regulations prohibiting non-lawyer ownership of law firms or fee sharing with nonlawyers.

Answered: 131 Skipped: 0



Rating	Percentage	Responses
Strongly Disagree	63.36%	83
Disagree	21.37%	28
Neutral/Unsure	8.40%	11
Agree	4.58%	6
Strongly Agree	2.29%	3
Average 1.61		131

Rating	Percentage	Responses
Show comments		
Average 1.61		131

#	COMMENTS:	DATE
1	Attorneys are not necessarily suited to be good at running a business, such as a law firm. I don't think it's inherently bad to allow a non-lawyer to provide some role in running a law firm. However, as a practical matter, I think this is likely to degrade the provision of legal services. I think the corporatization of medicine has significantly decreased the quality and access of health care by prioritizing profits and I am worried about that happening to law. I don't want someone who does not know about law and has no ethical duties telling me I have to limit the time I spend on a case or with a client because it is hurting the bottom line.	3/19/2026 8:46 AM
2	The profit motive is strong enough as things are. Allowing sharing of revenue with a non-lawyer would create much more likelihood of putting personal profit above professional responsibility and the interest of the client.	3/13/2026 10:41 AM
3	This would be a catastrophic decision. It would not be wise to open the legal industry to supervision by non-attorneys who do not face consequences for their actions and otherwise force attorneys to decide on legal or ethical decisions driven by private equity or those with no knowledge of the law.	3/9/2026 11:57 AM
4	Having attorneys subject to the whims of a board of directors and shareholders is frightening.	3/6/2026 4:26 PM
5	Permitting ownership of law firms by non-attorneys would be disastrous and undermine our democracy. Profit motives and pressures would erode professional ethics and damage attorneys' ability to serve their clients zealously. Look at what has happened in American healthcare. And lawyers, unlike doctors, are officers of the court and absolutely need to preserve their independence to that the legal system can preserve its independence. Don't do it!	3/6/2026 1:49 PM
6	I don't have super-strong feelings one way or another about law firm ownership. If I ever decided to hang a shingle, it would be nice to give my wife an ownership interest in a solo firm so that she would have rights to sell the practice upon my death, if I predecease her, but I also understand the moral-hazard argument that making lawyers fiduciaries with accountability to shareholders risks undercutting the faithful exercise of independent legal judgment. That said, and maybe this depends more on individual shareholder models or partnership agreements than the content of the rules, I would like to see, in a perfect world, some mechanism by which my wife, as my heir, would be guaranteed to receive whatever profit distribution to which I would otherwise be entitled in the year of my death, should I predecease her. If she predeceases me, the same mechanism would ensure that the profit distribution to which I would be entitled could pass to my other heirs. I don't know that any of that necessarily bears on the topic but wanted to pass along the comments.	3/6/2026 12:01 PM
7	This will create numerous ethical dilemmas we're better off avoiding.	3/5/2026 11:58 AM
8	This is probably the only reason a private practice is possible in an era of private equity buying and owning entire industries, essentially.	3/4/2026 7:23 PM
9	I believe this will cause severe damage to the profession of law.	3/4/2026 5:19 PM
10	Should be a non-starter for the legal profession.	3/4/2026 5:17 PM
11	This should be carefully explored, and the restrictions likely should be loosened -- but there probably should still be some limits.	3/4/2026 3:18 PM
12	This would be a terrible decision. Private equity ownership of physician practices has had a detrimental effect on the practice of medicine, and the same thing would happen to lawyers.	3/4/2026 3:17 PM
13	I do not have enough experience with private practice/firms in order to have an informed opinion on this issue.	3/4/2026 3:09 PM

14	Remember Enron as a cautionary tale. When attorneys lose their independence, integrity is systemically eroded.	3/4/2026 2:50 PM
15	The business of law should stay exclusively within the hands of attorneys. Further commoditization of legal services by non-attorney owners simply trying to maximize profit while underpaying young attorneys would exacerbate problems that already exist and greatly reduce the quality of representation available to the public, rather than solving any. The race to the bottom perpetuated by actual attorneys is bad enough.	3/4/2026 2:36 PM
16	This feels like a move toward more conglomerate law firms and removal of a privately operating attorney. The practice of law relies on the ethical obligations of its practitioners. Explaining these obligations to clientele already poses a challenge, but to involve non-lawyer individuals or corporations to purchase law firms and direct the operations of its employee attorneys is a terrible idea that undermines the value of our ethical obligations.	3/4/2026 2:34 PM
17	This is, by far, one of the worst ideas that has come up for the legal profession. Allowing non-legal ownership of firms would completely upend the self-regulation aspect of the profession. Additionally, there are many other issues that would arise, such as most insurance defense work stay in-house, creating a huge loyalty/conflict issue. Terrible idea.	3/4/2026 2:28 PM
18	Private equity investment in law firms would be detrimental to the foundational principals of law.	3/4/2026 2:28 PM
19	This will only allow for private equity to come into another professional space that they should not be in, similar to the current landscape of the medical field. It is inherently unethical for an attorneys conduct and work to be for the profit of a non-legal company or individual and will only force attorneys to work in a way to profit private equity owners rather than representing their clients.	3/4/2026 2:24 PM
20	Lawyer advertising corrupted the legal profession. Allowing non-lawyer ownership of law firms would be 10 times as bad.	3/4/2026 2:20 PM
21	Non-lawyer investors chasing a return on their investment would put pressure on attorneys to behave in potentially unethical behavior.	3/4/2026 2:14 PM
22	This will allow private equity to purchase law firms, a practice that in the medical industry has been a major source of vastly increased costs of providers and pharmaceuticals	3/4/2026 2:12 PM

Q10 Additional Comments

Answered: 19 Skipped: 112

#	RESPONSES	DATE
1	There are problems with the legal profession which could use improvement, but I am concerned that all of these proposals could make thing worse instead of better. Any changes should be implemented only after careful thought and planning.	3/19/2026 8:46 AM
2	The bar should look to the medical profession for a much improved method of ensuring competency of new lawyers: require internships and residencies. Law schools should require trial advocacy training. A law student may not know whether he or she will ever need to go to trial. Furthermore, a lawyer that is nervous about going to trial will be much less likely to obtain a good settlement during negotiations.	3/13/2026 10:41 AM
3	None at this time.	3/6/2026 12:01 PM
4	A lot of the problems would be solved if the pay for criminal appointments was raised to market value, and if the logging for in-court, out-of-court hours was not so restrictive.	3/6/2026 10:08 AM
5	We aren't a cartel or restraint of commerce. I favor tweaks to allow non-ABA school acceeditation, allowing apprenticeships as a path but still requiring formal education in areas all lawyers should "know what they don't know" (such as commercial law, basic property law, basic estate and probate, basic family law). New attorneys can't be expected to recognize client issues without some formal training or reliable mentoring.	3/5/2026 5:39 PM
6	Tennessee should increase, not decrease, its professional standards.	3/5/2026 4:42 PM
7	Great caution and reservation of such proposals. Much harm can be caused to the public.	3/5/2026 11:08 AM
8	The ABA serves as a "best in class" / "a gold standard" for attorneys. In my experience, any guidance in the form of resolutions, model acts, etc., are always well researched, vetted and set forth in a manner that is best suited to maintain "the rule of law" as our nation's guiding principle. Let us remain vigilant in an effort to maintain the highest possible standards for lawyers, judges and law schools.	3/5/2026 8:14 AM
9	N/A	3/4/2026 6:10 PM
10	Lowering competency requirements for the practice of law (my description of the proposal) is not the answer. Those areas underserved should still receive competent legal representation. Lowering the level of competency does no one any ultimate good (in my opinion).	3/4/2026 5:43 PM
11	I strongly believe that the legal profession is one that should and must maintain its high standards for the benefit and protection of our clients. I fear that such high standards will slip with what is now being considered here in TN.	3/4/2026 5:19 PM
12	Thank you. Our profession and its standards must be upheld. The current concerns need not be addressed at this time.	3/4/2026 3:27 PM
13	Several of the answers above have a common theme. Any changes should take into account (a) the high degree of specialization in the law, (b) that someone without a law degree may be able to provide quality and less expensive services	3/4/2026 3:18 PM

	in a specific practice area, and (c) having the experience and expertise to provide services in one subject area does not mean that someone would be competent to provide quality legal services in another subject area.	
14	Private Equity and National/International Companies threaten to take over even the Legal Profession. To solve some of the supply of lawyers problems, the Profession can shore up indigent representation funding (Rule 13 and Legal Aid), encourage city lawyers to take on more rural matters, and expand law-student internships and legal clinics in these areas. The Profession can also focus on costs and living standards. The Profession should protect the lawyers too.	3/4/2026 2:57 PM
15	The practice of law continues to be under threat of becoming just another business. It is a profession. Not a business. Profit and efficiency are wonderful things. But it would be a dire mistake to lose track of the special role of the legal profession in our society. We take an oath to uphold the constitution, to act ethically and to put other interests over profit that captains of industry, investment bankers, accountants, insurance companies and consulting firms do not.	3/4/2026 2:50 PM
16	Nashville School of Law should be accredited.	3/4/2026 2:41 PM
17	There are times when this five point spectrum of "strongly disagree" to "strongly agree" feels inadequate. This is one of them. "Strongly Disagree" is too kind of a response here. None of these reforms should be considered under any circumstances whatsoever.	3/4/2026 2:18 PM
18	Watering down the requirements to become an attorney will only lead to more incompetent attorneys. We should not, as an industry, be willing to lower the bar. More broadly available legal services help no one if those services leave clients worse off.	3/4/2026 2:15 PM
19	Strong disagree with non-lawyer ownership of law firms.	3/4/2026 2:14 PM

MaryBeth Lindsey

To: appellatecourtclerk
Subject: RE: NBA Comments No ADM2025-01403

From: Jeanne Heaton <Jeanne.Heaton@nashvillebar.org>
Sent: Wednesday, April 22, 2026 12:02 PM
To: appellatecourtclerk <appellatecourtclerk@tncourts.gov>
Cc: Sherie Lea Edwards <sherie.edwards@gmail.com>
Subject: NBA Comments No ADM2025-01403

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

April 22, 2025

James Hivner, Clerk
Via email: appellatecourtclerk@tncourts.gov
No. ADM2025-01403
IN RE: PUBLIC COMMENTS ON POTENTIAL REGULATORY REFORMS TO INCREASE ACCESS TO QUALITY LEGAL REPRESENTATION

Dear Mr. Hivner,

Attached, please find the comments of the Nashville Bar Association in regard to the order reference above. You may contact me or our NBA President, Sherie Edwards, copied on this email, if you have any questions. Thank you.

Jeanne B. Heaton J.D. CAE | Executive Director
Nashville Bar Association
150 4th Ave N, Ste 1350
Nashville, TN 37219
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Improving the Practice of Law through Education, Service, and Fellowship

April 21, 2026

BY EMAIL (appellatecourtclerk@tncourts.gov)

The Honorable Justices of the Tennessee Supreme Court
c/o Hon. James Hivner
Clerk, Tennessee Supreme Court
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1307

In Re: Public Comments on Potential Regulatory Reforms to Increase Access to Quality Legal Representation, No. ADM2025-01403 ("Order")

PROPOSAL CONCERNING NONLAWYER OWNERSHIP OF LAW FIRMS AND ATTORNEY FEE-SHARING

To the Honorable Justices of the Tennessee Supreme Court:

The authors of this comment are part of a group of Tennessee lawyers that began studying and considering legal innovation efforts three years ago, before the Court issued its request for comments. The group consisted of academics and law firm, legal services, and bar association leaders from across the state. Our group reviewed materials and held meetings with people who have led reform efforts in Utah, Arizona, and North Carolina, as well as academics and public interest organizations that have studied and evaluated legal innovation models. Although we were not formally constituted or affiliated, we shared a common interest in exploring opportunities to reform the structure of the legal market to remedy the unavailability of legal services for too many Tennesseans.

When the Court issued its request for comments, our group had a firm foundation to address several aspects of the Court's request. We began further research and drafting to respond to the Court's proposed areas for reform that aligned with our prior work. We submit this comment to assist the Court by drawing on the study and conclusions that have been the fruit of our group's work. We hope our work and this comment will help inform the Court's understanding, both now and as the Court proceeds with reform efforts.

I. INTRODUCTION

We submit this public comment addressing Question 7 of the Court's Order: whether Tennessee "should modify, reduce, or eliminate regulations prohibiting non-lawyer ownership of law firms or fee sharing with nonlawyers." (Order, 5.) We urge the Court to eliminate regulations prohibiting non-lawyer ownership of law firms or fee-sharing with nonlawyers if done directly to advance a more comprehensive set of reforms to increase the supply of affordable legal services for Tennessee consumers whose demand for legal services is unmet.

While reform to the NLO rules and regulations has the potential to expand access to legal services, we urge the Court not to consider NLO[1] reforms in isolation. Experience from jurisdictions that have adopted NLO reforms demonstrates that such reforms, standing alone, have had limited effect on affordability and access to justice. At the same time, existing NLO reform efforts have not shown an increase in consumer harm. Thus, much of the debate around NLO reform tends to miss the mark by overstating either the positive or negative impact of such reform. Based on the evidence currently available, the reality of NLO reform remains one of as-yet unrealized potential.

We share the Court's concern that "the current supply of legal services in the United States is insufficient to meet the needs of many Americans." (Order, 2.) For that reason, we encourage the Court to treat NLO reform as one tool among several measures under consideration—tools that may work in tandem to address the legal-services affordability crisis more effectively than any single reform on its own.

Before turning to lessons from other jurisdictions, we believe it is essential to frame our perspective on the "affordability crisis" identified in the Court's Order. We use this term deliberately because it most completely captures the underlying problem the Court seeks to address. Concepts such as Access-to-Justice and Legal/Attorney Deserts are helpful descriptors of certain manifestations of this crisis, but they ultimately reflect a common reality: quality legal services are too expensive for most Tennesseans. Across all three Grand Divisions, access largely tracks economic means—those with resources obtain high-quality legal services, and those without resources often cannot. While this disparity is felt most acutely in certain communities, the barrier itself is fundamentally economic. The Court, too, recognizes this and notes the challenge is economic at its core—an issue of supply and demand.

Accordingly, our comment focuses on the issue of non-lawyer ownership and its role within the broader set of reforms through this lens: Can NLO reform meaningfully contribute to addressing the affordability crisis by increasing the supply of underserved, affordable legal services?

Much of the appeal of NLO reform stems from the way it reshapes the relationship between lawyers and capital. Under long-standing Rule 5.4 of the ABA Model Rules of Professional Conduct, firms have been largely excluded from the investment opportunities available to most other sectors of the economy.[2] The possibility of opening law firm ownership to non-lawyers has therefore generated interest among a wide range of market participants, primarily because of the

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[1] We adopt the Court's language of non-lawyer ownership ("NLO") to describe generally these reform efforts, while also recognizing that other jurisdictions adopt different language, such as Arizona's alternative business structures. However, we believe these different characterizations are essentially the same way of addressing this method of supplying legal services.

[2] See Engstrom, David F. *et al.* Stanford Law School. Legal Innovation After Reform: Five Years of Data on Regulatory Change. (June 2, 2025). (Model Rule 5.4 "prevents lawyers from partnering with nonlawyers for financial investments that could drive innovation in legal services, including through the development of technology. As a result, lawyers still practice in entities that are organized, provide services, and charge for those services in nearly the same way they did a century ago. Law has been walled off from the technological, financial, and service innovations that have transformed almost every other part of the modern economy.").

potential for new sources of funding and operational capacity to expand the variety of resources provided. This is a central justification for NLO reform efforts across the country.

Yet the core question remains: Would increased access to capital meaningfully change affordability for Tennesseans by increasing the supply of underserved legal services? Fortunately, several early models from other jurisdictions provide data points that help evaluate this question. These examples illustrate a spectrum of approaches to NLO reform and allow us to assess outcomes in practice.

Results suggest that we should approach these models with measured skepticism. The evidence to date does not suggest that NLO reform alone solves the affordability crisis. Rather, the effect on supply has been limited largely to those areas already served under the current rules. Thus, we view NLO reform as a potential accelerator—a mechanism capable of amplifying supply, but only in conjunction with other targeted reforms. NLO reform may provide needed energy, but it still requires direction from complementary regulatory measures if it is to advance the Court's goal of expanding access to affordable, high-quality legal services. We therefore recommend the Court consider NLO reform in this cautiously optimistic light: not as a standalone cure, but as a tool that may support and strengthen broader, coordinated efforts to expand the supply of legal services in Tennessee.

II. ARGUMENTS FOR AND AGAINST NLO REFORM

Rule 5.4 of the ABA Model Rules of Professional Conduct was adopted to preserve the professional independence of lawyers. Its origins trace to early twentieth-century efforts by bar associations to prevent commercial enterprises from influencing legal judgment.[3] The central concern was that corporate ownership, profit-sharing with nonlawyers, or business partnerships could pressure attorneys to subordinate their ethical duties to clients in favor of profit motives or institutional interests.[4] Over the past several years, a number of scholars—some drawing on historical research into the origins of these prohibitions, particularly the organized bar's early-twentieth-century campaign against legal services provided by automobile clubs—have argued that bans on nonlawyer ownership and fee-sharing owe far more to lawyer protectionism than to any principled concern for consumer protection.[5]

The traditional justifications of Rule 5.4 revolve around protecting the integrity of legal services through (1) preserving the independent professional judgement of lawyers, (2) avoiding conflicts of interest, (3) protecting client confidentiality, and (4) maintaining public trust in the legal

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[3] Jayne R. Reardon, Alternative Business Structures: Good for the Public, Good for the Lawyers, 7 ST. MARY'S J. ON LEGAL MALPRACTICE & ETHICS 304, 310–12 (2017)

[4] Jayne R. Reardon, *Nonlawyer Ownership Is Not the End of Professionalism*, **Law Practice Magazine** (July–Aug. 2024), https://www.americanbar.org/groups/law_practice/resources/law-practice-magazine/2024/july-august-2024/nonlawyer-ownership-is-not-the-end-of-professionalism/.

[5] Nora Freeman Engstrom and James Stone, Auto Clubs and the Lost Origins of the Access-to-Justice Crisis, 134 YALE L.J. 123 (2024), https://yalelawjournal.org/pdf/134.1EngstromStone_x2iryo6v.pdf.

system.[6] By restricting nonlawyer ownership and fee-sharing, the rule seeks to ensure that legal advice is guided solely by the client's interests, free from external financial pressures or investor expectations.[7] It also reduces the risk that sensitive client information may be accessed or influenced by individuals who are not bound by the same professional obligations and deters corporations from gaining a competitive market advantage by having access to otherwise unavailable information about market conditions. Additionally, the rule helps prevent excessive market concentration by large commercial actors and limits the risk that outside entities might use legal services to advance personal regulatory, ideological, or competitive interests.[8]

Proponents of NLO reform contend that strict adherence to Rule 5.4 contributes to the access-to-justice crisis.[9] They argue that prohibiting nonlawyer ownership restricts capital formation, limits innovation, and insulates the legal market from competitive pressures that might otherwise reduce costs and expand service delivery. Traditional law firm financing models—often reliant on partner capital contributions or debt—may constrain scalability and technological investment. Allowing equity participation could promote financial stability, encourage modernization, and foster alternative service models better suited to serving middle- and lower-income consumers.[10]

Critics of the current framework further contend that Rule 5.4 operates less as a consumer-protection measure and more as a protectionist barrier that limits competition.[11] They argue that increased access to capital could improve outreach, consumer education, and service delivery, particularly for individuals who may not recognize that their problems have legal dimensions or who are deterred by the perceived cost and complexity of engaging counsel. Some also observe that concerns about divided loyalties presently exist within the bounds of Rule 5.4[12] or are

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[6] Robert Saavedra Teuton, *One Small Step and a Giant Leap: Comparing Washington, D.C.'s Rule 5.4 with Arizona's Rule 5.4 Abolition*, 65 ARIZ. L. REV. 223 (2023), available at https://arizonalawreview.org/pdf/65-1/65arizlrev223.pdf.

[7] Zachariah DeMeola & Michael Houlberg, *Model Rule 5.4: How It Protects Little, Harms a Lot, and Why Its Removal Can Greatly Benefit Lawyers*, **GP Solo**, July–Aug. 2021, available at https://www.americanbar.org/content/dam/aba/publications/gp_solo_magazine/2021-july-august/model-rule-5-4-how-it-protects-little-harms-lot-why-its-removal-can-greatly-benefit-lawyers.pdf.

[8] Lili Levi, The Weaponized Lawsuit Against the Media: Litigation Funding as a New Threat to Journalism, 66 AM. U. L. REV. 761 (2017)

[9] See, e.g., Ralph Baxter. Dereliction of Duty: State-Bar Inaction in Response to America's Access-to-Justice Crisis. YALE L.J.F. (October 19, 2022).

[10] *The Case for Rule 5.4 Reform*, Friedman Vartolo LLP (2026), https://friedmanvartolo.com/the-case-for-rule-5-4-reform-non-attorney-ownership-of-law-firms-and-employee-stock-options/.

[11] Thomas D. Morgan, The Evolving Concept of Professional Responsibility, 90 HARV. L. REV. 702, 704 (1977).

[12] Lucian T. Pera, *Time to Lift the Ban on Nonlawyer Ownership?*, **Law Practice Magazine** (Am. Bar Ass'n), Jan.–Feb. 2025.

elsewhere addressed through conflict-of-interest rules such as Rules 1.7 and 1.9, which prohibit representation adverse to current and former clients.[13]

For many years, these concerns and anticipated benefits remained largely theoretical. That changed with the recent wave of NLO reform, including the elimination of Rule 5.4 in Arizona and the implementation of a regulatory sandbox in Utah, causing the debate to shift from prediction to observation. Although these jurisdictions are only in the first decade of their respective NLO reforms, emerging data now provides insight into how nonlawyer-owned entities are operating and what impact they may be having on consumers and the legal market.

III. COMPARATIVE NLO REFORM MODELS

Tennessee now benefits from the experience of other jurisdictions that have already implemented variations of NLO reform—an advantage made possible by our federal tradition of allowing states to serve as laboratories of regulatory innovation. Arizona and Utah, in particular, offer instructive but distinct models. Arizona adopted a broad licensing regime that permits non-lawyer ownership and has attracted a significant number of diverse entities, though not necessarily in areas of law where unmet need is greatest. Utah, by contrast, implemented a tightly controlled regulatory "sandbox," limiting participation to entities designed to address identified gaps in legal services; this approach resulted in far more modest enrollment and growth.

These two jurisdictions illustrate two possible approaches to NLO reform but do not exhaust it. The District of Columbia's long-standing limited exception to Rule 5.4 and the recent revision of the ethical rules in Puerto Rico further demonstrate that NLO reform is not a binary choice but a spectrum of regulatory possibilities. As the Court evaluates how Tennessee should proceed, we suggest that NLO reform be viewed in this broader context: not as an all-or-nothing proposition, but as a set of calibrated options that can be tailored to Tennessee's specific goals for expanding access to affordable, high-quality legal services. Accordingly, we provide below a detailed overview of how NLO reforms have operated across jurisdictions that have adopted them to highlight the lessons they may offer Tennessee.

A. Arizona – The Licensing Model

Recognizing that the high cost of legal services poses a significant barrier to mid- and lower-income individuals seeking legal assistance, the Arizona Supreme Court in 2018 established the Task Force on the Delivery of Legal Services.

Among other responsibilities, the Task Force was directed to consider whether the Court's rules should be modified to allow co-ownership of legal service entities by lawyers and nonlawyers. The Task Force ultimately concluded that no compelling justification existed for maintaining Rule 5.4's restrictions on nonlawyer ownership, reasoning that the rule's traditional objectives—protecting independent professional judgment and safeguarding the public—were already

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[13] Model Rules of Pro. Conduct R. 1.7 (Am. Bar Ass'n 2024); Model Rules of Pro. Conduct R. 1.9 (Am. Bar Ass'n 2024).

addressed through other ethical rules that could be strengthened and enforced.[14] In response to these recommendations, the Arizona Supreme Court eliminated Rule 5.4 in its entirety and established a new regulatory framework for Alternative Business Structures ("ABS") within the Arizona Code of Judicial Administration.[15] Arizona adopted a permanent licensing regime under which qualified ABSs may apply for authorization to provide legal services.

Structure and Oversight

Administration of the ABS licensing program is conducted by the Arizona Administrative Office of the Courts ("AOC"), a state-funded entity responsible for implementing and enforcing the regulatory framework adopted by the Arizona Supreme Court. The AOC oversees the licensing process, monitors ABS entities for compliance with applicable regulations, and provides administrative support for the regulatory bodies responsible for evaluating applications and supervising licensed entities.

Applications for ABS licensure are reviewed by the Committee on Alternative Business Structures, which evaluates whether proposed entities satisfy the regulatory requirements established by the Court. The Committee reviews ownership structures, governance arrangements, and operational plans to determine whether the entity can operate in a manner consistent with the Court's regulatory objectives and with adequate safeguards for consumers. These pertinent regulatory objectives are: "*(A) protecting and promoting the public interest; (B) promoting access to legal services; (C) advancing the administration of justice and the rule of law; (D) encouraging an independent, strong, diverse, and effective legal profession; and (E) promoting and maintaining adherence to professional principles.*"[16] After review, the Committee makes recommendations to the Arizona Supreme Court, which retains final authority to approve or deny ABS licenses. If an ABS license is granted, it is valid for one year, after which time the ABS must seek a renewal.

Eligible Entities

The ABS framework allows a wide range of business entities to seek licensure, provided they include appropriate governance safeguards and comply with applicable ethical and regulatory standards. Entities may include both lawyers and nonlawyers as owners, managers, or investors, provided the entity satisfies the licensing requirements established by the Court.

Applicants must submit detailed information regarding ownership interests, governance structures, financial arrangements, and the scope of legal services to be provided. "Authorized Persons" or owners that hold ten percent (10%) or more equity in the ABS are required to undergo background

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[14] Supreme Court of the State of Arizona, *Task Force on the Delivery of Legal Services Report and Recommendations*, October 4, 2019, https://www.azcourts.gov/Portals/0/0/aoc/pdf/LSTFReportRecommendationsRED10042019.pdf.

[15] ABSs are defined as "business entities that include nonlawyers who have an economic interest or decision-making authority in a firm and provide legal services in accord with Supreme Court Rules 31 and 31.1(c)." Ariz. Code of Jud. Admin. § 7-209(A) (2022).

[16] Ariz. Code of Jud. Admin. § 7-209(E)(2)(a).

checks and investigation akin to a Character and Fitness application process. In addition, applicants must designate a "Compliance Lawyer" responsible for ensuring that the entity adheres to the Rules of Professional Conduct and other regulatory obligations.

Once licensed, an ABS must operate under the name that appears on the license unless granted special authority to operate under an assumed name. All licensed ABS are publicly available; however, unlike Utah, there are no requirements to specify to the public that legal services are being provided by an ABS.

Ongoing Monitoring

Once licensed, ABS entities remain subject to continuing oversight by the AOC and the Committee on Alternative Business Structures. Licensed entities must comply with reporting obligations and regulatory requirements designed to ensure adherence to the Rules of Professional Conduct and the Court's regulatory objectives. Further, all members of the ABS are bound by the ABS Code of Conduct. This means that lawyers who are members of the ABS are bound by two sets of ethical duties: the ABS Code of Conduct and the Arizona ethics rules for lawyers. However, in the event of a conflict, the ABS Code of Conduct prevails in all instances except ethics rules that govern conflicts of interest.

ABS entities are required to maintain internal compliance systems and procedures designed to safeguard professional independence, protect client confidentiality, and ensure that legal services are delivered in accordance with applicable ethical standards. The designated Compliance Lawyer plays a key role in monitoring adherence to these obligations and reporting potential issues to the regulatory authorities. The Arizona Supreme Court retains the authority to impose disciplinary measures, including license suspension or revocation, if an ABS entity fails to comply with regulatory requirements or engages in conduct that threatens consumer protection or the administration of justice.

Transparency and Reporting

The ABS program incorporates several transparency and accountability mechanisms designed to ensure public confidence in the regulatory system. The Arizona judiciary maintains publicly available information regarding licensed ABS entities, including ownership structures and key organizational information.

In addition, ABS entities are subject to reporting obligations designed to enable ongoing regulatory monitoring. These requirements allow the Court and regulatory authorities to evaluate how ABS entities operate in practice and whether they advance the program's stated objectives of improving access to legal services while maintaining professional safeguards.

Developments in the ABS Program

Since its implementation in 2021, Arizona's ABS licensing framework has authorized a growing number of entities to provide legal services under nontraditional ownership structures. In 2022, only 19 ABS entities were approved, which rose to 136 as of 2025. These entities include a range

of business models, from technology-driven legal service platforms to organizations integrating legal services with other professional offerings. Because the ABS program represents a structural reform rather than a temporary pilot initiative, the Arizona Supreme Court continues to monitor the program's development through regulatory oversight and periodic evaluation.

B. Utah – The "Sandbox" Model

The Utah Supreme Court acknowledged that lawyers "will never volunteer [themselves] across the access-to-justice divide" and that meaningful reform requires "market-based, far-reaching reform focused on opening the legal market to new providers, business models, and service options."[17]

In response, Utah created a pilot legal regulatory sandbox (the "Sandbox")—a temporary, innovation-focused regulatory framework that permits approved individuals and entities to provide nontraditional legal services that would otherwise be prohibited under the Rules of Professional Conduct.[18] The Sandbox is scheduled to sunset in August 2027, at which time the Utah Supreme Court will evaluate the program's effectiveness and determine whether it should be continued, modified, or discontinued.

Structure and Oversight

To administer the Sandbox, the Utah Supreme Court established the Office of Legal Services Innovation (the "Innovation Office") and the Legal Services Innovation Committee (the "Innovation Committee").

The Innovation Office is responsible for day-to-day administration and regulation of Sandbox participants. Its duties include developing processes and procedures for participation in the Sandbox, establishing monitoring and enforcement mechanisms, collecting and analyzing data, and ensuring compliance with consumer-protection standards.[19] Members of the Innovation Committee serve as officers of the Court and provide oversight and guidance to the Innovation Office. The committee's responsibilities include assisting with budgetary matters, reviewing applications and evaluation metrics, and preparing reports. When the Sandbox program was first created, the Utah Supreme Court retained the ultimate authority over the Innovation Office and the Innovation Committee. However, due to administrative burden on the Court, it eventually shifted a significant portion of its responsibility to the Utah State Bar.

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[17] Utah Supreme Court Standing Ord. No. 15 (Aug. 14, 2020, Amended Sept. 21, 2022), https://legacy.utcourts.gov/utc/rules-approved/wpcontent/uploads/sites/4/2020/08/FINAL-Utah-Supreme-Court-Standing-Order-No.-15.pdf.

[18] Utah Sup. Ct. R. Prof'l Prac. 4-802(b)(14)(d).

[19] *See, e.g.*, OFFICE OF LEGAL SERVICES INNOVATION, INNOVATION OFFICE MANUAL (2024), https://utahinnovationoffice.org/wpcontent/uploads/2024/02/Innovation-Office-Manual.pdf.

Eligible Entities

The Sandbox is expressly grounded in three core regulatory principles: (1) minimizing and measuring consumer harm,[20] (2) reliance on empirical data, and (3) a market-based approach to expanding legal services. The Sandbox establishes three categories of eligible nontraditional legal service providers:

1. Business entities in which nonlawyers hold an economic interest (including profit-sharing) or decision-making authority and that engage in the practice of law;
2. For-profit or nonprofit entities utilizing nonlawyer alternative legal service providers, or technology platforms, tools, or applications, to deliver legal services constituting the practice of law; and
3. Entities seeking a discrete waiver of specific Rules of Professional Conduct in order to facilitate innovative legal service delivery.

Applicants falling within one of these categories may submit application materials to the Innovation Office for initial review. If the Innovation Office determines that the applicant advances the regulatory objectives and does not pose an unacceptable risk of consumer harm, it recommends the applicant to the Innovation Committee. If the Innovation Committee concurs, a recommendation is made to the Utah Supreme Court, which retains final authority to admit the applicant into the Sandbox.

Ongoing Monitoring and Exit

Once admitted, Sandbox participants are subject to continuous monitoring and reporting obligations. Participants must demonstrate that their operations do not result in material consumer harm and must comply with regulatory conditions imposed by the Innovation Office and Innovation Committee, including data reporting requirements and operational safeguards tailored to the entity's risk profile.

If a participant demonstrates sustained compliance and absence of consumer harm, the Utah Supreme Court may permit the entity to "exit" the Sandbox and receive a license to operate outside the pilot framework. However, even after exiting the Sandbox, entities remain subject to ongoing oversight and reporting obligations.

Transparency and Reporting

The Sandbox incorporates robust transparency and oversight measures to ensure it advances its access-to-justice objectives while protecting consumers. These mechanisms include a formal process through which consumers may submit complaints on Sandbox participants, public disclosure of applicant identities and key information submitted during the application process,

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[20] Consumer harm is defined as a consumer failing to exercise legal rights through ignorance or bad advice, a consumer achieving an inaccurate or inappropriate legal result, or a consumer purchasing an unnecessary or inappropriate legal service.

and ongoing reporting obligations by approved entities. In addition, the Innovation Office must provide monthly reports to the Utah Supreme Court detailing the following:

1. The total number of regulated entities, including those inside and outside the Sandbox;
2. The number of Sandbox applicants;
3. General information regarding applicants (e.g., entity type, ownership structure, target market, subject matter focus, and legal needs addressed);
4. The number of applicants recommended for entry, denied entry, placed on hold, recommended for exit, and not recommended for exit;
5. Available demographic and service data regarding consumers served;
6. Identification of risk trends and regulatory responses; and
7. Consumer complaint data, both cumulative and monthly, for Sandbox and non-Sandbox participants.

Developments in the Sandbox

Based on the data collected during the first few years,[21] the Utah Supreme Court amended certain aspects of the Sandbox in a March 2023 letter.[22] Some of the changes included transferring certain authority to the Utah State Bar, requiring Sandbox entities to send clients an exit survey, providing for certain start-up funds, and implementing a fee policy such that the Sandbox would be "fully self-funded by charging fees to applicants and participants." Additionally, although initial data collection proved promising, the Court decided to narrow the scope of the Sandbox though an "innovation requirement" that may be met in "several ways, including but not limited to, reducing the cost of legal services, making legal services more accessible, or developing a new business or service model." The Court specifically noted that "non-attorney investment or ownership arrangements which do nothing more than supply capital for advertising and/or marketing of existing legal services will not meet the innovation requirement." Additionally, although the Sandbox relies primarily on an ex post regulation model, to combat potential consumer harm, the Court implemented additional pre-launch requirements on moderate- and high-risk entities, which are categorized based on the amount of lawyer involvement in the entity. Further, out of concern over the lack of ethics rules applying to non-lawyer owners, the Court implemented the following fiduciary duties on all financing and controlling persons:

1. Must act in good faith to further a client's best interests.
2. Must not allow economic or other conflicts of interest to adversely affect the legal services rendered to a client.
3. Must ensure that legal services are delivered with reasonable diligence and promptness.
4. Must not reveal confidential information pertaining to the representation of a client without the client's consent or as allowed or required by law.

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[21] Institute for the Advancement of the American Legal System, *An Interim Evaluation of Utah's Legal Regulatory Sandbox Outcomes Evaluation*, https://iaals.du.edu/sites/default/files/documents/publications/utah_interim_outcomes_evaluation.pdf.

[22] Letter from the Supreme Court of Utah to the Utah State Bar (March 28, 2023), https://utahinnovationoffice.org/wp-content/uploads/2024/01/3.-Letter-to-UtahState-Bar-3.28.23.pdf

5. Must not engage in or allow any activity that misleads or attempts to mislead a client, a court, or others.
6. Must not take any action or engage in activity that interferes with the professional independence of lawyers or others authorized to provide legal services.
7. Must develop systems and processes within the entity applicant to ensure that each of the above duties are met and satisfied.

Building off the changes in 2023 and feedback provided by the Innovation Committee, the Court implemented additional changes to the Sandbox in a September 2024 letter.[23] Among these changes were denying applications from for-profit entities solely or primarily offering immigration-related services, heightening the innovation requirement to specifically require Sandbox entities to reach Utah consumers currently underserved by the legal market, requiring entities to display language on their website and in physical locations to solicit complaints or feedback, and revoking participation of those entities that were grandfathered in before the innovation requirement went into effect in 2023.

C. Washington, D.C. - The Professional Services Model

The District of Columbia's early 1990s reform of its Rules provides a third model of NLO reform, although one that was never considered as an answer to the affordability problems identified by the Court. Nevertheless, the D.C. model provides a helpful baseline by which any potential reform might be measured. The D.C. reform is simple: non-lawyers may share in the management, ownership, and/or fees of a law firm, as long as the firm's sole purpose is the provision of legal services.

In 1991, the D.C. Bar changed Rule 5.4 to permit non-lawyers to share in the ownership of a law firm. These changes came out of the goal to recognize the role of non-lawyers in delivering legal services "without being relegated to the role of an employee."[24] The new Rule had four basic requirements: (1) that the firm's *sole purpose* is the provision of legal services, (2) anyone who takes a management and/or financial interest in a law firm must abide by the same ethical rules, (3) the lawyers with a management and/or financial interest in the law firm must undertake to be responsible for their non-lawyer partners as if they were lawyers under Rule 5.1, and (4) these conditions are set forth in writing.[25] Additionally, the amended D.C. Rule "does not permit an individual or entity to acquire all or any part of the ownership" of a law practice "for investment or other purposes," which prohibits the types of capital investment contemplated by the other reform efforts.[26]

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[23] Letter from the Supreme Court of the State of Utah to the Legal Services Innovation Committee (Sept. 5, 2024), https://utahinnovationoffice.org/wpcontent/uploads/2024/10/Letter-to-the-Legal-Services-Innovation-Committee-9.5.24.pdf

[24] D.C. Rules of Prof. Conduct R.5.4 cmt. 7.

[25] *Id.* R.5.4(b)(1)-(4).

[26] *Id.* cmt. 8.

Based on the lack of available data, it appears that the impact of this reform on legal services has been limited. Perhaps the limited impact is due to restraints on raising capital or how the ABA initially reacted to the reform. In particular, ABA Formal Opinion 91-360, published in the same year, essentially said that a lawyer licensed in D.C. and another jurisdiction could only handle matters inside D.C. if practicing with a NLO firm.[27] Thus, as D.C.'s reform remained unique for decades, the firms that would take advantage of it were limited to the District alone.[28]

Still, the D.C. model of NLO reform does what it set out to do: allow firms to recognize the contribution of non-lawyers to the successful operation of a law firm. Indeed, we may benefit across the profession from better recognizing the roles that our non-lawyer colleagues play in the provision of legal services. Tennessee's approach to NLO reform may also consider this related goal, alongside other considerations about the roles that non-lawyers contribute to the provision of legal services, such as the competent provision of legal services by paraprofessionals.

The D.C. model is not—nor did it ever attempt to be—an affordability reform. The NLO reform in D.C. had the goal of permitting experts, lobbyists, and other contributing individuals to share in the ownership of a law firm. Similar reform in Tennessee would be unlikely to move the needle on the number of rural law firms or the number of firms providing essential legal services to individuals and small businesses that are undersupplied by the current legal market. The reforms need to be intentionally designed to support those goals. We are confident that the Court will identify and support the necessary reforms to address the affordability crisis.

Thus, we inform the Court about the D.C. model, not as a goal but as an additional, time-tested data point—one that exemplifies the possibility of targeted reform. As with any of the above models, NLO reform under the D.C. model does not address the affordability problem. Yet, this model provides a long-standing testament to the reality that we can change the ethical rules of our practice without undermining the purpose of the rules. Further, this model shows us that innovation can be precise and targeted to its purpose.

D. Puerto Rico – The Newest, Open Model

Puerto Rico recently enacted new ethical rules that permit for NLO. This model is the most open that we have seen, as the primary conditions are simply that non-lawyers cannot own more than 49% of law firm shares, clients must be notified of the non-lawyer interest, and annual sworn statements must be submitted to the Supreme Court of Puerto Rico detailing firm ownership, including the investments and income from the non-lawyer owner.[29] The new rules took effect at the start of this year.

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[27] ABA Formal Opinion 91-360. Prohibition of Partnerships with Nonlawyers: Extrajurisdictional Effect.

[28] Robert Saavedra Teuton, One Small Step and a Giant Leap: Comparing Washington, D.C.'s Rule 5.4 with Arizona's Rule 5.4 Abolition, 65 ARIZ. L. REV. 223, 251-52 (2023).

[29] Emily R. Siegel. **Bloomberg Law**, Tax-Friendly Puerto Rico Approves Non-Lawyer Owners of Law Firms. (June 24, 2025, 4:28 AM CDT).

Interestingly, the Supreme Court of Puerto Rico appointed a rules committee to develop the new ethical rules, but that committee had not recommended this version of Rule 5.4 before the Court adopted it.[30] Instead, the Court appeared to have adopted it on its own and without initial explanation.

Although there is limited information on the implementation of these new rules, it is worth mentioning as an additional data point.

IV. OUTCOMES AND LESSONS LEARNED

A. The Stanford Reports

In 2022, the Deborah L. Rhode Center on the Legal Profession at Stanford Law School published the first empirical analysis of entities participating in the Arizona and Utah NLO reform programs, and more recently published a follow-up report in 2025—*Legal Innovation After Reform: Five Years of Data on Regulatory Change*[31]—both offering qualitative and quantitative insights that assess how these reforms have operated in practice. Although this comment seeks to evaluate NLO reform on its own terms, the reality is that the available data cannot be cleanly separated from other regulatory changes enacted alongside NLO in the jurisdictions that adopted it. As described in the reports, Arizona's approach is characterized as an "ABS-only" model—permitting outside ownership but limiting the delivery of legal services within those entities to licensed lawyers—while simultaneously but separately implementing significant unauthorized-practice-of-law ("UPL") reforms that expand the scope of work permitted for paraprofessionals and other nonlawyer providers in traditional, non-ABS entities. This stands in contrast to Utah's "ABS+UPL" model, which integrates ownership reform with a more expansive redefinition of who may deliver legal services within the regulated entities.

The reports provide comprehensive empirical data on the number and types of entities that emerged under Arizona's and Utah's respective NLO reforms, revealing a marked divergence in growth and organizational composition. From inception to 2025, Arizona's ABS-only program expanded rapidly, increasing from 19 to 136 authorized entities, whereas Utah's regulatory sandbox contracted from 39 to 11 entities, in part due to later regulatory tightening. Across both states, participating entities spanned a range of organizational forms—(i) traditional law firms adjusting their ownership or service models, (ii) corporate-owned "law companies," (iii) non-law companies adding legal services to existing offerings, and (iv) intermediary platforms connecting consumers with legal providers. Utah's model, however, uniquely supported mixed teams of lawyers, nonlawyers, and software, reflecting its broader relaxation of UPL rules, a form of innovation absent in Arizona's ABS-only structure. Organizational composition also differed significantly: in Arizona, traditional law firms comprise 64% of ABS participants, compared with 27% in Utah, while new entrants constitute only 15% and 9%, respectively. Law companies appear in similar proportions—27% in Utah and 18% in Arizona—but intermediary platforms represent 36% of

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[30] Bob Ambrogi. LawSites. Puerto Rico Allows Non-Lawyer Ownership of Law Firms. (June 19, 2025).

[31] Stanford Law School Deborah L. Rhode Center on the Legal Profession, *Legal Innovation After Reform: Five Years of Data on Regulatory Changes*, D. F. Engstrom *et al.* (June 2025, Revised November 2025).

Utah's sandbox and only 2% in Arizona, illustrating Utah's emphasis on consumer-connection models.

The reports also provide detailed data on the intended service populations of authorized entities, showing that both Arizona's ABS program and Utah's sandbox overwhelmingly target individual consumers. Of the 136 approved ABS entities in Arizona, 116 reported plans to serve individual consumers, as did 10 of the 11 entities remaining in Utah's sandbox—constituting the clear majority in both jurisdictions. A smaller but significant subset of entities in Arizona (32 ABSs, or 24%) and Utah (3 entities, or 27%) reported an intent to serve small- and mid-sized businesses. Far fewer entities expressed an intention to serve lawyers or law firms (13 in Arizona and none in Utah). Finally, 27 ABS entities in Arizona reported plans to serve corporate consumers, compared with just one such entity in Utah.

Although these patterns confirm that both jurisdictions have primarily generated consumer-facing service models, they also reveal meaningful differences in the market sectors each program has attracted. Utah's sandbox encompasses a broader and more evenly distributed set of case types than Arizona's program. Arizona's rapidly expanding ABS market shows emerging concentrations in three primary areas—personal injury, business matters, and end-of-life planning—such that these areas were the focal point of 120 of 136 of the ABS entities in 2025. Utah's sandbox, by contrast, also features entities that serve personal injury, business, and end-of-life planning matters but does not exhibit a dominant cluster in any of these categories. Instead, Utah shows comparable participation across a wider array of sectors, including healthcare, public benefits, landlord-tenant issues, consumer finance, marriage and family-related services, and others. This broader distribution reflects Utah's explicit access-to-justice orientation and regulatory controls, which channel participation toward diverse unmet legal needs rather than the more market-driven concentrations observed in Arizona.

Specifically with respect to underserved communities, although the available application materials do not permit a precise assessment of consumer income levels, the report reaffirms that Utah's sandbox is the only jurisdiction in which entities expressly sought authorization to serve primarily low-income individuals. Four of Utah's remaining sandbox participants—all nonprofits—detailed plans to provide free legal services, a pricing scheme absent from Arizona's ABS, to vulnerable populations, including survivors of domestic violence, individuals facing medical debt, and community members requiring assistance with housing and debt-collection matters. A fifth new entrant, the Utah State University Transforming Communities Institute, proposes to train social workers and other service professionals to deliver free legal assistance in debt-collection cases. Each of these entities relies on Utah's UPL waiver, underscoring the role that UPL flexibility can play in enabling service models for low-income communities. At the same time, the report cautions against drawing firm conclusions: these nonprofits represent a small segment of Utah's overall participants; Arizona is simultaneously pursuing separate UPL reforms outside its ABS program, offering alternative pathways for serving vulnerable groups.

Finally, and importantly, the report finds that consumer harm remains minimal across both jurisdictions. Despite concerns expressed prior to reform, the researchers report no evidence of systemic harm related to nonlawyer ownership or expanded UPL allowances. Arizona and Utah have not seen a degradation in the quality of legal services provided by authorized entities, and

Utah's sandbox appears to have effective oversight mechanisms that mitigate risk. These findings are consistent with the earlier two-year evidence in the initial report and broader international experience, suggesting that—in the contexts studied—NLO and UPL reforms have not resulted in increased consumer harm.

With respect to whether these reforms are meeting their goals, the report concludes that both programs have successfully spurred innovation in legal services delivery. The authors find that both NLO reform and UPL reform have produced diverse organizational models and a range of pricing structures. Importantly, the data show that lawyers continue to play central roles within authorized entities, alleviating concerns that nonlawyer investors or corporate participation would displace lawyers or diminish the value of their professional and ethical expertise. However, Utah's evidence suggests that UPL flexibility—rather than NLO reform alone—correlates more strongly with innovations that reach underserved populations, particularly those benefiting from community-connected nonlawyer providers.

B. Lessons Learned

Although data from other jurisdictions provides helpful reference points as the Court considers potential reform in Tennessee, the experience to date makes clear that there is no single, settled model for reform. Indeed, the continued evolution of programs in jurisdictions that have already implemented reform suggests that none has yet identified a definitive solution. What this indicates, however, is not failure but the importance of flexibility: the Court should anticipate and allow for evolution as part of any reform framework.

Recent developments in Arizona underscore this point. While Arizona's regulatory approach has differed from Utah's—most notably by applying less stringent criteria for approving ABS licenses—the Arizona Supreme Court nonetheless denied an ABS application in December on the ground that it would not benefit Arizona residents, observing instead that its "intended focus [was] securing investment capital to support the delivery of legal services."[32] This decision raises an important question as to whether increased access to capital, standing alone, meaningfully addresses the affordability challenges facing legal services consumers.

Growing concern among some states regarding cross-jurisdictional practice raises an additional caution.[33] Many of the entities most likely to participate in these reform programs—particularly those deploying technology-enabled or scalable service models—routinely serve clients whose legal needs span multiple jurisdictions. While Tennessee residents are the intended beneficiaries of reform, confining licensed entities to in-state practice could significantly deter participation by market actors for whom cross-jurisdictional work is central to their business model. Moreover, although Arizona's licensing regime has not yet been challenged, scholars have raised concerns that it may implicate separation-of-powers principles by effectively enabling the judiciary to authorize new corporate structures through its regulatory authority—an issue the Court may wish

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[32] Sup. Ct. of Ariz., Admin. Order No. 2025-241 (2025), https://www.azcourts.gov/Portals/0/22/admorder/Orders25/2025-241.pdf.

[33] For example, California has enacted legislation restricting fee-sharing with out-of-state nonlawyer-owned entities, imposing limits on cross-jurisdictional arrangements while continuing to permit multi-state practice under defined exceptions. Cal. A.B. 931, 2025–2026 Reg. Sess. (enacted 2025).

to consider as it evaluates potential reforms in Tennessee.[34] These lessons reinforce that this reform will not be a one-time act, but an iterative regulatory effort that must be designed with adaptability and on-going oversight.

V. A PARTIAL SOLUTION

As the Court considers potential reforms to improve the supply of affordable legal services, changes to the rules governing NLO should be understood only as one piece of a broader regulatory framework.

The experience of other jurisdictions suggests that NLO alone is unlikely to materially affect the supply of affordable legal services, and it could expose Tennessee attorneys to increased difficulty in engaging in multi-jurisdictional practice. However, it may serve as a component of more comprehensive reform when paired with complementary measures that more directly address the structure of the legal services market in Tennessee. Specifically, we believe that NLO could serve as an effective means of injecting capital into areas of the legal services market that are currently underserved.

Below, we evaluate how NLO could interplay with the Court's considerations of alternative pathways to admission to the Tennessee Bar and its evaluation of whether certain legal services could be performed by trained paraprofessionals. The combination of NLO with other topics under the Court's consideration represent potentially synergistic reforms. We note, however, that the Court should defer to comments specific to alternate pathways to admission and the limited licensure of paraprofessionals when determining how these programs, if created, should function. Our intent in the following analysis is to demonstrate a few ways in which the added capital from NLO could support other reforms under consideration by the Court.

A. NLO and Alternate Pathways to Bar Admission[35]

One area where NLO could support meaningful reform involves graduates who narrowly miss the passing score on the Tennessee Bar Examination. Tennessee currently requires the highest passing score among Uniform Bar Examination ("UBE") jurisdictions, meaning that candidates who miss the threshold by only a few points may nevertheless be eligible to practice in some of the largest legal markets in the country, including New York City, Washington, D.C., and Chicago.[36] Alternative admission pathways could allow such candidates to demonstrate competency through supervised practice, while NLO-enabled organizations could provide the resources and institutional structure necessary to support those training environments.

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[34] Maya Steinitz, The Partnership Mystique: Law Firm Finance and Governance for the 21st Century American Law Firm, 63 WM. & MARY L. REV. 939, 991–2 (2022).

[35] We note that Arizona recently adopted a similar program called the Arizona Lawyer Apprentice Program, but there does not appear to be any overlap between this program and Arizona's ABS entities.

[36] New York, Washington, D.C., and Illinois all currently require a UBE score of 266 to pass, whereas Tennessee requires a 270.

One alternative pathway to licensure could allow candidates who score just below a passing score on the Tennessee bar exam to earn admission through supervised practice in a structured apprenticeship program, which could be delivered in a variety of settings: law firms in rural and urban communities, legal services organizations, and new market entrants that are specifically constituted to support structured apprenticeships. After completing a period of supervised practice and demonstrating proficiency, the candidate could be admitted to the Tennessee Bar. NLO reform could supplement these efforts through NLO-capitalized legal service providers serving as hosts for these apprenticeship programs, particularly in areas where traditional law firms might otherwise lack the resources to train new attorneys.[37]

At its crux, the affordability crisis identified by the Court is a supply problem, with many Tennessee communities lacking enough attorneys to meet demand. Alternative pathways to licensure could increase the supply of practitioners, while NLO could supply the infrastructure to effectively deploy them. Capital-backed ABS entities could support supervision structures, training programs, and technology to bridge the gap between the licensing reform and practical deployment of practitioners.

B. NLO and the Limited Licensure of Paraprofessionals

Another area where NLO could serve as an engine for the increased supply of legal services is in connection with the limited licensure of paraprofessionals to perform specified legal services.

A limited licensure framework for paraprofessionals would allow trained professionals to assist with routine legal matters under defined parameters. NLO could play a significant role in supporting this model by providing the organizational infrastructure and investment necessary to develop and scale these services across Tennessee. Much like the apprenticeship model described above, ABS entities could invest in training programs, compliance systems, and technology to support standardized delivery models that allow paraprofessionals to assist clients while maintaining consistent oversight from licensed attorneys.

Importantly, this structure could allow legal services to be delivered through staffing models like those used in other professional fields. Similarly to how doctors work alongside physician assistants and nurse practitioners, ABS entities could deploy teams consisting of licensed attorneys and paraprofessionals authorized to handle limited matters. Licensed attorneys would retain

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[37] This consideration has arisen in efforts to address medical provider shortages in rural and underserved communities. In the medical licensing context, policymakers have recognized that alternative pathways – such as rural residencies and Teaching Health Centers – depend on the availability of institutional hosts capable of funding supervision, maintaining compliance infrastructure, and sustaining training environments that small or resource-constrained providers cannot support on their own. See, e.g., Emily M. Hawes et al., *Rural Residency Training as a Strategy to Address Rural Health Disparities: Barriers to Expansion and Possible Solutions*, 13 **J. Grad. Med. Educ.** 461 (2021). That experience underscores that licensing flexibility alone is insufficient; workforce reforms succeed only when paired with organizations that have the capacity to train and deploy new practitioners.

responsibility for legal judgment and oversight, while paraprofessionals would handle high-volume, routine legal needs that currently go unmet due to cost barriers.

C. The Need for Administrative Oversight

While NLO may offer meaningful benefits when paired with other reform measures, it would require deliberate regulatory design and ongoing administrative oversight to function effectively. If the Court were to pursue NLO, either on its own or in connection with a complementary reform measure, the regulatory framework should ensure that the influx of capital supports the Court's stated goals in improving access to justice. Further, the Court should be prepared to devote adequate resources to the administration and oversight of a NLO program. We encourage the Court, if it chooses to pursue NLO, to create or designate an entity charged with deliberate consideration of the regulatory design, supervisory framework, and resource commitments necessary to ensure effective oversight and implementation.

VI. CONCLUSION

Evidence from other jurisdictions that have enacted NLO reform demonstrates that non-lawyer ownership is neither a panacea nor a peril. Standing alone, NLO reform has not meaningfully expanded the supply of affordable legal services or resolved the economic barriers that underlie the access-to-justice crisis. At the same time, the available data does not indicate that regulated NLO regimes increase consumer harm. We believe NLO reform offers unrealized potential: it may serve as a catalyst when paired with complementary reforms—such as alternative pathways to licensure and the limited authorization of paraprofessionals—that more directly address structural constraints on the legal services market.

Accordingly, we respectfully urge the Court to consider eliminating regulations prohibiting non-lawyer ownership of law firms or fee-sharing with nonlawyers if done directly in conjunction with other potential reforms under the Court's consideration to increase the supply of more affordable legal services. If the Court elects to pursue NLO reform, its success will depend on deliberate regulatory design and administrative oversight, as well as the creation of incentives to align capital formation with the Court's stated goal of expanding access to affordable, high-quality legal services for Tennesseans.

Respectfully submitted,

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MaryBeth Lindsey

To: appellatecourtclerk
Subject: RE: Comment on Docket No. ADM2025-01403 (Potential Regulatory Reform)

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Sent: Tuesday, April 21, 2026 6:31 PM
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Subject: Comment on Docket No. ADM2025-01403 (Potential Regulatory Reform)

Mr. Hivner,

Attached is a comment to be filed under Docket Number ADM2025-01403 (In re: Public Comments on Potential Regulatory Reform to Increase Access to Quality Legal Representation).

Regards,
David Esquivel

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MaryBeth Lindsey

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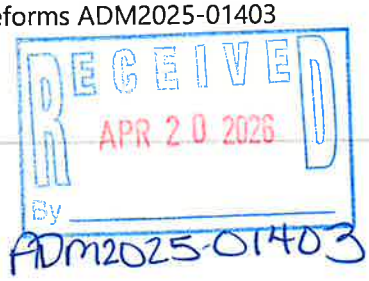
Subject: RE: In re: Public Comments on Potential Regulatory Reforms ADM2025-01403



From: Brian S. Faughnan <brian@faughnanonethics.com>
Sent: Monday, April 20, 2026 10:46 AM
To: appellatecourtclerk <appellatecourtclerk@tncourts.gov>
Subject: In re: Public Comments on Potential Regulatory Reforms ADM2025-01403

Mr. Hivner:

Attached please find a comment addressing Question 5 that Lucian Pera and I are jointly submitting for the Court today.

Thank you.

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FAUGHNAN LAW
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April 20, 2026

BY EMAIL

The Honorable Justices of the Tennessee Supreme Court
c/o Hon. James Hivner
Clerk, Tennessee Supreme Court
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1307

In Re: Public Comments on Potential Regulatory Reforms to Increase Access to Quality Legal Representation, No. ADM2025-01403

PROPOSAL TO INCREASE LAWYER MOBILITY BY AMENDING TENNESSEE RULE OF PROFESSIONAL CONDUCT 5.5

To the Honorable Justices of the Tennessee Supreme Court:

In response to the Court's Order dated September 16, 2025, soliciting public input on potential regulatory reforms to increase access to quality legal representation, we submit this proposal to revise Tennessee Rule of Professional Conduct 5.5 in order to increase lawyer mobility into Tennessee and increase the availability of legal services and lawyers to Tennesseans.

Specifically, we address Question 5 in the Court's Order:

> (5) Whether the Court should consider modifying requirements for admission to the Tennessee Bar for those licensed in other States to promote interstate practice and mobility;

The authors of this comment are part of a group of Tennessee lawyers that began studying and considering legal innovation efforts three years ago, before the Court issued its request for comments. The group consisted of academics and law firm, legal services, and bar association leaders from across Tennessee. Our group reviewed materials and held meetings with people who have led reform efforts in Utah, Arizona, North Carolina, and

elsewhere, as well as academics and public interest organizations that have studied and evaluated legal innovation models across the U.S. Although we were not formally constituted or affiliated, we shared a common interest in exploring opportunities to reform the structure of the legal market to remedy the unavailability of legal services for too many Tennesseans.

When the Court issued its request for comments, our group had a firm foundation to address several aspects of the Court's request. We began further research and drafting to respond to the Court's proposed areas for reform that aligned with our group's prior work. We submit this comment to assist the Court by drawing on the study and conclusions that have been the fruit of our group's work. We hope our work and this comment will help inform the Court's understanding, both now and as the Court proceeds with reform efforts.

We submit as **Exhibit A** to this comment a proposed revision to Rule 5.5. By its adoption in Tennessee, the Court would increase the availability of legal services and lawyers in Tennessee to provide quality legal services to Tennesseans. This proposal is based on two different proposals—one from the national organization of legal ethics lawyers, the Association of Professional Responsibility Lawyers (APRL)[1] and one from The Federalist Society's Regulatory Transparency Project[2]—and has been adapted to accomplish the purposes of both groups and fit within Tennessee's existing lawyer regulatory structure.

We strongly support such reform and urge the Court to adopt a revised version of Tennessee Supreme Court Rule 8, RPC 5.5 governing multijurisdictional practice, as outlined in the attached proposal. Our recommendation is grounded in the dual goals of increasing access to legal services for Tennesseans—particularly in underserved and rural areas—and expanding economic opportunity for attorneys.

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[1] Letter from APRL President Brian S. Faughnan to ABA President Reginald M. Turner, *Proposal for a Revised Model Rule 5.5* (April 18, 2022) (copy attached as **Exhibit E**), https://faughnanonethics.com/wp-content/uploads/2022/04/Letter-regarding-our-proposal-to-ABA-President.pdf.

[2] Shoshana Weissmann, Daniel Greenberg, Luke Wake, Braden Boucek, and Jonathan Riches, "The World Needs More Lawyers," The Federalist Society Regulatory Transparency Project (Sept. 28, 2023) (copy attached as **Exhibit F**), https://rtp.fedsoc.org/paper/the-world-needs-more-lawyers/.

The current rule, which ties the unauthorized practice of law to physical presence, is increasingly out of step with the realities of modern legal practice. Remote work, virtual court appearances, and multistate client needs have rendered geographic boundaries largely irrelevant.

With the Court's adoption of Rule 5.5 in nearly its present form more than a decade ago, Tennessee took a large step to move lawyer regulation of lawyer mobility closer to the needs of clients large and small.

More recently, with the effects of further economic changes, both in the needs of clients and the lives of lawyers, and the effects of the pandemic, greater flexibility was introduced by the informal adoption in Tennessee of the concept of "remote practice" consistent with ABA Formal Opinion 495, *Lawyers Working Remotely* (Dec. 16, 2020). Thanks to informal guidance from the Court's Board of Professional Responsibility endorsing this approach, today lawyers properly licensed and in good standing in other states can reside in Tennessee, without an office, without Tennessee clients, and work only on non-Tennessee matters for non-Tennessee clients, with little risk of UPL prosecution or discipline. But, of course, this informal accommodation while helpful to lawyers licensed in other jurisdictions serves not a single Tennessee client.

We submit that it is time for the Court to take the next step.

Our proposed revision would allow attorneys in good standing from other U.S. jurisdictions to practice in Tennessee, provided they:

- Disclose their licensure status;
- Comply with Tennessee's Rules of Professional Conduct;
- Submit to the jurisdiction of Tennessee's disciplinary authorities; and
- Disclose that they are not licensed in Tennessee.

All out-of-state lawyers practicing under this proposed rule would be subject to the disciplinary authority of this Court and its Board of Professional Responsibility, and Tennessee ethics rules would govern their conduct in Tennessee.[3] Both of these things have been true for years of all out-of-state

[3] Rule 8.5(a) has provided for years and today provides that "[a] lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction." Tenn. Sup. Ct. R.

lawyers practicing in Tennessee pursuant to the authority of current Tennessee Rule 5.5.

Because of the acknowledged difference between practice in Tennessee courtrooms and other kinds of law practice, any out-of-state lawyer practicing in Tennessee under the authority of our proposed amended Rule 5.5 would still be required to obtain *pro hac vice* admission under Tennessee Supreme Court Rule 19.

This approach would reduce unnecessary barriers to entry, attract qualified attorneys to Tennessee, and expand the pool of legal professionals available to serve Tennesseans—without compromising consumer protection. We believe this reform aligns with the Court's stated goals of lowering barriers to entry into the legal profession, ensuring the availability of affordable legal services, and safeguarding the public.

I. The Need for Proposed RPC 5.5

Unquestionably, the Court has identified a real problem with a shortage of lawyers in Tennessee.

Studies from Legal Services Corporation show that *almost 92% of the serious legal needs of the poor and near-poor are unmet*.[4] This deficiency is at

8, RPC 8.5(a). Rule 8.5(b) supplies the choice of law rule for any such disciplinary proceedings. See Rule 8.5(b)(1) (for litigation, the rules adopted by the tribunal govern—*i.e.*, the Tennessee Rules for conduct in litigation in Tennessee courts), (b)(2) (for all other conduct, the rules of the jurisdiction where the lawyer's conduct occurred apply, or the jurisdiction of the predominant effect of the jurisdiction). Out-of-state lawyers have been investigated and disciplined by this Court's Board of Professional Responsibility.

[4] Legal Servs. Corp., *The Justice Gap: The Unmet Civil Legal Needs of Low-Income Americans* (2022), https://justicegap.lsc.gov/.

an all-time high, when compared against earlier studies by LSC and others.[5] These serious legal needs extend far beyond the courthouse.[6]

For example, as the Court's Order notes, these studies address only those Tennesseans who earn up to 125% of the poverty level—for 2025 that amounted to $15,650 for an individual and $32,150 for a family of four.[7] As this Court if aware, this means that these measures of the "justice gap" seriously understate the problem. No doubt, millions more individual Tennesseans who are not poor by this definition face serious difficulty in accessing quality legal representation. There is also every reason to believe that Tennessee small businesses, a vital segment of our economy, face the same challenges in access to affordable, quality legal representation.

Tennessee also has a particularly acute problem with "legal deserts" in the rural parts of our state. The Court eloquently notes the "growing concern regarding the lack of access to legal services in rural areas, or so-called 'legal deserts.'"[8] The Court notes, for example, that only two percent of small law practices are located in rural areas and that a recent survey showed Tennessee had twenty counties with fewer than ten lawyers each.[9]

While these figures are troubling, the true problem in Tennessee is almost certainly worse. As noted in the NCSC's 2025 Clear Report cited in the Court's Order, the accepted benchmark for a "legal desert" is 1 lawyer per

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[5] Legal Servs. Corp., *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans* (2005); Legal Servs. Corp., *Documenting the Justice Gap in America: An Update* (2007); Legal Servs. Corp., *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans—An Updated Report of the Legal Services Corporation* (2009); Legal Servs. Corp., *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-Income Americans* (2017).

[6] The Tennessee Alliance for Legal Services (TALS) is currently preparing for publication very soon a further study of unmet legal needs of Tennesseans. We expect that TALS will provide this information to the Court.

[7] Annual Update of the HHS Poverty Guidelines, 89 Fed. Reg. 2962 (Jan. 17, 2024), https://www.govinfo.gov/content/pkg/FR-2024-01-17/pdf/2024-00796.pdf; U.S. Dep't of Health & Human Servs., Office of the Assistant Secretary for Planning & Evaluation, Poverty Guidelines (Dec. 20, 2025), https://aspe.hhs.gov/poverty-guidelines.

[8] Order, at 3, *In Re: Public Comments on Potential Regulatory Reforms to Increase Access to Quality Legal Representation*, No. ADM2025-01403 (Sept. 16, 2025)

[9] *Id.*

1,000 population.[10] A rough comparison of the Board of Professional Responsibility's roster of the locations of licensed lawyers and Tennessee data on county population suggests that ***more than half of Tennessee's counties, where more than a million Tennesseans live, may be legal deserts***.[11]

Thus, as the Court's Order suggests, the current supply of legal services in Tennessee is insufficient to meet the needs of those who live and work here. And while rules governing the practice of law are important to protect the public and ensure competent legal representation, they also necessarily limit the supply of legal services and drive up costs.

One such restriction pertains to the multijurisdictional practice of lawyers. Of course, thousands of skilled and experienced lawyers are just sitting right outside our borders, unable to offer their services. They are experienced and have demonstrated competence and can provide services right now to Tennesseans. But they are only licensed in states other than Tennessee and, therefore, unable to practice in Tennessee owing to the requirement that, with few exceptions, require licensure in Tennessee to practice "in" Tennessee. The relevant rule is RPC 5.5, which allows for only a limited amount of multijurisdictional practice. An update to RPC 5.5 is the quickest way to add meaningfully to the supply of lawyers available to offer their services.

II. The History of Current Tennessee Rule 5.5

Before going further, however, it may be useful to explain how the current version of RPC 5.5 came to be.

In 2002, the American Bar Association adopted Model Rule of Professional Conduct 5.5 in response to the landmark California Supreme Court *Birbrower* decision.[12] That case sent shockwaves through the legal profession by holding that New York lawyers had engaged in the

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[10] Committee on Legal Education and Admissions Reform (CLEAR) Report and Recommendations 12 (Nat'l Ctr. for St. Cts. July 27, 2025), https://perma.cc/SW8E-FTX4 (cited in Order at 3).

[11] *See* **Exhibit D** for data supporting this analysis. Of course, this calculation is simply a rough approximation.

[12] *Birbrower, Montalbano, Condon & Frank v. Superior Ct.*, 17 Cal. 4th 119, 949 P.2d 1 (1998).

unauthorized practice of law in California simply by advising a California client on a California matter involving potential arbitration. *Birbrower* exposed the legal and ethical risks faced by competent attorneys who, in good faith, served clients across state lines. The ABA's Model Rule 5.5 sought to address this problem by recognizing that lawyers licensed in one U.S. jurisdiction are presumptively competent to provide legal services in another, at least on a temporary basis.

Tennessee followed suit in 2009, adopting a version of Rule 5.5 that largely mirrored the ABA's model.[13] It currently permits limited multijurisdictional practice by attorneys licensed in other U.S. jurisdictions, but only under narrow conditions. These include temporary legal services tied to specific proceedings (*e.g.*, litigation, arbitration), or when working in association with a Tennessee-licensed attorney who actively participates in the matter. The rule also allows in-house counsel to serve their employer from within Tennessee, provided they register and comply with certain requirements.

III. The problems with the current rule

The 2009 changes to RPC 5.5 were a significant step forward at the time, acknowledging the growing need for multijurisdictional practice. However, its permission structure for multijurisdictional process is narrow.

It is constrained by primarily allowing "temporary" practice but prohibiting conduct if it ends up being deemed to be "continuous and systematic." The rule's focus on physical presence and office location fails to reflect the realities of contemporary legal practice, where geographic boundaries are increasingly irrelevant. The Rule has remained largely unchanged since 2009, despite dramatic shifts in how legal services are delivered. The rise of remote work, virtual court appearances, and increasingly mobile clients has rendered the original framework outdated. What was once a progressive reform is now a barrier to both lawyer mobility and client access to competent counsel.

The basic structure of the Rule reveals what today is its fundamental structural weakness: the Rule turns on whether a lawyer is providing legal services "in" Tennessee. The Rule and its Comment provide very little

[13] *See In re: Petition for the Adoption of Rules Governing the Multijurisdictional Practice of Law*, Order, No. M2008-01404-SC-RL1-RL (Tenn.; Oct. 23, 2009).

meaningful guidance as to how a lawyer may determine in good faith whether she is practicing "in" Tennessee beyond discouraging them from being physically present in the state. In what jurisdiction is a lawyer licensed outside Tennessee practicing when she:

- Negotiates a lease for an out-of-state client of a property located in Tennessee? What if she represents the Tennessee owner of the property?
- Advises an out-of-state employer on their rights concerning the conduct of a Tennessee-based employee? What if she represents the Tennessee employee in evaluating a claim against an out-of-state employee?
- Advises an out-of-state parent concerning their child custody rights when their ex-spouse has moved to Tennessee with the child?
- Drafts an out-of-state testator's estate plan that includes real and personal property in Tennessee and several other states

In answering these questions, the Court should consider this further question: What policy reason, grounded in client, consumer, and public protection, mandates that a lawyer performing these legal services must be (1) physically present in Tennessee or (2) licensed in Tennessee, as opposed to in another jurisdiction? We submit that the answer is simple: None.

Bear in mind, too, that in the seminal 1998 *Birbrower* decision from the California Supreme Court, which launched the effort that led to the adoption of ABA Model Rule of Professional Conduct 5.5, on which Tennessee Rule 5.5 is based, that court went out of its way in sweeping dicta to say that "one may practice law in the state in violation of [California's UPL law] although not physically present here by advising a California client on California law in connection with a California legal dispute by telephone, fax, computer, or other modern technological means."[14] Any thoughtful lawyer assessing Tennessee's Rule 5.5 in good faith against the increasingly multi-state interests and legal needs of ordinary clients often simply cannot reach a definitive conclusion as to whether her conduct is lawful. Our proposed rule would bring *clarity* and do so in a way that *increases* the choice of lawyers available to Tennessee residents.

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[14] *Birbrower, Montalbano, Condon & Frank v. Superior Ct.*, 17 Cal. 4th 119, 128–29, 949 P.2d 1, 5–6 (1998), *as modified* (Feb. 25, 1998).

COVID didn't create remote legal practice—it revealed how technology can permit lawyers to practice remotely without jeopardizing legal consumers and why rules prohibiting that from happening should be reexamined. Practicing law no longer requires a physical office or in-person meetings; attorneys now routinely work from home, appear in court virtually, and collaborate with clients and colleagues across jurisdictions using cloud-based tools. These innovations have made legal services more efficient and accessible, especially for clients who prefer or require remote options. Yet Tennessee's current RPC 5.5 still regulates based on physical presence, exposing competent attorneys to unauthorized practice penalties simply for residing in the state while serving their clients. This geographic tethering is not only impractical—it actively undermines access to justice and the economic viability of modern legal practice. As unpleasant as COVID was, it did demonstrate how outdated our thinking was about regulating the practice of law based on geographical location.

Tennessee Rules' current structure has real-world consequences. An attorney may relocate to Tennessee for family or lifestyle reasons but continue to serve clients exclusively in jurisdictions where they are licensed. Even this can be the unauthorized practice of law.

The Court has also raised the issue in its Order of whether it should adopt amendments to rules to make it easier for lawyers licensed in other jurisdictions to become licensed in Tennessee. We very much believe that the Court should do so, and do so urgently. The current restrictions on Tennessee bar admission on motion (or comity admission) are too strict.[15]

We understand that others will offer the Court their comments favoring reform of these restrictions, and we expect to heartily endorse them. To be clear, however, more than rule reform is needed concerning admission on

[15] Doing so would also directly address the inadequacies in Tennessee bar admissions rules revealed by the case of Violaine Panasci. After graduating from a Canadian law school and obtaining an L.L.M. from Pace University in New York where she graduated *summa cum laude*, she passed the notoriously difficult New York Bar Exam with a 90th percentile on the Uniform Bar Exam (UBE). She relocated to Nashville from New York during the pandemic. Although she (unsurprisingly) had no difficulty getting a job, the Tennessee Board of Law Examiners told her she was not fit to practice here because her "academic path [was] not equivalent" to an American educated attorney. This Court righted this wrong. *See* Order, *Panasci v. Tenn. Bd. of Law Examiners*, No. M2002-00609-SC-WR-CV (Tenn. Sept. 16, 2022). But reform along the lines proposed in this comment, plus meaningful reform of comity admission, would avoid such future controversies, and open Tennessee to other undoubtedly competent practitioners like Ms. Panasci.

motion; procedural reform and increased staffing is needed at the Tennessee Board of Law Examiners, as comity applicants now wait as long as three years—which could well be longer than in any other jurisdiction—to have their applications addressed. The rules' substance and the way they are implemented are both serious impediments to Tennesseans receiving needed legal services.

Regardless of whether the Court adopts reforms of comity admission, there will still be lawyers who may not wish to become licensed in another jurisdiction. The common-sense reform we propose to RPC 5.5 will itself increase the talent pool of lawyers available to be hired by the people and businesses of our state.

A small business with suppliers across state lines, a divorcing couple with assets in multiple jurisdictions, or a family navigating estate planning with out-of-state property may all require multistate legal expertise. Yet under the current rule, if a lawyer not licensed in Tennessee is willing to represent them, the client must either hire multiple attorneys (one of whom has a Tennessee license) or forego representation altogether. The result is higher costs, reduced access, and increased dissatisfaction among the public regarding the usefulness of our profession. By regulating based on physical presence rather than competence and transparency, Tennessee's rule discourages talented lawyers from living or working in the state and deprives Tennesseans of the full range of legal services they increasingly need.

IV. Proposed Rule

We urge the Court to consider modifying requirements for practicing in Tennessee by amending RPC 5.5 governing multijurisdictional practice. The proposed revision to Tennessee Supreme Court Rule 8, RPC 5.5 (as outlined in **Exhibit A**) modernizes the regulation of multijurisdictional practice by allowing attorneys licensed and in good standing in any U.S. jurisdiction to provide legal services in Tennessee—without requiring full bar admission—so long as they meet specific consumer protection requirements. This reform eliminates the current rule's outdated focus on physical presence (which matters little to many clients) and instead emphasizes transparency, accountability, and competence (which matters to all clients).

Under the proposed rule, out-of-state attorneys may practice in Tennessee if they:

- Disclose where they are licensed;

- Comply with Tennessee's Rules of Professional Conduct, including competency standards;
- Submit to Tennessee's disciplinary authority and choice-of-law rules; and
- Refrain from misrepresenting their admission status or assisting in unauthorized practice

This revised rule would make Tennessee a leader in legal innovation. But for all its ingenuity, the basic approach of acknowledging that lawyers licensed in other jurisdictions can provide competent representation to clients who choose them as their lawyer is not novel. Many federal courts—including those in Tennessee—allow attorneys in good standing from other jurisdictions to appear and practice under local rules without requiring separate licensure.[16]

By adopting this rule, Tennessee would position itself as a national leader in legal innovation—expanding access to justice, supporting a modern legal workforce, and maintaining strong ethical safeguards.

V. Benefits of the Proposed Rule

In brief, the revised rule would yield the following advantages.

A. Benefits to the Public

Expanding multijurisdictional practice is one of the surest and quickest ways to increase access to legal services, particularly in underserved and rural areas, because it increases the pool of attorneys dramatically. This is a tried and true market-based approach that addresses the deficiencies of a captured market with a supply side solution. Clients will gain access to a broader pool of attorneys, including subject-matter experts who may not be locally licensed but are fully competent to handle their legal needs. This reform promotes affordability, convenience, and choice for legal consumers across Tennessee.

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[16] *See* LR 83.4(b) (W.D. Tenn.) (allowing eligibility for membership to attorneys in good standing in other states or District of Columbia so long as they are a member in good standing of another United States District Court, subject to procedure); LR 83.5(a) (E.D. Tenn.) (attorneys in good standing and admitted to practice in any state, territory, or District of Columbia are qualified for admission upon standards set under Tennessee's RPC).

B. Benefits to the Legal Profession

The proposed rule lowers unnecessary barriers to entry, enabling qualified attorneys to practice in Tennessee without the expense (and delay) of duplicative licensure. It supports modern, flexible work arrangements, allowing lawyers to serve clients remotely without fear of violating outdated geographic restrictions. This is good for young lawyers because it prohibits job lock. It is good for working parents who might otherwise fall out of the job market when life takes them across a state border. And it is good for older attorneys who are ready to slow down but not retire because it gives them the flexibility to work in Tennessee remotely. By embracing mobility, Tennessee can attract and retain talented attorneys who might otherwise be excluded due to rigid licensure rules.

C. Safeguards for Consumer Protection

The proposed rule preserves essential safeguards by requiring attorneys to disclose their licensure status, comply with Tennessee's ethical rules, and submit to the state's disciplinary authority. These measures ensure accountability and transparency, protecting clients from deception or incompetence without relying on artificial geographic constraints.

The proposed rule also reinforces, rather than diminishes, Tennessee's authority to regulate the practice of law within its borders. Far from ceding control to other jurisdictions, the rule ensures that any lawyer—regardless of where they are licensed—who provides legal services in Tennessee is subject to Tennessee's Rules of Professional Conduct and disciplinary authority. This approach preserves the state's sovereign interest in protecting legal consumers while recognizing the competence of attorneys licensed elsewhere. It does not alter substantive law or ethical standards; it simply removes artificial geographic barriers that prevent qualified lawyers from serving Tennesseans, all while keeping them accountable to Tennessee's regulatory framework.

* * *

We appreciate the Court's thoughtful consideration of the important issue of access to justice and welcome the opportunity to provide further information or participate in any future proceedings.

Respectfully submitted,

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EXHIBIT A

PROPOSED REVISED TENNESSEE SUPREME COURT RULE 8, RPC 5.5

(proposed additions; ~~proposed deletions~~)

Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

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

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

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

(1) If not admitted to practice in this jurisdiction, disclose where the lawyer is admitted to practice law;

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

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

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

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

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

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

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

~~(b) A lawyer who is not admitted to practice in this jurisdiction shall not:~~

~~(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or~~

~~(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.~~

~~(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:~~

~~(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;~~

~~(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;~~

~~(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's representation of an existing client in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or~~

~~(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's representation of an existing client in a jurisdiction in which the lawyer is admitted to practice.~~

~~(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that:~~

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

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

~~(3) A lawyer providing legal services pursuant to paragraph (d)(1) is subject to registration pursuant to Tenn. Sup. Ct. R. 7, § 10.01, and~~

~~may be subject to other requirements, including assessments for client protection funds and mandatory continuing legal education. Failure to register in a timely manner may preclude the lawyer from later seeking admission in this jurisdiction.~~

~~(e) A lawyer authorized to provide legal services in this jurisdiction pursuant to paragraph (d)(1) of this Rule may also provide pro bono legal services in this jurisdiction, provided that these services are offered through an established not-for-profit bar association, pro bono program or legal services program or through such organization(s) specifically authorized in this jurisdiction and provided that these are services for which the forum does not require pro hac vice admission.~~

~~(f) A lawyer providing legal services in Tennessee pursuant to paragraph (c) or (d) shall advise the lawyer's client that the lawyer is not admitted to practice in Tennessee and shall obtain the client's informed consent to such representation.~~

(f) A lawyer providing legal services in Tennessee pursuant to paragraphs (b) ~~(c) or (d)~~ or (e) shall be deemed to have submitted himself or herself to personal jurisdiction in Tennessee for claims arising out of the lawyer's actions in providing such services in this state.

(g) A lawyer or law firm shall not employ or continue the employment of a disbarred or suspended lawyer as an attorney, legal consultant, law clerk, paralegal or in any other position of a quasi-legal nature.

COMMENT

[1] This Rule acknowledges that the practice of law now routinely transcends geographic jurisdictional boundaries. The question of what it means for a lawyer to practice law "in" a jurisdiction has been clouded by advances in technology that facilitate lawyers' ability to communicate, work, and appear in other jurisdictions. For example, historically a lawyer's physical presence in a jurisdiction was the predominant factor in determining where the lawyer practiced law. In modern law practices, lawyers routinely send emails, place phone calls, and participate in video calls with clients and other parties in other jurisdictions, rendering the lawyer's physical location irrelevant to the lawyer's capacity to provide legal services. Similarly, the advent of online research, including access to local rules and ordinances, has enhanced lawyers' ability to master competency without regard to artificial

geographic limitations. Hence, this Rule recognizes the realities of current law practice and expands access to lawyers while still being mindful of the need for public protection.

[2] The definition of the practice of law is established by statute (*see* Tenn. Code Ann. §§ 23-3-101 to -108) and common law. Limiting the practice of law to individuals admitted and authorized to practice law in at least one United States jurisdiction protects the public against rendition of legal services by unqualified and unaccountable persons. Under the circumstances specified in section (d) of this Rule, lawyers licensed in a foreign jurisdiction may also practice law in limited circumstances without undue risk of harm to the public.

[3] A lawyer is admitted in a jurisdiction when they have been formally licensed to appear in the courts of that jurisdiction without limitation.

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

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

[6] A lawyer may establish an office for the practice of law in this jurisdiction with proper disclosure of the jurisdictions in which the lawyer is admitted.

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

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

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

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

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

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

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

~~[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person. For example, a lawyer may not assist a person in practicing law in violation of the rules governing professional conduct in that person's jurisdiction.~~

~~[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See RPC 5.3.~~

~~[3] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law, for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-~~

~~related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.~~

~~[4] Other than as authorized by law or this Rule, a lawyer who is not admitted to practice generally in this jurisdiction violates paragraph (b)(1) if the lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. See also RPCs 7.1(a).~~

~~[5] There are occasions in which a lawyer admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.~~

~~[6] There is no single test to determine whether a lawyer's services are provided on a "temporary basis" in this jurisdiction, and may therefore be permissible under paragraph (c). Services may be "temporary" even though the lawyer provides services in this jurisdiction on a recurring basis, or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.~~

~~[7] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia and any state, territory or commonwealth of the United States. The word "admitted" in paragraph (c) contemplates that the lawyer is authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a lawyer who while technically admitted is not authorized to practice, because, for example, the lawyer is on inactive status.~~

~~[8] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer licensed to practice in this jurisdiction. For this paragraph to apply, however, the lawyer admitted to practice in this~~

~~jurisdiction must actively participate in and share responsibility for the representation of the client.~~

~~[9] Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under paragraph (c)(2), a lawyer does not violate this Rule when the lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a lawyer who is not admitted to practice in this jurisdiction to obtain admission pro hac vice before appearing before a tribunal or administrative agency, this Rule requires the lawyer to obtain that authority.~~

~~[10] Paragraph (c)(2) also provides that a lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is authorized to practice law or in which the lawyer reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a lawyer admitted only in another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.~~

~~[11] When a lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate lawyers may conduct research, review documents, and attend meetings with witnesses in support of the lawyer responsible for the litigation.~~

~~[12] Paragraph (c)(3) permits a lawyer admitted to practice law in another jurisdiction to perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's representation of an existing client in a~~

~~jurisdiction in which the lawyer is admitted to practice. The lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.~~

~~[13] Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the lawyer's representation of an existing client in a jurisdiction in which the lawyer is admitted but are not within paragraphs (c)(2) or (c)(3). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.~~

~~[14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the lawyer's representation of an existing client in a jurisdiction in which the lawyer is admitted. A variety of factors evidence such a relationship. The lawyer's client may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each. Lawyers desiring to provide pro bono legal services on a temporary basis in a jurisdiction that has been affected by a major disaster, but in which they are not otherwise authorized to practice law, as well as lawyers from the affected jurisdiction who seek to practice law temporarily in another jurisdiction, but in which they are not otherwise authorized to practice law, should consult Tenn. Sup. Ct. R. 47.~~

~~[15] Paragraph (d) identifies two circumstances in which a lawyer who is admitted to practice in another United States jurisdiction, and is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a lawyer who is admitted to practice law in another jurisdiction and who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.~~

~~[16] Paragraph (d)(1) applies to a lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities~~

~~that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The lawyer's ability to represent the employer outside the jurisdiction in which the lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the lawyer's qualifications and the quality of the lawyer's work.~~

~~[18] Paragraph (d)(2) recognizes that a lawyer may provide legal services in a jurisdiction in which the lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent. See, e.g., Tenn. Sup. Ct. R. 7, § 5.01(g) (Practice Pending Admission by Applicant Licensed in Another Jurisdiction).~~

~~[19]~~ [14] A lawyer who practices law in this jurisdiction pursuant to paragraphs (b), ~~(c) or (d)~~ or (e) or otherwise is subject to the disciplinary authority of this jurisdiction. See RPC 8.5(a). Additionally, under paragraph (f) ~~(g)~~, a lawyer providing legal services in Tennessee pursuant to paragraphs (b), ~~(c) or (d)~~ or (e) shall be deemed to have submitted himself or herself to personal jurisdiction in Tennessee for claims arising out of the lawyer's actions in providing such services in this state.

~~[20] Paragraph (f) requires a lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) to inform the client that the lawyer is not licensed to practice law in this jurisdiction. See also RPC 1.4(b).~~

~~[21] Paragraphs (c) and (d) do not authorize communications advertising legal services in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services in this jurisdiction is governed by RPCs 7.1 to 7.5.~~

~~[22]~~ [15] Paragraph (g) ~~(h)~~ provides that a lawyer or law firm may not employ or continue the employment of a disbarred or suspended lawyer as an attorney, legal consultant, law clerk, paralegal or in any other position of a quasi-legal nature. That paragraph is consistent with existing Tennessee law. See Formal Ethics Opinion 83-F-50; Tenn. Sup. Ct. R. 9, § 28.8 (providing, "[b]y no later than twenty days after the effective date of the order [imposing disbarment, suspension or transfer to disability inactive status], the

respondent attorney shall cease to maintain a presence or occupy an office where the practice of law is conducted, except as provided in Section 12.3(c)").

DEFINITIONAL CROSS-REFERENCES

"Informed consent" See RPC 1.0(e)
"Reasonably" See RPC 1.0(h)
"Tribunal" See RPC 1.0(m)

EXHIBIT B

CURRENT TENNESSEE SUPREME COURT RULE 8, RPC 5.5

Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

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

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's representation of an existing client in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's representation of an existing client in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that:

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

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

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

(e) A lawyer authorized to provide legal services in this jurisdiction pursuant to paragraph (d)(1) of this Rule may also provide pro bono legal services in this jurisdiction, provided that these services are offered through an established not-for-profit bar association, pro bono program or legal services program or through such organization(s) specifically authorized in this jurisdiction and provided that these are services for which the forum does not require pro hac vice admission.

(f) A lawyer providing legal services in Tennessee pursuant to paragraph (c) or (d) shall advise the lawyer's client that the lawyer is not admitted to practice in Tennessee and shall obtain the client's informed consent to such representation.

(g) A lawyer providing legal services in Tennessee pursuant to paragraph (c) or (d) shall be deemed to have submitted himself or herself to personal jurisdiction in Tennessee for claims arising out of the lawyer's actions in providing such services in this state.

(h) A lawyer or law firm shall not employ or continue the employment of a disbarred or suspended lawyer as an attorney, legal consultant, law clerk, paralegal or in any other position of a quasi-legal nature.

COMMENT

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person. For example, a lawyer may not assist a person in practicing law in violation of the rules governing professional conduct in that person's jurisdiction.

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See RPC 5.3.

[3] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law, for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[4] Other than as authorized by law or this Rule, a lawyer who is not admitted to practice generally in this jurisdiction violates paragraph (b)(1) if the lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. See also RPCs 7.1(a).

[5] There are occasions in which a lawyer admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

[6] There is no single test to determine whether a lawyer's services are provided on a "temporary basis" in this jurisdiction, and may therefore be permissible under paragraph (c). Services may be "temporary" even though the lawyer provides services in this jurisdiction on a recurring basis, or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.

[7] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia and any state, territory or commonwealth of the United States. The word "admitted" in paragraph (c) contemplates that the lawyer is authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a lawyer who while technically admitted is not authorized to practice, because, for example, the lawyer is on inactive status.

[8] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer licensed to practice in this jurisdiction. For this paragraph to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.

[9] Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under paragraph (c)(2), a lawyer does not violate this Rule when the lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a lawyer who is not admitted to practice in

this jurisdiction to obtain admission pro hac vice before appearing before a tribunal or administrative agency, this Rule requires the lawyer to obtain that authority.

[10] Paragraph (c)(2) also provides that a lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is authorized to practice law or in which the lawyer reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a lawyer admitted only in another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.

[11] When a lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate lawyers may conduct research, review documents, and attend meetings with witnesses in support of the lawyer responsible for the litigation.

[12] Paragraph (c)(3) permits a lawyer admitted to practice law in another jurisdiction to perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's representation of an existing client in a jurisdiction in which the lawyer is admitted to practice. The lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.

[13] Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the lawyer's representation of an existing client in a jurisdiction in which the lawyer is admitted but are not within paragraphs (c)(2) or (c)(3). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.

[14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the lawyer's representation of an existing client in a jurisdiction in which the lawyer is admitted. A variety of factors evidence such a relationship. The lawyer's client may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each. Lawyers desiring to provide pro bono legal services on a temporary basis in a jurisdiction that has been affected by a major disaster, but in which they are not otherwise authorized to practice law, as well as lawyers from the affected jurisdiction who seek to practice law temporarily in another jurisdiction, but in which they are not otherwise authorized to practice law, should consult Tenn. Sup. Ct. R. 47.

[15] Paragraph (d) identifies two circumstances in which a lawyer who is admitted to practice in another United States jurisdiction, and is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a lawyer who is admitted to practice law in another jurisdiction and who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.

[16] Paragraph (d)(1) applies to a lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The lawyer's ability to represent the employer outside the jurisdiction in which the lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the lawyer's qualifications and the quality of the lawyer's work.

[18] Paragraph (d)(2) recognizes that a lawyer may provide legal services in a jurisdiction in which the lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent. See, e.g., Tenn. Sup. Ct. R. 7, § 5.01(g) (Practice Pending Admission by Applicant Licensed in Another Jurisdiction).

[19] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) or otherwise is subject to the disciplinary authority of this jurisdiction. See RPC 8.5(a). Additionally, under paragraph (g), a lawyer providing legal services in Tennessee pursuant to paragraphs (c) or (d) shall be deemed to have submitted himself or herself to personal jurisdiction in Tennessee for claims arising out of the lawyer's actions in providing such services in this state.

[20] Paragraph (f) requires a lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) to inform the client that the lawyer is not licensed to practice law in this jurisdiction. See also RPC 1.4(b).

[21] Paragraphs (c) and (d) do not authorize communications advertising legal services in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services in this jurisdiction is governed by RPCs 7.1 to 7.5.

[22] Paragraph (h) provides that a lawyer or law firm may not employ or continue the employment of a disbarred or suspended lawyer as an attorney, legal consultant, law clerk, paralegal or in any other position of a quasi-legal nature. That paragraph is consistent with existing Tennessee law. See Formal Ethics Opinion 83-F-50; Tenn. Sup. Ct. R. 9, § 28.8 (providing, "[b]y no later than twenty days after the effective date of the order [imposing disbarment, suspension or transfer to disability inactive status], the respondent attorney shall cease to maintain a presence or occupy an office where the practice of law is conducted, except as provided in Section 12.3(c)").

DEFINITIONAL CROSS-REFERENCES
"Informed consent" See RPC 1.0(e)
"Reasonably" See RPC 1.0(h)
"Tribunal" See RPC 1.0(m)

EXHIBIT C

Association of Professional Responsibility Lawyers Proposed Rule

APRL MODEL RULE 5.5

RULE 5.5: Multijurisdictional Practice of Law

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

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

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

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

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

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

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

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

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

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

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

New Comments

1. This rule acknowledges that the practice of law now routinely transcends geographic jurisdictional boundaries. The question of what it means for a lawyer to practice law "in" a jurisdiction has been clouded by advances in technology that facilitate lawyers' ability to communicate, work, and appear in other jurisdictions. For example, historically a lawyer's physical presence in a jurisdiction was the predominate factor in determining where the lawyer practiced law. In modern law practices, lawyers routinely send e-mails, place phone calls, and participate in video calls with clients and other parties in other jurisdictions, rendering the lawyer's physical location irrelevant to the lawyer's capacity to provide legal services. Similarly, the advent of on-line research, including access to local rules and ordinances, has enhanced lawyers' ability to master competency without regard to artificial geographic limitations. Hence, this rule recognizes the realities of current law practice and expanding access to lawyers while still being mindful of the need for public protection.

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

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

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

represent that they are fully authorized to appear regularly in the courts of this jurisdiction.

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

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

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

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

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

10. A lawyer does not engage in the unauthorized practice of law by employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. *See* Rule 5.3. A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; for example, claims adjusters,

employees of financial or commercial institutions, social workers, accountants, and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

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

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

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

EXHIBIT D

PROPOSED AMENDMENT TO TENNESSEE PRO HAC VICE RULE

Tenn. Sup. Ct. R. 19
(proposed additions; ~~proposed deletions~~)

Rule 19. Appearance Pro Hac Vice in Proceedings Before Tennessee Agencies and Courts by Lawyers Not Licensed to Practice Law in Tennessee

(a) A lawyer not licensed to practice law in Tennessee ~~and who either resides outside Tennessee or resides in Tennessee and has~~ but who has either been permitted to practice in this State pursuant to Rule 7, section 10.07 of these Rules, or who is operating in compliance with Tenn. Sup. Ct. R. 8, RPC 5.5(b), is eligible for admission pro hac vice in a particular proceeding pending before a court or agency of the State of Tennessee:

(1) if, in the case of a lawyer who resides outside Tennessee, the lawyer is licensed, in good standing, and admitted to practice before the court of last resort in another state or territory of the United States or the District of Columbia in which the lawyer maintains a residence or an office for the practice of law; or, in the case of a lawyer who resides in Tennessee and has been permitted to practice in this State pursuant to Rule 7, section 10.07 of these Rules, or who is operating in compliance with Tenn. Sup. Ct. R. 8, RPC 5.5(b), the lawyer is licensed, in good standing, and admitted to practice before the court of last resort in another state or territory of the United States or the District of Columbia in which the lawyer maintained a residence or an office for the practice of law; and

(2) if the lawyer is in good standing in all other jurisdictions in which the lawyer is licensed to practice law; and

(3) if the lawyer has been retained by a client to appear in the proceeding pending before that court or agency....

Exhibit E

APRL ASSOCIATION OF PROFESSIONAL RESPONSIBILITY LAWYERS

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Chicago, IL 60607
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Phone: (312) 782-4396
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April 18, 2022

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

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

Dear President Turner:

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

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

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

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

Very truly yours,

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

APRL MODEL RULE 5.5

RULE 5.5: Multijurisdictional Practice of Law

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

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

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

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

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

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

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

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

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

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

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

New Comments

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Introduction

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

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

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

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

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

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

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

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

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

Technology and the Evolution of the Practice of Law

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

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

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

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

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

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

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

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

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

Geographical Limitation and The Public's Access to Legal Services

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

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

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

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

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

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

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

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

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

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

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

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

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

Competency and the Paradox of the Licensed Lawyer

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Client Trust and Choice of Counsel

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

From Colonial Times to 1921

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

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

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

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

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

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

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

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

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

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

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

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

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

1921 ABA Root Report

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

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

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

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

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

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

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

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

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

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

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[23] 2002 MJP Report, at 7.

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

[25] *Id.* at 687-88

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

[27] *Id.* at 680.

[28] *Id.*

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

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

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

Statutory Developments and Enshrinement of UPL Restrictions in the Ethics Rules

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

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

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

[31] Root Report, at 681.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Birbrower: The California Supreme Court Grabs Lawyers' Attention

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

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

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

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

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

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

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

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

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

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[43] *Id.* at 11.

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

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

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

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

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

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

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

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

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

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

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

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

Competence as an Ongoing Regulatory Justification

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

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

Licensing Lawyers in 2021

Admission by Bar Examination

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

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

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

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

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

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

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

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

Admission on Motion

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

Conclusion

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

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

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

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

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

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

Exhibit F

The World Needs More Lawyers

By Shoshana Weissmann, Daniel Greenberg, Luke Wake,
Braden Boucek and Jonathan Riches

"If there's one thing this world needs, it's more lawyers.
Could you imagine a world without lawyers?"

-Lionel Hutz, The Simpsons

To cite this paper: S. Weissmann et al., "The World Needs More Lawyers," released by the Regulatory Transparency Project of the Federalist Society, September 28, 2023 (https://rtp.fedsoc.org/paper/the-world-needs-more-lawyers/)

28 September 2023

Executive Summary

The American legal profession, as well as those it serves, would benefit from lowering the barriers to entry to the practice of law. Several licensing barriers unnecessarily contribute to the high cost of legal services, which inhibit access to justice for ordinary Americans. In some respects, legal licensure is categorically distinct from the licensure of other highly regulated professions. This suggests that a particular focus on legal licensure may be appropriate. We therefore explore the implications of modest reforms that would advance the public interest, with an eye to the encouragement of competitive markets in legal services, and the protection and preservation of the fiduciary nature of legal services.

I. Introduction

Everyone knows lawyers are expensive. The hard truth is that individuals of modest means often cannot afford counsel. Even small businesses may be hard-pressed to seek out counsel when needed.

Of course, there are good reasons why legal counsel is costly. Practicing law is difficult. Representation in any given matter may require an extraordinary expenditure of time and energy. Yet if we believe that it is important to provide ordinary individuals access to the justice system, it is worth asking whether there are ways we could encourage more competitive legal markets that might lower costs to consumers.

One answer may be to pursue modest reforms of existing legal licensure regimes that operate as barriers to entry into the profession. As detailed in Occupational Licensing Run Wild, there is now broad cross-ideological consensus that occupational licensing barriers generally raise costs for consumers with only marginal benefits to the public. Often the perceived benefits of licensing can be achieved through more tailored regulatory measures that would ultimately benefit consumers. Those lessons may be applied even to the legal profession.

We do not propose the elimination of legal licensure requirements. But consumers would benefit if we could eliminate duplicative or unnecessary restrictions on the practice of law. Accordingly, this paper examines the nature of existing licensing requirements and considers the relative merits of several potential reforms—while emphasizing that the practice of law requires particularized standards that will safeguard the interests of clients.

On their face, licensing requirements exist to protect the vulnerable. That remains an important goal. But it is essential that all licensing requirements have appropriate effect and are supported by evidence. As we shall see, some licensure restrictions impose burdens without commensurate benefits to society.

II. The Value of Reconsidering Existing Legal Licensure Requirements and Their Potential Tradeoffs

Today, there is a wide cross-ideological consensus in favor of occupational licensing reform.[1] Over-extensive occupational licensing blocks providers from entering labor markets, thereby reducing supply of their services and pushing prices higher for consumers. And the alleged benefits of stricter licensing requirements are often oversold or illusory.[2]

There is growing support for occupational licensing reform for historically low-paid professions like florists, health care paraprofessionals, childcare workers, and tradesmen. But occupational licensing is especially entrenched for higher-status professionals. That is especially true for the inherently conservative legal profession.[3]

Even if we accept licensure as a permanent fixture of the legal profession, there are opportunities to improve the system. For example, one could conceivably allow competent individuals to practice law on specific matters for which they have been well trained. This is starkly different from the universal scope of practice that is contemplated by our existing legal licensure regime. But the idea of allowing varying levels of legal licenses is not without precedent.

Consider the medical field. A doctor with a medical license is granted a universal scope of practice to provide any medical care that may be needed. But other medical professionals are only authorized to provide a narrow band of services. For example, nurses can diagnose and treat certain conditions and ailments; order, perform, and interpret diagnostic tests; and (in some cases) prescribe medications and certain treatments. These regimes ensure adequate care, partly because a licensed nurse must typically work under the supervision of a fully licensed doctor. And a nurse's license demonstrates only that its holder has been deemed competent to provide a limited set of medical services.

Of course, there are tradeoffs. The benefit of allowing nurses to provide more medical services is that they can provide needed services more rapidly, and at lower costs, than if those services were performed exclusively by licensed doctors. The potential cost is that services provided by nurses

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[1] Notably, every recent presidential administration has encouraged occupational licensing reform. The Obama Administration issued a report arguing that the growing costs of occupational licensing rules functioned as a tax on consumers. The Trump Administration devoted resources to helping state governments design and implement occupational licensing reforms. And on July 9, 2021, the Biden Administration, through executive order, encouraged "the FTC to ban unnecessary occupational licensing restrictions that impede economic mobility."

[2] Licensing regimes are often predicated on an assumption that excluding relatively weak or low-quality providers will benefit consumers. But as detailed in Occupational Licensing Run Wild, there are usually regulatory alternatives that facilitate more competitive markets, decrease costs for consumers, and safeguard the public interest more effectively.

[3] *See, e.g.,* https://news.bloomberglaw.com/us-law-week/california-bar-swamped-by-comments-opposing-ethics-rule-changes

might not always provide the same quality of care that a doctor would.[4] In many cases, policymakers have dealt with these tradeoffs by deciding that the pressing need for providing health care calls for a more flexible system.

Likewise, one must question whether the tradeoffs are worth accepting as we contemplate reforms to existing legal licensure regimes. Legal licensure reform is complicated because any reforms must ensure that the providers maintain fiduciary responsibilities and a high level of care to safeguard client interests. However, the state can often address those compelling concerns by enforcing codes of professional conduct as opposed to denying licensure.

These potential tradeoffs inform our analysis of limited scope of practice licensure and other liberalizing reforms. At the root of each of the following proposals is the idea that there is value in lowering the barriers to entry into the legal profession, so long as we ensure an adequate level of protection for consumers of legal services. The overarching question is: what system would most benefit those in need of legal services, especially those whom are currently priced out of the market?

III. Avenues for Legal Licensure Reform

A. Interstate Recognition and Remote Work

The legal profession has been fundamentally and irrevocably changed by the revolution in remote work. Lawyering is uniquely suited to remote work, given how much of the job involves quiet moments of research and writing that can take place from any location.

Lawyers already drafted documents on the computer, rather than by hand. They already researched online—not in libraries. In the digital era, lawyers can interview clients and witnesses virtually—and with lower cost and more convenience.[5] So now more than ever, lawyers can work from wherever, whenever—and they are just as effective as ever. Moreover, remote work arrangements can also benefit law firms by reducing overhead expenses, which could help lower the costs of legal services.

Yet unfortunately, remote practice of law is sometimes unlawful. One might reasonably think that a lawyer licensed in a specific state should be free to move and work wherever as long as the lawyer limits his or her work to matters pertaining to the state where he or she is licensed. And that is true in some states.[6] Some states expressly require attorneys to be licensed wherever they physically

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[4] In any event, empirical evidence shows nurse practitioners provide care equal to that of physicians.

[5] According to Clio's 2020 Legal Trends report, 56% of consumers would prefer videoconferencing over a phone call and 69% prefer working with a lawyer who can share documents electronically through a web page, app, or online portal. 2020 Legal Trends Report (Clio), available at https://www.clio.com/resources/legal-trends/2020- report/.

[6] For example, in 2022, the Virginia Supreme Court clarified that: "[A] foreign lawyer may work remotely in Virginia (from home or otherwise), for any length of time, with or without an emergency justification to do so, as long as the work done involves the practice of the law of the foreign lawyer's licensing jurisdiction or exclusively federal law that does not require Virginia licensure."

perform legal work—regardless of what state their clients are in or what matters they are working on.[7] And the issue is unsettled or unclear in other states—which means lawyers must seek admittance to avoid risk of sanction.[8]

Meanwhile, a related issue has long plagued attorneys seeking to practice law across different jurisdictions. Generally, if an attorney seeks to handle legal matters pertaining to different states he or she must be licensed within each jurisdiction. This means that to avoid professional and criminal sanction, an attorney must seek admittance to multiple state bars—with all the attendant costs, administrative burdens and energy that entails. For one, no attorney relishes having to take the bar exam—even if they have already passed their own state's bar with flying colors (perhaps decades ago).

All of this means that attorneys are discouraged from expanding services to clients who might benefit from their assistance. In so limiting the availability of competent attorneys, these licensing regimes, in turn, drive up costs for legal services. And so one must question whether the benefits of requiring an attorney to go through these hoops is really worth it.

Consider the case of Violaine Panasci.[9] She graduated law school from the University of Ottawa in Canada, and received her LLM from Pace University in New York where she graduated *summa cum laude*. She scored in the 90th percentile o n the Uniform Bar Exam (UBE) and passed the New York Bar Exam—which is notoriously one of the toughest in the country. But after being admitted to the New York Bar she relocated to Nashville during the pandemic.

Unsurprisingly, she had no trouble getting hired in Tennessee. Her trouble came from the state of Tennessee, which denied her application to practice law because the State Bar concluded her "academic path [was] not equivalent to that of a traditional U.S. graduate."

That was surprising. Given that Tennessee uses the same UBE as New York, and the fact that she remained in good standing in New York, there should be no doubt as to her professional competence. And given the need for good, affordable lawyers, in a rural state like Tennessee, one would think her admission would serve the public interest.[10]

Why wasn't it good enough that Violaine was admitted in another state? Why doesn't Tennessee want as many competent lawyers as it can find to drive down the cost of legal services that many find prohibitively high? Why did Violaine have to apply in the first place, only to be rejected?

The bottom line is that restrictive Tennessee practices appear to dampen competition in the market for legal services by benefiting incumbents at the expense of new market entrants and consumers.

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[7] For example, Missouri Bar Advisory Opinion No. 970098 provides: "It would constitute the unauthorized practice of law for an Attorney to provide legal advice or counseling on any area of law from an office which is located physically within the state of Missouri."

[8] *See E.g.*, Tex. Rules Disc. Prof'l. Cond. Rule 5.05; Ala. Rules of Prof'l. Cond. Rule 5.5(d); Colo. of Prof'l. Cond. Rule R.5.5; Nev. Rules of Prof'l. Cond. Rule 5.5.

[9] Available at https://www.tennessean.com/story/opinion/2022/08/22/tennessee-board-of-law-examiners-denied-application-supreme-court-challenge/7867974001/.

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

But if the only justification is to protect already licensed attorneys from competition, it really is time for policymakers to consider reform. Thankfully, on September 16, 2022, the Supreme Court of Tennessee issued a per curiam order that recognized that Violaine's legal education "should not preclude" her from being admitted to practice law in Tennessee.[11]

The good news is that there is a model rule that would both clarify that remote work is lawful and enable competent attorneys to engage in multijurisdictional practice without seeking admittance to numerous state bars. The Association of Professional Responsibility Lawyers has presented a Proposed Rule revising the American Bar Association Model Rule 5.5 governing multi-jurisdictional practice of law. Regardless of whether the ABA endorses the rule, state policy makers should consider adopting the following:

RULE 5.5: Multijurisdictional Practice of Law

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

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

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

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

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

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

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

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

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

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

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

B. Enabling Trained Professionals to Do More Without a Law License

One way to reduce legal costs for ordinary individuals is to give them more options for pursuing legal services. Currently, consumers are limited to working with fully-licensed lawyers if they want any sort of legal representation. Even something as simple as filling out a form that will be filed in court may constitute the practice of law, which usually precludes non-lawyers from giving assistance.

[11] https://www.goldwaterinstitute.org/wp-content/uploads/2022/09/Violaine-Panasci-Supreme-Court-of-Tennessee.pdf

But some states have begun experimenting with reforms that enable paralegals (or other trained professionals) to handle basic issues.

For example, in 2020, the Utah Supreme Court voted unanimously to establish a "pathbreaking" pilot program that allows qualified non-lawyers to provide services that were previously permitted only for Utah-licensed attorneys. The so-called "Regulatory Sandbox Program" may serve as an innovative model for other states to emulate. As the Supreme Court explained, the program would "explore creative ways to safely allow lawyers and non-lawyers to practice law and to reduce constraints on how lawyers market and promote their services."

Businesses had to apply to participate in the Regulatory Sandbox Program. There were restrictions: for example, the Sandbox would not allow for out-of-state attorneys to circumvent Utah's licensure requirements, or for disbarred attorneys to control a business providing legal services. There were disclosure requirements. Participants also had to affirm their compliance with Utah's Rules of Professional Conduct. Any request for waiver of those rules had to be clearly stated in the application, and it had to explain why waiver would not cause consumer harm.

Once approved, participating entities could engage in activities otherwise restricted to licensed Utah lawyers. This was not a universal license to practice law. But the Regulatory Sandbox Program allowed limited legal services in certain approved areas. And this opened up opportunities both for business innovation and for expanded services in the non-profit sector.

For example, Holy Cross Ministries joined the sandbox to train "two community health workers to serve as bilingual medical-debt legal advocates" so they could provide limited legal advice about medical debt and related problems. In the first nine months, the Regulatory Sandbox enabled non-lawyers to assist more than 2,500 individuals with "housing, immigration, healthcare, discrimination, employment, and a gamut of other issues." Program participants have also assisted victims of domestic violence and stalking with limited legal issues, while providing emotional support that they would not otherwise receive.

Although many low-income individuals may be priced out of the legal market altogether, there is reason to believe that limited authorized legal services from non-lawyers could reduce costs and expand access to justice. For example, some firms use both artificial intelligence software and nonlawyer providers to aid in the process of record expungement for Utahns. And the cost of such services is generally significantly cheaper than that charged by a traditional lawyer.

Some members of the established legal community are likely to resist such reforms. For example, "access to justice" advocates encountered fierce opposition in California when proposing reforms that would authorize non-lawyers to provide limited services. Some argued that these reforms would "completely destroy the practice of law as we know it," and argued that allowing non-lawyers to offer limited services would "erode the quality of legal services."

To be sure, the State has a legitimate interest in ensuring that those who provide legal services are appropriately regulated to safeguard the public. But as noted above, the medical field already has embraced the idea of allowing qualified individuals to provide limited medical services—while limiting the universal practice of medicine only to licensed doctors. Of course, those in need of legal help are in a vulnerable position and need assurance that those authorized to provide legal services

are competent. But the stakes are even higher in the field of medicine, where the quality of the service literally could be the difference between life and death.

In the medical field, policymakers have judged that the value of enabling greater access to health care is worth the risk of allowing trained individuals to provide limited medical care—even if they haven't gone to medical school. So it is not unreasonable to think that the legal profession could allow for limited licensure for trained individuals. When weighing the respective costs and benefits of the status quo, one must consider the likelihood that some people will go without legal help altogether if limited to working with more costly fully-licensed attorneys, in just the same way we know that staggering costs discourage some people from seeking health care.

While mindful of the risks, a growing number of states are experimenting with these sort of reforms—especially for paralegals who already have requisite training to help with limited matters in "[c]ases involving temporary separation, divorce, parentage, cohabitant abuse, civil stalking, custody and support, and name change," "forcible entry and detainer," and smaller debt collection issues. For example, licensed paralegals can now fill out forms that, previously, only lawyers were authorized to execute.

Likewise, Arizona, Minnesota, New Mexico, and Oregon have experimented with similar reforms. And other jurisdictions—like New York, Maryland, District of Columbia, and New Mexico—have experimented with "court navigators" who can assist people going through the court system with knowing what the processes look like, which office to contact next, what the necessary forms are, etc.

Ultimately, states contemplating reform should look to data from states that have pioneered regulatory innovation in this arena. If the data shows that that there are no greater complaints from individuals assisted with these sort of limited legal services, it would make sense for other states to follow suit. And at least so far, the initial results from Utah are positive.

C. Allowing Non-Lawyers to Invest in Legal Service Companies

The American Bar Association's Model Rule 5.4 provides that lawyers are generally prohibited from sharing legal fees with non-lawyers; furthermore, the Rule flatly prohibits lawyers from forming partnerships with non-lawyers.[12] Today, almost every state has adopted this rule in some form. Such restrictions are meant to protect legal consumers. The assumption that drives the rule is that, without it, non-lawyers may pursue profit at the expense of client interests. But is this assumption correct?

One state is now experimenting with an alternative model that sheds light on this question by encouraging innovation in the legal services market. In 2020, the Arizona Supreme Court eliminated

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12 https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_5_4_professional_independence_of_a_lawyer/.

its non-lawyer ownership prohibition.[13] The rule change allows non-lawyers to own, manage, and profit from law firms.[14]

Since Arizona adopted this measure, several firms have participated in this new business model, known as an Alternative Business Structure ("ABS"). The results have been promising. In addition to price and technological innovations in the practice of law,[15] ABS has proven to be convenient for clients looking for one-stop shops for legal and business needs.

For example, the ABS model allows attorneys to couple their services with those of other advisors in such fields as tax planning, real estate, and business formation, among others. According to Andy Kvesic, the CEO and Managing Partner of ABS firm Radix Law, many firms in Arizona have been providing these comprehensive services to clients: "Estate planning attorneys have combined with wealth planners under one roof. Tax attorneys are now working side by side with accountants…Personal injury firms are teaming up with litigation finance companies to tap a new source of capital."[16]

Simply put, legal consumers now have more options. And if this sort of innovation is serving client interests and potentially lowering the costs for consumers, then Arizona's approach should be heralded as a model for the rest of the country. But what about the objection that non-lawyers' investment may create profit-motive incentives that are adverse to client interests?

Only time will tell whether there is merit to these sort of concerns. But Arizona now provides a helpful case study. So far, there is no evidence to suggest that ABS firms are less protective of client interests than traditional attorney-only firms. Notably, there were no recorded complaints for ABS firms in the first 22 months of the program. If over time it remains true that there is no higher number of complaints for ABS firms, that might justify liberalization in other states.[17]

In any event, concerns about non-attorneys pursuing profit motives over client interests can hardly be confined to these new business models: after all, attorney-owned firms are not without profit

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[13] Joel Truett, "Goodbye Rule 5.4: Legal Ethics Change in Arizona," *Arizona State Law Journal*, available at https://arizonastatelawjournal.org/2021/04/19/goodbye-rule-5-4-legal-ethics-change-in-arizona/.

[14] Utah also adopted a "regulatory sandbox" pilot program in 2020 that loosened non-lawyer ownership prohibitions in that state. *See* Ricca & Ambrose, note 8, at 1.

[15] Lucy Ricca & Graham Ambrose, "The high highs and low lows of legal regulatory reform," Legal Evolution, Oct. 16, 2020, available at https://us01.l.antigena.com/l/GyaaAbimrrpUadkPPnye0KxF47rl6e3gjrfVXCO~qumIGHih50DgIeDu~lO5cFBBRhJ1P_q6SSWvbgCKHYpbnsC_JQgVEHhR-SRQzhIiFl_R9cRfzYGe19UbJEnGguTwClOAOOe8K72GFm6eR8ZtfoeeIhwgi9VYdCCDaH_YOfw7s7YbXXbieFE4Kjur4s1FBrOC2JicXQ2kdYtglVwtau6mZm, note 8 at 4 ("[M]ost entities across Utah and Arizona are implementing both technological and other innovations – including price innovations – to deliver legal services in new ways.").

[16] Andy Kvesic, "Firm Ownership Now Open to Non-Lawyers," *In Business Magazine, Greater Phoenix* (May 2022), available at https://inbusinessphx.com/legal-regulations/firm-ownership-now-open-to-non-lawyers#.Y_U7ruzMIfg.

[17] Ricca & Ambrose, note 8 at 5.

motives. That will always be true. Such concerns are currently addressed by existing rules of professional responsibility. If those rules are deemed adequate to regulate lawyers in traditional firms, presumably they should have similar effects for these new business models.

The best case for mixed-function firms rests on a model in which every function is governed by fiduciary duty—just as with traditional law firms. That could be easily addressed through legislation, or by requiring non-lawyers to consent to be bound by rules similar to the professional responsibility standards governing licensed attorneys. For example, a certified public accountant at a one-stop-shop firm would still have to act as a fiduciary and abide by all the same rules as would an attorney.

D. Revisiting Character and Fitness Requirements

In most states, those who hope to become licensed lawyers must pass a "character and fitness" evaluation. The requirements vary by state. Typically, the applicant must disclose previous addresses, civil and criminal violations, academic history, employment history, mental health and substance abuse issues, court judgments and orders.

In principle, this kind of review makes sense, given the fiduciary nature of the attorney-client relationship. Those offering legal services should have upright moral character. But it may be possible to improve the system of character and fitness evaluations.

First, inquiries about mental health and substance abuse issues may be counterproductive. Survey data suggests that these sort of disclosure requirements may discourage law students from seeking needed counseling—which might actually exacerbate mental health and substance abuse issues in the legal profession.[18] Accordingly, some have proposed that the focus of character and fitness evaluation should be confined to recent conduct and behavior, rather than over-inclusive inquiries about mental health or inquiries into long-forgotten episodes of the applicant's youth.

Second, it would make sense to modify the character and fitness process so that aspiring lawyers might have reasonable assurance that their personal history is uncontroversial before they invest three years, and incur many thousands of dollars of debt, to attend law school. The system currently requires aspiring lawyers to endure a character and fitness evaluation late in law school or after completing it. In principle, there is no reason why an applicant could not obtain pre-clearance for their character and fitness before enrolling in law school. Under this reform, bar applicants would still have to account for their conduct through law school; however, this sort of reform would avoid cruel surprises.

E. Apprenticeship as a Path to Licensure

A few states allow individuals to sit for the bar exam without first graduating from law school. This may be an unconventional path to licensure. But many who have studied under the auspices of a practicing attorney have learned the knowledge and skills necessary to practice law. And if the bar is worth its salt as a measure of one's competence to practice law, one might ask: Is graduation from a three-year ABA accredited law school truly essential?

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[18] *See* "Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns," vol. 66, *J. Legal Education*, no. 1 (2016).

Law school is the preferred route for most aspiring lawyers. But it is probably wrong to assume that an individual who has studied under a dedicated legal mentor for years is unfit to handle legal work of the sort that has been performed under supervision throughout their apprenticeship. If an enterprising apprentice can demonstrate competence by passing a difficult bar exam—that many law school graduates fail—he or she is presumably just as capable as a recent law school graduate.

As such, state bars should consider apprenticeship as an alternative route to licensure that may enable more socially disadvantaged individuals to break into the legal profession—while furthering the goal of expanding access to justice for all. As ever, the bar must ensure that those licensed to practice law are competent and that they will adequately safeguard client interests. At a minimum, it is worth studying how non-traditional attorneys (i.e., those who did not graduate from law school) perform as compared to law school graduates.[19]

F. Reducing or Eliminating CLE Requirements

Finally, it may be time to rethink existing Continuing Legal Education (CLE) requirements. At present, all but five states require some amount of CLE. But survey data suggests that many lawyers find CLE requirements burdensome in terms of time, energy, and cost. More importantly, there is reason to believe that CLE requirements will not necessarily make for better lawyers.

The theory behind the CLE requirement is that lawyers should continually learn about developments in the law. That makes sense. But any competent lawyer will keep abreast of significant developments affecting his or her practice area—with or without CLE requirements. Those who fail to do so will suffer consequences—including the potential for negligence lawsuits or reprimand by the State Bar.

CLE requirements mandate that an attorney must devote a specified number of hours toward CLE classes; however, there is not usually any requirement that those CLE credits must be relevant to the attorney's work. Attorneys in relatively niche practice areas may find it difficult to discover relevant CLE classes—which means that they are forced to spend time and money on courses that may be wholly irrelevant to their needs and their clients' interests. This is undoubtedly a source of frustration for many in the legal profession.

While the idea of continual learning makes sense, the existing CLE system does not (and probably cannot) measure the time attorneys spend learning about issues that are relevant to their practice outside the traditional CLE class. Some jurisdictions appropriately award CLE credit for time spent writing law review articles or teaching CLE courses; however, there is generally no accounting for the time attorneys spend outside of CLE courses. For example, there is no accounting for time spent reading articles (or the Federal Register) to keep abreast of regulatory developments. Nor is there

[19] It may also be time to consider other reforms. For example, states might consider allowing law school graduates to practice law without taking the bar. Currently only Wisconsin allows for "diploma privilege." So it would be worth studying Wisconsin to see if there is any measurable difference between Wisconsin licensed lawyers who took the bar and those who did not.

any accounting of time spent reading the latest judicial opinions, or for time spent attending think tank events, Supreme Court term review discussions, or other such continual learning methods.

As such, it might make sense to eliminate existing CLE requirements in favor of a relatively simple requirement: namely, an attorney must attest that he or she is staying on top of relevant developments that may affect their practice. But in so far as we keep existing CLE requirements, we should consider opportunities for improvement. One option might be to reduce the number of CLE hours required, with the expectation that attorneys will focus more on courses relevant to their daily practice. Another might be to loosen CLE requirements to allow attorneys to count time spent learning through novel methods—like presentations from other attorneys or scholars, regardless of whether they are hosted by an "approved" CLE provider.

In any event, there is a dearth of empirical research on the effectiveness of existing CLE requirements.[20] Although CLE requirements are less of a concern than the barriers to entry into the legal profession discussed above, they still deserve research. Indeed, we should ultimately require empirical evidence before we support any regulation that imposes societal burdens.

IV. Conclusion

Occupational licensure limits opportunities for individuals. Licensure requirements may inhibit individuals from pursuing professions for which they might be well-suited or from pursuing options that might provide for a better life. For example, licensure restrictions impede mobility for individuals who may hesitate to move across state lines simply because they don't want to deal with the burden of seeking licensure in a second state.

For all these reasons, policymakers are rethinking occupational licensing restrictions for various trades and professions. Lawmakers are entertaining licensing reform for florists, interior decorators, tour guides, estheticians, and beauticians. And reform should be on the table—even for the venerable legal profession.

As detailed above, reform doesn't have to mean eliminating licensure. There are many modest reform options that would reduce unnecessary barriers to entry into the profession while advancing the interests of consumers who need affordable access to legal services. Given the compelling need to ensure opportunities for access to justice for all, policymakers would be wise—at a minimum—to question whether the status quo is serving the public good.

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[20] Georgetown University Law Professor Rima Sirota writes in a paper that "no evidence-based reason has emerged to support the conclusion that CLE bears any relationship—much less a causal one—to better lawyering."