IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

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

No.ADM 2025-0143

COMMENT OF THE TENNESSEE ACCESS TO JUSTICE COMMISSION TO POTENTIAL REGULARTORY REFORMS TO INCREASE ACCESS TO QUALITY LEGAL REPRESENTATION

The Tennessee Access To Justice Commission (the Commission), pursuant to Supreme Court order filed September 16, 2025, respectfully submits the following Comment to potential regulatory reforms to increase access to quality legal representations.

Executive Summary

Tennessee faces a significant and well-documented access-to-justice gap, with the vast majority of low- and moderate-income residents experiencing civil legal issues without obtaining legal assistance. The 2025 Civil Legal Needs Assessment conducted by The Tennessee Alliance for Legal Services confirms that cost, lack of awareness, and structural barriers—including rural attorney shortages and limited access to technology—prevent many Tennesseans from securing help with critical matters such as housing, family law, and healthcare-related debt. At the same time, the Tennessee Supreme Court has called for public input on regulatory reforms, and the Tennessee Access to Justice Commission has undertaken a comprehensive review of national models, stakeholder perspectives, and its own decades of experience to identify reforms most likely to produce meaningful, measurable improvements in access to justice.

Based on that review, the Commission recommends four priority areas for focused study and potential implementation: (1) piloting non-lawyer assistance programs in high-need practice areas; (2) developing alternative pathways to licensure that incentivize service in rural and public interest settings; (3) refining court rules to better support self-represented litigants and expand pro bono participation; and (4) investing in plain-language forms, self-help resources, and responsibly designed AI tools to improve access to legal information. The Commission further recommends that the Court convene dedicated task forces to develop detailed proposals for each area. These

targeted, data-driven reforms offer a practical path forward—one that expands access to legal services while preserving the competence, integrity, and public trust essential to Tennessee's justice system.

Introduction

Tennesseans throughout the state cannot afford lawyers to represent them when they face a range of civil legal issues from fighting evictions to creating basic wills. The findings of the 2025 Civil Legal Needs Assessment conducted by the Tennessee Alliance for Legal Services offer helpful insights into this systemic problem.[1] Through surveys of 1,003 households and 165 legal, judicial, and community stakeholders across all 95 counties, the assessment found that 78% of respondents experienced at least one civil legal problem in the past year, yet fewer than one in four sought legal help, largely due to cost, lack of awareness, and access barriers.[2] The report identified the most common legal needs in areas that the Commission's work has examined: healthcare and medical debt (36.5%), family law issues including domestic violence and custody (30.2%), and housing instability such as eviction and landlord disputes (24.1%).[3] The assessment also identified significant disparities affecting rural residents, people with disabilities, seniors, immigrants, and households earning under $40,000 annually.[4] The gap is exacerbated by additional persistent barriers like limited internet access, language access challenges, and staffing shortages among legal aid providers.[5]

These findings make clear that the access-to-justice crisis in Tennessee is not theoretical. It is felt daily by real Tennesseans navigating serious legal problems without help. Recognizing the urgency of this challenge, the Tennessee Supreme Court issued an Order in September 2025 soliciting public comment on potential regulatory reforms to address it, and specifically called upon the Tennessee Access to Justice Commission to respond.[6] The order highlighted the "significant access-to-justice" gap in Tennessee, noting the tremendous work of civil legal services organizations assisting those at or near the poverty line.[7] Further, the Court discussed the growth of rural legal deserts. Some estimate that "as of 2020, Tennessee had twenty counties with fewer

---

[1] Tennessee Civil Legal Needs Assessment 2025. Tennessee Alliance for Legal Services at https://las.org/wp-content/uploads/2026/02/TALS-TN_Civil_Legal_Needs_Assessment_2025.pdf.

[2] *Id.* at 9-11.

[3] *Id.* at 3.

[4] *Id.*

[5] *Id.* at 23.

[6] Tennessee Supreme Court Order, In re: Public Comments on Potential Regulatory reforms (filed September 16, 2025 at https://tncourts.gov/sites/default/files/ProposedRulesPdf/ORDER%20SOLICITING%20PUBLIC%20COMMENTS%20ON%20POTENTIAL%20REGULATORY%20REFORMS%20TO%20INCREASE%20ACCESS%20TO%20QUALITY%20LEGAL%20REPRESENTATION.pdf

[7] *Id.*

than ten lawyers."[8] As a recent article in the Tennessee Bar Journal explained, rural residents are "rapidly losing access to lawyers which means losing access to justice."[9]

The Tennessee Access to Justice Commission and the Court have a shared commitment to ensuring meaningful access to justice for all Tennesseans. Building on more than twenty-five years of service supporting the Court, the Commission has worked to identify and address systemic barriers that contribute to the access-to-justice gap. The Commissioners have been tasked with developing strategic plans, identifying priorities, and recommending programs to improve access to justice across the state.[10] The Commission has provided collaborative leadership by working with courts, legal aid organizations, bar associations, and community partners to expand pro bono participation, develop self-help resources, revise court rules, and address systemic barriers to legal services. It is from this foundation of experience and commitment that the Commission undertook its response to the Court's Order.

To prepare this Comment, the Commission approached the Court's request with deliberate care and thoroughness. The Commission reviewed the CLEAR Report[11] in its entirety, sponsored a series of lunch-and-learn sessions with access-to-justice scholars and practitioners from states that have implemented innovative reform efforts, and established a dedicated subcommittee comprised of five Commissioners who conducted independent research on each of the regulatory reform topics identified in the Court's Order.

Building on this work and the Commission's more than twenty-five years of experience addressing access-to-justice issues in Tennessee, the Commission carefully reviewed all seven questions presented by the Court. The Commission evaluated each question through a single, consistent lens: which reforms would have the most meaningful and demonstrable impact on closing Tennessee's access-to-justice gap while preserving the competence, integrity, and public trust that define the legal profession.

That review led the Commission to identify four priority recommendations. Two of these recommendations, non-lawyer assistance programs and alternative pathways to licensure, respond directly to specific questions raised in the Court's Order. Two additional recommendations, concerning reform of court rules affecting self-represented litigants and the development of self-help tools and AI-assisted resources, emerged from the Commission's own research and discussions. The evidence supporting these two additional reforms was sufficiently compelling

---

[8] ABA, Profile on the Legal Profession (2020) at https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf.

[9] *Id.*

[10] https://tncourts.gov/courts/supreme-court/rules/supreme-court-rules/rule-50-tennessee-access-justice-commission.

[11] Committee on Legal Education and Admissions Reform (CLEAR) Report and Recommendations 10 (July 27, 2025), https://perma.cc/SW8E-FTX4.

that the Commission felt obligated to include them in this Comment, even though they were not specifically enumerated in the Order.

The Commission's four recommendations are:

1. Examine mechanisms for non-lawyer assistance and create a pilot project targeting specific legal practice areas where data demonstrates that low-income Tennesseans cannot obtain affordable, quality legal representation. (Addressing Item No. 6 in the Order.)
2. Study and develop alternative pathways to licensure, including curricular, post-graduation, and hybrid approaches, designed to incentivize lawyers and law students to serve in the public interest and in rural legal deserts. (Addressing Item Nos. 3, 4, and 5 in the Order.)
3. Review and refine Tennessee Supreme Court rules to further improve access to justice for self-represented litigants, including rules affecting limited-scope representation, pro bono service, and court navigation. (Identified through Commission research as a high-impact ATJ priority.)
4. Galvanize legal experts to develop statewide plain-language forms, stronger self-help resources, and responsible generative AI tools to expand access to legal information for self-represented litigants. (Identified through Commission research as a high-impact ATJ priority.)

The Commission also reviewed the remaining questions in the Court's Order, specifically those concerning ABA accreditation and non-lawyer ownership of law firms and addresses them in a separate section of this Comment. After careful consideration, the Commission does not find that either of these reforms would meaningfully promote access to justice for Tennesseans and therefore does not recommend them for the Court's priority consideration.

The Commission recognizes that each of the four priority recommendations involves reforms of significant complexity. Given the timeframe for this Comment, it was not possible for the Commission to fully develop implementation frameworks, cost structures, oversight mechanisms, or operational details for any of these reforms. Each recommendation will require substantial further study by subject-matter experts and dedicated stakeholders before it can be responsibly implemented.

Accordingly, the Commission's overarching recommendation to the Court is this: designate each of the four priority areas for focused study by a separately convened task force. Each task force should include subject-matter experts, members of the Commission, representatives of legal aid organizations, members of the bar, and other relevant stakeholders. These task forces would be charged with developing concrete implementation proposals, including governance structures, funding requirements, oversight mechanisms, and evaluation metrics, for the Court's subsequent consideration.

Regulatory Reform Recommendations

This Comment is intended to provide the Court with a substantive foundation for that work. It offers an honest assessment of the access-to-justice landscape in Tennessee, a survey of meaningful reform efforts underway in other states, and a clear identification of the areas where targeted action is most likely to produce results for the Tennesseans who need it most.

1. **The Court should examine mechanisms for non-lawyer assistance and create a pilot project targeting specific legal practice areas where data demonstrates that low-income Tennesseans cannot obtain affordable, quality legal representation. (Addressing Item No. 6 in the Order.)**

The Court identified in its Order that "there is a growing recognition that the current supply of legal services in the United States is insufficient to meet the needs of many Americans."[12] The Court also noted that "there is a growing concern regarding the lack of access to legal services in rural areas."[13] To address supply-side concerns about civil legal services, more than 25 states are exploring, implementing, or administering at least one regulatory reform initiative that authorizes nonlawyers to provide legal information or practice law in limited settings.[14]

These efforts are encouraged by the Conference of Chief Justices and Conference of Court Administrators in a resolution titled "In Support of Exploring Access to Justice Through Authorized Justice Practitioner Programs."[15] (Resolution 1-2025). The resolution noted that state supreme courts are responsible for the regulation of legal service providers in their respective jurisdictions, and six states have programs authorizing individuals without law licenses to practice law in limited or community settings. These models range from court navigators who cannot give legal advice to licensed paraprofessionals (LPs) who can provide limited legal services in certain practice areas.

A. Court Navigators Assisting Pro Se Litigants

One of the earliest non-lawyer initiatives created "navigators" – trained non-lawyer professionals who assist litigants in navigating court processes, completing forms, and understanding procedural requirements.[16] These programs, implemented in states like New York

[12] Tennessee Supreme Court Order, In re: Public Comments on Potential Regulatory reforms (filed September 16, 2025.

[13] *Id.*

[14] https://www.americanbar.org/groups/paralegals/blog/how-states-are-using-non-lawyers-to-address-the-access-to-justice-gap/.

[15] https://ccj.ncsc.org/resources-courts/support-exploring-access-justice-through-authorized-justice-practitioner-programs.

[16] Non-Lawyer Navigators in State Courts: Part II – An Update, new energy, urgency and possibilities. By Mary McClymont. https://www.law.georgetown.edu/tech-institute/wp-content/uploads/sites/42/2023/10/Nonlawyer-

and Alaska, typically target high-volume practice areas, like housing and family law, where self-represented litigants are common.[17] Navigators receive short-term, skills-based training that includes instruction on court procedures, ethical boundaries (especially the distinction between legal information and legal advice), and how to fill out legal documents. Navigators can also receive specialized training in subject-matter areas like evictions or consumer debt. Although navigators do not provide legal advice, they can play a critical role in improving court access and efficiency by helping individuals better understand and participate in their cases.[18]

B. Licensed Paraprofessionals Offering Specialized Legal Services

Several states have created a new tier of paid legal service providers that are not lawyers and refer to this new non-lawyer status by different terms including allied legal professional, legal paraprofessional, qualified paraprofessional, and licensed legal professional.[19] For clarity, this comment refers to these programs collectively as "licensed paraprofessional" programs or LPs. LPs allow non-lawyers to provide limited legal services. States have established different limitations for LPs, and many programs designate specific practice areas for LP certification.

For example, Minnesota's pilot project, launched in 2021, allows licensed paraprofessionals to represent clients in specific types of housing and family matters.[20] They keep track of their work and report it so the state can determine if they are impacting the 95% rate of unrepresented litigants in these cases.[21] Utah's Licensed Paralegal Practitioner (LPP) program established in 2018 allows LPPs to practice in consumer debt, landlord-tenant and family law.[22] Over two years, these LPPs have provided nearly 20,000 services to 10,000 clients with few complaints.[23]

LP programs have credentialing requirements that can include a combination of formal education (like an associate's degree or paralegal certificate), a set number of hours of substantive legal experience under attorney supervision, and passage of a licensing exam. They must also

---

Navigators-in-State-Courts-Update.pdf; Non-lawyer navigators in state courts: An emerging consensus. A survey of the national landscape of non-lawyer navigator programs in state courts assisting self-represented litigants. By Mary E. McClymont, the Justice Lab at Georgetown Law Center at https://www.law.georgetown.edu/tech-institute/wp-content/uploads/sites/42/2023/06/Nonlawyer-Navigators-in-State-Courts.pdf. *See also*, https://iaals.du.edu/sites/default/files/documents/publications/landscape_allied_legal_professionals.pdf

[17] *Id.*

[18] *Id.*

[19] https://iaals.du.edu/sites/default/files/documents/publications/landscape_allied_legal_professionals.pdf.

[20] Licensing Legal paraprofessionals, Rhode Center, https://clp.law.stanford.edu/licensing-paraprofessionals/#:~:text=Utah%20–%20licensed%20paralegal%20practitioners%20(LPPs,provincial%20offenses%2C%20and%20administrative%20tribunals.

[21] https://iaals.du.edu/projects/allied-legal-professionals.

[22] *Id.*

[23] *Id.*

complete continuing legal education (CLE) and adhere to professional conduct rules. These programs require dedicated licensing oversight which requires a financial investment from the state.

While states are still evaluating the effectiveness of these programs, early signs suggest that they are especially helpful for litigants of modest means. In Arizona, for example, paraprofessionals charge an average hourly rate of $236 with flat fees ranging from $600 to $3000–rates and fees that may remain out of reach for some low-income individuals and that, in certain markets, approach those of attorneys.[24] However, these programs are generally focused on practice areas where individuals are not retaining counsel and instead proceed pro se, meaning they are expanding access in spaces where legal representation is often absent rather than displacing existing attorney services.

C. Community Justice Workers Certified under a Lawyer's Practice License.

Community-Based Justice Worker (CJW) programs "involve training and certifying individuals working at community-based organizations to offer legal advice and services in certain case types."[25] This model provides free legal assistance to target low-income individuals who would not be able to afford legal representation. The CJWs might be required to be supervised by an attorney and/or be in partnership with a legal service corporation.[26] As of this month, 14 states have passed or proposed rules authorizing justice worker programs and 20 are considering them.[27] An evaluation of Alaska's program shows that by the end of 2024, "CJWs were serving nearly 4 cases for every one case served as volunteer attorneys."[28] Because they are imbedded in a community-based organization or legal aid organization, these non-lawyers reach populations that may not otherwise seek help from traditional legal institutions.

As one example, the CJW model in Arizona trains nonlawyers from local communities to provide limited legal assistance, especially to people who cannot afford attorneys. Authorized by the Arizona Supreme Court in 2020, the model allows these workers—often embedded in nonprofit organizations, social service agencies, or community groups—to offer practical support such as

---

[24] Assessing Arizona's Legal Paraprofessionals: 2024 Program Survey, https://www.azcourts.gov/Portals/0/26/Assessing%20Arizonas%20Legal%20Paraprofessionals_2024%20Survey%20--%20Narrative%20Summary_1.pdf at 15.

[25] The Diverse Landscape of Community-based Justice Workers at https://iaals.du.edu/news/diverse-landscape-community-based-justice-workers . *See also,* https://docs.google.com/spreadsheets/d/1yJIHSRy9k-l8wq8D6QRpqAuuFNLUiyQwpRNv1m9VTSs/edit?gid=262340764#gid=262340764.

[26] Nikole Nelson, Rebecca L. Sandefur & Matthew Burnett, Empowering Justice Through Community Justice Workers, 38 MGMT. INFO. EXCH. J. 29 (2024).

[27] Frontline Justice, https://www.frontlinejustice.org/about.

[28] https://www.americanbarfoundation.org/wp-content/uploads/2025/11/ABF-Alaska-Community-Justice-Brief-FIN.pdf at 2.

explaining legal rights, helping complete forms, and preparing individuals for hearings. They typically focus on high-need areas like housing, public benefits, family law, and domestic violence, and may work under attorney supervision or mentorship. By operating in trusted community settings, CJWs make legal help more accessible and easier to navigate. This model is designed to address the justice gap, where many people face legal problems without adequate assistance due to cost or limited attorney availability. CJWs do not replace lawyers but instead handle routine or high-volume needs through free, limited-scope services, helping to extend the reach of the legal system. Rooted in principles of community engagement, legal empowerment, and scalability, the model builds a larger, more flexible legal workforce while enabling individuals to better understand and advocate for their rights.

LP and CJW models generally require modifications to, or limited exemptions from, unauthorized practice of law rules, which are changes that several states have already implemented. Most programs also limit these roles to specific areas of law and to serving low-income populations, often focusing on high-volume matters where self-representation is common. In addition, both models require meaningful investment to develop and sustain, particularly where paraprofessionals operate under the supervision of, or in partnership with, legal services lawyers.

The Supreme Court could create task force in partnership with the Commission to further study specific state programs, identify the legal practice areas in Tennessee (i.e. consumer debt, evictions, orders of protection) where pro se representation is most prevalent, and develop proposals for a targeted paraprofessional licensing program and/or court access worker initiative in collaboration with legal services or social services organizations. This approach directly connects to our recommendations to examine court rules and develop court-approved forms and procedures to improve access to justice. For example, a targeted paraprofessional program could directly connect to our recommendation to expand a lawyer's ability to provide limited scope representation. The Georgia Supreme Court took a similar approach in August 2024.[29] The Court created a Supreme Court Study Committee on Legal Regulatory Reform "to develop recommendations regarding the regulation of the practice of law to improve civil legal access for Georgians."[30] The goal of the Committee was to "examine existing regulation of the practice of law and determine the viability of modifications to current regulatory practices to allow certain qualified, credentialed and supervised non-attorneys to provide limited legal services directly to low-income Georgians, with a focus on the "narrow areas in which non-lawyers can be trained to assist clients who otherwise could not afford a lawyer or who live in rural areas where lawyers are not available." The committee was chaired by Justice Carla Wong McMillian and vice-chaired by Court of Appeals Presiding Judge Stephen Louis A. Dillard.[31] The structure of the Georgia Committee might be instructive to our Court. For example, the Committee had 13 members, 8 members were appointed by the Chief Justice of the Court, and 5 members were appointed by the President of the State Bar, and the chair could designate and appoint committees as necessary to research and investigate issues to complete their work. Within 10 months, the committee issued a comprehensive report by engaging in

---

[29] https://www.gasupreme.us/wp-content/uploads/2024/09/In-Re-Supreme-Court-Study-Committee-on-Legal-Regulatory-Reform.pdf.

[30] https://assets.georgiacourts.gov/2/wp-content/uploads/2026/01/22165038/GA-Supreme-Court-Report-on-Legal-Regulatory-Reform_6-30-25.pdf. https://www.gasupreme.us/07-07-2025-supreme-court-study-committee-on-legal-regulatory-reform-submits-report/.

[31] *Id.*

extensive fact-gathering, including an analysis of regulations and programs in other states, and conducting "over 40 stakeholder interviews with members of the legal profession and community-based organizations that serve low-income and rural residents."[32] One of its recommendations was "a phased pilot program that would permit non-attorneys to perform certain limited legal tasks in specific types of cases."[33] The phased pilot approach in three counties aimed "to balance the need to show caution when expanding the practice of law into new areas with the urgent unmet legal needs of low-income and rural Georgians."[34]

Similarly, here, a Tennessee Supreme Court Task Force could be tasked with detailed fact-findings about the potential and challenges for non-lawyer representation in Tennessee and generate a report with recommendations. As demonstrated by Georgia's approach, the Court could pilot one of these models in three to four counties and evaluate its effectiveness over a couple of years before implementing a statewide model.

2. **The Court should study and develop alternative pathways to licensure, including curricular, post-graduation, and hybrid approaches, designed to incentivize lawyers and law students to serve in the public interest and in rural legal deserts. (Addressing Item Nos. 3, 4, and 5 in the Order.)**

In Tennessee, numerous counties have fewer than ten active lawyers, and several have only one to five lawyers serving the entire population. These shortages impede access to our civil justice systems—particularly in rural communities. In response to similar access-to-justice gaps, other states have adopted alternative lawyer licensing pathways that do not rely exclusively on the traditional model of the three-year J.D. and bar examination.

Broadly, these reforms fall into three categories:

- Curricular options where the applicants complete most or all bar requirements while attending law school,
- Post-graduation supervised practice options, and
- Hybrid or a combination of a curricular and post-graduation option.

A. Curricular Pathways to Bar Licensure

The curricular based options allow applicants to complete most, if not all, of the admission requirements while in law school. These range from full diploma privilege to requirements that applicants develop a portfolio of work that is evaluated by bar examiners. Curricular based

---

[32] *Id.*
[33] *Id.*
[34] *Id.*

pathways require close partnership between the law schools in the state and the state bar and have been most successful in states with few law schools.

The University of New Hampshire and the New Hampshire Supreme Court have maintained a highly structured alternative pathway that functions as a competency-based substitute for the bar exam for more than 20 years. To qualify, students must be admitted into the program during law school and complete a specialized, practice-focused curriculum over their final two years. This includes simulated and real legal work, like client counseling, negotiations, drafting, and court appearances—combined with doctrinal coursework. Throughout the program, students are evaluated by judges, practicing attorneys, and members of the New Hampshire Board of Bar Examiners, rather than taking a single written test. Other states are considering adopting similar approaches, including Oregon, Minnesota, Washington, and South Dakota.

The South Dakota alternative pathway is specifically for public interest lawyers and allows them to demonstrate their competence without taking the bar exam. The program is a pilot with up to ten law students who must follow a required curriculum, complete externships with attorney supervision, and commit to working in public interest for at least two years after graduation. In 2025, the South Dakota adopted a five-year pilot program to provide a public service pathway to bar admission.

B. Supervised-practice Pathways to Bar Licensure

The second alternative pathway involves supervised practice following graduation. These programs generally fall into three categories. The first emerged as a temporary response to the pandemic, and the Commission has not examined this category in detail. The second applies to graduates who did not initially pass the traditional bar examination. The third includes graduates who meet specified program criteria and elect to pursue supervised practice as an alternative path to licensure.

Three states have launched a supervised practice pathway for graduates who failed the traditional bar exam: California, Oregon, and Arizona. All three states require that graduates to pass the MPRE, meet all character and fitness requirements, and satisfy any other conditions for bar admission. The program only substitutes for a passing score on the traditional bar exam.

The Arizona Supreme Court's Arizona Lawyer Apprentice Program (ALAP), launched in 2024 and supported by a grant from the State Justice Institute, is "designed for candidates who narrowly miss Arizona's Uniform Bar Exam (UBE) passing score of 270, recognizing that a single cut score does not perfectly measure attorney competence and future success."[35] If a candidate

[35] https://www.sji.gov/arizona-lawyer-apprentice-program-alap-the-arizona-supreme-court/. For the July 2025 UBE, 16 of 44 eligible candidates (36%) have applied, while for the February 2025 UBE, 20 of 36 eligible

fails by fewer than 9 points, they can be admitted to practice law under the supervision of an experienced Arizona attorney, provided they commit to two years of providing legal services in rural areas or with public law offices statewide and meet all other admission standards. Upon completing the program, the licensee receives a regular license to practice law in Arizona. After one year, ALAP received 70 applications, and to date, there are 40 active licenses.[36]

Oregon has also launched a full-fledged supervised practice program in 2024, called the Supervised Practice Portfolio Examination (SPPE).[37] This pathway to licensure that allows applicants to complete structured supervised legal work after law school and submit a portfolio demonstrating competencies across key practice areas.[38] This model emphasizes real-world client work product and performance evaluation by supervising attorneys as an alternative to taking the bar exam. Minnesota and Washington are currently creating post-graduate alternative pathway to licensure program.[39]

C. Hybrid Pathways to Bar Licensure

The last alternative pathway is a hybrid or combination to the first two pathways described above. The Utah Supreme Court adopted an Alternate Path to licensure for graduates who have not taken a bar exam in any jurisdiction.[40] It is a combination of experiential education, post-graduate supervised practice, and standardized examination. Nevada is developing an innovative three-part Comprehensive Licensing Examination (the Nevada Plan).[41] The Nevada Plan requires all bar candidates to complete a supervised practice requirement. The Nevada Plan is an example of graduate reform that will apply to all bar candidates.

These reforms collectively demonstrate that state supreme courts can innovate within their licensing authority to assess practice competence while simultaneously advancing public protection and access to justice. They reflect a shift to competency-based licensure options that better align educational experiences with practice demands.

Tennessee should consider adopting an alternative licensure pathway tailored specifically to incentivize public interest work and to serve rural legal deserts. The Supreme Court could devise an implementation committee, like the current one in Minnesota, to study and propose an alternative pathway to licensure. The committee could be tasked with drafting a rule change to

---

candidates (56%) have applied. Earlier eligibility periods yielded 19 applications from July 2024 examinees (35%) and 7 applications from July 2023/February 2024 examinees (12%).

[36] *Id.*

[37] https://www.osbar.org/sppe.

[38] https://www.abajournal.com/web/article/oregons-alternative-pathway-to-the-bar-proves-popular.

[39] https://nationaljurist.com/washington-becomes-fourth-state-to-adopt-alternative-pathways-to-practice-law/; https://ble.mn.gov/board/alternative-pathways/

[40] https://www.utahbar.org/wp-content/uploads/2025/08/Frequently-Asked-Questions.pdf

[41] https://nvbar.org/nvplan/

implement the pathway and draft a plan for implementing the pathway. Such a pathway could include:

- Permitting bar admission after 12–18 months of supervised practice in designated rural counties, public defender offices, district attorney offices, or legal aid organizations;
- Allowing law students to complete structured, clinic courses or rigorous externships in underserved counties as part of a curricular licensing option;
- Designing a supervised practice pathway that incentivizes jobs in rural counties and public interest work through mentoring and portfolio evaluation;
- Pairing such pathways with incentives—such as loan repayment support, continuing legal education mentorship credits, or retention bonuses—to encourage sustained service in these communities; and
- Creating a curricular program that shortens the time students are in law school by a semester allowing them to meet admission requirements while in law school, which would make law school cheaper and allow them to begin practicing in a public interest job or rural legal desert sooner.

To illustrate potential impact, if ten law students at each Tennessee law school chose to pursue an alternative pathway focused on rural or public interest service, that could result in fifty new lawyers each year committed to serving legal deserts and public interest organizations. Over time, this cohort could significantly increase legal coverage in underserved regions and make measurable progress toward closing Tennessee's justice gap.

Such reforms would not lower professional standards. Rather, by assessing competence through observed practice and supervised skill development, and by incentivizing service where it is most needed, Tennessee can protect the public, strengthen practice readiness, and take a concrete step toward advancing access to justice for all its residents.

3. **The Court should review and refine Tennessee Supreme Court rules to further improve access to justice for self-represented litigants.** *(Identified through Commission research as a high-impact priority.)*

When studying the issues presented in the Court's Order, the Commission determined that it should also address additional access-to-justice reforms that further the purposes identified by the Court. The Commission has particular expertise in examining court rules and developing court-approved forms and procedures to improve access to justice. Thoughtful revision of court rules can meaningfully improve access to justice in rural areas, across the State, and in the case types where many litigants proceed without counsel.

Based on its experience, the Commission recommends that the Court consider whether targeted rule refinements could further improve access to justice in several areas, including:

- refining the rules governing limited-scope representation so that attorneys may provide appropriate, ethical assistance to self-represented litigants without unnecessary procedural burdens that discourage pro bono participation or limit access to justice;
- allowing attorneys who are licensed in another jurisdiction, but reside or work in Tennessee, to provide qualified pro bono legal services in Tennessee through approved organizations;
- encouraging attorneys and law firms to support supervised paralegal participation in pro bono matters;
- developing or endorsing court rules and procedures that make the courts easier for self-represented litigants to navigate;
- considering whether Tennessee Supreme Court Rule 13 should be amended to allow appointment of counsel in certain civil matters; and
- considering whether Rule 6.1 should be amended to increase the practical impact of pro bono service and financial support for civil legal services.

A. Limited Scope Representation and Related Rule Review

The Commission recommends that the Court consider whether rules governing limited scope representation could be refined to further support access to justice. Before the 2025 developments concerning Tennessee Rule of Civil Procedure 11.01, the Commission had already undertaken work addressing limited scope representation, also referred to as unbundled legal services,[42] under Tennessee Supreme Court Rule 8. That work was paused after Formal Ethics Opinion 2025-F-172 interpreted Rule 11.01 in a manner that raised substantial concerns for legal services organizations, pro bono programs, and attorneys providing limited assistance to otherwise self-represented litigants. The opinion was later withdrawn, and a separate rule-review process was initiated regarding Rule 11.01.

Even so, the Commission believes the concerns that prompted its earlier Rule 8 work remain important. Rule 11.01 and Rule 8 address related aspects of limited scope representation and may warrant consideration together to ensure that attorneys may provide appropriate, ethical assistance to self-represented litigants without unnecessary procedural burdens that discourage pro bono participation or limit meaningful access to justice. The Commission's

[42] According to the American Bar Association, unbundled legal services or limited scope representation is "an alternative to traditional, full-service representation. Instead of handling every task in a matter from start to finish, the lawyer handles only certain parts and the client remains responsible for the others. It is like an à la carte menu for legal services, where: (1) clients get just the advice and services they need and therefore pay a more affordable overall fee; (2) lawyers expand their client base by reaching those who cannot afford full-service representation but have the means for some services; and (3) courts benefit from greater efficiency when otherwise self-represented litigants receive some counsel."
https://www.americanbar.org/groups/delivery_legal_services/resources/.

prior limited-scope work is attached for the Court's consideration. See Appendix A – Access to Justice Commission, Pro Se Assistance/Limited Scope Review, November 22, 2023.[43]

B. Out-of-State Attorneys Performing Pro Bono Work in Tennessee

In general, attorneys must be licensed in the jurisdiction where they perform pro bono legal work. However, some states permit attorneys licensed elsewhere in the United States to provide pro bono services in-state under defined conditions. Texas, for example, created the New Opportunities Volunteer Attorney (NOVA) Pro Bono Program. Under that program, inactive members of the State Bar of Texas and lawyers licensed and in good standing in other states may participate if they provide pro bono services through an approved legal services organization and satisfy certification requirements. Tennessee could consider adopting a similar rule. See Appendix B – Examples of Out-of-state Pro Bono Rules from Other Jurisdictions.

C. Paralegal Support for Pro Bono Work

The Court may also wish to consider ways to encourage attorneys and law firms to allow paralegals to contribute time and resources to pro bono matters under attorney supervision. National organizations including the National Federation of Paralegal Associations and the American Bar Association have recognized the importance of supervised paralegal work in expanding legal services.[44] Supervised paralegal assistance can support intake, drafting, research, and certain administrative and tribunal-related functions, and can therefore increase the capacity of lawyers and legal services organizations to serve more Tennesseans.

D. Rule Refinements Affecting Self-Represented Litigants

The Court should also consider whether additional model rules, local rules, or statewide procedural refinements would make the courts easier for self-represented litigants to navigate. Tennessee already has an example of this approach in the Pro Se Bench Book for General Sessions Judges, which includes draft rules and practices that may assist courts in handling cases involving self-represented parties. See Appendix C – Pro Se Bench Book for General Sessions Judges. Several trial courts across the state have adopted helpful practices that could serve as models. Other model rules for the Court to consider are:

- Waiting a certain amount of time for the pro se litigant to appear in court before entering a default,

---

[43] Access to Justice Commission, Pro Se Assistance/Limited Scope Review, November 22, 2023. Appendix A contains the Commission's earlier work regarding limited scope representation and ghostwriting. It predates, and has not been revised to address, the 2025 developments concerning Tennessee Rule of Civil Procedure 11.01. Before those developments, the Access to Justice Commission had voted to seek action consistent with the findings reflected in this material, either by requesting an opinion from the Board of Professional Responsibility consistent with those conclusions or by seeking a comment to Tennessee Supreme Court Rule 8 from the Tennessee Supreme Court. Before that work was completed, Formal Ethics Opinion 2025-F-172 was issued, resulting in separate review of Rule 11.01 and suspension of the Commission's earlier Rule 8 efforts pending that process.

[44] https://www.americanbar.org/groups/litigation/resources/newsletters/ethics-professionalism/ethics-paralegal-work-supervision-litigation/?login.
https://cdn.ymaws.com/www.paralegals.org/resource/resmgr/files/migration/n/non_lawyer_practice_2_.pdf

- Providing videos and other documents to explain what to expect in court, the order of the docket, and explaining whether volunteer mediators are available,
- Permitting trained court clerks to explain a court process or the law to self-represented litigants without violating unauthorized practice of law rules,
- Ordering courts to explain information to an unrepresented party and assist in eliciting relevant facts to ensure a fair decision,
- Granting continuances to either party at least one time unless otherwise restricted by law so long any legal protection in place remains during the continuance(s),
- Encouraging appropriately trained mediators to be available for certain dockets for mediator of the day programs,
- Ensuring rules and processes make it easy for self-represented litigants to request and obtain an affidavit of indigency under a defined process for the affidavit to be timely reviewed by a judge so that applicants do not need to come back to court to file the underlying court document, and
- Not allowing writs of possession to be executed in eviction cases if not sought timely and within a prompt timeframe after an eviction judgment. See Appendix C.

E. Appointment of Counsel in Certain Civil Matters

The Court could amend TSC Rule 13 to allow the appointment of counsel in certain civil cases. The Commission recognizes the enormity of this reform, but the impact it would have on low-income Tennesseans who cannot afford legal counsel or do not qualify for assistance from legal service organizations would be significant. The Commission recommends that the Court evaluate such a rule change that would allow for appointments in certain civil cases. See Appendix B for examples of other jurisdictions that allow appointment for civil cases on a case-by-case basis.

F. Rule 6.1 and Support for Civil Legal Services

Finally, the Court may wish to consider whether Rule 6.1 should be revised to increase the practical impact of pro bono work and financial support for civil legal services.[45] Many of the regulatory reform recommendations will require a significant financial support to help fill the access to justice gap. Rule 6.1 could be a source for some of that funding if lawyers were required to do more than just aspire to 50 hours of pro bono. Lawyers could have a choice of providing free legal services or providing financial support to legal services organizations in lieu of pro bono hours. The District of Columbia has adopted a rule that could serve as a model.[46] The Court could ask the Commission to examine what other states have implemented regarding mandatory pro bono and make a suggestion to amend to Rule 6.1.

4. **The Court should galvanize legal experts to develop plain-language self-help materials and leverage responsible generative AI tools to expand access to legal**

[45] DarKenya W. Waller and Eric G. Osborne, Democracy, the Justice Gap and Preserving the Rule of Law, https://las.org/democracy-the-justice-gap-and-preserving-the-rule-of-law/; https://issuu.com/nashvillebarassociation/docs/2024_summer_nbj_online.

[46] https://www.dccourts.gov/sites/default/files/matters-docs/rule49.pdf.

information for self-represented litigants. *(Identified through Commission research as a high-impact priority.)*

The Commission recommends that the Court view plain-language forms, self-help resources, and responsible technology as closely related components of a modern access-to-justice strategy. For many Tennesseans, especially those in rural areas and those who cannot afford counsel, meaningful access to justice depends not only on the availability of lawyers, but also on whether litigants can understand court processes, locate reliable materials, and present their claims or defenses in a form the legal system can meaningfully process.

A. Statewide Forms and Self-Help Resources

The Tennessee Supreme Court is the only entity in Tennessee that can approve statewide use of plain-language legal forms for filing with the courts under Tennessee Supreme Court Rule 52. The creation of additional statewide forms would materially improve access to the Tennessee court system, including in rural areas. The availability of approved forms would promote consistency, reduce confusion, and help self-represented litigants present legally sufficient information to the court. In addition, if the Court ultimately approves paraprofessional or other non-lawyer assistance models, the existence of clear, approved forms will make those reforms more effective and more administrable.

The need for additional forms is particularly important in case types where one side has a readily available form and the other does not. Without sufficient forms, litigants may not have a meaningful opportunity to be heard. For example, in general sessions court, there is a statutorily created detainer summons form, but there is no comparable statewide form for a tenant to assert defenses or related claims. These kinds of gaps can make the system more difficult to navigate for unrepresented parties.

The Commission therefore recommends that the Court authorize the Commission and the Administrative Office of the Courts to work together to develop a more robust and modern self-help portal or center.[47] This effort should include sustained staffing and project management, including a dedicated position responsible for coordinating the development, review, approval, updating, and maintenance of plain-language forms; overseeing the usability and organization of the portal; and incorporating appropriate technological advances into the delivery of self-help resources. The Court may also wish to consider whether Rule 52 could be refined to allow the Commission and the Administrative Office of the Courts to evaluate, prioritize, and advance forms projects in a more systematic way so that forms development becomes an ongoing access-to-justice priority rather than a piecemeal effort.

Other states demonstrate the value of this approach. Kentucky, for example, has developed a self-help portal that includes guided interviews for numerous court forms,[48] and other

[47] Our current Tennessee Self Help Center is difficult to navigate: https://www.tncourts.gov/programs/self-help-center.

[48] https://www.kycourts.gov/Legal-Help/Pages/Self-Help-Portal.aspx.

state court systems provide useful models Tennessee can study in building a stronger statewide resource.[49]

B. Responsible Use of Generative AI in Self-Help Services

Artificial intelligence makes this work more urgent, not less. Self-represented litigants are already using publicly available generative AI tools to ask legal questions, draft filings, and attempt to navigate court processes. That reality cannot be ignored. AI therefore presents both a serious risk and a significant opportunity.

On the one hand, general-purpose tools may generate inaccurate, incomplete, overconfident, or legally unsound information. Self-represented litigants who rely on those tools may prepare flawed pleadings, misunderstand deadlines or procedures, or present arguments that are not supported by Tennessee law. That can harm litigants, create inefficiencies for courts, and undermine confidence in the justice system. If the justice system does not provide better alternatives, many users will continue turning to tools that are not designed for Tennessee courts, Tennessee procedure, or the practical realities faced by self-represented litigants.

On the other hand, responsibly designed and carefully limited AI tools could become one of the most effective ways to expand access to legal information and self-help assistance. If grounded in Tennessee-specific law, approved forms, court rules, and carefully curated plain-language content, such tools could help litigants understand court processes, identify the correct forms, complete guided interviews, receive explanations of common legal terms and procedural steps, and avoid common filing errors.

For that reason, the Commission recommends that the Court partner with the Administrative Office of the Courts, legal services organizations, technologists, and other stakeholders to identify funding sources and develop safe, limited AI-supported tools for self-represented litigants. These tools should not attempt to replace lawyers or provide unrestricted legal advice. Rather, they should be built to expand reliable access to legal information and to direct users toward approved Tennessee resources instead of leaving them to depend on unregulated public platforms that may produce erroneous or fabricated legal work.

The Commission believes this reform may have especially significant promise. In many case types, the combination of court-approved forms, guided self-help tools, and carefully bounded generative AI could have a greater practical impact on day-to-day access to justice than almost any other single reform. AI is already shaping how people seek legal help. The Court therefore has an opportunity to ensure that this emerging technology supports the public with accurate, understandable, and Tennessee-specific resources rather than allowing the field to be shaped entirely by general consumer tools.

In short, forms are now more important because of AI, not less. If the court system does not provide reliable plain-language materials, guided tools, and carefully bounded technological resources, self-represented litigants will continue to rely on whatever tools they can

[49] https://betterinternet.law.stanford.edu/2018/07/28/making-an-inventory-of-self-help-websites/. See Alabama, South Carolina, Connecticut.

find. The question is not whether AI will affect access to justice. It already does. The question is whether Tennessee's courts will help shape that reality in a way that protects the public while expanding meaningful access to justice. The Commission believes that improved statewide forms, a stronger self-help infrastructure, and responsibly limited generative AI tools may together offer one of the greatest opportunities to improve access to justice for Tennesseans.

Regulatory Reforms Considered Without a Recommendation

The Commission was tasked with evaluating potential regulatory reforms through the lens of improving access to justice. After thorough analysis, the Commission determined the regulatory reform options listed in questions 1, 2, and 7 of the Court Order do not create present clear or effective pathways to expanding access to legal services. The following section explains the reasoning behind this conclusion and outlines the key considerations that informed the Commission's position.

A. ABA Accreditation (Questions 1 and 2)

The Commission carefully considered the questions posed by the Court regarding reliance on ABA accreditation, alternatives to that accreditation, and less costly alternatives to the traditional three-year law school curriculum. These questions have generated significant public attention and commentary. After thorough review, the Commission does not recommend that the Court reduce or eliminate its reliance on ABA accreditation and offers the following analysis in support of that conclusion.

Tennessee already occupies a more flexible position than many jurisdictions on this issue. Under existing rules, graduates of Tennessee law schools approved by the Board of Law Examiners but not accredited by the ABA may sit for the Tennessee bar. The Nashville School of Law provides one such pathway, serving non-traditional students and career-change professionals who may otherwise lack access to legal education. This structure provides an additional pathway into the legal profession for Tennesseans who might not otherwise have access to legal education. However, expanding the number of non-ABA-accredited institutions would require the Court and the state to develop and maintain a robust independent oversight framework to ensure quality and protect consumers, a responsibility that currently falls largely to the ABA and one that would demand significant and sustained state resources. In this respect, Tennessee has already implemented a measured, locally tailored alternative to exclusive reliance on ABA accreditation, and the existing framework represents an appropriate balance between expanded access and responsible oversight.

The Commission's analysis leads it to conclude that moving beyond this existing framework to further reduce or eliminate reliance on ABA accreditation would not meaningfully

advance access-to-justice goals and could in fact undermine them. The Commission's concern centers on two related issues: attorney supply and interstate mobility.

Tennessee's law schools draw students from across the country, many of whom remain in Tennessee to practice after graduation. ABA accreditation is a critical factor in that pipeline. Graduates of ABA-accredited schools are generally eligible to sit for the bar in any state, making Tennessee an attractive destination for students who may be uncertain where they will ultimately practice.[50] If Tennessee were to reduce or eliminate its reliance on ABA accreditation, law schools operating under that reduced standard would produce graduates whose ability to practice in other states would be significantly restricted. Prospective students who are uncertain about where they wish to practice, which includes many law students, would have strong incentives to choose schools in states that maintain full ABA accreditation. Reduced enrollment at Tennessee law schools would mean fewer graduates entering the Tennessee bar, fewer lawyers available to serve underserved communities, and fewer attorneys willing to take on rural or public interest work. The access-to-justice consequences of shrinking Tennessee's attorney pipeline would fall hardest on the very populations the Commission is charged with serving.

The interstate mobility concern is equally significant. Graduates of non-ABA-accredited schools already face meaningful limitations on their ability to practice across state lines. Most jurisdictions continue to condition bar admission on ABA accreditation, and there is no indication that this is changing in a way that would benefit Tennessee graduates.[51] A Tennessee law graduate who cannot be licensed in neighboring states is a less attractive candidate for multistate employers, less mobile in response to market demands, and less able to follow clients whose legal needs cross state lines. Reduced portability does not serve access-to-justice goals.

The CLEAR Report reflects this tension and does not recommend the wholesale abandonment of ABA accreditation. The Report questions whether certain accreditation standards, many of which focus on institutional inputs such as faculty composition, facilities, and administrative structures, are sufficiently tied to demonstrated practice readiness or improved client outcomes, particularly given their contribution to the rising cost of legal education.[52] The Commission shares the concern that rising tuition and resulting student debt materially affect graduates' willingness and ability to serve low-income populations and rural communities.[53] The CLEAR Report acknowledges that national accreditation requirements have ensured uniform quality standards in accredited schools across the country, and notes that 49 states currently require graduation from an ABA-accredited law school.[54] The Report does not recommend the wholesale

---

[50] Committee on Legal Education and Admissions Reform (CLEAR) Report and Recommendations, p. 91 (July 27, 2025), https://perma.cc/SW8E-FTX4.

[51] *Id.*

[52] *Id.* at 45-47.

[53] *Id.* at 98-99.

[54] *Id.* at 19.

abandonment of ABA accreditation, but rather calls on state supreme courts to encourage an accreditation process that promotes innovation, experimentation, and cost-effective legal education geared toward lawyers meeting the legal needs of the public.[55] The Commission views this as an endorsement of reform within the existing accreditation framework, not a call to abandon it.

With respect to alternatives to ABA accreditation, the CLEAR Report identifies state-based accreditation, outcome-focused regulation, and conditional or provisional approval models as tools some jurisdictions are exploring. Each of these alternatives, however, requires significant administrative capacity, sustained oversight infrastructure, and reliable metrics to ensure competence and public trust. Developing and maintaining such a system would require substantial investment by the Court and the state, and the evidence regarding the effectiveness of these models remains, by CLEAR's own assessment, emerging and uneven. Poorly designed alternatives risk shifting risk onto clients and the public rather than meaningfully expanding access.

For all of these reasons, the Commission concludes that reducing or eliminating reliance on ABA accreditation is not an access-to-justice solution for Tennessee. Tennessee's existing framework, which already accommodates non-ABA-accredited institutions through Board of Law Examiners approval, appropriately balances flexibility with the consumer protections and interstate mobility that ABA accreditation provides. The Commission recommends that the Court maintain its current approach on this issue while continuing to monitor developments in other jurisdictions and the ongoing work of CLEAR.

B. Non-lawyer Law Firm Ownership (Question 7)

As for modifying or eliminating Rule 5.4 of the Tennessee Rules of Professional Conduct that generally prohibits fee sharing with non-lawyers and non-lawyer ownership of law firms, the Commission recognizes that non-lawyer ownership of law firms offers the potential to expand access to legal services through capital investment, competition, and innovation. Accordingly, several states are testing whether loosening ownership restrictions could increase service availability and affordability. At the same time, non-lawyer ownership of law firms raises serious concerns regarding professional independence, consumer protection, and the commercialization of legal practice. Current state experiments suggest cautious optimism among reformers but do not yet provide conclusive evidence that alternative business structures significantly reduce the justice gap. One of the hallmarks of this debate is the lack of definitive evidence. As a result, the national trend reflects incremental experimentation rather than wholesale deregulation.

---

[55] *Id.* at 14.

Conclusion

For more than two decades, the Tennessee Supreme Court demonstrated a strong commitment to improving access to justice for all Tennesseans. As the Court considers the range of regulatory reform possibilities, the Commission urges the Court to prioritize targeted, data-driven reforms grounded in Tennessee's unique legal landscape and informed by emerging national models. By piloting carefully designed non-lawyer assistance programs, exploring alternative licensure pathways tied to public service and rural legal deserts, removing procedural barriers for self-represented litigants, and investing in modern tools like plain-language forms and responsible AI solutions, the Court can meaningfully expand access while preserving the competence, integrity, and public trust that define the legal profession. The Commission commends the Court's leadership on these issues and hopes for the opportunity to contribute to this process as the Court develops and implements effective, access-to-justice solutions.

Respectfully Submitted,

Eric Osborne (BPR No. 029719)
Chair, Access To Justice Commission
Tennessee Supreme Court
511 Union Street, Suite 600
Nashville, TN 37219

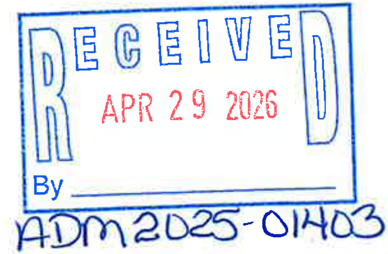
SOUTHERN ENVIRONMENTAL LAW CENTER

1033 Demonbreun Street, Suite 205
Nashville, TN 37203

Telephone 615-921-9470
Facsimile 615-921-8011

April 29, 2026

Via email: appellatecourtclerk@tncourts.gov



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

Re: Docket No. ADM2025-01403, Regulatory Reform

Dear Clerk Hivner:

I am submitting this comment pursuant to the Tennessee Supreme Court's Order, dated September 16, 2025, in docket number ADM2025-01403, *In re: Public Comments on Potential Regulatory Reforms to Increase Access to Quality Legal Representation.* In that Order, the Court requested comment on seven issues, which included: "[w]hether the Court should consider modifying requirements for admission to the Tennessee Bar for those licensed in other States to promote interstate practice and mobility." Order 6, Sept. 16, 2025, docket no. ADM2025-01403 (issue 5).

I write to tell the Court about my experience as an interstate attorney seeking admission to the Tennessee Bar. I am a highly trained and practiced environmental litigator, and I am currently a member of the Wisconsin Bar with no disciplinary history. I applied for admission without examination (comity) months before I moved to Tennessee.[1] Yet I have still not been admitted to the Tennessee Bar in over a year since I submitted my application, and I do not believe my experience is unique. I believe Tennessee's current practice for admission without examination discourages highly qualified, out-of-state attorneys like me from practicing in Tennessee.

My Qualifications, Training, and Experience as an Environmental Litigator

I attended the University of Wisconsin—Stevens Point (UWSP), where I triple-majored in biology, economics, and general resource management policy. That education gave me a foundation in the science of biology and natural resource management; environmental and natural resource law; and economics, including social and environmental economics. During my senior year at UWSP, I decided to attend law school to pursue a career in environmental law. I chose Drake University Law School, which is accredited by the American Bar Association, because Drake's education focused on preparing graduates to practice independently immediately upon graduation. While in law school, I served as the Articles Editor for the *Drake Law Review* and was

[1] Wisconsin has reciprocity with Tennessee. The Wisconsin Bar will allow a Tennessee attorney to move for admission upon proof of practice if that attorney has practiced law for at least three of the last five years. Wis. Sup. Ct. R. 40.05, https://www.wicourts.gov/sc/scrule/DisplayDocument.pdf?content=pdf&seqNo=540636.

the captain of one of Drake's two National Moot Court teams. I served as a teaching assistant for the 1L Legal Research and Writing class; a research assistant for former Dean Jerry Anderson; and an extern for former Iowa Supreme Court Justice Brent R. Appel.

During my 3L year, I applied for admission to the Wisconsin Bar. I graduated in May 2013 and sat for the Wisconsin bar exam in July 2013. At the time, the Wisconsin bar exam included one day of Multistate Bar Exam (MBE) multiple choice questions and a second day of state-specific essay questions. The Wisconsin Board of Bar Examiners provided test-takers with their raw scores as well as scaled results. For the July 2013 bar exam, the average scaled score for each test section was 144 points and a combined 258 points was required to pass. I answered correctly 170 of the 200 MBE questions, which placed me higher than 99.3% of Wisconsin test-takers during that exam. I received a MBE scaled score of 183 points and an essay scaled score of 181 points for a total scaled score of 364 points. This was well above the 258 points required to pass. I joined the Wisconsin Bar on October 14, 2013.

During law school, I interned at the U.S. Environmental Protection Agency's Office of General Counsel, and they offered me a position as their Honors Fellow upon graduation. I worked as the Honors Fellow for the Office of General Counsel from October 2013 to October 2014. In November 2014, I joined the environmental team at Godfrey & Kahn, S.C., a business-focused law firm based in Wisconsin. While at Godfrey & Kahn, I helped a client obtain the first wastewater discharge permit issued in Wisconsin that used a water quality trade to comply with a phosphorus discharge limitation.

In May 2016, I left Godfrey & Kahn to join the Wisconsin Department of Justice's (WDOJ) Environmental Protection Unit. I served as an Assistant Attorney General for the WDOJ from June 2016 through February 2025. In my role as an Assistant Attorney General, I civilly prosecuted violations of Wisconsin's environmental laws and defended the Wisconsin Department of Natural Resources (WDNR) when its decisions were challenged in court. I worked statewide, and most of my cases were in rural areas of the State.

In February 2025, I decided to move to Tennessee and join the Southern Environmental Law Center (SELC). SELC is a nonprofit, nonpartisan environmental organization rooted in the South. SELC has more than 160 legal and policy experts working to protect people, lands, air, water, climate, and wildlife across Virgina, North Carolina, South Carolina, Georgia, Alabama, and Tennessee. The staff in SELC's Tennessee office provide *pro bono* legal representation and advocacy for Tennesseans facing environmental issues. While SELC's Tennessee office is in Nashville, we represent clients throughout the State. For example, I have worked on major matters in Bedford and Marshall counties, neither of which has many experienced environmental litigators willing to provide *pro bono* representation.

I have been admitted to the bars of the United States District Court for the Middle District of Tennessee; the United States District Court for the Eastern District of Tennessee; the United States District Court for the Western District of Tennessee; and the United States Court of Appeals

for the Sixth Circuit. Despite my training, experience, and spotless disciplinary history, as of the date of this letter, I have yet to be admitted to the Tennessee Bar.

My Application to the Tennessee Board of Law Examiners

While I was still working at the WDOJ, I submitted a complete application for admission without examination to the Tennessee Board of Law Examiners. I submitted that application on February 18, 2025, *over a year ago now*. After I moved to Tennessee in April 2025 and joined SELC, I registered for practice pending admission. *See* Tenn. Sup. Ct. R. 7, § 10.07. The National Conference of Bar Examiners (NCBE) completed its review of my application in spring 2025, and I successfully completed the Tennessee Law Course on June 22, 2025, *see* Tenn. Sup. Ct. Rule 7, § 1.07.

I have followed up with the Board of Law Examiners regarding the status of my application, inquiring if anything is outstanding or missing. On January 15, 2026, the Board of Law Examiners told me that it was still reviewing applications that were submitted in 2024 and had not begun reviewing applications submitted in 2025. The Board of Law Examiners could not provide me with an estimate as to when it would begin reviewing applications submitted in 2025. I have not heard from the Board of Law Examiners since then.

My Experience Seeking Licensure as an Out-of-State Attorney

In my experience, seeking admission without examination to the Tennessee Bar is costly, delayed, and therefore not a functional pathway for admission. I believe the current process is discouraging qualified out-of-state attorneys from seeking admission in Tennessee, and the Court should take action to address systemic issues delaying this process.

Admission without examination is costly. As part of my complete application, I paid the NCBE $550.00. I also paid the Board of Law Examiners $1,436.02 (including the processing fee) to review my application, *a service which it has still not provided me over a year after collecting my payment*. In addition to the direct cost of my application, I paid the Wisconsin Board of Bar Examiners for a copy of my 2013 application to give to the Tennessee Board of Law Examiners; have paid the Wisconsin Supreme Court repeatedly for certificates of good standing to ensure I have a current certificate to support a *pro hac vice* motion; paid to register to practice pending admission in Tennessee; and paid to complete the Tennessee Law Course.

These monetary costs do not include the time and labor I have spent shepherding my application and dealing with the consequences of practicing under a temporary registration. I am obligated to explain my licensure status to clients. Tenn. Sup. Ct. R. 7, § 10.07(a)(6). I must work with another SELC attorney who is admitted to the Tennessee Bar and move for admission *pro hac vice* in any matter in state court, which puts more work on my colleagues. *See* Tenn. Sup. Ct. R. 19(a). This also burdens the courts to rule on the *pro hac vice* motions and the Board of Professional Responsibility to process the motions.

For over a year, I have been under a continuing obligation to update my pending application with the Board of Law Examiners if anything changes in my life. I must proactively reach out to the Board of Law Examiners to try and get updates on the status of my application because otherwise the Board does not communicate with me. I feel the stress of making sure that I comply with every special rule related to my temporary license status, because if I do not, I can be denied admission to the Tennessee Bar. I also must continue to maintain my license in Wisconsin despite having left that State in April 2025.

I know that my experience is not unique. There is an informal Facebook group for attorneys that have applied for admission without examination to the Tennessee Bar. Based on discussion in that group, I believe it is not uncommon for attorneys to wait a year and a half or two years for the Board of Law Examiners to review their applications. One applicant said that because the Board took almost two years to start reviewing his application, by the time the Board got to it, the Board considered it out-of-date and required him to submit new certificates of good standing and disciplinary history. I am concerned I will experience something similar once the Board finally begins reviewing my application, causing further delay and cost for me.

Tennessee's current inability to promptly process applications for admission without examination is deterring experienced attorneys from seeking admission here. I would not recommend it to other out-of-state attorneys. The only other route for admission would be to sit for the Tennessee bar exam, which would also be costly and burdensome. Nor do I think that should be required to better "protect" Tennesseans. I successfully completed the Wisconsin bar exam in 2013. I am a highly qualified and experienced environmental litigator with a clean disciplinary history who wants to provide *pro bono* legal services to the people of Tennessee, especially in areas outside of Tennessee's major cities. I believe I will provide quality, beneficial legal services to rural Tennesseans if admitted to the bar. Moreover, Tennessee relies on the Uniform Bar Exam, which does not even test the administrative and environmental law that I practice daily. Like me, I think that many practicing attorneys will not be willing to bear the cost of studying and sitting for a second bar exam, nor should they be forced to do so just to obtain timely review of their applications for admission.

At a minimum, the Court should formally change the rule to allow practice pending admission until the Board of Law Examiners takes final action on an application for admission without examination. *See* Tenn. Sup. Ct. R. 7, § 10.07(a). I also respectfully request that the Court address systemic challenges with the Board of Law Examiners. I assume the staff of the Board of Law Examiners are working in good faith to process applications for admission without examination as quickly as they can. Despite this, applications are not being processed promptly. If the Board of Law Examiners lacks staff, technology, or other resources to process applications, those issues must be addressed for comity to become a meaningful pathway to admission in this State. I respectfully encourage the Court to address the current costly and unduly delayed process.

I appreciate your review of my comment and consideration of my experience. I am happy to provide supporting documentation or discuss any of the details included in this letter if it would be of assistance to the Court.

Sincerely,

s/ Emily M. Ertel

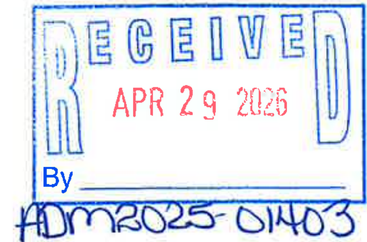
Emily M. Ertel
Senior Attorney*

Southern Environmental Law Center
1033 Demonbreun Street, Suite 205
Nashville, TN 37203
Office: (615) 921-9470
Fax: (615) 921-8011
eertel@selc.org

**Licensed in WI; not yet licensed in TN*

MaryBeth Lindsey

To: appellatecourtclerk
Subject: RE: Public Comment in Docket No. ADM2025-01403



From: Emily Ertel <eertel@selc.org>
Sent: Wednesday, April 29, 2026 10:09 AM
To: appellatecourtclerk <appellatecourtclerk@tncourts.gov>
Cc: George Nolan <gnolan@selc.org>
Subject: Public Comment in Docket No. ADM2025-01403

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

Dear Clerk Hivner:

Please find attached my public comment submitted pursuant to the Supreme Court of Tennessee's orders in docket no. ADM2025-01403, *In re: Public Comments on Potential Regulatory Reforms to Increase Access to Quality Legal Representation*. Please let me know if you have any issues accessing the attachment.

Thank you,

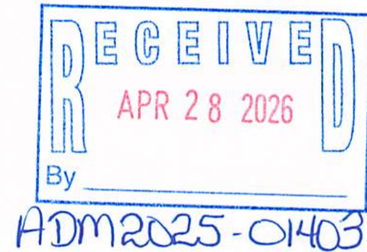
Emily Ertel

Emily M. Ertel
Senior Attorney

Southern Environmental Law Center
1033 Demonbreun Street, Suite 205
Nashville, TN 37203
(615) 921-8014
selc.org

Licensed in WI; registered to practice pending admission in TN

nalp *We advance law careers*



2026-2027 BOARD OF DIRECTORS

President
Michael J. Ende
William & Mary Law School

Vice-President for Diversity, Equity & Inclusion
Bendita Cynthia Malakia
O'Melveny & Myers LLP

Vice-President for Finance
Kay Nash
Wiley Rein LLP

Vice-President for Member Services and Education
Rashida T. West
Drexel University
Thomas R. Kline School of Law

President-Elect
Andy Hales
Venable LLP

DIRECTORS

Tanisia Charles
Jones Day

Joe Christian
Bass, Berry & Sims PLC

Tasha Everman
University of Nebraska
College of Law

Aisha Joseph
New York Law School

Marlon Lutfiyya
Neal, Gerber & Eisenberg LLP

Robyn Marttila
University of Western Ontario
Faculty of Law

Nicole Netkin-Collins
University of Colorado Law School

Amy Perez
University of Miami School of Law

Natalie Quinn
Fox Rothschild LLP

Deborah Snyder
Santa Clara University School of Law

Immediate Past President
Alison Ashe-Card
Duke University School of Law

Executive Director
Nikia L. Gray
NALP

April 28, 2026

James Hivner, Clerk
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1307
appellatecourtclerk@tncourts.gov

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

Dear Mr. Hivner:

The National Association for Law Placement (NALP) seeks to provide the following comments regarding the issue of whether the Tennessee Supreme Court should modify, reduce, or eliminate its reliance on the American Bar Association Council of the Section of Legal Education and Admissions to the Bar (the Council) accreditation in setting minimum educational requirements for applicants to the Tennessee Bar.

NALP is the preeminent association of law schools and legal employers throughout North America and beyond, focused on supporting and advancing the careers of law students and lawyers. NALP is widely recognized as the leading authority on the legal job market and the career paths of lawyers. For over 50 years, NALP has published the most comprehensive report in the industry on the employment outcomes of new law school graduates and has studied the trajectory of their careers over subsequent years. This research, combined with NALP's deep understanding of what drives the legal job market, uniquely positions NALP to comment on the potential impact to the careers of Tennessee law school graduates should the Tennessee Supreme Court alter the current Rules of the Supreme Court Relating to Admissions to the Bar to modify, reduce, or eliminate its reliance on Council accreditation.

1220 19th Street NW, Suite 510 • Washington, DC 20036
T (202) 835-1001 • F (202) 835-1112 • E info@nalp.org
www.nalp.org

As a preliminary matter, it is essential to distinguish between *eliminating* the Council as the accreditor of Tennessee law schools and *providing an alternative* to it, as is already done in Tennessee and other states. While the latter raises concerns, it still maintains the option of participating in a national accreditation scheme. By contrast, it is NALP's position that outright eliminating the Council as a recognized accreditor of Tennessee law schools would be catastrophic to the careers of future Tennessee graduates. We therefore write to briefly explain this position.

The Modern Legal Job Market Requires Portability

To understand the impact of weakening the national accreditation system provided by the Council, it is important to understand that legal careers have changed profoundly since the Great Recession. While just a decade ago it was commonplace for lawyers to have lifelong legal careers in a single state, today's graduates face a much more fluid, competitive legal industry. Indeed, mobility — both geographic and professional — has become the defining feature of successful modern legal careers.

The importance of mobility, particularly in the early stages of a lawyer's career, is underscored by longitudinal studies conducted by NALP and the NALP Foundation that examine the employment status of law school graduates three years after graduation. This research shows an exceptionally high degree of mobility among early-stage lawyers with upwards of 70% of graduates from recent law school classes having held two or more jobs within their first three years of practice. Further, on average one in five of those job changes involve relocation, whether it's due to new professional opportunities or personal circumstances.

Given these facts, the portability of a law license is critical to the success and longevity of legal careers today. As bar eligibility in most states is directly tied to Council accreditation, weakening the national Council accreditation system would make it significantly more difficult for lawyers to relocate or adapt as their careers evolve. Practically speaking, JD degrees from non-Council-accredited law schools functionally limit where the degree holder can practice law and their employment prospects, ultimately decreasing the value of that degree and resulting in such individuals prematurely exiting the profession, if they ever practice law at all.

National Accreditation is Critical for Graduate Mobility and Employment

Maintaining a national accreditor is particularly critical for graduate mobility and employment immediately following law school. Currently, five of the six Tennessee law schools are Council-accredited, producing approximately 600 graduates annually. These students come from across the country, with out-of-state enrollment figures ranging

anywhere from 9% to 93% for the Class of 2028 (the most recently enrolled law school class). The fact that these law schools are currently accredited by the Council — which is the only national accreditor for law schools — provides these out-of-state students with the assurance that they can attend a Tennessee law school and return home after graduation and still be eligible to practice law. Eliminating Council accreditation removes that assurance and forces these students to choose between either remaining in Tennessee for practice or going elsewhere for law school.

Moreover, the negative impact of eliminating Council accreditation goes beyond just out-of-state students. NALP data shows that on average 42% of all Tennessee law graduates will obtain a job in another jurisdiction following graduation — a figure that is much higher than the national average of 34% and represents about 252 Tennessee law school graduates each year. Without Council accreditation, many of these graduates would not be eligible to be licensed in another state or would face severe hurdles in becoming so. In fact, for the past ten years, the top three jurisdictions for Tennessee graduates who obtain a job outside of Tennessee have been New York, the District of Columbia, and Texas. Should the Court eliminate Council accreditation, Tennessee graduates would no longer be eligible for admission in New York or the District of Columbia immediately following graduation. *See* N.Y. Ct. App. R. 520.5 (imposing a five-year practice requirement on graduates from non-Council-accredited law schools); D.C. Ct. App. R. 46 (imposing an additional study requirement on graduates from non-Council-accredited law schools).

The Texas Supreme Court recently amended their criteria for bar eligibility to allow graduates of non-Council-accredited schools to sit for the Texas bar exam, but only if such schools are approved by the Texas Supreme Court based on yet-to-be determined criteria. *See* Order, Misc. Dkt. No. 26-9002 (T.X. S. Ct. Jan. 6, 2026). Tellingly, the Nashville School of Law, Tennessee's only non-Council-accredited law school, was not included in the list of initially approved law schools attached to the Texas Supreme Court's order. Nor were any other non-Council-accredited law schools, including those that hold state accreditation such as the fifteen CALS schools in California. This fact illustrates the risks should the Court eliminate Council accreditation.

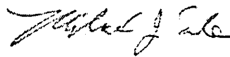
The lack of Council accreditation will also negatively impact the job opportunities of Tennessee graduates — whether they are staying in-state or going out-of-state. Mid to large-sized law firms, which collectively account for nearly 30% of all entry-level legal jobs, overwhelmingly prefer or require that applicants hold degrees from Council-accredited schools. Likewise, many government and public interest employers have similar preferences. For example, the IRS' prestigious Chief Counsel Honors Program requires candidates to have graduated from an Council-accredited law school. *See* IRS, The Chief Counsel Honors Program, https://www.jobs.irs.gov/resources/honors-program-entry-level-attorneys (accessed Apr. 23, 2026).

In short, a national accreditor is critical for graduate mobility and employment following law school. Eliminating Council accreditation for Tennessee law schools will limit the jurisdictions graduates can practice in, outright exclude them from many employment opportunities, and harm their overall job prospects.

Conclusion

For the foregoing reasons, the National Association for Law Placement encourages the Supreme Court of Tennessee to maintain Council accreditation as a component of Tennessee bar admission requirements. While alternatives like California's model should be studied carefully, eliminating reliance on the Council as the accreditor for Tennessee' law schools would severely harm its graduates and lawyers and undermine the national accreditation scheme that is vital for an increasingly mobile profession.

Respectfully submitted on behalf of the National Association for Law Placement,

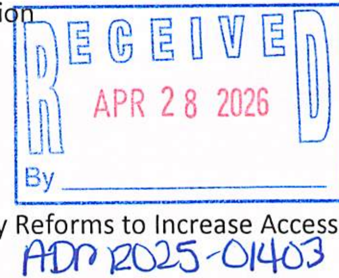


Michael J. Ende
President

Nikia Gray,
Executive Director

MaryBeth Lindsey

To:	appellatecourtclerk
Subject:	RE: Docket No. ADM2025-01403 – Public Comments on Potential Regulatory Reforms to Increase Access to Quality Legal Representation



From: Nikia Gray <ngray@nalp.org>
Sent: Tuesday, April 28, 2026 7:25 PM
To: appellatecourtclerk <appellatecourtclerk@tncourts.gov>
Subject: Docket No. ADM2025-01403 – Public Comments on Potential Regulatory Reforms to Increase Access to Quality Legal Representation

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

Dear Mr. Hivner-

Attached please find comments from the National Association of Law Placement in response to Docket No. ADM2025-01403 – Public Comments on Potential Regulatory Reforms to Increase Access to Quality Legal Representation.

Please do not hesitate to let us know if there are any questions about our comments or NALP's data. We are happy to be of further assistance.

Best regards,
Nikia

Nikia Gray, Esq.
Executive Director
NALP - We advance law careers
1220 19th Street NW, Suite 510, Washington, DC 20036
Phone (202) 835-1001
www.nalp.org

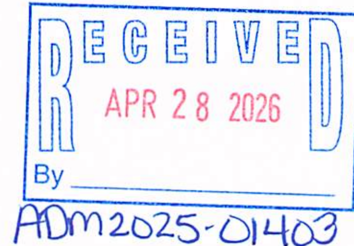
Pronouns: She/Her/Hers

NALP believes in fairness, facts and the power of a diverse community.

MaryBeth Lindsey

From: Ryan Love <ryanelove@gmail.com>
Sent: Tuesday, April 28, 2026 9:10 PM
To: appellatecourtclerk
Cc: gsiskind@visalaw.com; c.moon@vanderbilt.edu; Lucian.Pera@arlaw.com

Subject: Public Comment: In Re ADM2025-01403 - AI, UPL, and Access to Legal Assistance



Warning: Unusual sender <ryanelove@gmail.com>

You don't usually receive emails from this address.
Make sure you trust this sender before taking any actions.

April 28, 2026

By email to: appellatecourtclerk@tncourts.gov

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 Title: Proposal Regarding Artificial Intelligence, Unauthorized Practice of Law, and Access to Legal Assistance

To the Honorable Justices of the Tennessee Supreme Court,

I respectfully submit this comment regarding the regulatory treatment of artificial intelligence ("AI") in the delivery of legal information and legal services.

I am writing as a Nashville resident, a paralegal degree holder, and a senior project manager with 15 years of experience working with AI systems to offer my support for the proposal filed by Greg Siskind, Caitlin Moon, and Lucian Pera regarding the regulatory treatment of AI tools under Tennessee's unauthorized practice of law ("UPL") statutes.

In January 2024, I completed a Bachelor of Science in Legal Studies and Support (Paralegal) from Purdue Global University. That four-year program gave me a working understanding of UPL doctrine, its history, and the reasoning behind it. I understand that UPL statutes exist to protect the public from unqualified parties making legal judgments that require professional training, licensing, and accountability. That purpose is legitimate and worth preserving.

What those statutes were not designed to do is prevent a person from understanding their own legal situation.

I also spend my professional life managing large-scale technical projects that involve AI tools, and I want to address something directly: I am not someone who believes AI should be left to run without guardrails. In my work, I advocate consistently for defined boundaries, human oversight, and structured governance around AI systems. On most questions involving AI, I believe the risks of under-regulating outweigh the inconvenience of doing it carefully.

This is not one of those situations, and the reason is specific. In most domains where AI guardrails matter, the concern is that AI will act on behalf of a person without their knowledge or control, making decisions they did not authorize. Here,

the concern being raised is the opposite: that a person, fully in control, fully aware of what the tool is and is not, will use AI to better understand their own legal circumstances. Restricting that is not consumer protection. It is information restriction, and it falls hardest on the people who can least afford an alternative.

It is also worth naming what happens when that alternative is removed. Some people will turn to general-purpose tools with no legal-specific safeguards. Some will rely on informal sources with no accountability. And some will do nothing at all, not because their legal problem went away, but because they had no accessible starting point and gave up. That last outcome is the one that tends to go uncounted, but it is a real and measurable harm. A purpose-built AI tool, operating under clear disclosure requirements, does not replace an attorney. It gives someone enough orientation to understand their situation, ask better questions, and make an informed decision about when professional help is necessary. That is triage, not representation, and it is exactly the kind of structured, transparent entry point that serves the public interest.

As a Nashville resident, this is not an abstract policy question for me. Tennessee's access gap is real, and it affects my neighbors. People are already using AI to research their legal situations. The only question the Court is actually deciding is whether those tools will be purpose-built, transparent, and governed by clear disclosure requirements, or whether that development will be chilled and people will continue using general-purpose tools with no legal-specific safeguards at all.

I support the proposal's framework: clear disclosures, defined capability limits, transparency on data use, and guardrails that focus on preventing deception and harm rather than blocking access to information. That is a model that takes consumer protection seriously without treating Tennesseans as incapable of using a tool responsibly.

One additional point I would offer from my background in project management: sustainable adoption of any technology, including AI, depends on people learning to use it correctly. Prohibition does not produce that outcome. Structured access, paired with clear disclosure and user education, does. The proposal's approach aligns with how responsible technology deployment actually works in practice.

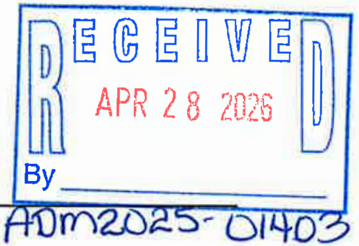
I respectfully urge the Court to support legislative clarification that creates a safe harbor for AI-enabled legal tools operating within defined disclosure and transparency requirements, and to move forward with the working group and pilot program recommendations included in the proposal.

Thank you for the opportunity to comment.

Respectfully submitted,

Ryan Love
1605 Hillmeade Dr.
Nashville, TN 37221
(813) 613-5945
RyanELove@gmail.com

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

PUBLIC COMMENT OF RENÉ GALICIA, ESQ.

California State Bar No. 349282
10615 Chapman Highway #370
Seymour, TN 37865
rene@galicia.law
Submitted April 28, 2026

INTRODUCTION AND SUMMARY

René Galicia, Esq. is a California-licensed attorney residing in East Tennessee. He holds a Juris Doctor degree from a law school approved by the California Committee of Bar Examiners, passed the California bar examination, and has practiced law in matters ranging from corporate in-house counsel work to immigration, estate planning, business and real estate law, and civil representation for low-income, Spanish-speaking clients. He cannot become licensed in Tennessee without re-examination. Not because he lacks competence and not because he has failed a bar examination, but because the organization that accredited his law school was not the American Bar Association.

This comment argues that Tennessee's current reliance on ABA accreditation as the threshold requirement for bar eligibility does not serve the public protection purpose that justifies it. The bar examination tests competence. Accreditation tests institutional characteristics. Where an applicant has passed a rigorous bar examination and practiced under the professional responsibility rules of a licensing jurisdiction, the identity of the organization that approved his law school is not a meaningful proxy for his fitness to serve Tennessee clients. It is an administrative credential that, in practice, functions as a market-entry barrier with no corresponding public protection benefit.

The barrier is absolute on the comity track. Rule 7, Section 5.01, requires satisfaction of the educational requirements of Section 2.02, which mandate ABA accreditation. The commenter's non-ABA JD forecloses the comity pathway entirely, regardless of his years of practice, the rigor of the bar examination he passed, or his standing as a licensed attorney in California. The practice requirement is not even the obstacle he faces; the educational gate closes before he reaches it. His only available pathway is to retake a bar examination he has already passed, in a state that uses a less demanding examination format than California employed when he became licensed. Alternatively, he could obtain an ABA-accredited JD, spending three or more years and well over $150,000 to obtain a second law degree, substantively identical to the one he already holds, after which he would qualify for comity admission without examination. The rule would give priority to an ABA diploma he did not originally earn over a California license he has held and practiced under for nearly 3 years. Neither option serves any public protection purpose. Both are precisely the kind of result the absurd results canon, applied by Tennessee courts to Supreme Court Rules as well as statutes, exists to prevent.

Tennessee's rules have already mapped this contradiction. Rule 7 Section 2.02(d) permits non-ABA graduates to sit for the Tennessee bar examination upon demonstrating substantially equivalent education and practice experience, implicitly conceding that non-ABA education can be sufficient. Rule 47 permits any licensed attorney, regardless of educational pedigree, to practice Tennessee state law during declared disasters, implicitly conceding that ABA accreditation is not a competency variable. The commenter qualifies under both provisions. What the current rules do not offer is a pathway to the full, permanent, sustainably funded practice that Tennessee's underserved communities need and that qualified attorneys already living and working in this State are prepared to build.

This comment addresses Questions 1, 2, 5, 6, and 7 of the Court's September 16, 2025, Order. It urges the Court to end ABA exclusivity in bar eligibility, following the models adopted by Texas and Florida in January 2026 and by the District of Columbia in April 2026, and to leverage Tennessee's existing regional accreditation infrastructure through SACSCOC and its founding participation in the Commission for Public Higher Education. It proposes replacing the comity admission practice requirement with individualized evaluation, provisional licensure, and credit for part-time and legal aid service, anchored by the Tennessee Law Course, which is already mandatory for all comity applicants. It urges caution regarding paraprofessional expansion, recommending that the Court prioritize licensed-attorney access reforms before broadening the scope of non-attorney practice, and identifies minimum safeguards should the Court proceed. And it proposes specific amendments to Rule 7, Sections 2.02(a) and 5.01(a), for the Court's consideration.

The reforms proposed here do not lower Tennessee's standards. They align Tennessee's gatekeeping mechanisms with the competencies they are meant to serve.

I. STATEMENT OF INTEREST

This Court has invited comment on whether the regulatory framework governing admission to the Tennessee Bar unnecessarily restricts access to legal services for Tennesseans and, if so, what reforms would better serve the twin goals of expanding access while ensuring competence. This comment addresses Questions 1, 2, 5, 6, and 7 of the Court's September 16, 2025, Order. It argues that these goals are not in conflict; properly designed reforms can simultaneously expand the supply of qualified legal services and maintain, or improve, the quality of representation available to Tennesseans who need it most.

The commenter is René Galicia, Esq., a California-licensed attorney (California State Bar No. 349282) who resides in East Tennessee. He holds a Juris Doctor degree from a law school approved by the California Committee of Bar Examiners, a state-authorized body that applies rigorous standards to the schools it approves, including curriculum review, faculty qualifications, and student outcomes. His school was not accredited by the American Bar Association ("ABA"). He passed the California bar examination, which, at the time he took it, was a three-day examination widely regarded as the most rigorous state bar examination in the United States.[1] He currently serves as General Counsel for a Texas-based corporation under Texas Disciplinary Rule 5.05(c), which permits out-of-state licensed attorneys to provide legal services exclusively to their employer without obtaining a Texas law license. His only bar license is in California. He also maintains a part-time California practice focused primarily on pro bono and low-cost legal services for low-income clients, many of whom are Spanish-speaking members of immigrant communities.

He would like to become licensed in Tennessee to serve its residents, particularly low-income, underserved, and Spanish-speaking communities that face acute shortages of accessible legal representation. He cannot. Under Tennessee Supreme Court Rule 7, Sections 2.02(a) and 5.01(a), his Juris Doctor degree from a California state-approved, non-ABA-accredited law school does not satisfy the educational requirements for admission by comity. Tennessee's current rules do not ask whether he is competent to practice law. They ask only whether the organization that accredited his law school was the ABA. The answer is no, and that answer, whatever its original justification, now operates as an arbitrary barrier to qualified attorneys who are prepared and willing to serve Tennessee's communities.

The commenter's situation also illustrates a categorical barrier that runs deeper than the practice requirement: his non-ABA JD disqualifies him from the comity pathway under Rule 7, Section 5.01, entirely, regardless of how many years he has practiced or that he holds a California license in good standing. The five-of-seven-year practice requirement is not even the main obstacle he faces on the comity track. The ABA education requirement forecloses that pathway before the practice clock ever begins to run.

Tennessee's existing rules have already mapped this territory and found it wanting. They offer the commenter a hierarchy of inadequate half-measures. RPC 5.5(d) permits employer-only practice, but the commenter has no Tennessee employer. Rule 7 Section 10.01 permits registered in-house

counsel to provide pro bono services through established nonprofit bar programs, but that pathway requires a Tennessee employer that he does not have, restricts practice to that employer's representation, and, in any event, channels pro bono work only through nonprofit programs, foreclosing the low-bono and fee-paying client relationships that make a sustainable community practice financially possible. Rule 47, invoked during declared disasters, imposes no ABA requirement but restricts practice to pro bono services and expires upon the emergency's end. Rule 7, Section 2.02(d), would permit him to sit for the Tennessee bar examination, but that would entail retaking a competency examination he has already passed. None of these pathways accomplish what full admission under reformed rules would accomplish. This comment explains why reform is warranted and what it should look like.

This is not an isolated case. It is a structural problem. Tennessee's current reliance on ABA accreditation as the gateway to bar eligibility, and its attendant practice requirements under the comity rules, excludes attorneys who have demonstrated competence through the only measure that actually tests it: passing a bar examination. This comment urges the Court to reclaim its regulatory authority over legal education standards, modernize its interstate admission framework, and, in doing so, unlock a meaningful supply of qualified attorneys for the Tennesseans who need them most.

---

[1] The California bar examination was a three-day examination until February 2017, when it was reduced to two days. California has never adopted the Uniform Bar Examination, although on April 17, 2026, the California Committee of Bar Examiners recommended that the California Supreme Court adopt the NextGen UBE beginning in July 2028, subject to Board of Trustees and California Supreme Court approval. See Cal. Bar, CBE Recommends the NextGen Uniform Bar Exam and Consideration of a Future California Component (Apr. 17, 2026), https://www.calbar.ca.gov/news/cbe-recommends-nextgen-uniform-bar-exam-and-consideration-future-california-component. California historically administered a hybrid examination: Multistate Bar Examination multiple-choice questions developed by the National Conference of Bar Examiners ("NCBE"), combined with California-written essays and performance tests. California's bar passage rates consistently rank among the lowest in the country for first-time takers, reflecting the examination's rigor. At the time the commenter passed the exam, the minimum passing score was a scaled 1440 out of 2000. See Cal. Bar, Statistics, https://www.calbar.ca.gov/Admissions/Examinations/California-Bar-Examination/Statistics (last visited Apr. 27, 2026).

II. QUESTIONS 1 AND 2: THE COURT SHOULD END ITS EXCLUSIVE RELIANCE ON ABA ACCREDITATION AND RECLAIM ITS OWN REGULATORY AUTHORITY

The Court asks whether it should "modify, reduce, or eliminate its reliance on [ABA] accreditation in setting minimum educational requirements for applicants to the Tennessee Bar" and whether "there are any practicable alternatives to ABA accreditation" it should consider.[2] The answer to the first question is yes. The answer to the second is also yes, and the roadmap already exists in the reforms adopted by Texas and Florida in January 2026, the District of Columbia in April 2026, and in the accreditation infrastructure that Tennessee itself is helping to build.

A. The Bar Examination, Not School Accreditation, Is the Appropriate Competency Gatekeeper

Accreditation is an input measure. It assesses the characteristics of a legal education program, its curriculum, faculty, library resources, and facilities, against a set of standards established by the accrediting body. Bar passage is an output measure. It directly assesses whether a candidate possesses the minimum legal knowledge and analytical skills necessary to practice law competently. Where both measures are available, the output measure is the more reliable and more defensible gatekeeper for public protection purposes.

Tennessee already uses the Uniform Bar Examination ("UBE"), a standardized, psychometrically validated assessment of minimum competence adopted by forty-one jurisdictions.[3] The UBE tests knowledge across the full range of subjects a newly admitted attorney must understand, through various formats, the Multistate Bar Examination, the Multistate Essay Examination, and the Multistate Performance Test, designed to assess legal reasoning and application, not mere memorization of doctrine. When a candidate passes the Tennessee UBE with a scaled score of 270 or higher, he has demonstrated, through a validated, independently administered examination, that he possesses the minimum competence to practice law in this State.[4]

Against this backdrop, the question of which entity approved his law school is, at most, a secondary concern. The Court's own rules acknowledge this. Rule 7, Section 2.02(d) already creates a discretionary pathway through examination for non-ABA graduates who hold degrees from schools approved by "an authority similar to the Tennessee Board of Law Examiners," have passed a bar examination "equivalent to that required by Tennessee," and have practiced for three of the preceding five years.[5] The Court has, therefore, already determined that non-ABA legal education can be sufficient; the question is only whether that determination should remain a narrow, discretionary exception or become a principled, systematic rule.

This Court should adopt the latter approach. Where an applicant has passed a bar examination that directly tests minimum competence, the accrediting body that approved his law school is not a meaningful proxy for his fitness to practice. Conditioning his admission on ABA accreditation substitutes an input measure, which organization approved his school, for the output measure, whether he passed the bar, in a way that serves no identifiable public protection purpose that the bar examination does not already serve.

The practical consequence of this framework is illustrated by the commenter's own situation. The comity pathway under Rule 7 Section 5.01 is not available to him at all. Section 5.01(a)(1) requires the applicant to satisfy the educational requirements of Section 2.02, and Section 2.02(a) requires ABA accreditation. His non-ABA JD fails that threshold categorically. No amount of practice experience, no length of California licensure, and no demonstration of professional accomplishment can cure the educational disqualification under the current rule. The comity clock never begins to run for him because the educational gate is closed before he reaches it.

His only available pathway to Tennessee admission is the bar examination under Section 2.02(d). Under that provision, he very likely satisfies the educational requirements to sit: his California state-approved JD was granted by an authority similar to the Tennessee Board of Law Examiners; he passed the California bar examination, which Rule 7 Section 2.02(d)(2) requires to be equivalent to Tennessee's; and he will satisfy the three-of-five-year practice requirement under Section 2.02(d)(3) as of next month. Tennessee's rules, therefore, already implicitly recognize his education as sufficient to attempt admission. What the rules require, however, is that he retake a bar examination he has already passed. That requirement does not advance any competency purpose. He has already demonstrated minimum competence through licensure. Requiring him to demonstrate it again through a different examination does not protect the public; it merely delays his ability to serve it.

Under current Rule 7, the options available to a licensed, practicing attorney in his position are two and only two: sit for the Tennessee bar examination, retaking an assessment of minimum competence he has already satisfied in a more demanding jurisdiction, or return to an ABA-accredited law school to obtain a second Juris Doctor degree substantively identical to the one he already holds, at a cost exceeding $150,000 and no less than three additional years of full-time study, after which he would qualify for comity admission without examination. The first option is redundant. The second defies any competency rationale. Tennessee courts apply the absurd results canon to Supreme Court Rules as they do to statutes, declining to adopt interpretations that produce outcomes illogical or contrary to the rule's evident purpose, even when the plain text appears to support them. The evident purpose of Rule 7's educational requirements is to ensure a minimum level of competence. Requiring a licensed, practicing attorney to obtain a second law degree substantively identical to the one he already holds, or to retake an examination of minimum competence he has already passed, serves no competency or public protection purpose. It is precisely the kind of result the absurd results canon exists to prevent.

The redundancy of the bar examination requirement becomes even sharper when examined alongside Rule 7, Section 3.05, which permits attorneys who passed the UBE in another jurisdiction to transfer their scores to Tennessee without retaking the examination.[6] An attorney who passed the UBE at exactly 270 in any of the forty-one UBE jurisdictions may transfer that score to Tennessee today. The commenter, who passed a more demanding examination in California (1440 passing score, often considered equivalent to a UBE 288 score), may not. California's professional responsibility standards are similarly demanding: the MPRE minimum passing score in California is 86, compared to Tennessee's required 82, reflecting California's more stringent threshold for professional conduct licensure. The disparity is not a function of relative competence. It is a function of the examination format California adopted, a decision made for its own reasons that has no bearing on the commenter's fitness to practice Tennessee law. When the mechanism designed to avoid redundancy, the UBE score transfer, is unavailable solely because of format rather than rigor, the bar re-examination requirement cannot be justified as advancing any legitimate competency or public protection goal.

B. The ABA's Accreditation Monopoly Operates as an Anticompetitive Restraint on Legal Education

The Federal Trade Commission's Office of Policy Planning and Bureau of Competition addressed this issue directly in a December 2025 comment to the Texas Supreme Court. The FTC staff concluded that the ABA's exclusive control over law school accreditation constitutes a "monopoly" that "increases the cost of a legal education" and "limits the supply of new lawyers," and that delegating bar eligibility to the ABA "effectively gives the ABA . . . the ability to exclude market participants who would compete with its members."[7]

The FTC's analysis is grounded in well-established antitrust principles. In North Carolina State Board of Dental Examiners v. FTC, the Supreme Court held that a state professional licensing board composed of active market participants is not entitled to state action antitrust immunity unless the state actively supervises the board's conduct.[8] The Tennessee Supreme Court does not actively supervise the ABA's accreditation decisions. It simply accepts them. Under Dental Examiners, that passive delegation to a body whose members have strong financial interests in restricting entry raises serious anticompetitive concerns.[9]

The ABA's accreditation standards provide a concrete illustration of the problem. Chapter 6 of the ABA's Standards historically required law schools to maintain a full-time law library director holding a law faculty appointment, in most cases a tenure-track position, along with dedicated library staff and a physical collection spanning all federal court decisions, all state appellate decisions, all federal and state regulations, and significant secondary materials.[10] These requirements imposed substantial fixed costs on every ABA-accredited school, costs that flowed directly into tuition. They had no demonstrated relationship to producing competent lawyers. The ABA itself was ultimately forced to acknowledge this: in 2024, the ABA loosened these requirements, removing the mandatory full-time director requirement and eliminating the prescribed core collection, stating simply that "physical books are no longer required."[11]

That concession is instructive. If the library standards were sound educational policy, they would not have been abandoned under pressure. If they were necessary for minimum competence, their removal would have generated educational objections rather than relief. The reality is that they were the kind of cost-inflating, innovation-suppressing requirements that the FTC identified as the predictable output of a monopolist accreditor whose standards serve the interests of incumbent institutions more than the public. The library requirement is one example; it is not the only one.

The commenter's own experience illustrates the point at the individual level. His California state-approved law school provided access to legal research tools, curriculum, and instruction that enabled him to pass the California bar examination. The fact that his school did not maintain the physical library infrastructure and tenured library faculty that ABA standards historically required did not diminish the quality of his legal education or his competence as an attorney. It did, however, reduce the cost of his legal education, enabling him to complete law school later in life without

incurring significant debt and on a schedule compatible with his other obligations. That is precisely the kind of cost-effective, accessible legal education model that the Court should encourage.

C. The ABA Lacks the Democratic Legitimacy to Serve as a Quasi-Governmental Gatekeeper

The ABA presents itself as the voice of the American legal profession. The membership data do not support that claim. As of the 2024 fiscal year, the ABA had approximately 170,000 dues-paying attorney members, roughly 13 percent of the approximately 1.3 million licensed attorneys in the United States.[12] In 1979, approximately half of all American attorneys were ABA members.[13] The organization adds more than 25,000 new members annually but retains only about 53% of them.[14] In the 2024 fiscal year, attorney member dues generated approximately $42.7 million for the ABA, accounting for approximately 36% of its total reported revenue.[15]

This is not the profile of a representative professional body. It is the profile of an organization whose authority has been delegated by states, not earned through the voluntary endorsement of the profession it purports to represent. When Tennessee delegates accreditation authority to the ABA, it is not delegating to "the legal profession." It is delegating to a private advocacy organization with a 13 percent constituency share, operating without active state supervision, whose financial structure increasingly counts on revenue other than dues from the attorneys whose gatekeeping it controls.

The Supreme Court's analysis in Dental Examiners is again instructive. The Court emphasized the particular danger of competitive harm "when a state professional board is composed of unsupervised industry competitors."[16] The ABA Council that sets accreditation standards consists of law school administrators, faculty, and practicing lawyers, all of whom have direct interests in the structure of legal education and the supply of new lawyers. The FTC has documented the ABA's history of using its accreditation monopoly to serve those interests, including a 1995 DOJ antitrust complaint, a consent decree, and a 2006 federal court finding that the ABA had "on multiple occasions . . . violated clear and unambiguous provisions" of that decree.[17]

D. Texas, Florida, the District of Columbia, and Tennessee's Own Accreditation Initiatives Provide a Ready Roadmap

Tennessee need not act without precedent or infrastructure. Texas, Florida, and the District of Columbia have each moved in 2026 to reduce or eliminate ABA accreditation as a barrier to bar admission, and Tennessee is itself a founding partner of a new accreditation body built around exactly the outcome-focused criteria this Court is being asked to adopt.

The Texas Supreme Court's January 6, 2026, final approval of amendments to Rule 1 of the Rules Governing Admission to the Bar eliminated ABA reliance entirely, substituting direct court approval based on objective criteria, bar passage rates, employment outcomes, curriculum requirements, and compliance with applicable law, which the court itself administers.[18] The Texas order expressly provided that loss of ABA accreditation would not itself mandate removal from

the court's approved list, and that schools not accredited by the ABA could seek direct court approval.[19]

The Florida Supreme Court's January 15, 2026, order in In re Amendments to Rules Regulating the Florida Bar took a more gradualist approach: it amended the definition of "accredited law school" to include not only ABA-approved schools but any school approved by an accrediting agency recognized by the United States Department of Education and approved by the court.[20] Florida made explicit that graduates of ABA-accredited schools would continue to qualify, that law schools could continue to seek ABA accreditation, and that the court would contact the seven DOE-recognized institutional accreditors to assess their interest in accrediting law schools under outcome-focused standards.[21] The Florida amendments become effective October 1, 2026.

The District of Columbia Court of Appeals has gone further still on the comity question specifically. In an order filed March 24, 2026, effective April 24, 2026, the court amended D.C. App. R. 46(e)(3) to eliminate educational pedigree as a requirement for admission without examination entirely. Under the amended rule, any attorney who has actively practiced law as a member in good standing of a bar of a court of general jurisdiction in the United States for at least three of the five preceding years qualifies for D.C. comity admission.[21a] The prior requirement of an ABA-approved JD, or twenty-six credit hours of ABA law school study for non-ABA graduates, has been deleted from the comity pathway. The amendment does not ask where the applicant went to law school. It asks whether the applicant has practiced law. That is the individualized, practice-focused standard this comment proposes for Tennessee's Section 5.01.

Tennessee is particularly well-positioned to act either through direct court approval like Texas, or through accreditation. The Southern Association of Colleges and Schools Commission on Colleges ("SACSCOC"), one of seven regional accreditors currently recognized by the U.S. Department of Education, already accredits the University of Tennessee (UT) System's five campuses, including UT Knoxville's College of Law.[21b] SACSCOC evaluates institutions on educational quality, student outcomes, and institutional effectiveness, criteria that map directly onto the competency-focused accreditation standard for which this comment advocates. A framework that recognized SACSCOC-accredited law schools as satisfying Rule 7's educational requirement would impose no disruption to existing Tennessee law school graduates, no reduction in educational standards, and no loss of degree portability for students already within SACSCOC's regional coverage.

Tennessee has gone further still. The University of Tennessee System is a founding partner of the Commission for Public Higher Education ("CPHE"), a new accrediting body established by six public university systems with an explicit focus on student achievement, workforce readiness, and academic quality.[21c] CPHE has adopted accreditation standards and is pursuing formal recognition by the U.S. Department of Education, which it anticipates receiving no earlier than late 2027.[21d] This comment does not suggest that CPHE currently qualifies as a DOE-recognized accreditor for purposes of Rule 7, because it does not yet hold that recognition. The point is structural: Tennessee has already demonstrated, through its founding participation in CPHE, a commitment to outcome-

focused, state-responsive accreditation that prioritizes student achievement over administrative credentialing. It would be anomalous for this Court to continue ceding bar admission authority exclusively to a national private organization operating under different criteria when Tennessee is actively helping construct an outcome-focused regional alternative.

This Court should adopt, at a minimum, the Florida approach: end ABA exclusivity, recognize DOE-recognized regional accreditors and state bar authority approval as equivalent pathways, and establish a framework for direct court approval of schools based on outcome metrics. The proposed amendment to Rule 7, Section 2.02(a) has been revised to reflect this framework explicitly:

> (a) Any applicant seeking admission must have completed a course of instruction in and graduated with a J.D. Degree from: (1) a law school accredited by the ABA at the time of the applicant's graduation; (2) a Tennessee law school approved by the Board pursuant to section 17.01 of this Rule; (3) a law school accredited by a regional or national accrediting agency recognized by the United States Department of Education, provided the Board determines that such agency applies standards substantially equivalent to those required for Tennessee approval; (4) a law school approved by the bar admitting authority of the state or territory in which the law school is located, provided such authority applies standards the Board determines to be substantially equivalent to those required for Tennessee approval; or (5) a law school approved by the Court pursuant to criteria the Court shall establish, which shall include bar passage rates, employment outcomes, curriculum requirements, and compliance with applicable law.

Three objections raised by the ABA Council in its March 16, 2026, comment to this Court warrant direct response.

First, the ABA Council argues that ending ABA exclusivity would undermine the portability of law degrees, noting that approximately 30.9% of first-time Tennessee bar takers in July 2025 graduated from out-of-state ABA-accredited schools.[21e] This concern, while genuine, does not require exclusivity; it requires continued recognition. The proposed amendment expressly preserves ABA accreditation as a qualifying pathway (1); it adds pathways rather than eliminates them. Graduates of Vanderbilt, the University of Tennessee, and every other ABA-accredited school would continue to qualify for Tennessee bar admission on exactly the same terms as today, and their degrees would remain nationally portable. The portability concern is an argument against eliminating ABA recognition, not an argument against ending its monopoly.

Second, the ABA Council cites aggregate bar passage data showing 67% first-time passage for ABA graduates versus 23% for non-ABA graduates nationally in 2024.[21f] This aggregate comparison is misleading because it conflates several distinct categories under the "non-ABA" label: graduates of state-accredited schools such as those approved by the California Committee of Bar Examiners, graduates of truly unaccredited schools, and graduates of foreign law schools, each of which has substantially different outcomes. California Bar data show that graduates of California-accredited schools pass at rates far exceeding the 23% aggregate, which is driven primarily by unaccredited and foreign school graduates.[21g] The proposed amendment addresses this

directly: pathways (3) and (4) do not recognize truly unaccredited schools or foreign institutions. They recognize schools accredited by DOE-recognized agencies or approved by state bar admitting authorities that apply substantially equivalent standards, a qualification that the California Committee of Bar Examiners satisfies. This Court need not speculate: any applicant who passes the Tennessee UBE at 270 or higher, or a comparable out-of-state examination such as California's, has already demonstrated minimum competence. The bar passage data confirm the examination works. That is precisely the argument for relying on it.

Third, the ABA Council cites California's February 2025 bar examination redesign, which failed and required significant remediation, as evidence of the risks of states departing from nationally developed processes.[21h] That episode involved California's attempt to replace the NCBE-developed multiple-choice component of its hybrid examination with questions developed by a third-party vendor, while retaining California's own essays and performance tests. The redesign failed; California reverted to using NCBE-developed multiple-choice questions for that component while continuing to write its own essays and performance tests. Critically, on April 17, 2026, the California Committee of Bar Examiners recommended that the California Supreme Court adopt the NextGen UBE beginning in July 2028, subject to Board of Trustees and Supreme Court approval, reflecting California's trajectory toward the same national examination framework Tennessee already uses.[21i] The objection is inapposite in any event. This comment does not propose that Tennessee design or administer its own bar examination. Tennessee would continue administering the full UBE exactly as it does today. The reforms proposed here concern who may sit for the UBE or be admitted through comity, not what the UBE contains. Tennessee's bar examination infrastructure remains fully intact under every proposal advanced in this comment.

---

[2] Order, In re Public Comments on Potential Regulatory Reforms to Increase Access to Quality Legal Representation, No. ADM2025-01403, at 4 (Tenn. Sept. 16, 2025) [hereinafter "Order"].

[3] Tenn. Sup. Ct. R. 7, Sec. 4.02; National Conference of Bar Examiners, List of UBE Jurisdictions, https://www.ncbex.org/exams/ube/list-ube-jurisdictions (last visited Apr. 27, 2026).

[4] Tenn. Sup. Ct. R. 7, Sec. 4.07(b); see also CLEAR Report and Recommendations 56-68 (July 27, 2025) [hereinafter "CLEAR Report"] (discussing bar examination as assessment of minimum competence).

[5] Tenn. Sup. Ct. R. 7, Sec. 2.02(d).

[6] Tenn. Sup. Ct. R. 7, Sec. 3.05.

[7] FTC Staff Comment re Proposed Amendment to Rule 1 of the Rules Governing Admission to the Bar of Texas, at 3, 6 (Dec. 1, 2025) [hereinafter "FTC Staff Comment"]. The comment was authorized by a vote of the Commission. Id. at 1 n.1.

[8] N.C. State Bd. of Dental Exam'rs v. FTC, 574 U.S. 494, 507 (2015).

[9] FTC Staff Comment at 4-5 (explaining that state action immunity requires active supervision and that passive delegation to the ABA raises anticompetitive concerns).

[10] ABA Standards and Rules of Procedure for Approval of Law Schools, Standards 603, 606 (2016-2017 ed.) (requiring full-time library director with faculty appointment and physical core collection spanning all reported federal and state court decisions, current regulations, and significant secondary works).

[11] ABA, Notice and Comment: Proposed Revisions to Standards and Rules of Procedure (Feb. 2024) (cover memorandum stating "Physical books are no longer required"); see also Standard 604 (2025-2026 ed.) (replacing enumerated core collection requirement with "reliable and efficient access" standard).

[12] ABA Treasurer's Report, Fiscal Year 2024, 111 ABA J. (Aug. 2025), https://www.abajournal.com/magazine/article/aba-treasurers-report-fiscal-year-2024 (reporting consolidated revenue from nearly 170,000 dues-paying members) (last visited Apr. 27, 2026).

[13] Id. (noting that in 1979, roughly half of all lawyers were ABA members).

[14] ABA Journal, New Dues Rates for ABA Members Announced (2024) (reporting that the ABA "adds more than 25,000 new members annually, but only retains about 53% of them").

[15] ABA Treasurer's Report, Fiscal Year 2024, 111 ABA J. No. 4 (Aug. 2025) (reporting consolidated revenue from nearly 170,000 dues-paying members totaled $42.7 million); American Bar Ass'n, Form 990: Return of Organization Exempt from Income Tax (Fiscal Year Ending August 31, 2024) (reporting total revenue of $119,070,500).

[16] N.C. State Bd. of Dental Exam'rs, 574 U.S. at 504.

[17] FTC Staff Comment at 6-7 (citing Competitive Impact Statement, United States v. Am. Bar Ass'n, No. 95-cv-1211 (D.D.C. June 27, 1995); United States v. Am. Bar Ass'n, 2006 U.S. Dist. LEXIS 42645, at *2 (D.D.C. 2006)).

[18] Final Approval of Amendments to Rule 1 of the Rules Governing Admission to the Bar of Texas, No. 26-9002, at 1 (Tex. Jan. 6, 2026) [hereinafter "Texas Order"].

[19] Id. paras. 6(d)-(e).

[20] In re Amendments to Rules Regulating the Fla. Bar and Rules of the Supreme Court Relating to Admissions to the Bar, No. SC2025-2064, at 5-6 (Fla. Jan. 15, 2026) [hereinafter "Florida Order"].

[21] Id. at 6.

[21a] In re Amendments to D.C. App. R. 46, No. M-295-26 (D.C. Ct. App. Mar. 24, 2026) (eff. Apr. 24, 2026) (amending Rule 46(e)(3) to replace ABA educational pedigree requirement with active practice standard of 3 of 5 years, deleting prior subsection (B) requiring ABA-approved JD or 26 ABA credit hours for non-ABA graduates).

[21b] Southern Association of Colleges and Schools Commission on Colleges, Directory of Member Institutions, https://sacscoc.org (confirming accreditation of the University of Tennessee system); University of Tennessee College of Law, About the Law School, https://law.utk.edu (last visited Apr. 27, 2026).

[21c] Commission for Public Higher Education, Mission and Purpose, https://cphe.org/missionandpurpose/ (last visited Apr. 27, 2026) (founding university systems include the State University System of Florida, the University System of Georgia, the University of North Carolina System, the University of South Carolina System, the Texas A&M University System, and the University of Tennessee System); University of Tennessee, Work to Learn Tennessee, https://tennessee.edu/academics/affordability/work-to-learn-tennessee/ (describing UT system workforce development and career-readiness initiatives).

[21d] Commission for Public Higher Education, Frequently Asked Questions, https://cphe.org/frequently-asked-questions/ (last visited Apr. 27, 2026) ("CPHE will submit an application for recognition to the U.S. Department of Education once it meets the regulatory requirements to do so, likely during late 2027.").

[21e] ABA Accreditation Council, Comment re No. ADM2025-01403, at 5 (Mar. 16, 2026) [hereinafter "ABA Council Comment"] (citing Tennessee Board of Law Examiners, July 2025 UBE Exam Statistics).

[21f] ABA Council Comment at 4 (citing National Conference of Bar Examiners, Persons Taking and Passing the 2024 Bar Examination by Source of Legal Education (2024)).

[21g] State Bar of Cal., Profile of California Law Schools, Executive Summary (2022) (reporting 2022 bar passage rates of 67% for ABA-accredited graduates, 21% for California-accredited graduates, and 9% for unaccredited graduates, demonstrating that the non-ABA aggregate is driven primarily by the unaccredited and foreign school categories).

[21h] ABA Council Comment at 4 (citing Reuters, "California's February Bar Exam Mess is Costing Millions to Clean Up" (June 6, 2025)); see also L.A. Times, "'Utterly Botched:' Glitchy rollout of new California bar exam prompts lawsuit and legislative review" (Feb. 28, 2025). California historically administered a hybrid examination combining NCBE-developed multiple-choice questions with California-written essays and performance tests. The February 2025 redesign replaced the NCBE multiple-choice component with questions developed by Kaplan; California reverted to NCBE-developed multiple-choice questions following the failed redesign while continuing to develop its own essays and performance tests.

[21i] Cal. Bar, CBE Recommends the NextGen Uniform Bar Exam and Consideration of a Future California Component (Apr. 17, 2026), https://www.calbar.ca.gov/news/cbe-recommends-nextgen-uniform-bar-exam-and-consideration-future-california-component. The CBE's recommendation goes to the Board of Trustees at its May 14-15, 2026 meeting before being submitted to the California Supreme Court. The final decision on exam format rests with the California Supreme Court.

III. QUESTION 5: TENNESSEE SHOULD MODERNIZE ITS INTERSTATE ADMISSION RULES TO REFLECT THE REALITIES OF A MOBILE LEGAL PROFESSION

The Court asks whether it "should consider modifying requirements for admission to the Tennessee Bar for those licensed in other States to promote interstate practice and mobility."[22] It should. The current framework imposes barriers that are not, today, calibrated to any legitimate competency concerns, excludes qualified attorneys prepared to serve Tennessee communities with acute unmet legal needs, and contains internal inconsistencies that undermine its own justifications.

A. A Licensed Out-of-State Attorney Is Not Less Qualified Than a Newly Admitted Tennessee Lawyer

Under Rule 7, Section 5.01(a)(3), an applicant for admission without examination must have been "primarily engaged in the active practice of law . . . for five of the seven years immediately preceding the date upon which the application is filed."[23] An attorney who passes the Tennessee bar examination, by contrast, may be admitted immediately upon completion of the Tennessee Law Course and satisfaction of character and fitness requirements, regardless of whether he has ever practiced law for a single day.

This asymmetry is not defensible on public protection grounds. An attorney licensed in California or any other State who has passed a bar examination has demonstrated minimum competence through a validated assessment. He has practiced under the Rules of Professional Conduct, subject to State Bar discipline and potential license revocation for inadequate representation. He has real-world experience, court appearances, client counseling, contract drafting, legal research, and negotiation, which a newly admitted Tennessee attorney does not have. Yet under current Rule 7, he must wait five of seven years (and hold an ABA JD) before Tennessee will consider admitting him without examination, while a newly minted Tennessee graduate with zero practice experience may be admitted immediately.

The five-year requirement does not measure competence; it measures time. Those are not the same thing. An attorney who has practiced part-time for two years in a specialized field may be more competent in that field than an attorney who has logged five years in general practice. An attorney who has served as in-house counsel for a large corporation, assisted in federal litigation, and advised on complex regulatory matters may be more prepared to serve Tennessee clients than the temporal threshold suggests or excludes. A blunt durational rule treats all practice as equivalent and all applicants as interchangeable, which is precisely what an individualized competency evaluation would not do.

B. Rule 7's Internal Inconsistency Reveals That the Practice Requirement Is Not Calibrated to Competence

Rule 7, Section 2.02(d)(3), the provision governing non-ABA graduates seeking to sit for the Tennessee bar examination, requires the applicant to have been "primarily engaged in the active

practice of law . . . for three of the five years immediately preceding the date upon which the application is filed."[24] Rule 7, Section 5.01(a)(3), governing comity admission without examination, requires five of the seven preceding years.

The same rule therefore applies a lower practice threshold, three of five years, to the more demanding pathway, taking and passing the bar examination, than it applies to the less demanding pathway, admission without examination based on an established practice record. If three years of practice are sufficient to demonstrate the competence necessary to sit for the Tennessee bar as a non-ABA graduate, then five of seven years cannot be justified as a public protection measure for comity applicants who have already been licensed and practiced in another jurisdiction. The inconsistency reveals that the five-year comity requirement is not a competency measure; it is a market entry barrier, one whose primary beneficiaries are incumbent Tennessee practitioners rather than the public the rule purports to protect.

C. Proposed Reforms: Individualized Evaluation, Tennessee Law Course, Provisional Licensure, and Practice Credit

This comment proposes the following framework as a replacement for the current durational practice requirement in Rule 7, Section 5.01(a)(3):

First, the mandatory Tennessee Law Course should serve as the primary mechanism for ensuring that out-of-state attorneys are familiar with Tennessee-specific law. That course already exists. Under Rule 7, Section 1.07, it is already mandatory for all comity applicants.[25] It is a 7.5-hour online course covering Tennessee civil procedure, evidence, appellate procedure, family law, property, torts, wills and estates, criminal law, professional responsibility, business associations, employment law, workers' compensation, and constitutional law.[26] It directly addresses the concern that out-of-state attorneys may lack familiarity with Tennessee-specific doctrine and procedure. It does so at a cost of fifteen dollars and approximately seven and a half hours of time. This is the proportionate, narrowly tailored response to the state-specific knowledge concern, not a five-year waiting period.

Second, the durational practice requirement should be replaced with an individualized evaluation of the applicant's practice history. An applicant with substantial experience, in-house counsel work, active litigation practice, public service, or other qualifying activity as defined in Rule 7, Section 5.01(c), demonstrates competence through that record. The Board's existing discretionary authority under Rule 7, Section 5.02 already permits consideration of "any evidence submitted by the applicant in an effort to demonstrate that the applicant possesses the knowledge, skill and abilities basic to competence in the profession."[27] That discretionary authority should be formalized and expanded as the primary evaluation mechanism, with the durational requirement eliminated or substantially reduced.

Third, provisional licensure should be available for applicants who cannot demonstrate sufficient practice experience through individualized evaluation. Under a provisional license, the applicant would practice under the supervision of an experienced Tennessee attorney for a defined period,

engage in mandatory pro bono service with a Tennessee legal aid organization, and complete any additional MCLE requirements the Board determines appropriate. Upon satisfactory completion, the provisional license converts to full admission. This approach is consistent with the alternative licensure models documented in the CLEAR Report and already in use in several states.[28]

Fourth, part-time practice must count toward any experience threshold. There is no principled basis for requiring full-time practice. An attorney who has practiced part-time for two years, appearing in court, advising clients, drafting contracts, or handling transactions, has engaged in the active practice of law within the meaning of Rule 7, Section 5.01(c). The nature and quality of the practice matter; the number of hours per week does not.

Fifth, pro bono service with a legal aid organization, whether in Tennessee or another jurisdiction, should count as qualifying active practice. This serves a dual purpose: it provides a pathway for attorneys who have not accumulated traditional practice hours, and it creates an incentive structure that channels attorneys toward the underserved communities where Tennessee's unmet legal needs are most acute. An attorney who has represented low-income clients in eviction proceedings, family law matters, public benefits cases, and immigration proceedings has demonstrated practical competence in exactly the practice areas most relevant to Tennessee's access-to-justice crisis, irrespective of how much time has passed.

The proposed amendments to Rule 7, Section 5.01(a) would read as follows:

> (1) meet the educational requirements imposed under sections 2.01 and 2.02 (as amended) of this Rule; (3) [Replace existing subsection] have demonstrated, to the Board's satisfaction, practice experience sufficient to establish competence to practice law in this jurisdiction, based on an individualized evaluation of the nature, duration, and breadth of the applicant's active practice, as defined in subsection (c) of this section; provided that (i) part-time practice shall count toward any experience determination; (ii) pro bono service with a legal aid organization recognized by the Tennessee Access to Justice Commission or equivalent authority shall count as active practice; (iii) applicants who do not satisfy the Board's experience determination may be admitted on a provisional basis pursuant to [new provisional licensure provision]; and (iv) all applicants admitted under this section shall complete the Tennessee Law Course pursuant to section 1.07 of this Rule prior to, or within ninety days of, admission.

D. Tennessee's Own Emergency Practice Rule Confirms That Educational Pedigree Is Not a Competency Variable

Tennessee Supreme Court Rule 47, enacted in the aftermath of Hurricane Katrina and most recently activated in October 2024 following severe flooding in East Tennessee, permits any attorney authorized to practice law in another United States jurisdiction to provide free legal services to disaster-affected Tennessee residents, without pro hac vice admission and without any admission fee, assigned and supervised through an established nonprofit bar association or pro bono program.[29]

Rule 47 draws no distinction between attorneys who attended ABA-accredited law schools and those who did not. Its sole competency criterion is licensure in good standing in another United States jurisdiction. The rule contains no educational requirement. It does not ask whether the responding attorney's school was approved by the ABA, by a state bar authority, or by any other accrediting body. Whether or not any particular attorney who responded to the October 2024 activation attended a non-ABA law school is not known to this commenter and is not the point. The point is structural: in drafting and implementing Rule 47, this Court made a considered judgment that educational pedigree is not a relevant factor in determining whether an out-of-state attorney is sufficiently competent to practice Tennessee law and to appear in Tennessee courts. That judgment does not become less valid when the emergency declaration expires.

The commenter's California license and non-ABA education, which disqualify him from permanent Tennessee bar admission under Rule 7's ABA requirement, would fully qualify him to serve flood victims under Rule 47. He could appear in every court in the affected judicial districts, represent individual clients in eviction and family law proceedings, and provide the full range of state law legal services, provided that services were rendered free of charge and through a designated program. The legal needs of disaster-affected communities do not end when the emergency declaration does. The communities of East Tennessee affected by the September 2024 flooding still need legal assistance. The attorney competent to provide it under Rule 47 is equally competent to provide it under a permanent license.

E. The Federal and State Practice Framework Creates a Jurisdictional Gap That Falls With Particular Force on Tennessee's Most Vulnerable Communities

Federal law authorizes attorneys licensed in any United States jurisdiction to practice immigration law, VA benefits, and other categories of federal matters anywhere in the country, without regard to where the attorney holds state bar admission. That authorization, which operates nationwide and is not unique to Tennessee, creates a jurisdictional gap when combined with the standard state court admission requirements that Tennessee and every other state maintain. The gap falls with particular force on Tennessee's immigrant and veteran communities, who rely most heavily on federal practice authorization and whose legal needs do not stop at the boundary between federal and state law.

A California-licensed attorney residing in Tennessee may represent Tennessee residents in federal immigration matters, proceedings before U.S. Citizenship and Immigration Services, the Executive Office for Immigration Review, and the United States Court of Appeals for the Sixth Circuit, and in federal benefits proceedings, pursuant to federal law and the rules governing practice before those federal bodies.[30] That same attorney cannot assist the client with a connected Tennessee state law matter: the eviction that followed the client's detention, the probate issue affecting the client's family, the family law proceeding in Tennessee General Sessions Court, or the criminal law matter that may impact their legal presence in this country.

The client who needs immigration representation and family law assistance is not two clients; she is one person with interconnected legal needs. The veteran whose federal benefits claim connects to a state court guardianship or housing matter faces the same gap. The artificial barrier between federal and state practice does not protect these clients; it leaves portions of their legal needs unaddressed by the attorney who already knows their situation. The solution is not to expand the scope of paraprofessional practice, as discussed below. The solution is to remove the barrier that prevents their qualified attorney from serving them across the full range of their legal needs. Reform of Rule 7's interstate admission requirements would accomplish this directly.

---

[22] Order at 5.

[23] Tenn. Sup. Ct. R. 7, Sec. 5.01(a)(3).

[24] Tenn. Sup. Ct. R. 7, Sec. 2.02(d)(3).

[25] Tenn. Sup. Ct. R. 7, Sec. 1.07(a)(3); Tennessee Board of Law Examiners, Tennessee Law Course, https://bwp.tnble.org/?page_id=57 (last visited Apr. 27, 2026) [hereinafter "TLC Page"].

[26] TLC Page (listing course subjects including Tennessee Rules of Civil Procedure, Family Law, Property, Torts, Wills and Estates, Criminal Law, Professional Responsibility, Business Associations, Employment Law, Workers' Compensation, and Constitutional Law).

[27] Tenn. Sup. Ct. R. 7, Sec. 5.02.

[28] CLEAR Report at 79-90 (describing supervised practice and hybrid licensure pathways in Oregon, Utah, Nevada, and other states).

[29] Tenn. Sup. Ct. R. 47; Order Activating Rule 47 (Tenn. Oct. 28, 2024), https://tncourts.gov/press/2024/10/28/tn-supreme-court-activates-rule-allowing-flood-victims-accept-free-legal-services.

[30] See 8 C.F.R. Sec. 1292.1(a)(1) (authorizing practice before the Executive Office for Immigration Review by attorneys licensed in any U.S. jurisdiction); 38 C.F.R. Sec. 14.629 (authorizing accredited representatives and agents to practice before the Department of Veterans Affairs); Tenn. Sup. Ct. R. 8, RPC 5.5(c) (permitting out-of-state attorneys to provide legal services in Tennessee in matters in which they are authorized to practice under federal law).

IV. QUESTIONS 3 AND 4: ALTERNATIVE PATHWAYS TO LICENSURE, INCLUDING LEGAL AID SERVICE, DESERVE SUPPORT

The Court asks whether there are less costly alternatives to the traditional three-year law school curriculum and whether it should consider alternative pathways for bar admission, such as apprenticeship or service with a legal aid organization.[31] This comment endorses both inquiries and addresses the legal aid service pathway specifically, as it is particularly well-suited to Tennessee's access-to-justice needs.

A pathway under which accumulated hours of supervised legal service with a recognized Tennessee legal aid organization, West Tennessee Legal Services, Legal Aid of Middle Tennessee and the Cumberlands, or Legal Aid of East Tennessee, could satisfy admission requirements, upon recommendation of the organization's supervising attorney, would accomplish several goals simultaneously. It would provide a structured, supervised practice environment in which an applicant demonstrates competence through actual legal work. It would channel attorneys toward the communities and practice areas where Tennessee's unmet legal needs are greatest. And it would create an incentive for attorneys who might otherwise not consider Tennessee practice to engage

with its legal aid system and, through that engagement, develop the Tennessee-specific knowledge and community connections that make them effective long-term practitioners.

The commenter would participate in such a program today. As a bilingual attorney with experience in immigration, business and real estate law, estate planning, and civil matters, he would welcome the opportunity to volunteer with a Tennessee legal aid organization on evenings and weekends. Under current rules, he cannot do so in any meaningful way without risking unauthorized practice of law under Tennessee Supreme Court Rule 8, RPC 5.5. A legal aid service pathway, combined with the reforms proposed in Section III above, would unlock that contribution immediately.

The CLEAR Report identifies public interest and legal aid service as a particularly valuable pathway for addressing both the access-to-justice crisis and the shortage of attorneys in underserved communities.[32] Recommendation 7 of the CLEAR Report specifically calls on state supreme courts to "champion public interest lawyering by considering innovative pathways to licensure" and to "support efforts to lower caseloads and support lawyer well-being" for public service attorneys.[33] A legal aid service admission pathway is a concrete implementation of that recommendation calibrated to Tennessee's specific needs.

---

[31] Order at 4-5.

[32] CLEAR Report at 93-115.

[33] Id. at 16 (Recommendation 7.1).

V. QUESTION 6: CAUTION IS WARRANTED ON PARAPROFESSIONAL EXPANSION; THE BETTER SOLUTION IS EXPANDING LICENSED ATTORNEY ACCESS

The Court asks whether legal services currently provided by lawyers could be competently provided by paraprofessionals, and if so, what limitations should apply.[34] This comment urges caution and recommends that the Court prioritize reforms that expand the supply of licensed attorneys, particularly through the interstate admission reforms proposed above, before expanding the scope of paraprofessional practice.

The access-to-justice problem that motivates this inquiry is real and serious. But the solution to a shortage of qualified attorneys is not to make legal services available from less qualified practitioners. It is to make qualified attorneys more accessible. The reforms proposed in Sections II and III of this comment would, if adopted, immediately expand the pool of licensed attorneys available to serve Tennessee residents without lowering the competency standards that protect the public.

The commenter has observed firsthand the harm that results when unregulated or inadequately supervised non-attorneys provide legal assistance to non-English-speaking clients. "*Notarios*" and paraprofessionals who hold themselves out as capable of handling immigration matters, often with

genuine intent to help, regularly cause serious, sometimes irreversible harm: applications filed prematurely, incorrect pathways pursued, procedural defaults that cannot be undone, and clients placed in removal proceedings as a consequence of a filing that should never have been made.[35] The complexity that lies beneath the surface of even apparently routine immigration and housing matters is not reliably visible to practitioners who lack legal training and the professional obligation of continuing competence.

To the extent the Court does authorize any paraprofessional role, this comment supports the framework proposed by attorney William P. York in his March 16, 2026 comment: any paraprofessional role must be structured as supervised assistance to licensed attorneys, not as an independent practice pathway; attorney supervision must be genuine and documented, not nominal; and the lines of attorney responsibility for all work performed must be clear.[36] Any such framework should also include robust enforcement mechanisms for unauthorized practice of law, given the documented harm caused by unsupervised non-attorney practice in immigrant communities.

---

[34] Order at 5.

[35] See, e.g., Legal Services Corporation, The Justice Gap: The Unmet Civil Legal Needs of Low-Income Americans 48 (Apr. 2022) (documenting the extent of unmet legal need and the inadequacy of non-attorney assistance in complex legal matters).

[36] William P. York, Public Comment, No. ADM2025-01403, at 5-6 (Mar. 16, 2026).

VI. QUESTION 7: NON-LAWYER OWNERSHIP OF LAW FIRMS SHOULD NOT BE PERMITTED

The Court asks whether it should "modify, reduce, or eliminate regulations prohibiting non-lawyer ownership of law firms or fee sharing with non-lawyers."[37] It should not. Tennessee Rule of Professional Conduct 5.4 should be preserved in its essential form.

The prohibition on non-lawyer ownership is not a vestige of professional protectionism. It is the structural guarantee that a lawyer's professional judgment, the advice he gives, the cases he accepts or declines, the settlements he recommends, the time he devotes to a client's matter, remains governed by his duties to the client and the legal system, not by the financial interests of an outside investor. When a law firm is owned by a private equity fund, a publicly traded corporation, or another non-lawyer entity, the lawyer answers to two masters: his professional obligations to his client, and the financial expectations of his owners. Those obligations are not always aligned, and when they diverge, the client, particularly the low-income client who cannot evaluate the quality of representation or easily obtain alternative counsel, bears the risk.

The experience of the American medical profession provides a documented cautionary parallel. The entry of private equity into medical practice has been associated with consolidation, reduced time per patient, prioritization of profitable procedures over patient need, and, in some cases, demonstrable declines in care quality.[38] Medical patients and legal clients share a common

vulnerability: they often cannot accurately evaluate the quality of the service they receive at the time it is provided, and the harm from inadequate service may not be apparent until it is irreversible. The legal profession's independence rules exist precisely because of this information asymmetry. They should not be dismantled in the name of access to justice when the reforms proposed above would expand access without compromising independence.

The legal profession's own recent experience with ownership reform reinforces this caution. Arizona eliminated its ban on non-lawyer ownership of law firms in 2021, becoming the first state to do so in the modern era.[39] The Arizona experience remains nascent, but early evidence suggests that the anticipated access-to-justice benefits have not materialized at scale, while concerns about lawyer independence and consumer protection have grown more acute as the nature of the entities seeking ownership stakes has become clearer. Arizona's experiment may ultimately yield useful data, but Tennessee need not conduct its own experiment when the reforms proposed in Sections II and III of this comment offer a proven, independence-preserving path to expanding access.

This comment therefore supports preserving Rule of Professional Conduct 5.4 and urges the Court to address the access-to-justice crisis through the mechanisms proposed in Sections II and III: ending ABA exclusivity, modernizing comity requirements, and creating legal aid service pathways that expand the supply of qualified, independent, licensed attorneys.

---

[37] Order at 5.

[38] See, e.g., Zirui Song & Leemore Dafny, The Growing Role of Private Equity in Healthcare, JAMA 327(18), at 1765 (2022) (documenting association between private equity acquisition of medical practices and changes in care patterns and costs); see also York Comment at 2 (Mar. 16, 2026) (noting that "outside ownership necessarily carries with it pressures relating to revenue, efficiency, market share, growth, staffing, case selection, and return on investment").

[39] See Joel Truett, Goodbye Rule 5.4: Legal Ethics Change in Arizona, Ariz. St. L.J. (Apr. 19, 2021); cf. William P. York, Public Comment, No. ADM2025-01403, at 2 (Mar. 16, 2026) (arguing that outside ownership creates structural conflicts between commercial pressures and client-centered representation).

VII. CONCLUSION

The Court framed this proceeding around a genuine tension: the goal of lowering barriers to the legal profession must be balanced against the goal of ensuring competent representation and safeguarding the public. This comment has argued throughout that this tension is resolvable; the reforms most urgently needed are not those that dilute competency standards, but those that remove barriers that never served a competency purpose in the first place.

Ending Tennessee's exclusive reliance on ABA accreditation does not lower the quality of Tennessee's bar or compromise public protection. It removes a gatekeeping function from a private organization that represents approximately 13 percent of American attorneys, has a documented history of anticompetitive conduct, and whose standards have demonstrably inflated the cost of legal education without producing better lawyers. The bar examination, the output measure, remains fully intact. And Tennessee already has the regional accreditation infrastructure, through

SACSCOC today and potentially through CPHE in the future, to implement outcome-focused alternatives without starting from scratch.

Modernizing the comity rules does not reduce the rigor of Tennessee's admission standards. It replaces a blunt durational barrier with the individualized evaluation and targeted state-specific training that the public protection rationale actually requires, through the existing Tennessee Law Course. The attorney who passes that course, completes a character and fitness review, and demonstrates a record of competent practice is as well-prepared to serve Tennessee clients as an attorney who simply waited five years.

Creating legal aid service pathways does not compromise the integrity of the profession. It channels attorneys toward the communities the Court most wants to serve, under supervision and with accountability structures that protect clients throughout the process.

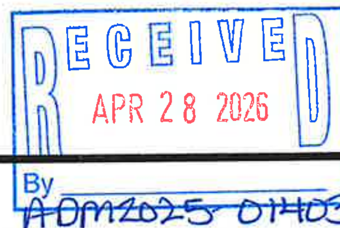
The commenter is one attorney. But he represents a category of attorney that current Rule 7 systematically excludes: qualified, experienced, bilingual practitioners who attended non-ABA law schools, passed rigorous bar examinations, and are prepared to serve underserved communities, not in some future regulatory landscape, but now, if the rules permitted it. This Court has already determined, through Rule 47, that such attorneys are competent to serve Tennesseans in a crisis. The Tennesseans who need legal help with housing, immigration, family law, and public benefits are in a crisis that did not begin with a flood and will not end with an emergency order. They can be served, starting now, by attorneys who are already here.

This comment respectfully urges the Court to adopt the reforms proposed herein.

Respectfully submitted,

Rene Galicia

René Galicia, Esq.
California State Bar No. 349282
10615 Chapman Highway #370
Seymour, TN 37865
rene@galicia.law
April 28, 2026



MaryBeth Lindsey

To: appellatecourtclerk
Subject: RE: Public Comment — No. ADM2025-01403 — René Galicia, Esq., CA Bar No. 349282

From: Rene Galicia, Esq. <rene@galicia.law>
Sent: Tuesday, April 28, 2026 6:15 PM
To: appellatecourtclerk <appellatecourtclerk@tncourts.gov>
Subject: Public Comment — No. ADM2025-01403 — René Galicia, Esq., CA Bar No. 349282

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

Dear Clerk Hivner,

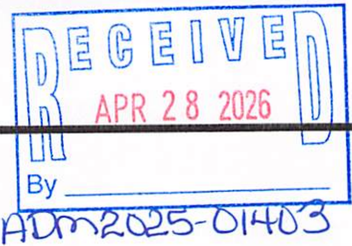
Please find attached the public comment of René Galicia, Esq., California State Bar No. 349282, submitted in response to the Court's September 16, 2025 Order soliciting public comments on potential regulatory reforms to increase access to quality legal representation, No. ADM2025-01403.

The comment addresses Questions 1, 2, 5, 6, and 7 of the Court's Order and proposes specific amendments to Tennessee Supreme Court Rule 7, Sections 2.02(a) and 5.01(a).

Respectfully submitted,

Rene Galicia, Esq.
CA Bar No. 349282
Phone: 213-222-6240
Email: Rene@Galicia.Law

MaryBeth Lindsey



From:	William Metzinger <wmetzinger@gmail.com>
Sent:	Tuesday, April 28, 2026 3:47 PM
To:	appellatecourtclerk
Subject:	Comment re: Regulatory Reforms, No. ADM2025-01403 – Comment on MJP and lawyer mobility reform (Question 5)

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

To the Tennessee Supreme Court:

I write today to support the views expressed in the comment submitted to the Court on April 21, 2026, by Brian Faughnan and Lucian Pera.

In addition to the proposed Rule 5.5 reforms, I respectfully request the Court consider targeted and related changes to Tennessee Supreme Court Rule 7 governing admission by comity (admission on motion). Two aspects of the current framework merit particular attention:

(a) Indefinite comity prohibition tied to the 180-day filing for in-house admission

The current rule's apparent consequence—that failure to meet the 180-day deadline for filing an application for in-house admission may result in a permanent bar to comity admission—raises concerns of proportionality, clarity, and policy coherence (See Tenn. Sup. Ct. R. 7, Section 10.01(d)(3)).

First, the absence of a defined endpoint for this restriction is difficult to reconcile with how the profession addresses far more serious misconduct. Even in cases involving significant ethical violations—such as client fund misappropriation or other serious breaches—disciplinary systems typically impose determinate sanctions with defined reinstatement pathways (often in the range of several years). By contrast, a procedural lapse in timing can effectively result in a lifetime restriction on admission by comity.

Second, the nature of the consequence appears misaligned with the underlying conduct. The remedy directs the applicant toward admission by examination, which is framed as a competency-based pathway. Yet the triggering issue is not a demonstrated lack of competence, but rather noncompliance with a filing deadline. This creates a conceptual mismatch: the "penalty" operates in the domain of competence rather than as a proportional regulatory consequence (such as a monetary penalty, late fee, or discretionary waiver standard).

Third, the rule would benefit from clearer articulation. It is not readily apparent whether the prohibition is intended to be absolute, whether any discretionary relief exists, or how the Court or Board of Law Examiners may evaluate mitigating circumstances.

For these reasons, I respectfully request that the Court consider:

- Clarifying the scope and duration of any disqualification tied to the 180-day deadline;
- Providing a defined path to eligibility after a specified period or upon satisfaction of objective criteria; and/or
- Replacing or supplementing the current consequence with a more proportionate mechanism (e.g., discretionary review, late filing provisions, or financial penalties).

(b) Consideration of a COVID-related amnesty or equitable relief period

The Court may also wish to consider a limited amnesty or equitable relief mechanism addressing applicants affected by the COVID-19 period.

As reflected in broader legal and administrative contexts, courts and agencies have recognized that the pandemic created extraordinary disruptions affecting mobility, employment transitions, access to information, and administrative processes. During that period, many attorneys relocated across jurisdictions under unusual and often urgent circumstances, while licensing systems operated with reduced capacity or significant delays.

Analogous reasoning can be found in cases such as *Kwong v. United States*, 179 Fed. Cl. 382 (2025), where courts have acknowledged the need to evaluate procedural compliance in light of extraordinary external conditions. While not directly controlling in this context, the principle is instructive: rigid application of procedural deadlines may warrant reconsideration where systemic disruption materially impaired compliance.

A narrowly tailored amnesty period—whether time-limited or tied to defined pandemic dates—could allow otherwise qualified applicants to seek admission by comity upon a showing of good cause related to COVID-era disruptions. Such an approach would:

- Address fairness concerns for a discrete and identifiable group;
- Promote lawyer mobility at a time when the Court has recognized the need to expand access to legal services; and
- Avoid imposing long-term structural consequences based on short-term, extraordinary conditions.

The Court's current review presents a meaningful opportunity to align Tennessee's licensing framework with modern legal practice while maintaining appropriate safeguards for the public. The proposed Rule 5.5 reforms represent a significant step in that direction, and targeted adjustments to Rule 7 would further advance those goals by ensuring that admission pathways are clear, proportionate, and responsive to real-world conditions.

I appreciate the Court's consideration of these comments.

Kind regards,

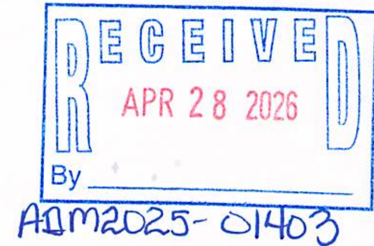
Bill

Bill Metzinger
wmetzinger@gmail.com
615.540.2060

harris|shelton

Christopher S. Campbell
Chief Managing Member
ccampbell@harrisshelton.com
Licensed in Tennessee and Arkansas

April 27, 2026



Submitted via email: appellatecourtclerk@tncourts.gov

James Hivner, Clerk
Tennessee Supreme Court
Re: No. ADM2025-01403 Public Comments
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 (Court Order ADM2025-01403)

Dear Clerk Hivner and Honorable Justices of the Tennessee Supreme Court,

Harris Shelton Hanover Walsh, PLLC respectfully submits this comment in response to the Court's Order dated September 16, 2025 soliciting written comments on potential regulatory reforms, including Question (7): whether the Court should "modify, reduce, or eliminate regulations prohibiting non-lawyer ownership of law firms or fee sharing with non-lawyers." We oppose any modification to Rule 5.4 that would permit non-lawyer ownership of law firms or fee sharing with non-lawyers.

We share the Court's concern about the justice gap and attorney shortages described in the Order, including unmet civil legal needs among low-income residents and the challenges faced by "legal desert" communities. However, allowing nonlawyer to investment in law firms is a structural change with irreversible consequences that should not be adopted absent clear, compelling, Tennessee-relevant empirical evidence that (a) it measurably improves access to justice and (b) it does so without increasing harm to clients, courts, or the integrity of the profession.

Non-lawyer ownership threatens lawyer independence. The duty of professional judgment, loyalty, and confidentiality cannot be subordinated to outside investors' commercial interests. Even robust compliance programs cannot fully neutralize conflicts that arise when non-lawyer owners influence case selection, litigation strategy, settlement decisions, or revenue allocation. Rule 5.4's structural separation protects the public by ensuring that clients' interests, not return on capital, drive legal advice.

6060 Primacy Parkway, Suite 100 Memphis, TN 38119 ph. 901.435-0143 (d) 901-525.1455 (o)

Memphis | Nashville | Covington | Oxford

Christopher S. Campbell
Chief Managing Member
ccampbell@harrisshelton.com
Licensed in Tennessee and Arkansas

Even under "non-controlling" or "limited" frameworks, nonlawyer financial interests predictably create pressure to: (1) prioritize revenue and growth over client-centered outcomes; (2) standardize and scale services in ways that may not fit individualized legal needs; (3) influence staffing, budgeting, and case strategy in ways that compromise quality; and (4) encourage settlement or litigation decisions driven by business objectives rather than client interest and professional judgment.

Non-lawyer ownership risks exacerbating conflicts and undermining fiduciary duties. Equity holders who are not bound by the Rules of Professional Conduct may press for cross-selling, data monetization, or volume-driven practices that weaken individualized counsel. Permitting fee sharing with non-lawyers can create incentives to steer clients to particular service vendors or to prioritize short-term revenue over long-term client outcomes. These pressures are incompatible with the profession's duties of independence, confidentiality, candor to tribunals, and avoidance of conflicts.

The proposed relaxation is unlikely to meaningfully close the access-to-justice gap. Jurisdictions experimenting with non-lawyer ownership have not shown clear, scalable evidence that such models reduce prices for low- and moderate-income consumers across core need areas such as family, housing, and consumer law. Market entry often targets higher-margin or automated segments, while complex, low-fee matters remain underserved. Tennessee can better advance affordability through alternatives the Court has already invited comment on—such as exploring less costly educational pathways, bar admission reforms, and careful deployment of paraprofessionals in defined, supervised roles—without sacrificing Rule 5.4's essential safeguards.

Existing tools can responsibly expand access without compromising independence: limited scope representation, innovation in law practice technology under lawyer control, streamlined licensure for experienced out-of-state attorneys, and court-sponsored pro bono and self-help initiatives. These approaches preserve the non-delegable duties lawyers owe to clients and courts while enabling efficiency and scale. If the Court elects to pilot reforms, any such reforms should exclude changes to ownership or fee sharing and, instead, focus on supervised service models that maintain lawyer accountability.

6060 Primacy Parkway, Suite 100 Memphis, TN 38119 ph. 901.435-0143 (d) 901-525.1455 (o)

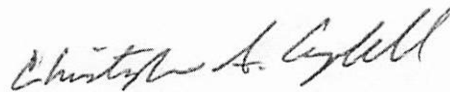
Memphis | Nashville | Covington | Oxford

Christopher S. Campbell
Chief Managing Member
ccampbell@harrisshelton.com
Licensed in Tennessee and Arkansas

Finally, public confidence in the justice system depends on the perception—and reality—that lawyers are guided by professional obligations rather than investor priorities. Eroding Rule 5.4 would blur that line, invite complex enforcement challenges, and risk harm to vulnerable consumers who often cannot detect subtle conflicts embedded in business structures.
For these reasons, Harris Shelton Hanover Walsh, PLLC respectfully urges the Court to retain Tennessee's existing prohibitions on nonlawyer ownership of law firms and fee sharing with nonlawyers. We appreciate the Court's focus on ensuring that all Tennesseans have access to affordable quality legal services while also ensuring attorney competence and safeguarding the public. The Court can—and should—pursue access-to-justice reforms that expand service capacity and reduce costs without compromising professional independence or introducing profit-driven incentives that threaten client loyalty, confidentiality, and public trust. Thank you for considering these comments and for the opportunity to be heard in this important process. Please accept this letter for filing in Docket No. ADM2025-01403 and direct any correspondence to the undersigned at 6060 Primary Parkway, Suite 100, Memphis, TN 38119.

HARRIS SHELTON HANOVER WALSH, PLLC

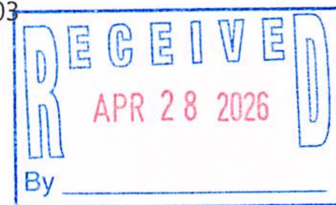
Sincerely,



Christopher S. Campbell, Chief Manager

MaryBeth Lindsey

To: appellatecourtclerk
Subject: RE: Public Comment on Court Order ADM2025-01403



From: Finnely King-Scoular <finn@harrisshelton.com>
Sent: Tuesday, April 28, 2026 10:40 AM
To: appellatecourtclerk <appellatecourtclerk@tncourts.gov>
Cc: Christopher Campbell <ccampbell@harrisshelton.com>; Chad Roberts <croberts@harrisshelton.com>
Subject: Public Comment on Court Order ADM2025-01403

ADM2025-01403

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

Good morning,

Please see attached for the public comments of Harris Shelton Hanover Walsh, PLLC, located in Memphis, Tennessee, in response to Court Order ADM2025-01403.

Thank you for your service to the people of Tennessee.

Finn King-Scoular | Legal Assistant
harris|shelton

6060 Primacy Parkway
Suite 100
Memphis, TN 38119
Tel 901.310.1857
finn@harrisshelton.com

For the firm's policies regarding email communications and confidentiality, please visit http://www.harrisshelton.com/disclaimers/.

WARNING – WIRE FRAUD ADVISORY If you have a Real Estate Closing Transaction with our Office, please be aware that Wire Fraud and Email Hacking/Phishing attacks are on the increase! To help guard against Wire Fraud and other Financial Scams, please verify the authenticity of any Wire Transfer Instructions by calling our Office using a known telephone number or an independently confirmed number. DO NOT USE THE TELEPHONE NUMBER THAT IS INCLUDED IN AN EMAIL YOU ARE TRYING TO CONFIRM OR QUESTION AND DO NOT RESPOND TO THE EMAIL OR ANY LINKS IN THE EMAIL! OUR WIRE TRANSFER INSTRUCTIONS WILL NEVER CHANGE DURING THE TRANSACTION. WE WILL NEVER SEND COMPLETE ACCOUNT INFORMATION ON OUR WIRING INSTRUCTIONS. IF IT LOOKS STRANGE, CHANCES ARE IT IS FRAUDULENT.

James Hivner, Clerk

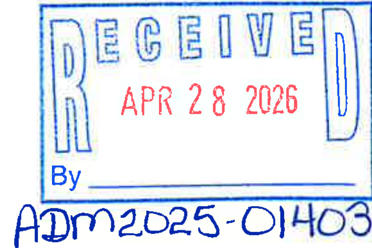
Re: Regulatory Reform

100 Supreme Court Building

401 7th Avenue North

Nashville, TN 37219-1307

appellatecourtclerk@tncourts.gov



VIA EMAIL

April 28, 2026

Tennessee Law Professor Comment in Response to Tennessee Supreme Court Order No. ADM2025-01403

We the undersigned Tennessee law professors respectfully submit this public comment in response to the Supreme Court of Tennessee Order No. ADM2025-01403.

1. Recognition of the access to justice and legal deserts crises

First, we commend and celebrate this Court for taking this step and starting this important discussion. The Court is absolutely correct that America faces a significant and worsening access to justice crisis. The Legal Services Corporation (LSC) has released four different *Justice Gap* studies (2005, 2009, 2017, and 2022) that clearly establish the deterioration.[1] The 2005 Report notes that "[o]nly a very small percentage of the legal problems experienced by low-income people (one in five or less) are addressed with the assistance of . . . [a] lawyer."[2] By 2022, LSC reported that "[l]ow-income Americans did not receive any legal help or enough legal help for 92% of the problems that substantially impacted their lives in the past year."[3]

---

[1] For links to all five reports, see LEGAL SERV. CORP., THE JUSTICE GAP REPORT (2022), https://justicegap.lsc.gov/resource/section-1-introduction/ [https://perma.cc/B3H6-C5TL].

[2] Legal Serv. Corp., Documenting the Justice Gap in America 4 (Sep. 2005), https://lsc-live.app.box.com/s/zb2hn2xm0ewmsubckbtpo9jjegxruwfp [https://perma.cc/B4UX-UXXF].

[3] Legal Serv. Corp., *supra* note 1.

Nor is the issue limited to the poor. Middle-income Americans are increasingly priced out of the market for legal services. Rebecca Sandefur estimates that more than one hundred million Americans experience one or more civil justice issues at any given time.[4] Survey results from a mid-sized city suggest that 66% of Americans encounter at least one civil justice issue in an eighteen-month period, and those same Americans use a lawyer's help just 16% of the time.[5] Small businesses fare similarly, with one study finding that 60% of small business owners lack a lawyer's assistance with their significant legal issues.[6]

The problem is shown most clearly in the rise of the *pro se* litigant. At least one party appears unrepresented in a whopping 76% of state-court civil cases.[7] In courts that handle issues like debt collection, family law, or eviction—90% or more of the cases feature at least one *pro se* litigant.[8] The upshot is quite embarrassing for a country founded on "equal justice under law." In 2022, the *World Justice Project's Rule of Law Index* ranked the United States 36th in the world for civil justice, tucked between Barbados and Mauritius.[9]

The problem of legal deserts is likewise serious and growing. The small town practice of law is in significant distress, and this leaves many Americans without access to a lawyer or other legal resources.[10] A full 20 Tennessee counties have fewer than 10 lawyers.[11]

---

[4] *See* Rebecca L. Sandefur, *Money Isn't Everything: Understanding Moderate Income Households' Use of Lawyers' Services*, *in* Middle Income Access to Justice 222, 223 (Michael Trebilcock, Anthony Duggan & Lorne Sossin, eds., 2012).

[5] *See* Rebecca L. Sandefur, Am. Bar. Found., Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study 3, 6, 14 (2014), http://www.americanbarfoundation.org/uploads/cms/documents/sandefur_accessing_justice_in_the_contemporary_usa._aug._2014.pdf [https://perma.cc/966A-JYV4].

[6] *See* LegalShield, The Legal Needs of Small Business: A Research Study Conducted by Decision Analyst Commissioned by LegalSheild 4 (2013), https://avonintegrativehealth.com/storage/app/media/_Client/patient_education/1010711-legal-needs-of-small-businesses.pdf [https://perma.cc/V5CJ-FTBH].

[7] Ralph Baxter, *Dereliction of Duty: State-Bar Inaction in Response to America's Access-to-Justice Crisis*, 132 Yale L.J. F. 228, 230 (2022).

[8] *Id.* at 230 n.9.

[9] World Just. Project, Rule of Law Index 10, 34 (2022), https://worldjusticeproject.org/sites/default/files/documents/WJPIndex2022.pdf [https://perma.cc/A3GU-CEPV].

[10] *See* Elizabeth Chambliss, *Rural Legal Markets*, 12 Tex. A&M L. Rev. 961 (2025); Lisa R. Pruitt, Amanda L. Kool, Lauren Sudeall, Michele Statz, Danielle M. Conway, & Hannah Haksgaard, *Legal Deserts: A Multi-State Perspective on Rural Access to Justice*, 13 HARV. L. & POL'Y REV. 15 (2018).

[11] https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf at p. 14.

The Court is correct to note that these issues are serious and growing and have a detrimental effect on public belief in our justice system.[12] We are thrilled that the Court has recognized these problems and is seeking solutions.

2. Order Items 1-3 Addressing Law Schools

We have decided to avoid any appearance of a conflict of interest and will thus refrain from comment on these issues.

3. Order Items 4, 5, 6, and 7

We note that many American states are currently engaged in some or all of these reforms, and a number more are considering changes. Overall, we have been particularly impressed with the approaches of Arizona and Utah, who have used a combination of different strategies and have been unafraid to act boldly and experiment. Acting individually, these reforms will not solve the crisis described above, but any progress should be welcome and taken together, such reforms should prove helpful.

Item four ("Whether the Court should consider adopting alternative pathways for admission to the Tennessee Bar") is being tried in multiple states. At least six states (California, Maine, New York, Vermont, Virginia, and Washington) have some sort of apprenticeship program[13] and another six states are considering other alternative pathways into the practice of law (Arizona, Nevada, Oregon, South Dakota, Wisconsin, and Vermont).[14] Many more states are considering such a move. As of yet the uptake in these

---

[12] Benedict Vigers & Lydia Saad, *Americans Pass Judgment on Their Courts*, GALLUP, December 17, 2024, https://news.gallup.com/poll/653897/americans-pass-judgment-courts.aspx (Survey showing a "Americans' confidence in their nation's judicial system and courts dropped to a record-low 35% in 2024," representing a "sharp decline in confidence in" the American judiciary that "is among the largest Gallup has ever measured").

[13] *See, e.g.*, Karen Sloan, *More States Consider How to License Lawyers*, Reuters, https://www.reuters.com/legal/government/more-states-reconsider-how-license-lawyers-2023-04-10 (Apr. 10, 2023); N.Y. Comp. Codes R. & Regs. tit. 22, § 520.4 (2024), [illegible];

[14] Walter Olson, *States Pursue Alternative Licensing Pathways for Lawyers*, Cato at Liberty (Mar. 28, 2024), https://www.cato.org/blog/states-pursue-alternative-licensing-pathways-lawyers (noting that several states, including Arizona, Nevada, Oregon, South Dakota, Wisconsin, and Vermont, are considering alternative pathways to legal licensure). Lauren Curtis, *Arizona Lawyer Apprentice Program (ALAP)*, State Just. Inst. (Jan. 1, 2026), [illegible]; Laura Bagby, *Nevada Supreme Court Approves Plan to Proceed with Developing Alternative Attorney Licensing Pathway in State*, 2Civility (Sept. 23, 2024), [illegible]; *Admission to the Practice of Law in Wisconsin*, Wis. Ct. Sys., [illegible]; *Law Office Study Program*, Vt. Judiciary, [illegible].

programs has been small, and the study of their full impact is ongoing, but that does not mean they are not worth implementing.[15]

Item five ("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") seems like a straightforward way to increase the provision of legal services in the State, especially if any changes are reciprocal. One of the main issues of changing the route to becoming a lawyer in this state is that other states may not allow licensed Tennessee lawyers to waive into their bar if our entry requirements change significantly. Tennessee could work with other states to ease movement among reform minded states.

Issue six ("Whether any legal services currently provided by lawyers could be competently provided by paraprofessionals") is likewise being tried in multiple states. Arizona, Minnesota, New Hampshire, Oregon, and Utah all have some form of licensed paralegal program, and such programs are under consideration in many other states.[16]

Alaska, Arizona, and Utah have likewise pioneered justice worker programs, where legal aid or specific legal non-profits train and supervise non-lawyers in providing services in specific areas like domestic violence or debt collection.[17] We are particularly supportive of

---

[15] *Supreme Court Approves Alternative Pathways to Lawyer Licensure in Washington State*, Wash. Cts. (Mar. 15, 2024), https://www.courts.wa.gov/newsinfo/?fa=newsinfo.internetdetail&newsid=50389 (approving alternative pathways to licensure based on findings that the bar exam limits access to the profession and that new pathways may help address attorney shortages and expand legal services); *see also* Or. State Bar, *Alternatives to the Bar Exam: Final Report of the Alternatives to the Bar Exam Task Force* (2018), https://www.osbar.org/_docs/resources/AltPathwaysTFReport.pdf (proposing an apprenticeship-style pathway to licensure aimed at reducing barriers to entry and improving access to justice, while recognizing varied outcomes across existing state programs).

[16] *How States Are Using Non-Lawyers to Address the Access to Justice Gap*, Am. Bar Ass'n (Sept. 2, 2022); Tom Jarvis, *Newly Enacted Paraprofessional Pilot Program Helps Promote Access to Justice*, N.H. Bar Ass'n (July 19, 2022), https://www.nhbar.org/newly-enacted-paraprofessional-pilot-program-helps-promote-access-to-justice/ (noting that several states have adopted licensed paralegal or limited-license legal practitioner programs, with additional states considering similar models). *See also* T.E. Mootz III, *Independent Paralegals Can Fill the Gap in Unmet Legal Need*, 4 U.D.C. L. Rev. 67 (2000), https://digitalcommons.law.udc.edu/cgi/viewcontent.cgi?article=1204&context=udclr (arguing that independent paralegals can expand access to justice by providing lower-cost legal services and addressing unmet demand in the civil legal system)

[17] Inst. for the Advancement of the Am. Legal Sys., *The Diverse Landscape of Community-Based Justice Workers* (Feb. 22, 2024), https://iaals.du.edu/news/diverse-landscape-community-based-justice-workers; Cayley Balser et al., *Leveraging Unauthorized Practice of Law Reform to Advance Access to Justice*, 18 Law J. Soc. Just. 66 (2023) (arguing that community-based justice workers expand access to "preventative civil justice problem-solving" for underserved populations); *see also* Matthew Burnett, Rebecca L. Sandefur & James Teufel, *Analysis of the Social and Economic Impact of the Alaska Community Justice Worker Program (2021–2025)* (Am. Bar Found. 2025), https://www.americanbarfoundation.org/wp-

justice worker programs. The advantage to these programs is that a) they do not require building out a new licensure and training regime; b) they build off of existing community legal resources; c) they act as a force multiplier to underfunded providers of legal services to the poor like legal aid; d) they can be aimed at rural counties or specific tasks; and e) they are the reform least likely to undercut struggling small firm, main street lawyers.

Issue seven "Whether the Court should modify, reduce, or eliminate regulations prohibiting non-lawyer ownership of law firms or fee sharing with non-lawyers") is currently underway in Washington, D.C., Arizona, and Utah. Utah and Arizona have separately regulatory regimes for these providers, and the results from the Utah "regulatory sandbox" have been promising:

> Sandbox entities have served 24,000 unduplicated consumers and provided over 40,000 legal services. Most of those services (87%) have been provided by lawyers working as employees within new legal businesses. Thirteen percent of services have been provided by nonlawyers. Sandbox entities are primarily serving individual consumers and small businesses with an average cost of service of $162. Small business services make up the majority delivered to date (40%). Military benefits (21%), immigration (13%), end of life planning (6%), and accident/injury (6%) round out the top five areas of service.[18]

In sum, we praise the Court for opening this discussion and think that some combination of items 4-7 would be helpful in addressing the state's unmet legal needs.

4. The Court Should Also Consider More Direct Supervision of Tennessee Courts to Ameliorate the Growth in *Pro Se* Litigation

We would encourage the Court to consider other options as well. 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."[19]

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

---

content/uploads/2025/11/ABE-Alaska-Community-Justice-Brief-FIN.pdf. (finding that Alaska's community justice worker program dramatically expanded legal service capacity, particularly in rural communities, and generated significant economic returns).

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

[19] In re Bell, 344 S.W.3d 304, 313 (Tenn. 2011).

granted and clothed with general supervisory control over all the inferior courts of the state."[20] The Court has "a broad conference of full, plenary and discretionary power" under Tennessee law.[21]

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 undertaken several different projects that could serve as a model, including their Uncomplicated Courts Initiative[22] and their Cases Without Counsel project.[23] The State Justice Institute has likewise compiled a list of promising reforms to help Americans engaged in Self-Represented Litigation.[24] 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.[25] Likewise, this Court's self-help center[26] and the creation of uniform pleadings[27] 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 taskforce 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

[20] 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").

[21] Tenn. Code Ann. § 16-3-504.

[22] *Uncomplicated Courts Initiative*, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., https://iaals.du.edu/projects/uncomplicated-courts-initiative (last visited Mar. 26, 2026).

[23] *Cases Without Counsel*, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., https://iaals.du.edu/projects/cases-without-counsel (last visited Mar. 26, 2026).

[24] *Self-Represented Litigation*, STATE JUST. INST., https://www.sji.gov/priority-investment-areas/self-represented-litigation/ (last visited Mar. 26, 2026).

[25] *Tennessee Online Debt Resolution Platform (TOP)*, TENN. CTS., https://www.tncourts.gov/programs/mediation/tennessee-online-debt-resolution-platform-top (last visited Mar. 26, 2026).

[26] *Self Help Center*, TENN. CTS., https://www.tncourts.gov/programs/self-help-center (last visited Mar. 26, 2026).

[27] *Court Forms*, TENN. CTS., https://www.tncourts.gov/court-forms (last visited Mar. 26, 2026).

unrepresented, to determine the legal basis for the case before them, to discover the relevant facts at issue from any unrepresented party, and to ensure the claimant has met their burden of proof before deciding any case.

2) This Court could argue 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 make a determination with respect to 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.[28]

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.

SIGNED

Eric Amarante, The University of Tennessee Winston College of Law

Maha Ayesh, LMU Duncan School of Law

Benjamin H. Barton, The University of Tennessee Winston College of Law

Mohamed Faizer, LMU Duncan School of Law

Regina L. Hillman, The University of Memphis School of Law

Alex Long, The University of Tennessee Winston College of Law

Caitlin Moon, Vanderbilt Law School

Jennifer S. Prusak, Vanderbilt Law School

Joy Radice, The University of Tennessee Winston College of Law

Katy Ramsey Mason, The University of Memphis School of Law

Paula Schaefer, The University of Tennessee Winston College of Law

---

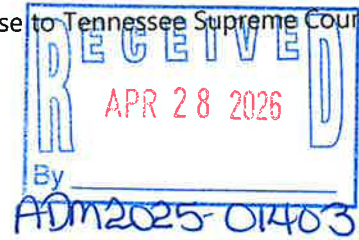
[28] *See* Lauren Sudeall, *The Overreach of Limits on 'Legal Advice'*, 131 YALE L.J. F. 637 (2022).

Daniel M. Schaffzin, The University of Tennessee Winston College of Law

Lauren Sudeall, Vanderbilt Law School

MaryBeth Lindsey

To: appellatecourtclerk
Subject: RE: Tennessee Law Professor Comment in Response to Tennessee Supreme Court Order No. ADM2025-01403



From: Barton, Benjamin <bbarton@utk.edu>
Sent: Tuesday, April 28, 2026 10:33 AM
To: appellatecourtclerk <appellatecourtclerk@tncourts.gov>
Subject: Tennessee Law Professor Comment in Response to Tennessee Supreme Court Order No. ADM2025-01403

Warning: Unusual sender <bbarton@utk.edu>

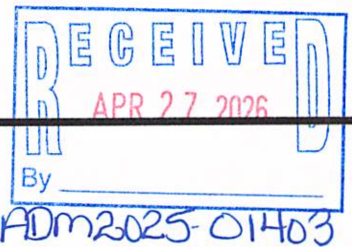
You don't usually receive emails from this address.
Make sure you trust this sender before taking any actions.

Please find attached the Tennessee Law Professor Comment in Response to Tennessee Supreme Court Order No. ADM2025-01403. I attach the file as a word document and a scanned PDF. Please tell me if you would prefer a different format. Thanks!

Professor Benjamin Barton, The University of Tennessee Winston College of Law, on behalf of:

Eric Amarante, The University of Tennessee Winston College of Law Maha Ayesh, LMU Duncan School of Law Mohamed Faizer, LMU Duncan School of Law Regina L. Hillman, The University of Memphis School of Law Alex Long, The University of Tennessee Winston College of Law Caitlin Moon, Vanderbilt Law School Jennifer S. Prusak, Vanderbilt Law School Joy Radice, The University of Tennessee Winston College of Law Katy Ramsey Mason, The University of Memphis School of Law Paula Schaefer, The University of Tennessee Winston College of Law Daniel M. Schaffzin, The University of Tennessee Winston College of Law Lauren Sudeall, Vanderbilt Law School

MaryBeth Lindsey



From:	Tyler Brown <t@zaflegal.com>
Sent:	Monday, April 27, 2026 6:22 PM
To:	appellatecourtclerk
Subject:	Comment re: Regulatory Reforms, No. ADM2025-01403 – Comment on nonlawyer ownership (Question 7)

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

To the Tennessee Supreme Court:

I write today to support the views expressed in the comment submitted to the Court on April 21, 2026, by David Esquivel and others.

I am a Utah and Arizona licensed lawyer. I currently sit on the Utah Supreme Court's Ad Hoc Committee on Regulatory Reform. As someone who has been involved with regulatory reform from the earliest outset of the Utah sandbox experiment, I can tell you the primary lesson I've learned is that the regulations governing the practice of law across the country are serving lawyers more than they are serving the public--that is a problem. The model rules of professional conduct in most states are inhibiting innovation, which ultimately leads to a less competitive and less consumer-oriented legal services marketplace.

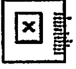
The Utah experiment has shown that non-lawyer ownership of law firms does not increase the risks of consumer harm. It turns out that non-lawyers are at least as ethical as lawyers. Who would have ever guessed that? The other lesson learned is that solving this problem in a single jurisdiction doesn't fix the entire marketplace. The practical reason for this is that investors looking to scale a legal tech business that provides great legal solutions to consumers are ultimately turned off by the limited geographies of state-by-state approvals. Limited upside means limited investment. This "lack of scale" problem has not stopped all investors from pursuing innovation inside Utah and Arizona, but we have not yet seen the floodgates open. More states need to take bold initiative to push the legal services marketplace in a direction that favors consumers over attorneys.

The lion's share of legal innovation is happening outside of "the practice of law" as it is defined by most states. This is because the regulatory frameworks applicable to the practice of law stifle innovation. As a result, we have relatively few lawyers participating in cutting-edge legal innovation. Instead, it is dominated by tech with limited lawyer input. That will be to the detriment of the consumer. By taking a bold step in Tennessee, I believe consumers will be one step closer to a functional marketplace where legal services are high quality, dramatically more affordable, and more accessible.

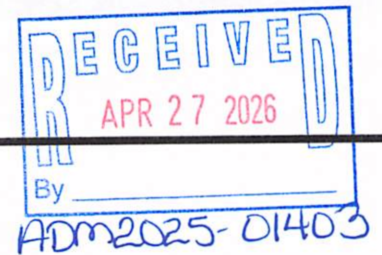
I admire the courage of regulators in Tennessee and elsewhere who are taking a close look at this and asking the right question--how can legal regulation serve the public interest? The answer--a competitive legal services marketplace.

Thanks,

Ty Brown // Partner
—
Office : +1 801 346 0080
6925 S Union Park Center, Ste 265 // Cottonwood Heights, Utah 84047



MaryBeth Lindsey



From: Michael Rafferty <mrafferty@harrisshelton.com>
Sent: Monday, April 27, 2026 6:15 PM
To: appellatecourtclerk
Subject: IN RE: PUBLIC COMMENTS ON POTENTIAL REGULATORY "REFORMS" - Strong opposition

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

To the Supreme Court of Tennessee:

I have practiced in Tennessee since 1982. I am also licensed to practice in Arkansas (1985) and Mississippi (1990). I try to focus my practice on commercial litigation, but I have more than 30 years of experience in defending medical malpractice claims.

I witnessed a phantom medical malpractice "crisis" early in my practice along with a second such purported crisis which yielded the current "Health Care Liability Act." The HCLA is little more than a trap for claimants to shift the focus from a medical malpractice claim to a pointless dispute over "notice" which, of course, has nothing to do with the merits (or lack thereof) of a claim.

At the same time the HCLA became law, the General Assembly enacted the caps on damages, also in response to a phantom crisis. I remember seeing one critic point out that the impetus for this legislation could not be supported by any actual facts, but was effectively legislation by anecdotes and urban legends. Sadly, many of the so-called reforms have mimicked or followed policy initiatives which originated in Texas where there probably was a genuine need to clean up a corrupt system.

I moved here from Missouri when I went to college at Rhodes. When I started practicing, I was always pleased that Tennessee, even in Shelby County where my office is located, seemed to be much more moderate, avoiding extremes in favoring either the plaintiff or the defendant. The one thing that has been consistent in my more than 44 years of practice is that insurance companies have been highly effective in prohibiting any public interest legislation. I have heard critics complain about runaway juries, but we've always had safeguards in place to deal with that. But unlike many people, I have the benefit of experience, from the inside, and therefore have perspective. I have even served on a jury.

The idea that we now need to discard the way of licensing lawyers in favor of a free-for-all with, effectively, no regulation is ludicrous. If the ABA is not going to evaluate law schools, what entity will do this?

When I started practicing, more lawyers viewed the practice of law as a profession, not merely a job or a way to make money. Younger lawyers, particularly those in the more urbanized counties, don't appear to have any appreciation for the concept of being an officer of the court or of providing a service for clients. Eliminating the traditional method for accrediting schools is not a solution; it will further erode a crucial pillar of an institution – the courts – that needs to be a bulwark against mediocrity and greed and oppression of the weak and disadvantaged in favor of the unprincipled.

I was extremely discouraged and disappointed when I learned that the Supreme Court was seriously considering these so-called regulatory "reforms." For one, I knew that if the Court were considering them, they would certainly be implemented whether they were needed or helpful. Second, I also knew they weren't needed, but that the forces behind these policy initiatives were echoes of nonsense that is spewed hourly on Fox News and other propaganda outlets that base their views, not on facts or history, but phony grievances that are aggressively ignorant of history. I know this is a losing proposition for me. I know these unnecessary "reforms" are inevitably coming, just as I know every update on my iPhone is toing to make it less user-friendly. I should proofread this before I send it, but I doubt it's going to be read, and I know my perspective will not prevail.

If the system is broken – and I adamantly disagree that there's any evidence that it is broken – discarding the traditional way that all current lawyers became licensed in favor of something that would have no standards and no infrastructure to ensure accreditation is certainly not the way to fix it. And if this state won't spend money on health care, the legislature certainly won't have any appetite for building an infrastructure to do what is currently being done to ensure accreditation. This state won't even join the Twenty-first Century and implement a uniform and effective e-filing system!!!!

It should go without saying that these my opinions and not those of anyone else in my firm or the firm as a whole.

Michael F. Rafferty | Attorney at Law

harris|shelton

6060 Primacy Parkway
Suite 100
Memphis, TN 38119
Direct 901.435.0128 | Tel 901.525.1455 | Fax 901.526.4084
mrafferty@harrisshelton.com

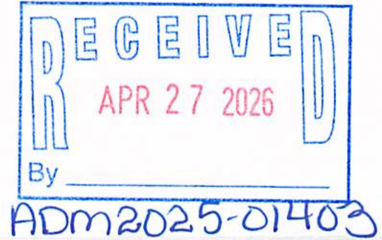
For the firm's policies regarding email communications and confidentiality, please visit http://www.harrisshelton.com/disclaimers/.

WARNING – WIRE FRAUD ADVISORY If you have a Real Estate Closing Transaction with our Office, please be aware that Wire Fraud and Email Hacking/Phishing attacks are on the increase! To help guard against Wire Fraud and other Financial Scams, please verify the authenticity of any Wire Transfer Instructions by calling our Office using a known telephone number or an independently

confirmed number. DO NOT USE THE TELEPHONE NUMBER THAT IS INCLUDED IN AN EMAIL YOU ARE TRYING TO CONFIRM OR QUESTION AND DO NOT RESPOND TO THE EMAIL OR ANY LINKS IN THE EMAIL! OUR WIRE TRANSFER INSTRUCTIONS WILL NEVER CHANGE DURING THE TRANSACTION. WE WILL NEVER SEND COMPLETE ACCOUNT INFORMATION ON OUR WIRING INSTRUCTIONS. IF IT LOOKS STRANGE, CHANCES ARE IT IS FRAUDULENT.

MaryBeth Lindsey

From: Robert Davis <ethiclaw45@gmail.com>
Sent: Monday, April 27, 2026 5:23 PM
To: appellatecourtclerk
Subject: New Rules Expanding Access to Justice



Warning: Unusual sender <ethiclaw45@gmail.com>
You don't usually receive emails from this address. Make sure you trust this sender before taking any actions.

Greetings:
I am a lawyer, licensed in Pennsylvania, West Virginia and Georgia. However, my hometown is signal Mountain Tennessee. I still have a number of cherished relatives who are living in the state of Tennessee.

My good friend Lucian Pera has asked me to raise my voice in support of changes in administrative rules by the Supreme Court in Tennessee that will make access to justice much easier for Tennesseans, particularly for those who are poor.

I am also an adjunct professor of law and have both prosecuted and defended lawyers, judges, state officials, and others in ethics and disciplinary proceedings. One thing I have learned in my 53 years of practice is that when justice is rationed and the poor and others have no access to it, justice generally is denied.

Thinking of my fellow Tennesseeans, I strongly urge the Tennessee Supreme Court to accept the proposed changes that will truly increase access to justice for those less fortunate.
Thank you for considering my views. I would be pleased to answer questions and expand upon my views if requested.

Robert H 'Bob" Davis Jr.
Former PA Chief Counsel, former Counsel, West Virginia State Bar, former Asst. Gen. Counsel, State Bar of Georgia

__ + T +__

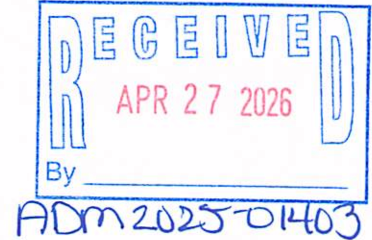
IMPORTANT NOTICE OF CONFIDENTIALITY: THE INFORMATION IN THIS DOCUMENT AND IN ACCOMPANYING DOCUMENTS IS COVERED BY THE ELECTRONIC COMMUNICATIONS PRIVACY ACT, 18 USC §§ 2510-2521 , IS A CONFIDENTIAL COMMUNICATION, IS ATTORNEY WORK PRODUCT AND IS PROTECTED BY THE LAW OF CONFIDENTIAL PROPERTY.

Law Office of Robert H. Davis, Jr.

Harrisburg PA

MaryBeth Lindsey

From:	Jayne Reardon <jayne@jaynereardon.com>
Sent:	Monday, April 27, 2026 3:47 PM
To:	appellatecourtclerk
Cc:	Jayne Reardon
Subject:	Comment re: Regulatory Reforms, No. ADM2025-01403 – Initial comment on need for action



Warning: Unusual sender <jayne@jaynereardon.com>

You don't usually receive emails from this address.
Make sure you trust this sender before taking any actions.

To the Tennessee Supreme Court:

I write today to support the views expressed in the comment submitted to the Court on April 2, 2026, by Lucian Pera supporting the Supreme Court's finding of an urgent need for reform. I appreciate the opportunity to lend my voice from the neighboring state of Illinois.

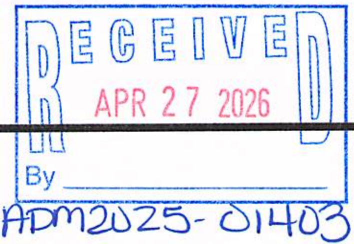
I currently am in the private practice, but I spent over fifteen years at the Illinois Supreme Court Commission on Professionalism. Through my work promoting professionalism, I came to learn that most states in our country, including Illinois, are characterized by legal deserts and large swaths of populations that lack access legal services. At the same time, unsurprisingly, polls of the public show they feel shut out of the legal system and their perception of lawyers and judges plummets. When members of the public feel marginalized by the legal system, they do not support it. When we allow this to occur, and persist, we fail to live up to basic principles of professionalism.

It is our core responsibility to confront and attempt to stem this tide. The raison d'être of our profession is to make legal services available so that Americans can understand and vindicate their rights. Lawyers have the responsibility "to seek improvement of the law and access to the legal system...[and] should further the Public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation to maintain their authority." Preamble to the Rules of Professional Conduct Comment [6] .

I commend the Tennessee Supreme Court for its bold leadership in confronting and in fashioning reforms to correct this crisis. I hope other states follow suit. If I can assist n any way, I stand by.

Jayne R. Reardon
FisherBroyles, LLP
203 N. LaSalle St. Suite 201
Chicago, IL 60601

MaryBeth Lindsey



From:	Bahou, A.J. <ajbahou@bradley.com>
Sent:	Monday, April 27, 2026 3:43 PM
To:	appellatecourtclerk
Subject:	Comment re: Regulatory Reforms, No. ADM2025-01403 – Comment on AI and UPL reform

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

To the Tennessee Supreme Court:

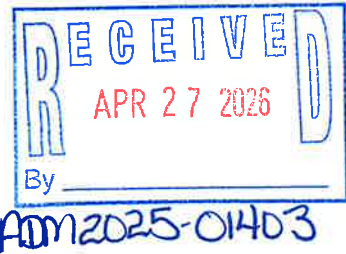
I personally write today to support a request that the Court appoint a working group and fund pilot programs related to the use of AI in high-need legal areas, including housing, debt collection, and family law.

This is a personal request—not submitted on behalf of my firm or any client. My signature line below is merely provided as contact information.

All the best,
A.J. Bahou

A.J. Bahou
Partner | Chair AI Practice
e: ajbahou@bradley.com w: bradley.com
d: 615.252.2333
Bradley Arant Boult Cummings LLP
1221 Broadway, Suite 2400
Nashville, TN 37203
LinkedIn | Facebook | Twitter | Instagram | Blogs

Confidentiality Notice: This e-mail is from a law firm and may be protected by the attorney-client or work product privileges. If you have received this message in error, please notify the sender by replying to this e-mail and then delete it from your computer.



April 27, 2026

VIA E-MAIL: appellatecourtclerk@tncourts.gov

Re: Docket No. ADM2025-01403—Tennessee Supreme Court's Request for Comment on Whether the Court Should Modify, Reduce, or Eliminate Regulations Prohibiting Nonlawyer Ownership of Law Firms or Fee Sharing with Nonlawyers

Attorneys' Liability Assurance Society Ltd., a Risk Retention Group (ALAS) responds to the request of the Tennessee Supreme Court for comments on whether the court should modify, reduce, or eliminate regulations prohibiting nonlawyer ownership of law firms or fee sharing with nonlawyers.

I. Introduction

ALAS is a mutual insurance company that insures 222 law firms, including more than 84,000 lawyers in all 50 states, the District of Columbia, and 38 foreign countries, and is the leading provider of professional liability insurance for large law firms in the United States. We insure 18 member firms with offices in Tennessee—with 1,164 total lawyers practicing in the state. Since our inception in 1979, ALAS has handled more than 19,000 claims and has developed substantial knowledge and experience concerning situations that give rise to legal malpractice claims. By virtue of the extensive loss prevention services it provides to its members, ALAS has a unique understanding of problems confronting lawyers and law firms today.

Lawyers from ALAS were actively involved in the American Law Institute's development of the *Restatement Third, The Law Governing Lawyers* and in the American Bar Association's (ABA) 2002 revision of the Model Rules of Professional Conduct. ALAS is also involved with other professional and bar associations that have defined the ethical and professional duties of lawyers and is mindful of the need to enhance access to justice for middle- and low-income individuals. ALAS applauds the Tennessee Supreme Court for its efforts to ensure access to affordable legal services for all Tennessee residents.

The provisions of Tennessee Rule of Professional Conduct 5.4, titled "Professional Independence of a Lawyer," were enacted to "protect the lawyer's independence of professional judgment" by prohibiting, among other things, nonlawyer ownership of a law firm.[1] The Tennessee Supreme Court's recent initiative to explore modification, reduction, or elimination of Rule 5.4 and any other regulations governing the manner in which lawyers and law firms function seeks to balance dual goals: (1) ensuring the availability of affordable legal services, while (2) protecting consumers of legal services from harm. While modifying, reducing, or eliminating Rule 5.4 and other regulations prohibiting nonlawyer ownership may appear to be in line with those objectives, they do not promote either. Instead, they threaten to undermine the core values of the U.S. legal system and compromise client confidentiality and the attorney-client privilege without reliable evidence that the changes will increase access to justice. Accordingly, ALAS opposes any modification, reduction, or elimination of Rule 5.4 or any other

[1] Tenn. Sup. Ct. R. 8, RPC 5.4 cmt. [1-2].

10 South Riverside Plaza
Suite 1100
Chicago, IL 60606
312.697.6900 tel
312.697.6901 fax
alas.com

Tennessee regulations prohibiting nonlawyer ownership of law firms or allowing fee sharing with nonlawyers.

II. History of Select Rule 5.4 Proposed Revisions

The ABA has debated revising or eliminating its Model Rule of Professional Conduct 5.4 multiple times since the 1970s. Each time, the ABA has ultimately rejected proposals to revise Rule 5.4 because such a change threatened the core values of the legal profession, including lawyer independence, confidentiality, and client loyalty. For example, between 1977 and 1983, the Commission on Evaluation of Professional Standards (Kutak Commission) considered the issue of lawyers partnering with nonlawyers and proposed a draft Rule 5.4 allowing such conduct. The ABA House of Delegates rejected the proposal and, instead, adopted a version of Rule 5.4 that is substantially the same as the current version of the rule.[2] In 2000, the ABA House of Delegates again considered and rejected a proposal for fee sharing with nonlawyers and nonlawyer ownership, instead adopting a recommendation stating that "the sharing of legal fees with non-lawyers and the ownership and control of the practice of law by non-lawyers are inconsistent with the core values of the legal profession."[3] We share the ABA's view in this regard.[4] In 2019, the ABA Center for Innovation released a resolution that would have encouraged "variations" to Rule 5.4 as a way to address the access to justice problem. However, in the wake of strong opposition from multiple state bar presidents, the ABA House of Delegates adopted a version of the proposal that explicitly disclaimed any recommendation regarding changes to Rule 5.4.[5] Most recently, on August 9, 2022, the ABA House of Delegates passed Resolution 402, reaffirming its position that allowing nonlawyers to own law firms is inconsistent with the core values of the legal profession.[6]

Most U.S. jurisdictions are in accord with the ABA's position and continue to prohibit nonlawyer ownership of law firms, consistent with the long-standing principles set forth in Rule 5.4. Several states recently confronted with the issue of whether to revise or eliminate their respective versions of Rule 5.4 responded with a resounding "no."

For example, the Florida Supreme Court considered and rejected a proposal to allow nonlawyer ownership of law firms and fee sharing with nonlawyers in March 2022.[7] In December 2025, the Florida Supreme Court reaffirmed its prohibition on nonlawyer ownership of law firms by amending Rule 4.8.6,

---

[2] ABA Comm. on Ethics 20/20, *Issue Paper Concerning Alternative Business Structures* (Apr. 5, 2011), https://www.americanbar.org/content/dam/aba/administrative/ethics_2020/abs_issues_paper.authcheckdam.pdf.

[3] *Id.* at 6.

[4] The topic of nonlawyer ownership and fee sharing with nonlawyers surfaced yet again in 2011 and 2016, and each time the ABA declined to make any changes to Rule 5.4. Press Release, ABA Comm. on Ethics 2020, *ABA Commission on Ethics Will Not Propose Changes to ABA Policy Prohibiting Non-Lawyer Ownership of Law Firms* (Apr. 16, 2012); ABA, *Report on the Future of Legal Services in the United States* (Aug. 2016).

[5] ABA House of Delegates, Resolution 115 (Feb. 17, 2020), https://www.americanbar.org/content/dam/aba/directories/policy/midyear-2020/2020-midyear-115.pdf.

[6] ABA House of Delegates, Resolution 402 (Aug. 9, 2022), https://www.americanbar.org/content/dam/aba/directories/policy/annual-2022/402-annual-2022.pdf.

[7] Letter from the Fla. Sup. Ct. to the Fla. Bar Rejecting Nonlawyer Ownership (Mar. 3, 2022), https://www.abajournal.com/files/Florida_Supreme_Court_letter.pdf.

"Authorized Business Entities," to explicitly prohibit nonlawyers from serving as a partner, member, shareholder, president, or equity owner of a Florida law firm.[8] The amendment also prohibits nonlawyers from supervising the work of any lawyer or performing any policymaking duties at a law firm.[9] In December 2023, the Texas Access to Justice Commission voted against a plan that would allow nonlawyer ownership of law firms.[10] Illinois and Connecticut have also forcefully rejected efforts to allow nonlawyer ownership.[11]

On September 9, 2022, the California Bar retracted its efforts to pursue nonlawyer ownership, when the governor of California signed legislation (AB 2958) restraining the California Bar from pursuing a regulatory sandbox aimed at testing nonlawyer ownership.[12] On October 12, 2025, California's governor signed another bill into law, Bill AB 931, which bans contingent fee arrangements with nonlawyer-owned firms.[13] In March 2017, the United States Court of Appeals for the Second Circuit upheld the dismissal of a complaint by two related New York law firms that would have undercut New York Rule 5.4.[14] In that case, the defendants, the Presiding Justices of the Appellate Division of New York who are tasked with administering the rule, successfully defeated plaintiffs' claim that Rule 5.4 improperly prohibited the law firms from accepting nonlawyer investment, which they claimed would enable the firms to improve the quality of the legal services offered, reduce fees, and expand their ability to serve needy clients.[15] In affirming the lower court's decision dismissing the complaint, the Second Circuit held that New York Rule 5.4 serves New York's "well established interest in regulating attorney conduct and in maintaining ethical behavior and independence among members of the legal profession."[16] Similarly, two recent New York Ethics Opinions reiterated that Rule 5.4, prohibits lawyers from sharing fees with nonlawyers.[17]

On the other side of the spectrum, six jurisdictions have created a pathway for nonlawyers to obtain an ownership interest in law firms: District of Columbia, Arizona, Utah, Indiana, Washington, and Puerto Rico. As explained more fully below, despite touting access to justice as the primary driver for this change, most of these jurisdictions have not seen meaningful progress in efforts to increase access to justice and make legal services more affordable for underserved communities. To the contrary, the

---

[8] *In re* Amend. *to Rules Regul. Fla. Bar*, No. SC2025-1173 (Fla. Dec. 18, 2025).

[9] *Id.*

[10] Texas Access to Legal Services Working Group, *Report and Recommendations* (Dec. 5, 2023), https://www.texasatj.org/sites/default/files/2023.12.05%20Final%20Report.pdf.

[11] The Chicago Bar Foundation, *CBA/CBF Task Force on the Sustainable Practice of Law & Innovation* (Oct. 2020), https://chicagobarfoundation.org/advocacy/cba-cbf-task-force-on-the-sustainable-practice-of-law-innovation/.

[12] ALAS also submitted comments opposing revisions to Rule 5.4 proposed by California and Illinois.

[13] Emily R. Siegel, *California Bans Contingent Fee Sharing With 'Alternative' Firms*, Bloomberg Law (Oct. 12, 2025), https://news.bloomberglaw.com/business-and-practice/california-bans-contingent-fee-sharing-with-alternative-firms.

[14] *Jacoby & Meyers, LLP v. Presiding Justices*, 852 F.3d 178 (2d Cir. 2017).

[15] *Id.* at 181.

[16] *Id.* at 191.

[17] N.Y. Formal Op. 1289 (Dec. 23, 2025) (Rule 5.4 does not permit a law firm to share fees with a nonlawyer entity); N.Y. Formal Op. 1288 (Dec. 19, 2025) (trust may not own shares of a New York law firm even if, among other things, both the trustee an sole beneficiary are New York–licensed attorneys because the trust is not a lawyer and not an entity authorized to practice law).

changes have seen private equity companies and even a Big Four accounting firm enter the marketplace with a focus far removed from access to justice issues.

III. Rule 5.4 Should Not Be Revised

Tennessee's Rule 5.4 serves critical public-policy interests. The rule ensures that lawyers will protect client interests and uphold the principles of the profession, including lawyer independence. These core values will be threatened if the financial interests of nonlawyers, who have no ethical duty to the law firms' clients, overshadow the best interest of clients.[18] Indeed, given that profit is the principal goal in most business ventures, there is substantial risk that nonlawyer investors, or intermediary entities, will focus only on the bottom line at the expense of client interests and the quality of services. Potential consequences of this focus include a decrease both in the quality of law-related services and pro bono work.[19]

Based on ALAS's extensive experience, we know that building and maintaining an effective risk management program in a law firm takes considerable resources. It is also a matter of culture and professionalism that puts ethical practice and client concerns above profit. We are very concerned that allowing fee sharing with nonlawyers and nonlawyer ownership will erode the culture and professionalism of law firms and result in a practice that is less protective of clients.

Lawyers are unique from most other professional services providers because they owe special and specific responsibilities to their clients and are required to proceed in a manner that best serves their clients' interests, as outlined throughout the Tennessee Rules of Professional Conduct. A lawyer's ability to maintain professional independence is paramount to serving a client's best interests. The ethical obligations set forth by Rule 5.4 ensure that lawyers protect clients' interests over profits. For example, consider what might happen if private equity investors were permitted to have an ownership stake in law firms. It is not unrealistic to envision those investors taking dividends out of the firm, cutting costs expended on risk management and quality control, and taking other steps to realize profits. These actions might benefit the investors financially, but they would undermine the firm's lawyers' professional obligations to their clients.[20] These concerns apply equally to firms that share fees with or co-own intermediary entities.

These are not the only risks associated with fee sharing and nonlawyer ownership of law firms. The attorney-client privilege and client confidentiality are long-standing principles at the heart of every lawyer's relationship with every client. *See* Tenn. R. of Pro. Conduct 1.6. It is unrealistic to think that nonlawyer investors and other business partners will not want data on clients that is both confidential and privileged. Revealing such data will breach the lawyer's duty of confidentiality (absent client

---

[18] Nick Robinson, *When Lawyers Don't Get All the Profits: Non-Lawyer Ownership of Legal Services, Access, and Professionalism*, 29 Geo. J.L. Ethics, 14 (2016).
[19] *Id.* at 11.
[20] Sapna Maheshwari & Vanessa Friedman, *The Pandemic Helped Topple Two Retailers. So Did Private Equity*, N.Y. Times (May 14, 2020), https://www.nytimes.com/2020/05/14/business/coronavirus-retail-bankruptcies-private-equity.html.

consent) and likely waive the privilege.[21] For example, nonlawyer investors may seek access to client confidences and data to inform their business decisions, thereby creating a serious risk of confidentiality breach and waiver of applicable privilege. Beyond the initial exposure of information to nonlawyer investors, there is also a risk that the investors may further disclose a client's confidential information to their business partners to assist in their financial decisions. In light of these concerns, modifying, reducing, or eliminating Rule 5.4 and related regulations does not achieve the Tennessee Supreme Court's goal of maintaining consumer protection.

Nor will the proposed revisions of Rule 5.4 promote the Tennessee Supreme Court's stated purpose of access to justice. Although there are some proponents that assert that Alternative Business Structures (ABS) entities will improve access to justice, there is no evidence suggesting access to justice is the driving force for nonlawyer ownership. To the contrary, since the inception of the first ABS program more than five years ago, the available data does not show a meaningful improvement in access to justice or the delivery of legal services to otherwise underserved communities. Instead, the data indicates that ABS entities largely focus on commercial legal markets (e.g., intellectual property, contract law, and commercial litigation) rather than targeted access initiatives for underserved or low-income communities (e.g., housing, consumer protection, public benefits, and income support). Indeed, Arizona's 2024 annual ABS report shows that it granted 51 ABS licenses that year, and the vast majority of those entities focus on practice areas unrelated to access to justice needs, including commercial litigation, general business services, intellectual property, mass torts and class actions, and trusts and estates.[22]

The experience in Utah is telling. Once Utah required participants to demonstrate that authorization allows them to reach underserved Utah consumers, over 75% of the approved entities sought to terminate their authorization for an ABS license.[23] These patterns suggest that ABS reforms have not closed, nor substantially impacted, the justice gap.

The lack of evidence establishing that nonlawyer ownership increases access to justice also led Ontario, Canada, to decline a recommendation to allow nonlawyers to become majority owners in firms.[24] That decision was premised on an Ontario-commissioned 2014 study by Jasminka Kalajdzic that sought to determine whether ABSs had improved access to justice in England and Australia, two jurisdictions that allow nonlawyer ownership.[25] Ms. Kalajdzic's study concluded that there is "no empirical data to support the argument that non-lawyer ownership has improved access to justice."[26]

---

[21] ABA Comm. on the Future of Legal Services, *Report on the Future of Legal Services in the United States* (Aug. 2016), at 3.

[22] ABS Committee, *Annual Report to Supreme Court for 2024* (Apr. 2025); ABS Committee, *Annual Report to Supreme Court for 2024* (Feb. 28, 2025).

[23] Utah Office of Legal Services Innovation, *Authorized Entities* (last visited Dec. 11, 2025), https://utahinnovationoffice.org/authorized-entities/.

[24] Alternative Business Structures (ABS) Report: *Majority non-lawyer ownership off the table* (Sept. 28, 2015).

[25] Memorandum from Jasminka Kalajdzic to Linda Langston of the Ont. Trial Lawyer Ass'n on ABS Research 1 (Dec. 1, 2014).

[26] *Id.* at 1, 10–11, 14.

This lack of evidence was again manifest in the ABA Commission on the Future of Legal Services' 2016 *Report on the Future of Legal Services in the United States* (Legal Services Report), which documented the commission's findings stemming from a two-year study focused on access to legal services.[27] Here too, there was "little reported evidence that ABS has had any material impact on improving access to legal services."[28] Similarly, in England, where nonlawyers have been allowed to own interests in law firms since 2011, the lack of access to justice persists for most of the low- and middle-income population.[29] According to a 2019 Solicitors Regulation Authority survey, 68% of those surveyed stated they cannot afford the cost of legal services, and 79% believe that it needs to be easier for people to access legal guidance.[30]

Instead of increasing access to justice, Australia and England have seen growth in a single practice area—personal injury cases—since allowing nonlawyer ownership of law firms.[31] Other areas where such access is desperately needed, such as family law, property and landlord/tenant law, and criminal law, have not seen the same growth.[32] Indeed, the rate of self-representation in family law matters in Australia was more than 50% in 2014.[33] This is entirely consistent with the conclusions of a 2014 study conducted by Nick Robinson, a fellow at the Program on the Legal Profession at Harvard Law School, which found that nonlawyer investment is "likely to be attracted to legal sectors, like personal injury, where expected returns are high and that are relatively easy to commoditize, but where there may not be as much of an access need because of the long-standing practices like conditional or contingency fees."[34] This provides further evidence that allowing nonlawyer ownership of law firms will not serve the Tennessee Supreme Court's stated purpose of access to affordable legal services.

Numerous jurisdictions have enacted successful programs aimed at reducing the access-to-justice gap without allowing nonlawyer ownership. For example, since 2012, Washington State has permitted the licensing of nonlawyers, such as paralegals, to undertake some legal tasks through creation of the limited license legal technician (LLLT) program.[35] LLLTs can advise and assist clients in certain family law matters in Washington. Although the Washington program was sunset in 2023, other states, including Colorado, Minnesota, New Hampshire, and Oregon, have begun licensing paraprofessionals to promote access to justice. They have done so through limited authorization to provide affordable legal services in areas where underserved communities seek the most assistance, including representation in family court, domestic violence court, and landlord/tenant matters.[36]

---

[27] ABA Comm. on Future Legal Services Report at 1.

[28] *Id.* at 42.

[29] Solicitors Regulation Authority, *Legal Access Challenge Launched to Encourage Innovation* (May 30, 2019), https://www.sra.org.uk/sra/news/press/2019-press-release-archive/legal-access-challenge-launch-may-2019/

[30] *Id.*

[31] Memorandum from Jasminka Kalajdzic to Linda Langston, Ontario Trial Lawyers Ass'n, on ABS Research, at 10–11.

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] Wash. Admission & Practice R. 28 (Limited License Legal Technician Rule) (2024).

[36] Sam Skolnik, *By the Numbers: 10 States Allowed Non-Lawyers to Offer Services*, Bloomberg Law (Dec. 28, 2023).

ALAS supports efforts to increase access to legal representation for all middle- and low-income individuals, but we have found no reliable evidence that fee sharing with nonlawyers or nonlawyer investment in law firms furthers that goal.

Because the Tennessee Supreme Court's stated objectives, namely affordable legal services and consumer protection, will not be served by modifying, reducing, or eliminating the provisions of Rule 5.4, and there is a risk that any proposed changes will erode attorney independence and client service, ALAS opposes the modification, reduction, or elimination of Rule 5.4 and any other regulations governing the manner in which lawyers and law firms function concerning this rule.

IV. Conclusion

ALAS thanks the Tennessee Supreme Court for its consideration of these comments and recommendations. They do not necessarily reflect the views of all ALAS member firms. The Tennessee Supreme Court has permission to reference these comments as being made by a major American legal malpractice insurer.

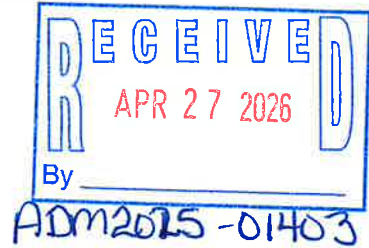
Nesheba Kittling
Senior Vice President—Loss Prevention

Givonna St. Clair Long
Vice President—Senior Loss Prevention Counsel

Collette Woghiren
Senior Loss Prevention Counsel

MaryBeth Lindsey

To: appellatecourtclerk
Subject: RE: Docket No. ADM2025-01403: In re Public Comments on Potential Regulatory Reforms



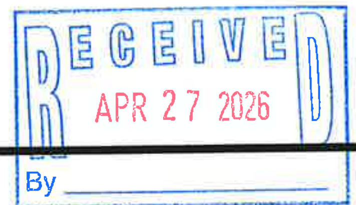
From: Collette Woghiren <CWoghiren@alas.com>
Sent: Monday, April 27, 2026 3:55 PM
To: appellatecourtclerk <appellatecourtclerk@tncourts.gov>
Cc: Nesheba Kittling <NKittling@alas.com>; Givonna Long <GLong@alas.com>
Subject: Docket No. ADM2025-01403: In re Public Comments on Potential Regulatory Reforms

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

Dear Clerk Hivner,
Please find attached the response of Attorneys' Liability Assurance Society Ltd. to the request of the Tennessee Supreme Court for comments on whether the court should modify, reduce, or eliminate regulations prohibiting nonlawyer ownership of law firms or fee sharing with nonlawyers. Please let me know if you have any questions or any additional information is needed.

Thank you,
Collette

Collette Woghiren
Senior Loss Prevention Counsel
Attorneys' Liability Assurance Society Ltd
(312) 697-7026 direct
CWoghiren@alas.com
www.alas.com



ADM2025-01403

MaryBeth Lindsey

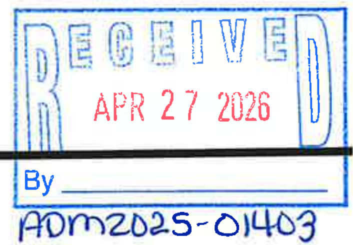
From: Maya Markovich <maya.markovich@gmail.com>
Sent: Monday, April 27, 2026 1:56 PM
To: appellatecourtclerk
Subject: Comment re: Regulatory Reforms, No. ADM2025-01403 – Comment on AI and UPL reform

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

To the Tennessee Supreme Court:

I write today to support the views expressed in the comment submitted to the Court on April 23, 2026, by Attorney Greg Siskind and others.

Sincerely,
Maya Markovich
(510) 843-3916



MaryBeth Lindsey

From:	Maya Markovich <maya.markovich@gmail.com>
Sent:	Monday, April 27, 2026 1:56 PM
To:	appellatecourtclerk
Subject:	Comment re: Regulatory Reforms, No. ADM2025-01403 – Comment on MJP and lawyer mobility reform (Question 5)

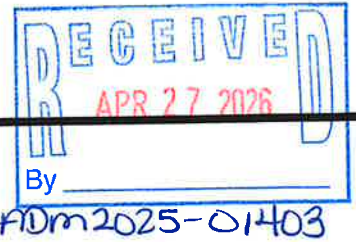
Warning: Unusual sender <maya.markovich@gmail.com>
You don't usually receive emails from this address. Make sure you trust this sender before taking any actions.

To the Tennessee Supreme Court:

I write today to support the views expressed in the comment submitted to the Court on April 21, 2026, by Brian Faughnan and Lucian Pera.

Sincerely,
Maya Markovich
(510) 843-3916

MaryBeth Lindsey



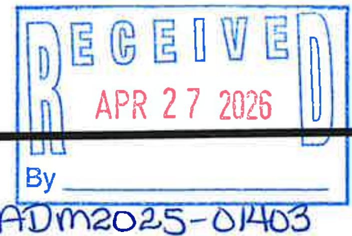
From: Maya Markovich <maya.markovich@gmail.com>
Sent: Monday, April 27, 2026 1:55 PM
To: appellatecourtclerk
Subject: Comment re: Regulatory Reforms, No. ADM2025-01403 – Comment on Legal Ed and Alternate Paths to Admission (Questions 3 and 4)

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

To the Tennessee Supreme Court:

I write today to support the views expressed in the comment submitted to the Court on April 21, 2026, by Greg Siskind, Cat Moon, and Lucian Pera.

Sincerely,
Maya Markovich
(510) 843-3916



MaryBeth Lindsey

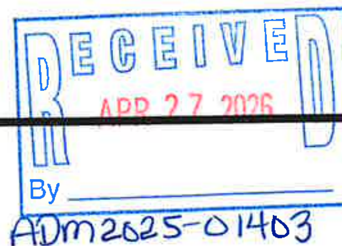
From: Maya Markovich <maya.markovich@gmail.com>
Sent: Monday, April 27, 2026 1:55 PM
To: appellatecourtclerk
Subject: Comment re: Regulatory Reforms, No. ADM2025-01403 – Comment on nonlawyer ownership (Question 7)

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

To the Tennessee Supreme Court:

I write today to support the views expressed in the comment submitted to the Court on April 21, 2026, by David Esquivel and others.

Sincerely,
Maya Markovich
(510) 843-3916



MaryBeth Lindsey

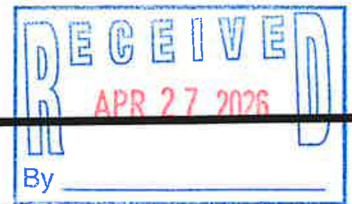
From:	Maya Markovich <maya.markovich@gmail.com>
Sent:	Monday, April 27, 2026 1:55 PM
To:	appellatecourtclerk
Subject:	Comment re: Regulatory Reforms, No. ADM2025-01403 – Community Justice advocate proposal (Question 6)

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

I write today to support the views expressed in the comment submitted to the Court on April 24, 2026, by Attorney Linda Seely and others.

Sincerely,
Maya Markovich
(510) 843-3916

MaryBeth Lindsey



From: Maya Markovich <maya.markovich@gmail.com>
Sent: Monday, April 27, 2026 1:54 PM
To: appellatecourtclerk
Subject: Comment re: Regulatory Reforms, No. ADM2025-01403 – Comment on court reform

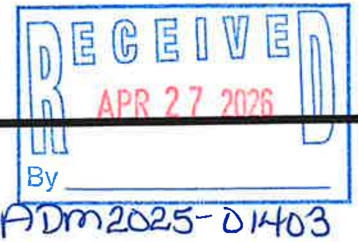
Warning: Unusual sender <maya.markovich@gmail.com>
You don't usually receive emails from this address. Make sure you trust this sender before taking any actions.

To the Tennessee Supreme Court:

I write today to support the views expressed in the comment submitted to the Court on April 23, 2026, by Professor Ben Barton and others.

Sincerely,
Maya Markovich
(510) 843-3916

MaryBeth Lindsey



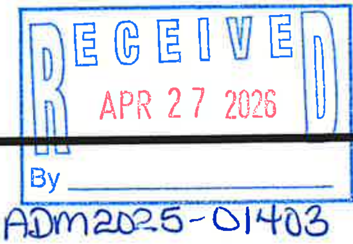
From:	Maya Markovich <maya.markovich@gmail.com>
Sent:	Monday, April 27, 2026 1:54 PM
To:	appellatecourtclerk
Subject:	Comment re: Regulatory Reforms, No. ADM2025-01403 – Initial comment on need for action

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

To the Tennessee Supreme Court:

I write today to support the views expressed in the comment submitted to the Court on April 2, 2026, by Lucian Pera supporting the Supreme Court's finding of an urgent need for reform.

Sincerely,
Maya Markovich



MaryBeth Lindsey

From:	Moon, Caitlin <c.moon@vanderbilt.edu>
Sent:	Monday, April 27, 2026 12:24 PM
To:	appellatecourtclerk
Subject:	Comment re: Regulatory Reforms, No. ADM2025-01403 – Initial comment on need for action
Attachments:	Tenn_SC_Petition___Initial_Response_4_2_26.pdf

Warning: Unusual sender <c.moon@vanderbilt.edu>
You don't usually receive emails from this address. Make sure you trust this sender before taking any actions.

To the Tennessee Supreme Court:

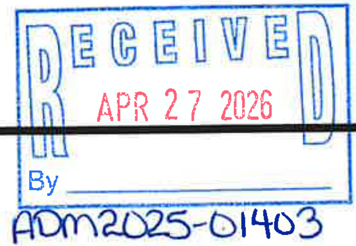
I write today to support the views expressed in the comment submitted to the Court on April 2, 2026, by Lucian Pera supporting the Supreme Court's finding of an urgent need for reform. See attached for Mr. Pera's full comment, which I adopt and support fully.

Sincerely,

Cat Moon

Cat Moon, MA JD
BPR 19266
Professor of the Practice
Co-Director, Program on Law & Innovation (PoLI)
Founding Co-Director, Vanderbilt AI + Law Lab (VAILL)
Vanderbilt Law School
615-600-8672 cell
c.moon@vanderbilt.edu

MaryBeth Lindsey



From: Jonathan Petts <jonathan.petts@gmail.com>
Sent: Monday, April 27, 2026 12:16 PM
To: appellatecourtclerk
Subject: Comment re: Regulatory Reforms, No. ADM2025-01403 – Initial comment on need for action

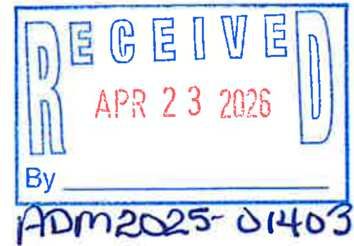
Warning: Unusual sender <jonathan.petts@gmail.com>
You don't usually receive emails from this address. Make sure you trust this sender before taking any actions.

To the Tennessee Supreme Court:

I write today to support the views expressed in the comment submitted to the Court on April 2, 2026, by Lucian Pera supporting the Supreme Court's finding of an urgent need for reform.

[Please provide your name and contact information]

Warmly,
Jonathan Petts



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.

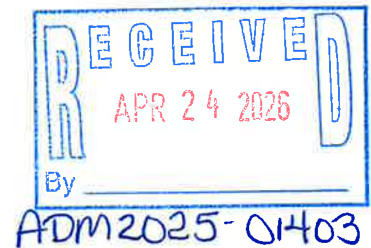
B. Overly restrictive or unclear UPL regulation risks reinforcing the justice gap

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.

Linda W. Seely
Pro Bono Counsel
Butler Snow LLP
D: (901) 680-7298 | C: (731) 217-8013 | F: (901) 680-7201
6075 Poplar Avenue, Suite 500, Memphis, TN 38119
P.O. Box 171443, Memphis, TN 38187-1443
Linda.Seely@butlersnow.com

James P. Barry
Past President Tennessee Bar Association
8597 Level Creek Drive
Germantown, Tn 38139
901-237-9608
Jpbejb@aol.com

Benjamin H. Barton
Helen and Charles Lockett Distinguished Professor of Law

The University of Tennessee Winston College of Law
1505 Cumberland Avenue
Knoxville, Tennessee 37996-1810

Lucian T. Pera
Adams & Reese, LLP
Crescent Center
6075 Poplar Ave., Suite 700
Memphis, TN 38119
901-524-5278
Lucian.Pera@arlaw.com

Larry Crawford
Butler Snow LLP
D: (901) 680-7200
6075 Poplar Avenue, Suite 500, Memphis, TN 38119
P.O. Box 171443, Memphis, TN 38187-1443
Larry.Crawford@butlersnow.com

Joy Radice
Director of Clinical Programs
Associate Professor
The University of Tennessee Winston College of Law
1505 Cumberland Avenue
Knoxville, Tennessee 37996-1810
347-617-6555
jradice@utk.edu

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

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

Mr. Hivner,

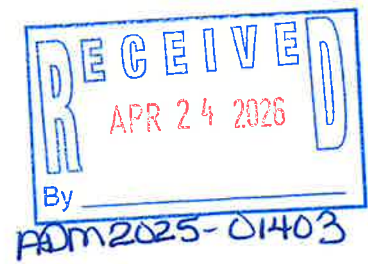
Attached please find a comment regarding the proposed Regulatory Reform Order of the Court, No. ADM2025-01403.

Linda W. Seely
Pro Bono Counsel
Butler Snow LLP

D: (901) 680-7298 | C: (731) 217-8013 | F: (901) 680-7201
6075 Poplar Avenue, Suite 500, Memphis, TN 38119
P.O. Box 171443, Memphis, TN 38187-1443
Linda.Seely@butlersnow.com | vCard

X (Twitter) | LinkedIn | Facebook | YouTube

CONFIDENTIALITY NOTE: This e-mail and any attachments may be confidential and protected by legal privilege. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the e-mail or any attachment is prohibited. If you have received this e-mail in error, please notify us immediately by replying to the sender and deleting this copy and the reply from your system. Thank you for your cooperation.



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

All contents and materials ©2026 Law School Admission Council, Inc. All rights reserved.

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

All contents and materials ©2026 Law School Admission Council, Inc. All rights reserved.

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

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

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

MARK MURRAY
Public Affairs Liaison
MarkMurray@lsac.org
425.922.4306 - mobile

LSAC
662 Penn Street
Newtown, PA 18940
LSAC.org

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.

---

[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.

---

[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]

Such clarification would align Tennessee with longstanding distinctions in UPL law and reduce unnecessary ambiguity.

---

[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,

Greg Siskind
Siskind Susser, PC. | Visalaw.ai
1028 Oakhaven Road
Memphis, TN 38119
(901) 682-6455
gsiskind@visalaw.com

Caitlin "Cat" Moon
Vanderbilt Law School
131 21st Ave. South
Nashville, TN 37203
615-322-6591
c.moon@vanderbilt.edu

Lucian T. Pera
Adams & Reese, LLP
Crescent Center
6075 Poplar Ave., Suite 700
Memphis, TN 38119
901-524-5278
Lucian.Pera@arlaw.com

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

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

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.

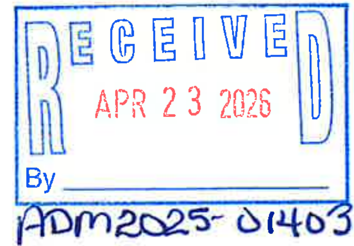
Thank you.

Lucian Pera

LUCIAN T. PERA
Partner

E: Lucian.Pera@arlaw.com
O: 901.524.5278
M: 901.606.4948
Adams & Reese, LLP
6075 Poplar Avenue, Suite 700
Memphis, TN 38119

adamsandreese.com



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.

---

[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.

---

[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]

Such clarification would align Tennessee with longstanding distinctions in UPL law and reduce unnecessary ambiguity.

---

[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,

Greg Siskind
Siskind Susser, PC. | Visalaw.ai
1028 Oakhaven Road
Memphis, TN 38119
(901) 682-6455
gsiskind@visalaw.com

Caitlin "Cat" Moon
Vanderbilt Law School
131 21st Ave. South
Nashville, TN 37203
615-322-6591
c.moon@vanderbilt.edu

Lucian T. Pera
Adams & Reese, LLP
Crescent Center
6075 Poplar Ave., Suite 700
Memphis, TN 38119
901-524-5278
Lucian.Pera@arlaw.com

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

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

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.

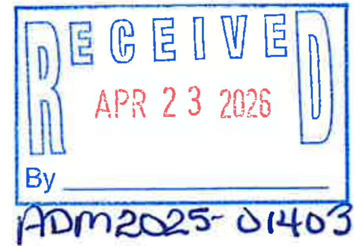
Thank you.

Lucian Pera

LUCIAN T. PERA
Partner

E: Lucian.Pera@arlaw.com
O: 901.524.5278
M: 901.606.4948
Adams & Reese, LLP
6075 Poplar Avenue, Suite 700
Memphis, TN 38119

adamsandreese.com



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.

---

[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.

---

[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]

Such clarification would align Tennessee with longstanding distinctions in UPL law and reduce unnecessary ambiguity.

---

[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,

Greg Siskind
Siskind Susser, PC. | Visalaw.ai
1028 Oakhaven Road
Memphis, TN 38119
(901) 682-6455
gsiskind@visalaw.com

Caitlin "Cat" Moon
Vanderbilt Law School
131 21st Ave. South
Nashville, TN 37203
615-322-6591
c.moon@vanderbilt.edu

Lucian T. Pera
Adams & Reese, LLP
Crescent Center
6075 Poplar Ave., Suite 700
Memphis, TN 38119
901-524-5278
Lucian.Pera@arlaw.com

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

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

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.

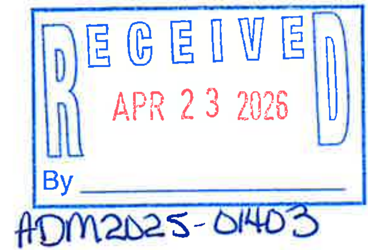
Thank you.

Lucian Pera

LUCIAN T. PERA
Partner

E: Lucian.Pera@arlaw.com
O: 901.524.5278
M: 901.606.4948
Adams & Reese, LLP
6075 Poplar Avenue, Suite 700
Memphis, TN 38119

adamsandreese.com



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

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

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

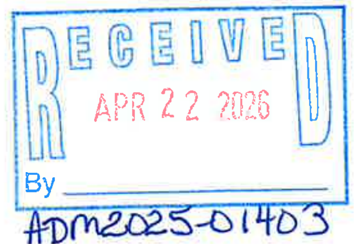
LUCIAN T. PERA
Partner

E: Lucian.Pera@arlaw.com
O: 901.524.5278
M: 901.606.4948
Adams & Reese, LLP
6075 Poplar Avenue, Suite 700
Memphis, TN 38119

adamsandreese.com

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

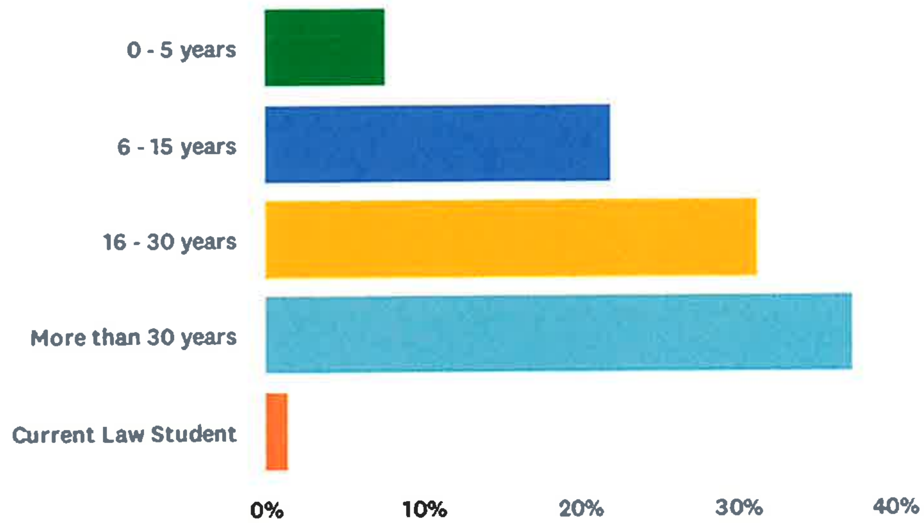
COMMENT OF THE NASHVILLE BAR ASSOCIATION

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.

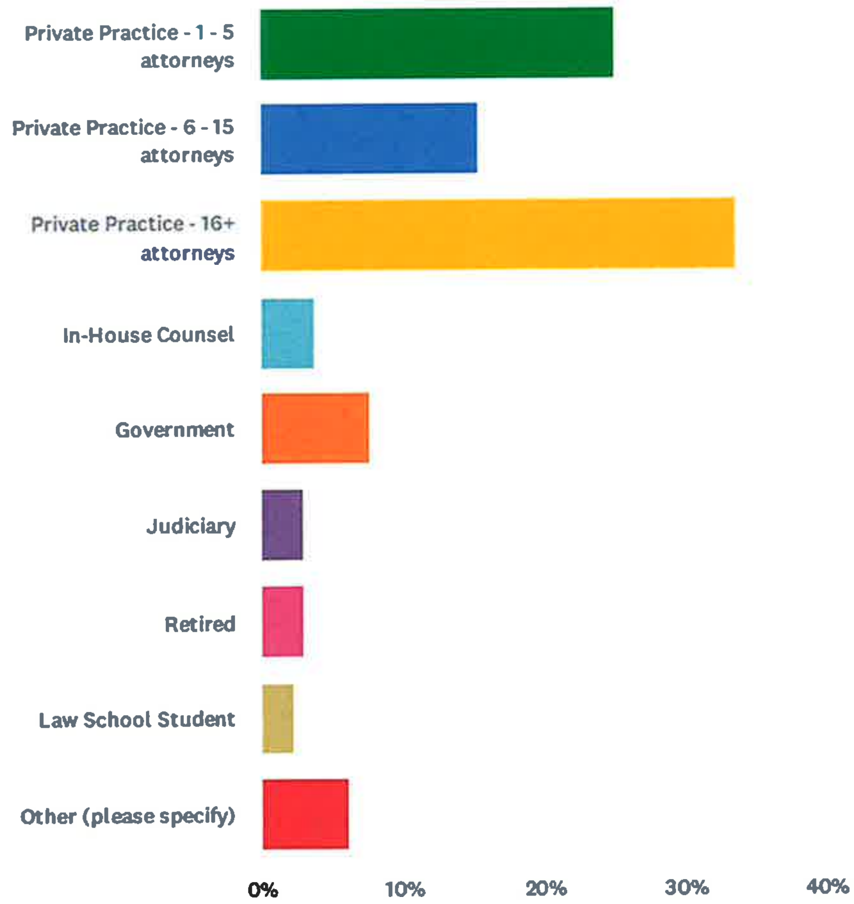
Given the number of proposed reforms and the expected differing viewpoints among our diverse membership, the NBA submitted a survey to our members soliciting their opinions and comments. We received 131 votes regarding agreement or disagreement, as well as approximately 20 comments, for each proposed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

<u>Years of Practice</u>

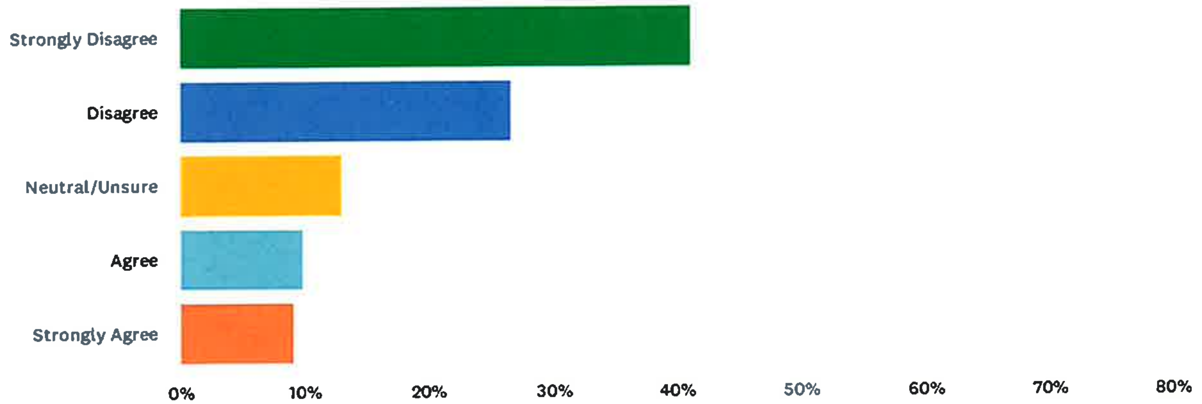


Practice Area



<u>**Survey Results and Comments**</u>

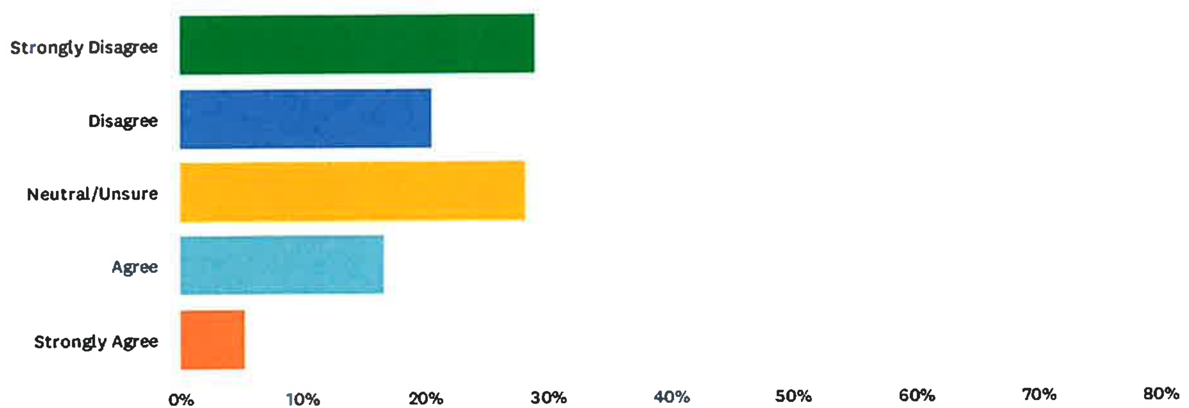
1. **The Court should modify, reduce, or eliminate its reliance on ABA accreditation in setting minimum educational requirements for applicants to the Tennessee Bar.**



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.

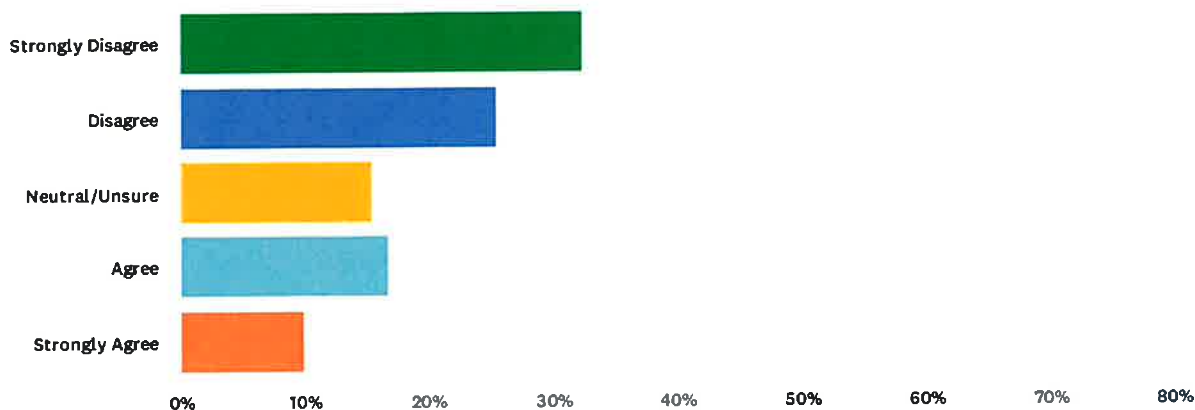
2. **There are practicable alternatives to ABA accreditation the Court should consider.**



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.

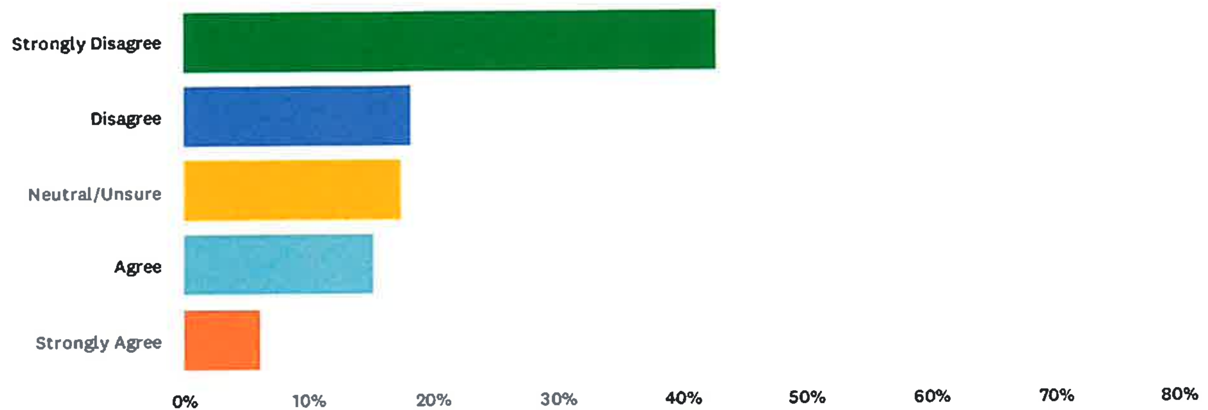
3. There are less costly alternatives to the traditional three-year law school curriculum that would adequately prepare individuals for the practice of law.



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.

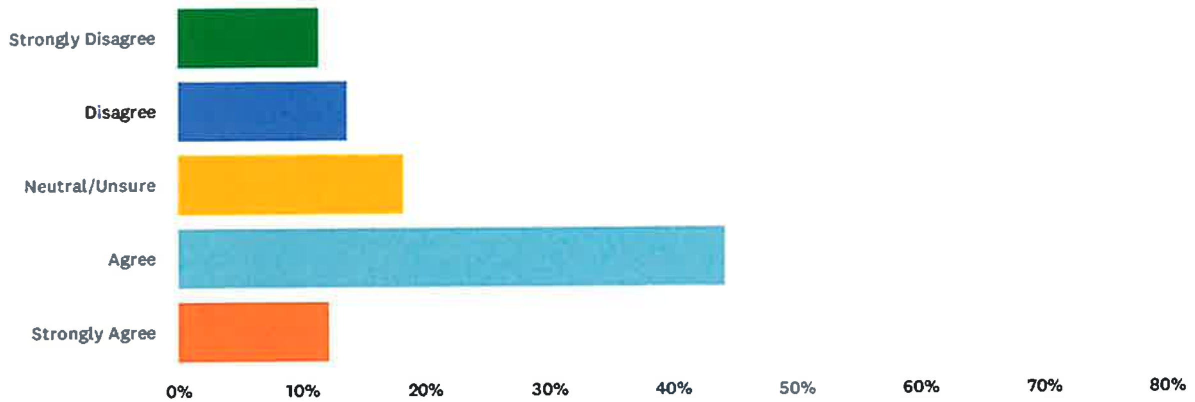
4. **The Court should consider adopting alternative pathways for admission to the Tennessee Bar—for example, by allowing applicants to satisfy the minimum educational requirements and/or examination requirement in part by completing an apprenticeship or serving with a legal aid organization.**



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.

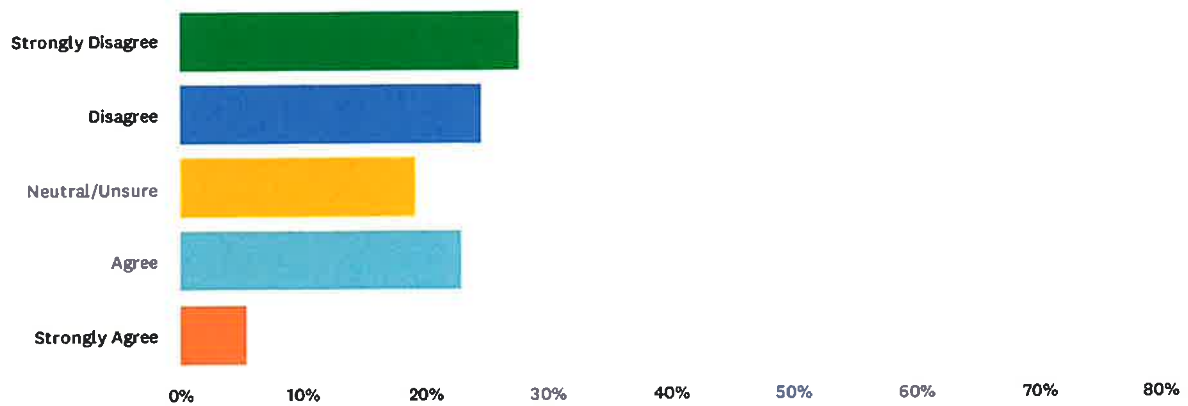
5. The Court should consider modifying requirements for admission to the Tennessee Bar for those licensed in other States to promote interstate practice and mobility.



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.

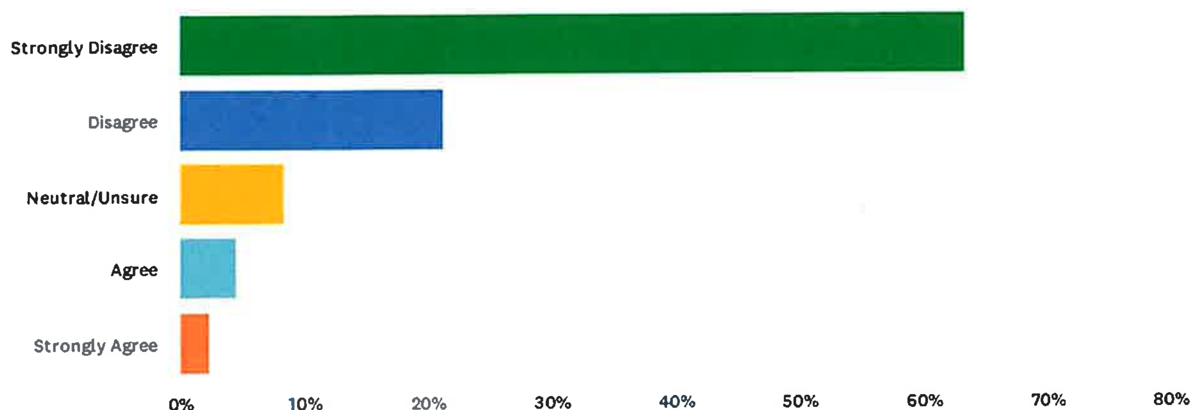
6. **The Court should consider whether there are some legal services currently provided by lawyers that could be competently provided by paraprofessionals. If so, what qualifications, limitations, or subject matter restrictions the Court should consider imposing?**



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.

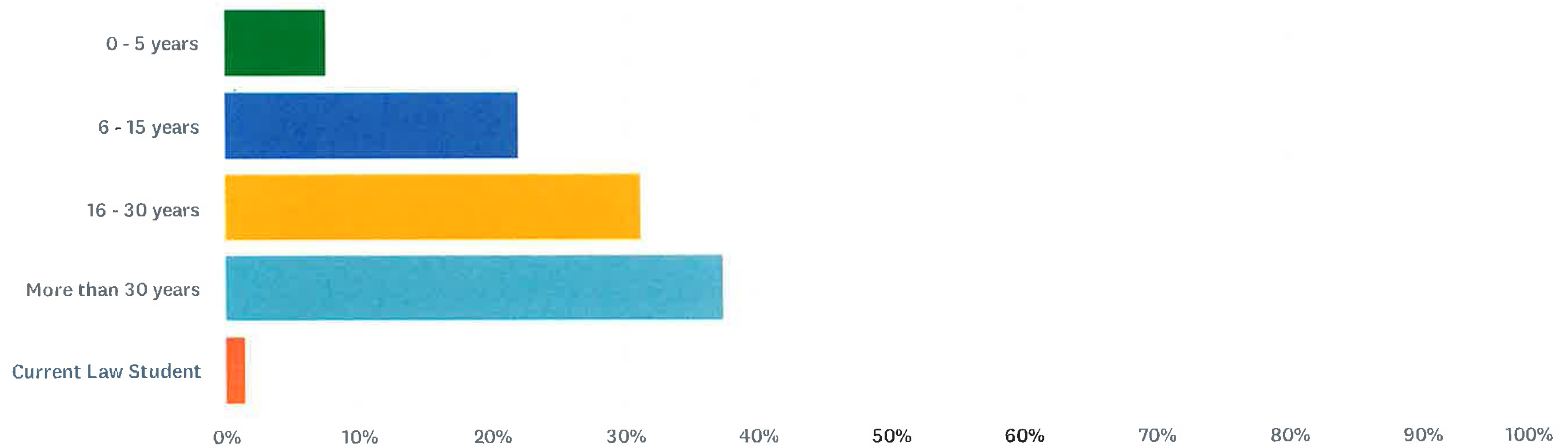
Some NBA members expressed strong opposition to the entirety of the contemplated proposals under the belief they would erode the legal profession and the quality of services provided. Of those open to potential change, there was a consistent theme that any modifications should be carefully overseen and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

Respectfully submitted,

Sherie Edwards
Nashville Bar Association President

Q1 How long have you been an attorney?

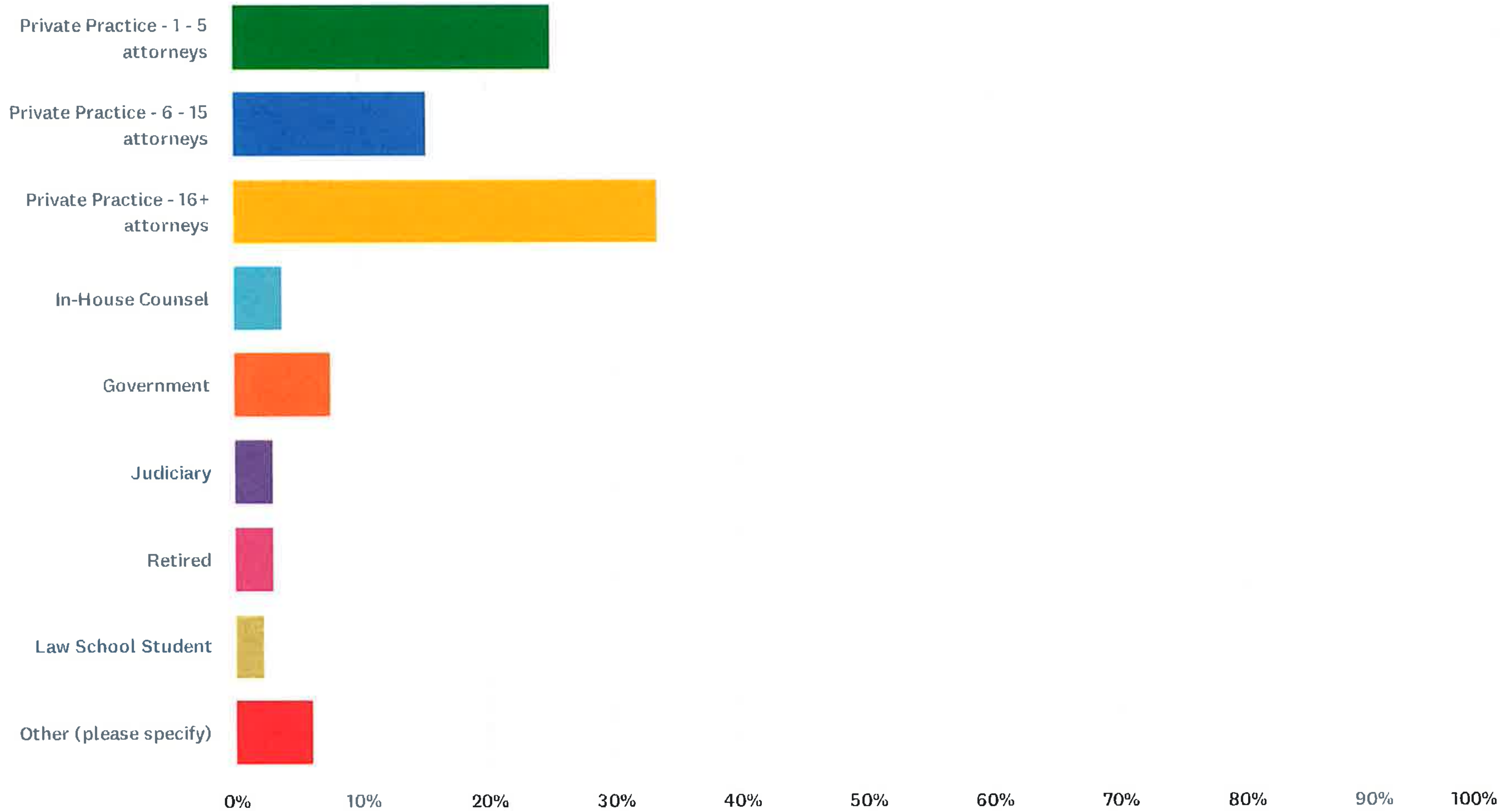
Answered: 131 Skipped: 0



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



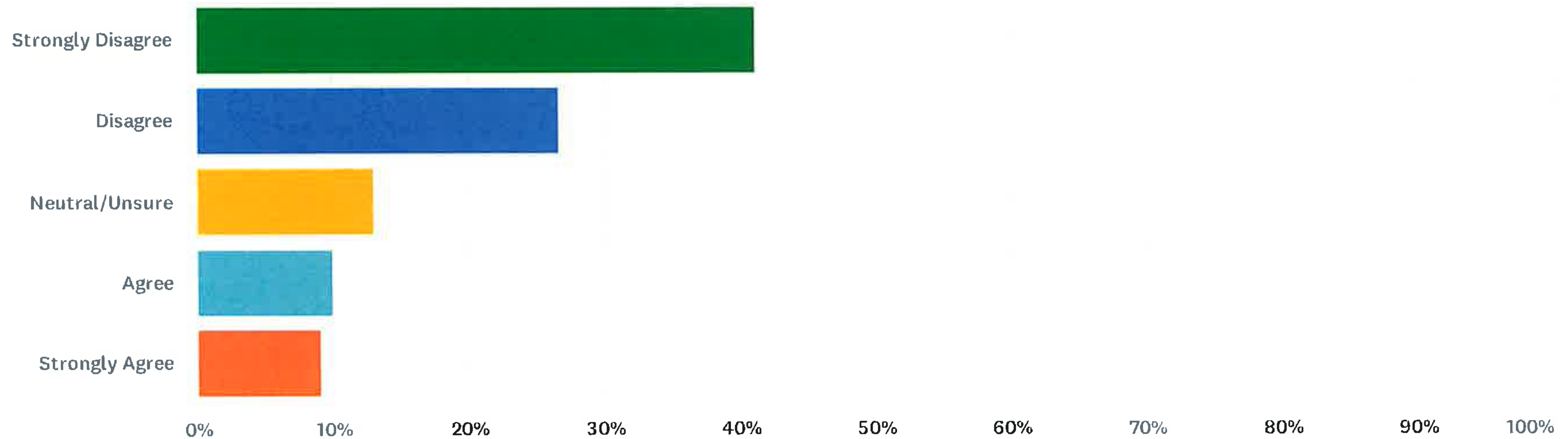
Answer Choices	Percentage	Responses
Total		131

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**

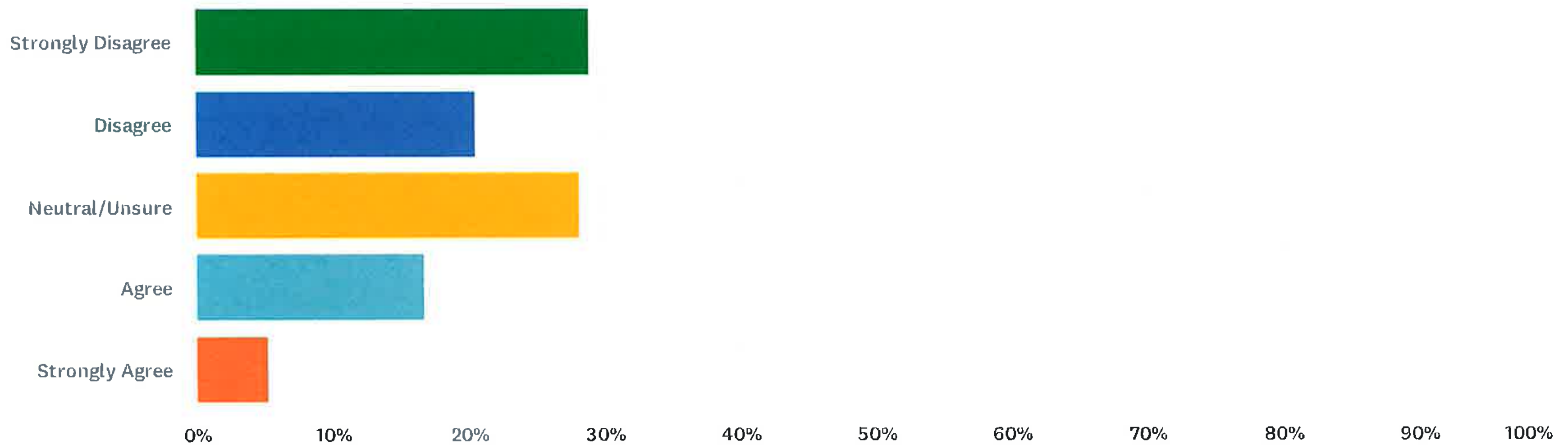
Rating	Percentage	Responses
Average 2.19		131

#	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

#	Response	Date
	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

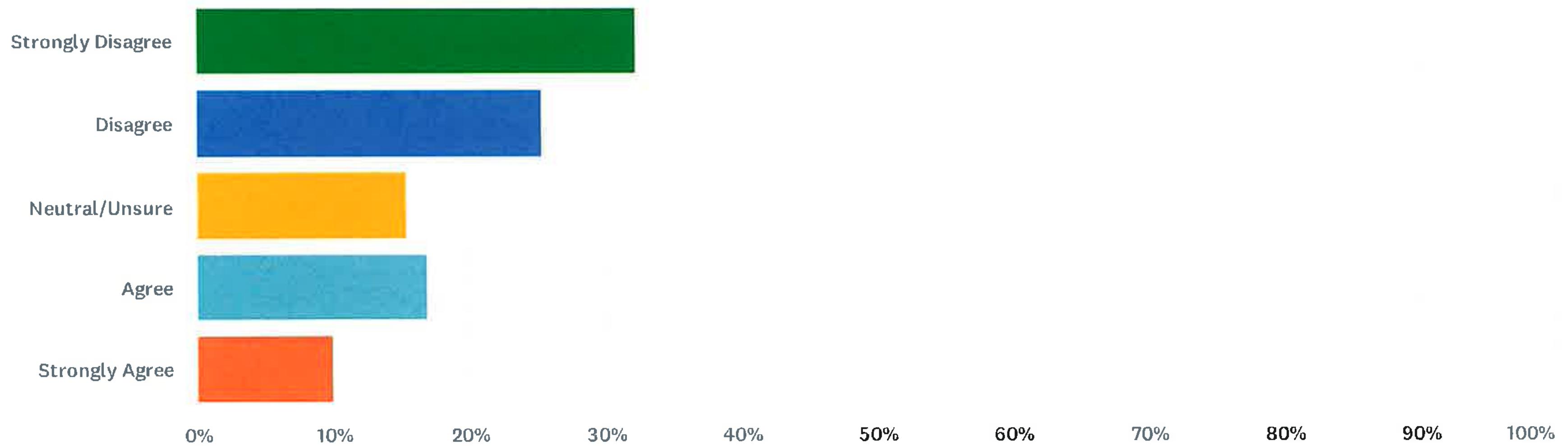
Show comments

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

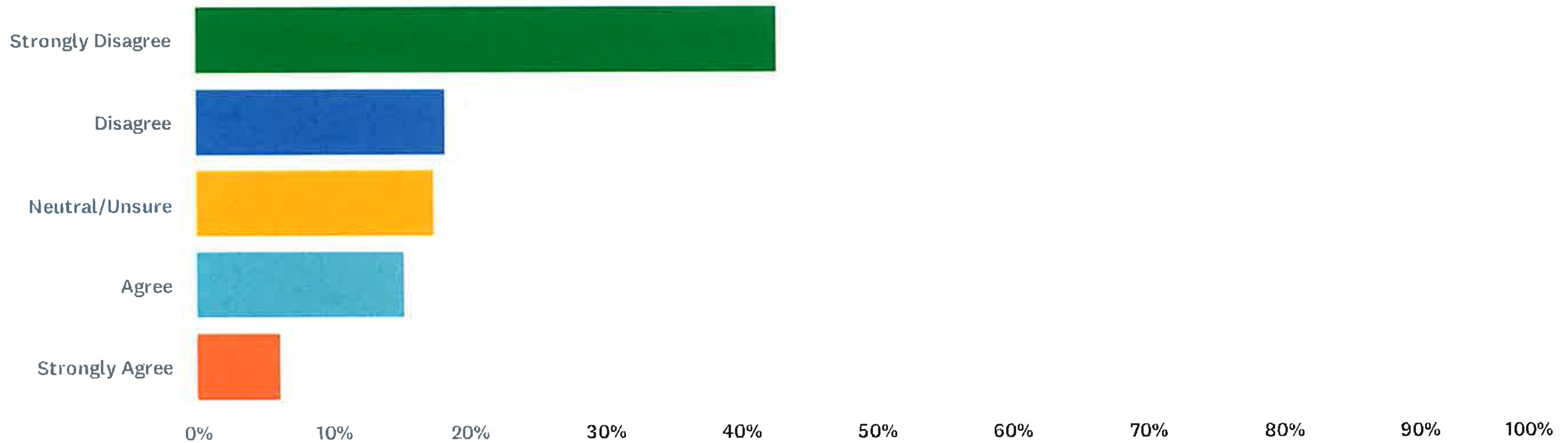
Average **2.47**		130

#	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**

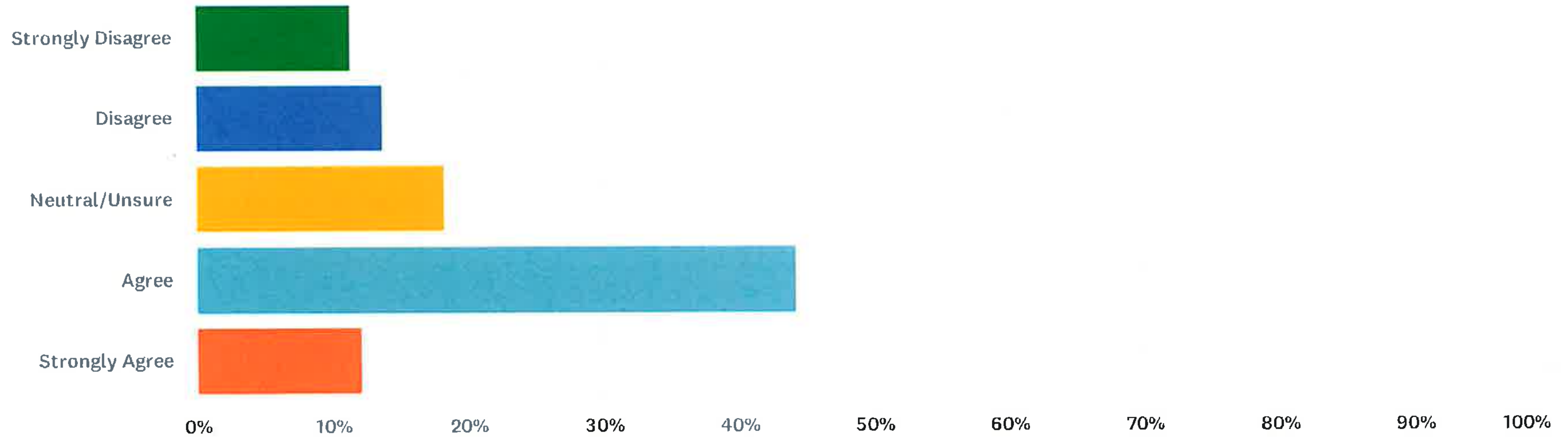
Rating	Percentage	Responses
Strongly Agree	6.11%	8
Show comments		
Average 2.24		131

#	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**

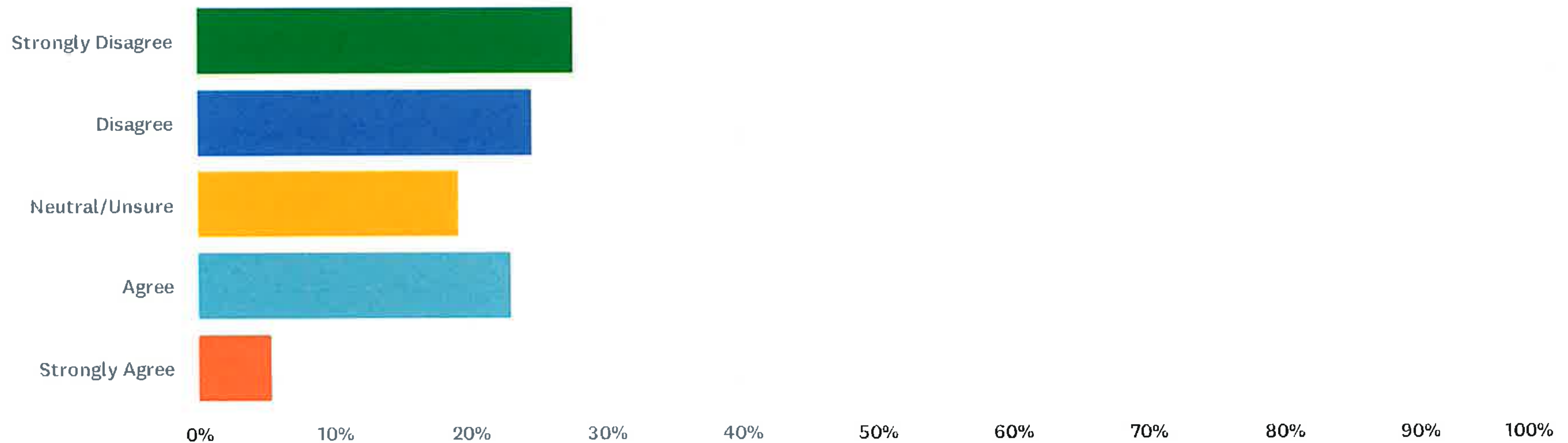
Rating	Percentage	Responses
Average **3.32**		131

#	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**

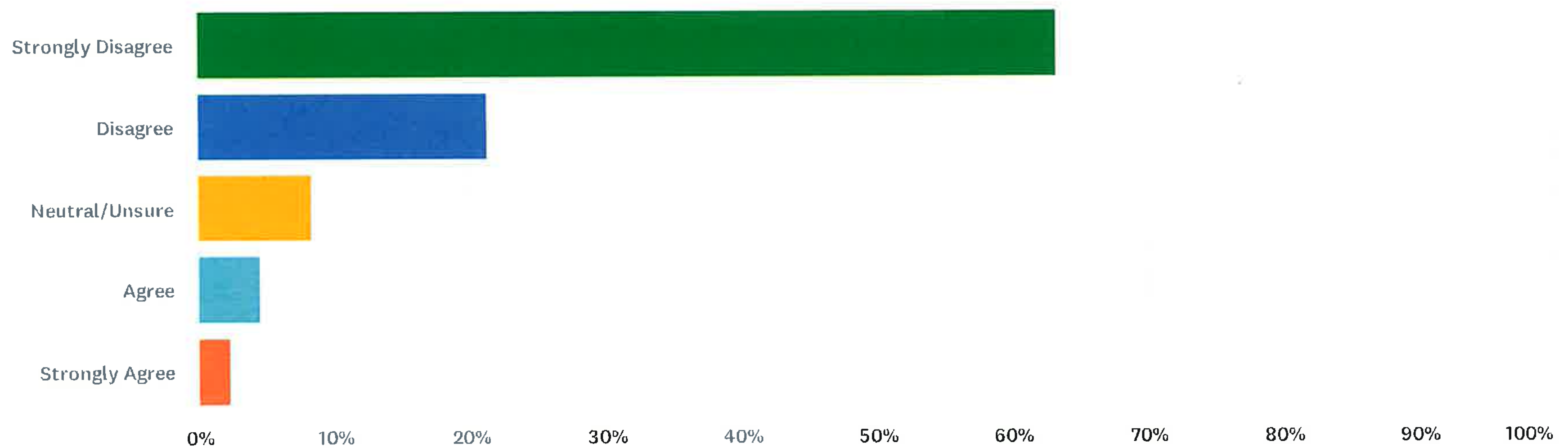
Rating	Percentage	Responses
Strongly Agree	5.38%	7
Show comments		
Average 2.54		130

#	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
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.

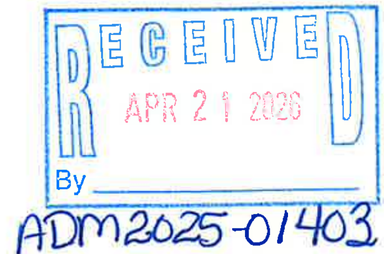
April 22, 2025

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
615.242.9272 | NashvilleBar.org
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

---

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

---

[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

---

[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

---

[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

---

[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.

---

[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,

---

[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.

---

[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]

---

[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.

---

[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

---

[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

[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.

---

[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

---

[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,

David R. Esquivel (#021459)
Brian S. Faughnan (#019379)
Caitlan "Cat" Moon (#019266)
Lucian T. Pera (#011641)
Ben C. Peterson (#043190)
Joshua Porte (#036161)
Todd J. Rolapp (#018433)
Lauren Taylor Roswall (#043355)
Greg Siskind (#014487)
Lucinda E. Smith (#005056)
Adriana A. Snedaker (#042234)

MaryBeth Lindsey

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

From: Esquivel, David <DEsquivel@bassberry.com>
Sent: Tuesday, April 21, 2026 6:31 PM
To: appellatecourtclerk <appellatecourtclerk@tncourts.gov>
Cc: Brian S. Faughnan <brian@faughnanonethics.com>; c.moon@vanderbilt.edu; Lucian T. Pera <lucian.pera@arlaw.com>; Peterson, Ben C. <Ben.Peterson@bassberry.com>; Josh Porte <josh.porte@hklaw.com>; Rolapp, Todd <TRolapp@bassberry.com>; Roswall, Taylor <Taylor.Roswall@bassberry.com>; Greg Siskind <gsiskind@visalaw.com>; Smith, Lucinda <lucinda.smith@bassberry.com>; Snedaker, Adriana A. <Adriana.Snedaker@bassberry.com>
Subject: Comment on Docket No. ADM2025-01403 (Potential Regulatory Reform)

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

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

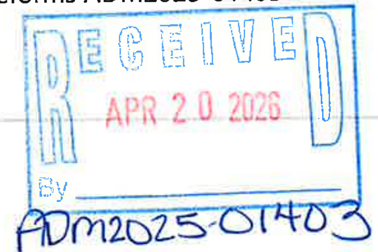
BASS BERRY + SIMS

David Esquivel
Member

Bass, Berry & Sims PLC
21 Platform Way South, Suite 3500 • Nashville, TN 37203
615.742.6285 phone • 615.742.0405 fax
desquivel@bassberry.com • www.bassberry.com
map

MaryBeth Lindsey

To:	appellatecourtclerk
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

External sender <brian@faughnanonethics.com>
Make sure you trust this sender before taking any actions.

Mr. Hivner:

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

Thank you.

Brian S. Faughnan
Faughnan Law, PLLC
5865 Ridgeway Center Parkway, Suite 300
Memphis, TN 38120
901-820-4556
brian@faughnanonethics.com

FAUGHNAN LAW
PLLC

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.

---

[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

---

[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

[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.

---

[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.

---

[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,

Brian S. Faughnan
Faughnan Law, PLLC
5865 Ridgeway Center Parkway NW
Suite 300
Memphis TN 38120
(901) 820-4556
brian@faughnanonethics.com

Lucian T. Pera
Adams & Reese, LLP
Crescent Center
6075 Poplar Ave., Suite 700
Memphis, TN 38119
901-524-5278
Lucian.Pera@arlaw.com

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

ASSOCIATION OF PROFESSIONAL RESPONSIBILITY LAWYERS
600 W. Van Buren Street
Suite 700
Chicago, IL 60607
www.aprl.net

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

President
Brian Faughnan
Lewis Thomason
Memphis, TN

President-Elect
Trisha Rich
Holland & Knight, LLP
Chicago, IL

Secretary
Tyler Maulsby
Frankfurt, Kurnit, Klein & Selz, P.C.
New York, NY

Treasurer
Kendra L. Basner
O'Rielly & Roche, LLP
San Francisco, CA

2020-2022 Directors
Frank R. Maher
Legal Risk, LLP
Liverpool, Merseyside

Sari W. Montgomery
Robinson, Stewart, Montgomery & Doppke, LLC
Chicago, IL

David M. Majchrzak
Klinedinst P.C.
San Diego, CA

2021-2023 Directors
Emil Ali
McCabe & Ali, LLP
Encino, CA

Stacie H. Rosenzweig
Halling & Cayo, S.C.
Milwaukee, WI

Allison Wood
Legal Ethics Consulting, P.C.
Chicago, IL

Immediate Past President
Shannon Nordstrom
Nordstrom Law Office
Las Vegas, NV

Executive Director
Karolyn Kiburz
Scottsdale, AZ

April 18, 2022

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

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

Dear President Turner:

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

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

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

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

Very truly yours,

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

APRL MODEL RULE 5.5

RULE 5.5: Multijurisdictional Practice of Law

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

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

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

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

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

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

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

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

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

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

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

New Comments

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Introduction

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

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

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

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

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

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

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

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

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

Technology and the Evolution of the Practice of Law

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

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

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

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

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

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

---

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

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

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

Geographical Limitation and The Public's Access to Legal Services

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

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

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

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

---

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

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

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

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

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

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

---

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

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

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

Competency and the Paradox of the Licensed Lawyer

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Client Trust and Choice of Counsel

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

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

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

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

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

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

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

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

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

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

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

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

---

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

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

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

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

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

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

From Colonial Times to 1921

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

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

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

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

---

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

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

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

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

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

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

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

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

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

1921 ABA Root Report

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

---

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

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

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

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

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

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

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

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

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

---

[23] 2002 MJP Report, at 7.

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

[25] *Id.* at 687-88

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

[27] *Id.* at 680.

[28] *Id.*

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

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

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

Statutory Developments and Enshrinement of UPL Restrictions in the Ethics Rules

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

---

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

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

[31] Root Report, at 681.

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

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

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

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

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

---

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

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

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

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

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

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

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

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

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

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

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

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

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

---

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

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

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

Birbrower: The California Supreme Court Grabs Lawyers' Attention

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

---

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

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

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

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

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

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

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

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

---

43 *Id.* at 11.

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

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

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

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

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

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

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

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

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

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

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

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

Competence as an Ongoing Regulatory Justification

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

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

Licensing Lawyers in 2021

Admission by Bar Examination

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

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

---

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

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

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

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

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

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

Admission on Motion

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

Conclusion

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

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

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

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

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

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

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

The Federalist Society and Regulatory Transparency Project take no position on particular legal or public policy matters. This paper was the work of multiple authors, and no assumption should be made that any or all of the views expressed are held by any individual author except where stated. The views expressed are those of the authors in their personal capacities and not in their official or professional capacities.

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

---

[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

---

[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.

---

[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

---

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

---

[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?

---

[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.

[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."