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June 18, 2018

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

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

Attn: James M. Hivner, Clerk of Appellate Courts

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

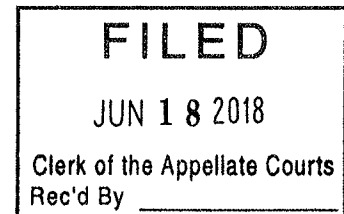
IN RE: AMENDMENT OF RULE 6, RULES OF THE TENNESSEE SUPREME COURT  
No. ADM2018-713

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

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

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

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



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

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

In its introduction, the *MacCrate Report* explains,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you for the opportunity to comment.

Respectfully,

/s/Yvonne K. Chapman

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

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## ***Fundamental Lawyering Skills***

### **A. Problem Solving**

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

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

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

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

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

### **C. Legal Research**

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

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

### **D. Factual Investigation**

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

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

### **E. Communication**

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

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

### **F. Counseling**

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

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

### **G. Negotiation**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

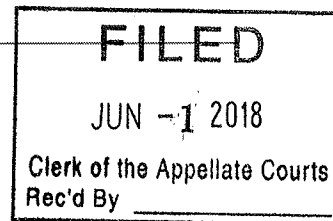
As a member of a learned profession, a lawyer should be committed to the values of:

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

appellatecourtclerk - Tennessee Law Course

ADM 2018-00713

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



Clerk Hivner:

The opportunity to comment is appreciated.

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

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

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

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

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Clerk Hivner:

Oops! I apologize.

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

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

Amendments to **Rule 6**.

The Tennessee Law Course.

I am also merely a deputy law director.

Thank you for the opportunity to assist.

Myers

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

Director Morton:

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

Jim Hivner

Clerk of the Appellate Courts

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

Clerk Hivner:

The opportunity to comment is appreciated.



**Lisa Marsh - Proposed Rule 6 comments**

ADM2018-713

**FILED**

**MAY 10 2018**

Clerk of the Appellate Courts  
Rec'd By LM

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

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

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

Thank you,

--

Jeremy Gourley  
615-568-0865

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

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

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