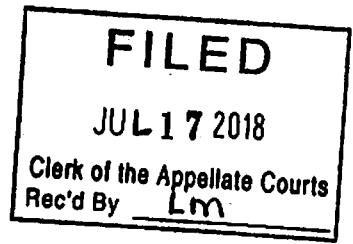


IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE



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

No. ADM2018-00713

COMMENT OF THE TENNESSEE COMMISSION ON CONTINUING LEGAL EDUCATION TO THE PROPOSED AMENDMENT TO TENNESSEE SUPREME COURT RULE 6 REGARDING THE PROPOSED TENNESSEE LAW COURSE

The Tennessee Commission on Continuing Legal Education ("CLE"), by and through its Chairman, John Alexander, responds to the proposed amendment to Tennessee Supreme Court Rule 6 regarding the Tennessee Law Course ("TLC").

Pursuant to the Tennessee Supreme Court's Order dated April 19, 2018, the CLE Commission joins, with permission, the Knoxville Bar Association Professional Committee's recommendation that completion of the TLC should be a prerequisite to applying for licensure in Tennessee and agrees that applicants should have to develop and establish their knowledge and competence of Tennessee laws and practices prior to their being allowed to represent individuals and businesses in Tennessee.

We also understand that the Board of Law Examiners is considering modifying the original proposal to change the Tennessee Law Course from a post-admission requirement to a pre-admission requirement. We support such a modification. However, because the Court may choose to make the Tennessee Law Course a post-admission requirement and have it administered by the CLE Commission, we submit for consideration the following outline of the practical issues as we see them with a post-admission requirement.

If enacted, Rule 6 would require the Tennessee Commission on CLE to assume the responsibility of:

1. Notifying newly licensed Tennessee attorneys who have not completed the TLC within twelve months of admission of their non-compliance;
2. Assessing penalties (fines) for those delinquent attorneys; and
3. Preparing Draft Suspension Orders and Suspension Orders if compliance is not timely obtained.

Although the CLE Commission currently follows a similar compliance process for enforcing the CLE requirements of the twenty five thousand (25,000) attorneys licensed in Tennessee, all CLE non-compliance notifications occur on a specific scheduled date as CLE compliance is established on a single date, December 31st each year.

Under the current TLC proposal, the CLE Commission's initiation of the compliance process would come from daily updates from the Administrative Office of the Courts ("AOC") notifying the Commission that an attorney has not been issued a Certificate of Compliance and one year has passed from when the attorney was admitted to practice in Tennessee. The TLC notifications will potentially create hundreds of non-compliance dates because attorneys can, and do, activate their licenses on any given date.

The proposed rule also states that the TLC is not continuing legal education and does not count as CLE. As such, a second compliance tracking system for newly licensed Tennessee attorneys will need to be developed that would operate separately from the current CLE tracking system. The second tracking system would have to be significantly modified to address the timing component of the proposed rule. For example, the one year "clock" for completing the TLC would not start on January 1st as occurs for all attorneys under the current CLE system.

Instead, the "clock" for the TLC system would start on the day the attorney is sworn in, which could be any day of the calendar year. The issuance of the non-compliance documents and Suspension Orders could also occur on a daily basis depending on when the attorney was either sworn in, or if practicing as a Multi-Jurisdictional Practice attorney, admitted Pro Hac Vice, by comity, on motion, as in-house counsel, by prior successful MPRE score, by Uniform Bar Examination score, and when the attorney paid registration fees to the Board of Professional Responsibility.

Although the CLE Commission currently has a staff of six¹ (6) fulltime individuals, the TCCLE respectfully submits that staffing is not sufficient for the Commission to meet all of its current responsibilities and the additional requirements that would be required under the proposed Rule 6. Currently, each CLE staff person is assigned to a specific full time job responsibility; each of the Commission's staff is working at their maximum capacity; the Commission does not have additional staff to serve as a back-up if a staff person is ill, on leave, or away from the office for any reason; during compliance deadlines, it is not unusual for staff to work overtime to assure completion of the work necessary to meet the deadline; and the work load of the staff increases each year as new attorneys enter the profession.

Therefore, to complete all of the tasks required to assure compliance with the current proposal, the Commission submits that an additional staff person will be needed to:

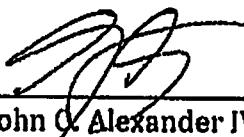
1. Track compliance for each attorney and post course completion information received each day;
2. Provide daily communication with the AOC on compliance issues;
3. Prepare and send out non-compliance letters;
4. Process non-compliance payments;

¹The Executive Director, Associate Director, and four (4) support staff.

5. Prepare Suspension Orders,
6. Prepare Reinstatement Orders;
7. Handle disputes; and
8. Respond to questions coming in daily by mail, email message, fax and telephone.

Based on the foregoing, the CLE Commission wholeheartedly supports implementation of a Tennessee law course and will support whichever direction the Court chooses. However, if the Court chooses to implement Rule 6 in the posture of the current proposal, then for all of the reasons cited above, the CLE Commission anticipates seeking funding for a minimum of one (1) additional staff member who will be needed to assist with handling all the duties required by the current proposal.

Respectfully submitted this 17th day of July, 2018.

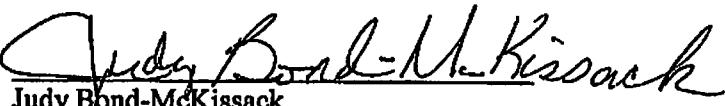


John C. Alexander IV .BPR #025234

Chairman, Tennessee Commission on CLE
1321 Murfreesboro Pike, Suite 810
Nashville, TN 37217-2690

CERTIFICATE OF SERVICE

I certify that on the 17th day of July, 2018, a true and correct copy of this comment was served upon the individuals and organizations identified in Exhibit "A" by regular US Mail, postage prepaid.



Judy Bond-McKissack
Executive Director
Tennessee Commission on CLE

EXHIBIT A

List of Individuals and Organizations Receiving Notice of the Foregoing by Mail

Deborah Tate
Administrative Director
Administrative Office of the Courts
511 Union St, Suite 600
Nashville, TN 37219-1768

Andrew Frazier
President, Benton County Bar Assn.
Whitworth Law Firm
P O Box 208
116 E Main
Camden, TN 38320

Matt Tuck
President, Anderson County Bar
14 Kentucky Ave Ste 101
PO Box 4552
Oak Ridge, TN 37831

Troy Jones
President, Blount County Bar Assn.
Law Office of Troy B. Jones
P. O. Box 2308
Knoxville, TN 37901

Amy Farrar, President
MTLAW
Farrar | Wright PLLC
122 North Church Street
Murfreesboro, TN 37130

Sandy L. Garrett
Chief Disciplinary Counsel
Board of Professional Responsibility
10 Cadillac Drive, Suite 220
Brentwood, TN 37027-5078

Robert Thomas
National Bar Association President
Ballard-Taylor Chapter
Federal Defender Office
200 Jefferson Ave Ste ; 200 PO Box 266
Memphis, TN 38103-8307

Jimmie Miller; Chairman of the Board
Board of Professional Responsibility
Hunter, Smith & Davis LLP
P O Box 3740
Kingsport, TN 37664

Kristin Green
President, Bedford County Bar Assn.
300 E. Lane Street Po Box 461
Shelbyville, TN 371620461

Andrew Morgan, President
Bradley County Bar Association
Law Office of Andrew B. Morgan
140 N. Ocoee St
Cleveland, TN 37311

Alberto Gonzales
Dean, Belmont University College of Law
1900 Belmont Blvd
Nashville, TN 37217

Ashley Boyer
President, Bristol County Bar Assn.
Sullivan County Public Defender...
266 Blountville Bypass Po Box 839
Blountville, TN 37617

Florence Johnson
President, Ben Jones Chapter - National Bar Assn.
Johnson and Johnson, PLLC
1407 Union Avenue Suite 1002
Memphis, TN 381047556

William Jones
President, Campbell County Bar Assn.
Asst. Public Defender
3170 Appalachian Hwy, Ste 1
Jacksboro, TN 37757

Matthew Maddox
President, Carroll County Bar Assn.
Maddox Maddox & Maddox
P O Box 827
19695 E Main St
Huntingdon, TN 38344

Candice K. Mendez
President, Cocke County Bar Assn.
123 Mcsween Ave.
Newport, TN 37821-3111

Drew Taylor
President, Carter County Bar Assn.
211 South Main St.
Elizabethton, TN 37643

Will Lockhart
Coffee County Bar Assn
Burch & Lockhart
200 South Woodland Street
Manchester, TN 37355

Peter Lersou
Dean, Cecil C. Humphreys School of Law
University of Memphis
1 North Front Street
Memphis, TN 38103

Kelly Tollett
President, Cumberland County Bar Assn.
Fields & Tollett, Association
18 East Street
Crossville, TN 38555

Lynda Hood
Executive Director
Chattanooga Bar Association
801 Broad St Suite 420 Pioneer Bldg
Chattanooga, TN 37402

Billy Townsend, President
Decatur, Lewis, Perry, Wayne Counties Bar Assns.
Townsend Law Office
26 West Linden Ave
Hohenwald, TN 38462

Marc Harwell
President, Chattanooga Bar Association
Leitner Williams Dooley &...
200 W. Martin Luther King Blvd, Ste. 500
Chattanooga, TN 37402-2566

Bratten Cook
President, Dekalb County Bar Assn.
104 N 3rd St
Smithville, TN 37166

Lynn Newcomb
President, Cheatham County Bar Assn.
Balthrop, Perry, Noe, Newcomb
102 Boyd St., PO Box 82
Ashland City, TN 37015

Hilary Duke
President, Dickson County Bar Assn.
Reynolds, Potter, Ragan
210 East College Street
Dickson, TN 37055

David Stanifer
President, Claiborne County Bar Assn.
Stanifer & Stanifer
PO Box 217
1735 Main St
Tazewell, TN 37879-0217

Julie Palmer
President, Dyer County Bar Assn.
Palmer Law Firm
116 W Court St
Dyersburg, TN 38024-4639

Beth Brooks
President, East Shelby County Bar Assn
2299 Union Ave
Memphis, TN 38104

Joseph Ford
President, Franklin County Bar Assn.
McBee & Ford
17 S College St
Winchester, TN 37398

Loretta Cravens, President, ETLAW
Attorney at Law
Cravens Legal
PO Box 396
Knoxville, TN 37901

Terri Crider
President, Gibson County Bar Assn.
Flippin & Atkins P.C.
P.O. Box 160
1302 Main Street
Humboldt, TN 38343

Jeffrey Granillo
President, Federal Bar Assn Chatt. Chapter
Chambliss Bahner & Stophel PC
605 Chestnut Street, Liberty Tower Suite 1700
Chattanooga, TN 37450

Rebecca Parsons
President, Giles County Bar Assn
Rebecca Sue Parsons, Attorney at...
118 South Second Street P.O. Box 333
Pulaski, TN 38478-3219

Bryce Ashby, President,
Federal Bar Assn – Memphis/ Mid South Chapter
Donati Law, PLLC
1545 Union Ave.
Memphis, TN 38104-3726

Creed Daniel
President, Grainger County Bar Assn.
Daniel & Daniel
P O Box 6
Courthouse Sq 115 Marshall Ave
Rutledge, TN 37861

Michael Russell
President, Federal Bar Assn-Nashville Chapter
Russell Dispute Resolution, PLLC
P.O. Box 41314
Nashville, TN 37204 204

Curt Collins
President, Greene County Bar Assn.
Collins Shipley, PLLC
128 S MAIN ST, Suite 102
Greeneville, TN 37743-4922

Joseph McAfee
President, Federal Bar Assn. NE TN Chapter
McAfee & McAfee, PLLC
100 West Summer Street
Greeneville, TN 37743

Jeff Cranford
President, Hamblen County Bar Assn.
Wimberly Lawson Wright Daves and...
929 West 1st North St. P.O. Box 1066
Morristown, TN 37814

Jennifer Porth
President, Fifteenth Judicial District
J Stephen Brown PC
224 W Gay St PO Box 792
Lebanon, TN 37088-0792

Harriet Thompson
President, Hardeman County Bar Assn.
P O Box 600
205 East Market St.
Bolivar, TN 38008

Amy Kathleen Skelton
President, Hawkins County Bar Assn.
Law Office of Mark A. Skelton
121 South Depot Street
Rogersville, TN 37857

Rachel Manci
President, Kingsport Bar Assn.
Hunter Smith & Davis LLP
PO Box 3740
Kingsport, TN 37664

James Haywood
President, Haywood County Bar Assn.
Haywood Law, PLLC
50 Boyd Avenue Po Box 438
Brownsville, TN 38012-0438

Marsha Watson, Executive Director
Knoxville Bar Association
P O Box 2027
505 Main St Suite 50
Knoxville, TN 37901

Douglas Bates
President, Hickman County Bar Assn.
Bates & Bates Law Office
PQ Box 1
Centerville, TN 37033

Keith Burroughs
President, Knoxville Bar Association
Egerton McAfee Armistead &...
900 S.Gay St. 14th Floor
Knoxville, TN 37902

John Lee Williams
President, Humphreys County Bar Assn.
Porch Peeler Williams Thomason
102 South Court Square
Waverly, TN 37185

Timothy Naifeh
President, Lake County Bar Assn.
227 Church St
Tiptonville, TN 38079

Danielle Hardee
President, Jackson-Madison Henderson County Bar Assn.
U. S. District Federal Court
111 So Highland Ave
Jackson, TN 38301

William Dan Douglas
President, Lauderdale County Bar Assn.
P O Box 489
109 N Main St
Ripley, TN 38063-0489

Jeremy Ball
President, Jefferson County Bar Assn.
Dist Atty OFC
P.O. Box 690
Dandridge, TN 37725

Ben Boston
President, Lawrence County Bar Assn.
Boston Holt Sockwell & Durham PLLC
P O Box 357
235 Waterloo St
Lawrenceburg, TN 38464

William Cockett
President, Johnson County Bar Assn.
Smith & Cockett
PO Box 108
Mountain City, TN 37683

Eileen Kuo, President
Assn for Women Attorneys
Jackson Lewis, Pc
999 Shady Grove Rd, Suite 110
Memphis, TN 38120

Melanie Gober Grand
Executive Director
Lawyers Assn for Women-Marion Griffin
P.O. Box 210436
Nashville, TN 37221

Chessis Cox
President, McMinn-Meigs County Bar Assn.
Cox Law Office
130 East Washington Avenue, Suite 7
Athens, TN 37303

Mark A. Mesler, II
Chair, Lawyers Fund for Client Protection
Rosenblum and Reisman, Attys
6070 Poplar Avenue, Suite 550
Memphis, TN 38119

Earle Schwarz
President, Memphis Bar Association
Office of Earle J. Schwarz
2157 MADISON AVE Ste 201
Memphis, TN 38104-6524

Randall E. Self
Attorney At Law
President, Lincoln County Bar Assn.
P O Box 501
131A E Market St
Fayetteville, TN 37334-0501

Jon Mac Johnson
President, Monroe County Bar Assn.
Jon McMurray Johnson, Attorney at...
P. O. Box 613
Madisonville, TN 37354

Gary Wade
Dean, Lincoln Memorial University
Duncan School of Law
601 W. Summit Hill Drive
Knoxville, TN 37902

Zachary Talbot
President, Montgomery County Bar Assn.
Patton & Pittman
101 North Third Street
Clarksville, TN 37040-3401

Ian McCabe
President, Loudon County Bar Assn.
Law Office of Ian McCabe
PO Box 2069
Knoxville, TN 37901

Michael Davis
President, Morgan County Bar Assn.
PO Box 925
216 N. Kingston St.
Wartburg, TN 37887

Nick Utter
President, Marshall County Bar Assn.
104 Belfast St
Lewisburg, TN 37091-3317

Paz Haynes
President, Napier-Looby Bar Fdn.
Bone McAllester Norton PLLC
511 Union St. Ste. 1600
Nashville, TN 37219

Mark Free
President, Maury County Bar Assn.
Tisher, Free, & Lynn, PLLC
809 South Main Street, Suite 200
Columbia, TN 38401

Erin Palmer Polly
President, Nashville Bar Association
Butler Snow LLP
150 3rd Avenue South, Suite 1600
Nashville, TN 37201

Monica Mackie
Executive Director
Nashville Bar Association
150 4th Avenue North #1050
Nashville, TN 37219

Charles Crass
President, Roane County Bar Assn.
100 Court St
Kingston, TN 37763-2809

William C. Koch, Jr.
Dean, Nashville School of Law
4013 Armory Oaks Drive
600 Linden Square
Nashville, TN 37204

Steven Wilmoth
President, Robertson County Bar Assn.
Fleming Law Firm
409 North Locust Street
Springfield, TN 37172-2443

Jack Warner
President, Obion County Bar Assn.
Warner Law Firm PLC
308 W Church St
Union City, TN 38261-3710

Kirk Catron
President, Rutherford-Cannon County Bar Assn.
Kirk Catron, Attorney at Law
303 North Walnut Street
Murfreesboro, TN 37130

Daryl Colson
President, Overton County Bar Assn.
Colson & Maxwell
808 North Church Street
Livingston, TN 38570-1134

Ariel Anthony, President
S.L. Hutchins Chapter – National Bar Assn.
Husch Blackwell
735 Georgia Avenue Suite 300
Chattanooga, TN 37402

Andy Clark
President, Paris-Henry County Bar Assn.
Clark and Cox PLLC
104 North Brewer St.
Paris, TN 38242-4006

Mark Blakley
President, Scott County Bar Assn.
8th judicial district attorney...
2792 Baker HWY Po Box 310
Huntsville, TN 37756-0310

Gordon Byars
President, Putnam County Bar Assn.
Byars Law
101 S. Jefferson Ave.
Cookeville, TN 38501

Lauren Sherrell
President, SETLAW
Pinnacle Financial Partners
801 Broad St.
Chattanooga, TN 37402

James Taylor
President, Rhea County Bar Assn.
375 Church Street, Suite 300
Dayton, TN 37321-1322

Anna Penland
President, Sevier County Bar Assn.
Ogle, Wyrick & Associates
103 Bruce St. P.O. Box 5365
Sevierville, TN 37864

Herbert Slatery
Attorney General, State of Tennessee
PO Box 20207
Nashville, TN 37202

Joycelyn Stevenson
Executive Director, Tennessee Bar Assn
Tennessee Bar Association
221 4th Ave N Suite 400
Nashville, TN 37219

Lindsay Ralston
President, Sumner County Bar Assn.
The Ralston Firm
101 Public Sq Suite 301
Gallatin, TN 37066-2839

Barri Bernstein
Executive Director, Tennessee Bar Foundation
Tennessee Bar Foundation
618 Church St Suite 120
Nashville, TN 37219

Tiffany Johnson
President, TN Alliance for Black Lawyers
QP Legal Research & Writing
33 N Tucker St #1
Memphis, TN 38104-2630

Jeff Ward
President, Tennessee Board of Law Examiners
Milligan & Coleman
P O Box 1060
Greeneville, TN 37744

Ann Pruitt
Executive Director
Tennessee Alliance for Legal Services
1220 Vintage Place
Nashville, TN 37215

Lisa Perlen
Executive Director
Tennessee Board of Law Examiners
511 Union Street, Suite 525
Nashville, TN 37219

Vinh Duong
President, TN Asian Pacific American Bar Assn c/o
Waller Lansden Dortch & Davis
511 Union St #2700
Nashville, TN 37210

John Alexander
Chairman, Tennessee Commission on CLE
Rainey, Kizer, Reviere & Bell
50 N. Front St., Ste. 610
Memphis, TN 381031106

Cameron Jehl
President, Tennessee Trial Lawyers Assoc.
Jehl Law Group
5400 Poplar Avenue, Suite 250
Memphis, TN 38119

Michael Mansfield
President, Tennessee Defense Lawyers Assn
Rainey, Kizer, Reviere & Bell...
PO Box 1147
Jackson, TN 38302

Suzanne Keith
Executive Director, Tennessee Association for Justice
Tennessee Assn for Justice
629 Woodland St.
Nashville, TN 37206

Douglas E. Dimond
General Counsel
Tennessee Department of Childrens Services
UBS Tower, 315 Deaderick, 10th Floor
Nashville, TN 37243

Jerry Estes
Executive Director
Tennessee District Attorney Generals Conference
226 Capitol Blvd Ste 800
Nashville, TN 37243

Mario Ramos
President, TN Assn of Spanish Speaking Attys
Mario Ramos PLLC
2021 Richard Jones Road Suite 300
Nashville, TN 37215

Joanna Douglass, President,
Lawyers Assn for Women- Anne Schneider Chapter
Tennessee Dept of Human Services
225 Martin Luther King Dr., #210
Jackson, TN 38301

Melissa Thomas Blevins
President, Twelfth Judicial District
12th Judicial District
23 COURTHOUSE SQUARE
Jasper, TN 37347-3531

Linda Schultz
Executive Director
Assn for Women Lawyers
P. O. Box 770186
Nashville, TN 8177

William Lawson
President, Unicoi County Bar Assn.
William B. Lawson, Attorney At Law
112 Gay St, Suite A PO Box 16
Erwin, TN 37650-1275

Patrick Frogge
Executive Director
Tennessee Public Defenders Conference
211 Seventh Ave N Ste 320
Nashville TN 37219

David Myers
President, Union County Bar Assn.
P O Box 13
105 Monroe St
Maynardville, TN 37807-0013

Rachel Witherington
President, Tipton County Bar Assn.
Owen Jenkins Dedmon Witherington...
P. O. Box 846
Dyersburg, TN 38025

Melanie Wilson
Dean, University of Tennessee
College of Law
1505 W. Cumberland Ave, Rm 278
Knoxville, TN 37996-1810

Joseph Ozment, President
TN Assn of Criminal Defense Lawyers
Law Office of Joseph S. Ozment, P....
212 Adams Avenue
Memphis, TN 38103-1922

Chris Guthrie
Dean, Vanderbilt University School of Law
131 21st Ave. South Room 108
Nashville, TN 37203-1181

Denise Lawrence
Executive Director
TN Assn of Criminal Defense Lawyers
530 Church St., Ste. 300
Nashville, TN 37219

Larry Stanley
President, Warren County Bar Assn.
100 W. Main Street Po Box 568
Mcminnville, TN 37111-0568

Laurel Farrell
President, Washington County Bar Assn.
Sisters at Law
249 E Main St
Johnson City, TN 37604-5707

Amy Bryant, President
National Bar Assn
Napier-Looby Chapter
State of Tennessee
310 Great Circle Road
Nashville, TN 37243-1700

Beau Pemberton
President, Weakley County Bar Assn.
Bradberry And Pemberton
P. O. Box 789
Dresden, TN 38225-0789

Anne Fritz
Executive Director
Memphis Bar Association
145 Court Ave., Ste. 301
Memphis, TN 38103-2292

William (Denny) Mitchell
President, White County Bar Assn.
Mitchell Law Office
112 South Main Street
Sparta, TN 38583

Jason Pannu; President
Tennessee Bar Association
Lewis Thomason
P.O. Box 198615
Nashville, TN 37219

Dwight Aarons, President
William Henry Hastie Chap. -National Bar Assn.
University of Tennessee College of Law
1505 Cumberland Ave, Rm 363
Knoxville, TN 379960681

Mark Hayes, Chair
Tennessee Bar Foundation
Jenkins, Dedmon, Hayes Law Group
111 So. Mill Ave.
Dyersburg, TN 38024

Katie Zipper
President, Williamson County Bar Assn.
Zipper Law, PLLC
204 4th Avenue South
Franklin, TN 37064

TLAW
Karen Crutchfield, President
Wimberly Lawson Wright Davies...
PO Box 2231
Knoxville, TN 37901-2231

Loretta Cravens
East TN Lawyers Assn for Women
Cravens Legal
PO Box 396
Knoxville, TN 37901

Liz Sitgreaves
Lawyers Association for Women
Marion Griffin Chapter Pres.
The Law Offices of John Day
5141 Virginia Way, Suite 270
Brentwood, TN 37027

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

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

FILED
JUL 18 2018
Clerk of the Appellate Courts
Rec'd By CV

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

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

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

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

I. Background

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

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

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

A. Tennessee Component of the UBE

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

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

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

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

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

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

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

B. TBA Ad Hoc Committee's Scope of Study

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. Conclusion

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

RESPECTFULLY SUBMITTED,

By: /s/ by permission
JASON PANNU (023816)
President, Tennessee Bar Association
Lewis Thomason
P.O. Box 198615
Nashville, Tennessee 37219
(615) 259-1366

By: /s/ by permission
JOHN T. RICE (031774)
Tennessee Bar Association
Uniform Bar Exam Ad Hoc Committee
Elmore, Stone & Caffey, PLLC
5616 Kingston Pike, Suite 301
Knoxville, Tennessee 37919
(865) 766-0056

By: /s/ by permission
SARAH Y. SHEPPEARD (007120)
President - Elect, Tennessee Bar Association
Uniform Bar Exam Ad Hoc Committee
Lewis Thomason
One Centre Square, Fifth Floor
620 Market Street
Knoxville, Tennessee 37902
(865) 546-4646

By: s/ by permission
SHELLY WILSON (019935)
Tennessee Bar Association
Uniform Bar Exam Ad Hoc Committee
Owings, Wilson & Coleman
800 Riverview Tower
900 S. Gay Street
Knoxville, Tennessee 37902-1800
(865) 522-2717

By: /s/ by permission
EDWARD LANQUIST (013303)
General Counsel,
Tennessee Bar Association
Patterson Intellectual Property Law, PC
1600 Division Street, Suite 500
Nashville, Tennessee 37203
(615) 242-2400

By:

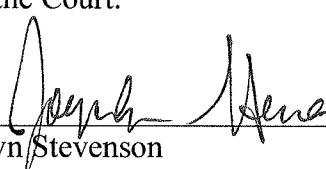

JOYCELYN A. STEVENSON (021710)
Executive Director,
Tennessee Bar Association
221 Fourth Avenue North, Suite 400
Nashville, Tennessee 37219-2198
(615) 383-7421

By:


BERKLEY SCHWARZ (033166)
Director of Public Policy &
Government Affairs
Tennessee Bar Association
221 Fourth Avenue North, Suite 400
Nashville, Tennessee 37219-2198
(615) 383-7421

CERTIFICATE OF SERVICE

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


Joycelyn Stevenson

"Exhibit A"

Dwight Aarons President, National Bar Association, William Henry Hastie Chapter University of Tennessee College of Law 1505 Cumberland Avenue, Room 363 Knoxville, TN 37996-0681	Loretta Cravens President, ETLAW Cravens Legal P.O. Box 396 Knoxville, TN 37901	Jeremy Ball President, Jefferson County Bar Association District Attorney Office P.O. Box 690 Dandridge, TN 37725
Douglas Bates President, Hickman County Bar Association Bates & Bates P.O. Box 1 Centerville, TN 37033	Barri Bernstein Executive Director Tennessee Bar Foundation 618 Church Street, Suite 120 Nashville, TN 37219	Jeff Ward President Tennessee Board of Law Examiners Milligan & Coleman P.O. Box 1060 Greeneville, TN 37744
Karol Lahrman, Executive Director TLAW P.O. Box 331214 Nashville, TN 37203	Laurel Farrell Washington County Bar Association Pres. Sisters at Law 249 E. Main Street Johnson City, TN 37604-5707	Gordon Byars Putnam County Bar Association President Byars Law 101 S. Jefferson Avenue Cookeville, TN 38501
Mark Blakley President, Scott County Bar Association District Public Defender's Office 2792 Baker Highway; P.O. Box 310 Huntsville, TN 37756	Keith Burroughs President, Knoxville Bar Association Egerton, McFee, Armistead & Davis 900 S. Gay Street, 14 th Floor Knoxville, TN 37902	Denise Lawrence TN Assoc. of Criminal Defense Lawyers 530 Church Street, # 300 Nashville, TN 37219
Ben Boston President, Lawrence County Bar Assoc. Boston, Holt, Sockwell & Durham PLLC P.O. Box 357 Lawrenceburg, TN 38464	Rachel Witherington President, Tipton County Bar Association Law Office of T.D. Forrester 114 W. Liberty Ave., P.O. Box 1038 Covington, TN 38019	Joseph Ozment President, TACDL Law Office of Joseph S. Ozment, P.C. 212 Adams Avenue Memphis, TN 38103
Bruce Fox President, Tennessee Trial Lawyers Assoc. Fox & Farley 310 N. Main Street Clinton, TN 37716	Florence Johnson President, NBA, Ben Jones Chapter Johnson and Johnson, PLLC 1407 Union Avenue, Suite 1002 Memphis, TN 38104	Jeff Cranford President, Hamblen County Bar Assoc. Wimberly Lawson Wright Daves 929 West 1 st North St., P.O. Box 1066 Morristown, TN 37814
Wynne Caffey-Knight President-Elect, Knoxville Bar Association Elmore, Stone & Caffey PLLC 5616 Kingston Pike, #301 Knoxville, TN 37919	Curt Collins President, Greene County Bar Association C. Collins Law Firm 128 S. Main Street, Suite 102 Greeneville, TN 37743-4922	Daryl Colson President, Overton County Bar Association Colson & Maxwell 808 North Church Street Livingston, TN 38570-1134
Kirk Catron Rutherford-Cannon County Bar Association McCarter, Catron & East 101 N. Maple Street Murfreesboro, TN 37130-3506	Bratten Cook President, Dekalb County Bar Association Bratten Hale Cook II 104 N. 3rd Street Smithville, TN 37166	Anthony Clark President, Paris-Henry County Bar Assoc. Clark & Cox PLLC 104 N. Brewer Street Paris, TN 38242
Marc Harwell President, Chattanooga Bar Assoc. Leitner Williams Dooley & Napolitan 200 W. MLK Blvd., Suite 500 Chattanooga, TN 37402-2566	Terri Crider President, Gibson County Bar Association Flippin, Atkins & Crider PC P.O. Box 160 Humboldt, TN 38343	Creed Daniel President, Grainger County Bar Association Daniel & Daniel 115 Marshall Avenue; P.O. Box 6 Rutledge, TN 37861-0006
Patrick G. Frogge Executive Director Public Defenders Conference 618 Church Street, Suite 300 Nashville, TN 37219	Nick Utter President, Marshall County Bar Association 104 Belfast Street Lewisburg, TN 37091	Michael Davis President, Morgan County Bar Assoc. 216 N. Kingston Street P.O. Box 925 Wartburg, TN 37887-0925

Dan Douglas President, Lauderdale County Bar Association P.O. Box 489 Ripley, TN 38063-0489	Joanna Douglass President, Lawyers Association for Women Tennessee Department of Human Services 225 Martin Luther King Dr., #210 Jackson, TN 38301	Hilary Duke President, Dickson County Bar Association Reynolds, Potter, Ragan & Vandivort, PLC 210 East College Street Dickson, TN 37055
Vinh Duong President, Tennessee Asian Pacific American Bar Association Waller Lansden Dortch & Davis LLP 511 Union Street, #2700 Nashville, TN 37210	Michael Mansfield President, Tennessee Defense Lawyers Association (TDLA) Rainey, Kizer, Reviere & Bell, PLC P.O. Box 1147 Jackson, TN 38302	Ariel Anthony Chapter President, National Bar Association, S.L. Hutchins Chapter Husch Blackwell 735 Georgia Avenue, Suite 300 Chattanooga, TN 37402
Kelly Tollett President, Cumberland County Bar Association Fields & Tollett 18 East Street Crossville, TN 38555	Sam Felker President, Tennessee Stonewall Bar Assoc. Baker, Donelson, Bearman, Caldwell 211 Commerce Street, Suite 800 Nashville, TN 37201	Joseph Ford President, Franklin County Bar Association McBee & Ford 17 S. College Street Winchester, TN 37398
Andrew Frazier President, Benton County Bar Association Whitworth Law Firm P.O. Box 208 Camden, TN 38320	Jeffrey Granillo President, Federal Bar Association Chattanooga Chapter Chambliss Bahner & Stophel PC 605 Chestnut Street, Suite 1700 Chattanooga, TN 37450	Anne Fritz Executive Director Memphis Bar Association 145 Court Avenue, Suite 1 Memphis, TN 38103-2292
Katie Zipper President, Williamson County Bar Association Zipper Law, PLLC 204 4th Avenue South Franklin, TN 37064	Steven Wilmoth President, Robertson County Bar Association Fleming Law Firm 409 North Locust Street Springfield, TN 37172	Melissa Blevins President, 12 th Judicial Bar Association Blevins & Blevins, PLLC 23 Courthouse Square Jasper, TN 37347
Anna Penland President, Sevier County Bar Association Ogle, Gass & Richardson PC P.O. Box 5365 Sevierville, TN 37864	Melanie Gober Grand Executive Director Lawyers Association for Women Marion Griffin Chapter P.O. Box 210436 Nashville, TN 37221	Eileen Kuo President, AWA Jackson Lewis, PC 999 Shady Grove Rd., Suite 110 Memphis, TN 38120
Alberto Gonzales Dean Belmont University School of Law 1900 Belmont Boulevard Nashville, TN 37212	Kristin Green President, Bedford County Bar Association P.O. Box 461 Shelbyville, TN 37162-0461	Chris Guthrie Dean Vanderbilt University School of Law 131 21st Ave. South, Room 108 Nashville, TN 37203-1181
David Stanifer President, Claiborne County Bar Association Stanifer & Stanifer P.O. Box 217 Tazewell, TN 37879	Bryce Ashby Federal Bar Association, Memphis/Mid-South Chapter President Donati Law, PLLC 1545 Union Avenue Memphis, TN 38104-3726	Jon Mac Johnson President, Monroe County Bar Association Attorney at Law P.O. Box 613 Madisonville, TN 37354
Amy Kathleen Skelton Hawkins County Bar Association President Law Office of Mark A. Skelton 121 South Depot Street Rogersville, TN 37857	James Haywood President, Haywood County Bar Association Haywood Law, PLLC 50 Boyd Avenue, P.O. Box 438 Brownsville, TN 38012-0438	Andrew Morgan President, Bradley County Bar Association Law Office of Andrew B. Morgan 140 N. Ocoee Street Cleveland, TN 37311
Lynda Hood Executive Director Chattanooga Bar Association 801 Broad Street Suite 420 Pioneer Building Chattanooga, TN 37402	Mark Hayes Tennessee Bar Foundation Chair Jenkins Dedmon Hayes Law Group LLP 111 South Mill Avenue Dyersburg, TN 38024	Joseph McAfee Federal Bar Association, Northeast Tennessee Chapter President 100 West Summer Street Greeneville, TN 37743

Amy Bryant
President, Napier-Looby Chapter
State of Tennessee
310 Great Circle Road
Nashville, TN 37243

Matt Tuck
President, Anderson County Bar Assoc.
Law Office of Matt Tuck
14 Kentucky Avenue, Suite 101
Oak Ridge, TN 37831

Candice Mendez
President, Cocke County Bar Association
123 McSween Avenue
Newport, TN 37821-3111

Lindsey Ralston
Sumner County Bar Association President
The Ralston Firm
101 Public Square, Suite 301
Gallatin, TN 37066-2389

Michael Russell
President, Federal Bar Association
Nashville Chapter
Waller
511 Union Street, Suite 2700
Nashville, TN 37219

John Alexander
Tennessee CLE Commission Chair
Rainey, Kizer, Revier & Bell PLLC
50 N. Front St., Suite 610
Memphis, TN 38103

Jack Warner
President, Obion County Bar Association
Warner Law Firm PLC
308 W. Church Street
Union City, TN 38261

Monica Mackie
Executive Director
Nashville Bar Association
150 4th Avenue N., Suite 1050
Nashville, TN 37219

Peter Letsou
Dean, University of Memphis
Cecil C. Humphreys School of Law
1 North Front Street
Memphis, TN 38103

Mark Mesler
Tennessee Lawyers Fund for Client
Protection Chair
Rosenblum & Reisman, P.C.
6070 Poplar Avenue, Suite 550
Memphis, TN 38119

Tiffany Johnson
Tennessee Alliance for Black Lawyers
QP Legal Research & Writing Services
1067 Fleece Place
Memphis, TN 38104-5620

Troy Jones
President, Blount County Bar Assoc.
P.O. Box 2308
Knoxville, TN 37901

Suzanne Keith
Executive Director
Tennessee Association for Justice
629 Woodland Street
Nashville, TN 37206

Rebecca Parsons
Giles County Bar Association President
Rebecca Sue Parsons, Attorney at Law
118 S. Second St.; P.O. Box 333
Pulaski, TN 38478-3219

Will Lockhart
President, Coffee County Bar Association
Burch & Lockhart
200 South Woodland Street
Manchester, TN 37355

Marsha Watson
Executive Director
Knoxville Bar Association
P.O. Box 2027
Knoxville, TN 37901-2027

Denny Mitchell
President, White County Bar Association
Mitchell Law Office
112 South Main Street
Sparta, TN 38583

David Myers
President, Union County Bar Association
105 Monroe Street; P.O. Box 13
Maynardville, TN 37807-0013

Matt Maddox
President, Carroll County Bar Association
Attorney at Law
P.O. Box 827
Huntingdon, TN 38344

Rachel Mancl
President, Kingsport Bar Association
Hunter Smith & Davis LLP
P.O. Box 3740
Kingsport, TN 37664

Danielle Hardee
President, Jackson-Madison-Henderson
County Bar Association
U.S. District Federal Court
111 S. Highland Avenue
Jackson, TN 38301

Bill Koch
Dean, Nashville School of Law
4013 Armory Oaks Drive
Nashville, TN 37204-4577

Chessia Cox
President, McMinn-Meigs County Bar
Association
Cox Law Office
130 East Washington Ave., Suite 7
Athens, TN 37303

William Lawson
President, Unicoi County Bar Association
112 Gay Street, Suite A; P.O. Box 16
Erwin, TN 37650-0016

Judy McKissack
Director
Tennessee Commission on Continuing
Legal Education
1321 Murfreesboro Pike, #810
Nashville, TN 37217

Larry Stanley
President, Warren County Bar Association
100 W. Main Street
P.O. Box 568
McMinnville, TN 37111-0568

Ashley Boyer
President, Bristol Bar Association
Sullivan County Public Defender Office
266 Blountville Bypass; P.O. Box 839
Blountville, TN 37617

Ian McCabe
President, Loudon County Bar Association
Law Office of Ian McCabe
103 Suburban Road, #201
Knoxville, TN 37923-5584

Mark Free
President, Maury County Bar Association
Tisher, Free & Lynn PLLC
809 S. Main Street, Suite 200
Columbia, TN 38401

Lynn Newcomb
Pres., Cheatham County Bar Assoc.
Balthrop, Perry, Noe, Newcomb
102 Boyd Street; P.O. Box 82
Ashland City, TN 37015

William Jones
President, Campbell County Bar Assoc.
Assistant Public Defender
3170 Appalachian Highway, Suite 1
Jacksboro, TN 37757

Liz Sitgreaves
President, LAW Marion Griffin Chapter
The Law Offices of John Day
5141 Virginia Way, Suite 270
Brentwood, TN 37027

Donna Hargrove
Public Defenders Conference Rep.
17th Judicial District Public Defender
P.O. Box 1165
Lewisburg, TN 37091-0165

Earle Schwarz
President, Memphis Bar Association
2157 Madison Avenue, Suite 201
Memphis, TN 38104

Charles Crass
President, Roane County Bar
100 Court Street
Kingston, TN 37763-2809

Steven Jacoway
President-Elect, Chattanooga Bar Assoc.
Patrick, Beard, Schulman & Jacoway, P.C.
537 Market Street, Suite 202
Chattanooga, TN 37402

Deborah Tate
Administrative Director
Administrative Offices of the Courts
511 Union Street, Suite 600
Nashville, TN 37219-1768

Robert Thomas
NBA, Ballard Taylor Chapter President
Federal Defender Office
200 Jefferson Ave., Suite 200
Memphis, TN 38103

Amy Farrar
President, MTLAW
Farrar Wright PLLC
122 North Church Street
Murfreesboro, TN 37130

Amy Farrar
President, MTLAW
Farrar Wright PLLC
122 North Church Street
Murfreesboro, TN 37130

Beau Pemberton
President, Weakley County Bar Association
Law Office Of James H. Bradberry
109 North Poplar Street; P.O. Box 789
Dresden, TN 38225-0789

Lisa Perlen
Executive Director
Tennessee Board of Law Examiners
511 Union Street, Suite 525
Nashville, TN 37219

Gary Wade
Dean, Lincoln Memorial University
Duncan School of Law
601 W. Summit Hill Drive
Knoxville, TN 37902

Paz Haynes
President, Napier-Looby Bar Foundation
Bone McAllester Norton PLLC
511 Union Street, Suite 1600
Nashville, TN 37219

Laura Smith
President-Elect, Nashville Bar Assoc.
Nashville Electric Service
1214 Church Street
Nashville, TN 37246

Harriet Thompson
President, Hardeman County Bar
Association
P.O. Box 600
Bolivar, TN 38008

Erin Palmer Polly
President Elect, Nashville Bar Association
Butler Snow LLP
150 3rd Avenue South, Suite 1600
Nashville, TN 37201

John Lee Williams
President, Humphreys County Bar Assoc.
Porch Peeler Williams Thomason
102 S. Court Square
Waverly, TN 37185-2113

Melanie Wilson
Dean
UT College Of Law
1505 W. Cumberland Avenue
Knoxville, TN 37996-1810

Ann Pruitt
Executive Director
Tennessee Alliance for Legal Services
1220 Vintage Place
Nashville, TN 37215

Lauren Sherrell
President, SETLAW
O'Shaughnessy & Carter, PLLC
735 Broad Street, Suite 1000
Chattanooga, TN 37402

Mario Ramos
President, Tennessee Association of
Spanish Speaking Attorneys
2021 Richard Jones Road, Suite 300
Nashville, TN 37215

Zachary Talbot
President, Montgomery County Bar Assoc.
Patton & Pittman
101 North Third Street
Clarksville, TN 37040-3401

Randall Self
President, Lincoln County Bar Association
Randall E. Self, Attorney At Law
131A Market Street E.; P.O. Box 501
Fayetteville, TN 37334-0501

Kyle Heckman
President, 15th Judicial District Bar Assoc.
Lee & Lee Attorneys at Law
109 E. Gay Street
Lebanon, TN 37087-3611

James Taylor
President, Rhea County Bar Association
375 Church Street, Suite 300
Dayton, TN 37321-1322

Julie Palmer
President, Dyer County Bar Association
Palmer Law Firm
116 W. Court Street
Dyersburg, TN 38024-4639

Amanda Busby
Knoxville Bar Assoc. Imm. Past President
Anderson Busby PLLC
P.O. Box 2588
Knoxville, TN 37901-2588

FILED

JUL 17 2018

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

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

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

No. ADM2018-713

**COMMENT OF THE TENNESSEE BOARD OF LAW EXAMINERS
AND THE TENNESSEE LAW COURSE COMMITTEE**

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

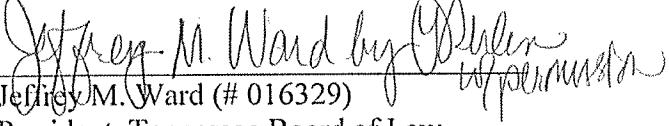
The Board and TLC Committee appreciate the interest of the Court in establishing a Tennessee Law Course in conjunction with adoption of the Uniform Bar Examination. Further, the Board and the TLC Committee have read with interest the comments that have been filed and the Motion of the Knoxville Bar Association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

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

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

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

Respectfully submitted,


Jeffrey M. Ward (# 016329)
President, Tennessee Board of Law
Examiners and Chair, Tennessee Law
Course Committee

Milligan and Coleman, PLLC
230 W. Depot Street
Greeneville, TN 37743



Lisa D. Perlen (#012749)
Executive Director
Tennessee Board of Law Examiners
511 Union Street, Suite 525
Nashville, TN 37219
(615) 741-3234

Attachments:

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

Certificate of Service

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

Marsha Watson, Executive Director
Knoxville Bar Association
mwatson@knoxbar.org

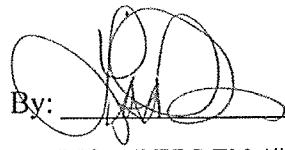
Joycelyn Stevens, Executive Director
Tennessee Bar Association
jstevenson@tnbar.org

Anne Fritz, Executive Director
Memphis Bar Association
afritz@memphisbar.org

Monica Mackie, Executive Director
Nashville Bar Association
Monica.Mackie@nashvillebar.org

Sandy Garrett, Chief Disciplinary Counsel
Board of Professional Responsibility
sgarrett@tbpr.org

Judy McKissack, Executive Director
Commission on Continuing Legal Education
Judy.McKissack@cletn.com

By: 
LISA PERLEN (#012749)

Executive Director, Tennessee Board of Law
Examiners

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

2 **PREFACE**

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

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

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

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

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

- 14 (1) admitted to the bar of the Supreme Court in accordance with Tenn. Sup. Ct. R. 6; and
- 15 (2) issued a license by the Supreme Court in accordance with this Rule and after having been
16 administered the oath in accordance with Tenn. Sup. Ct. R. 6 as set forth in this Rule; or
- 17 (b) ~~he or she~~ has been granted permission to engage in special or limited practice ~~under~~ under the
18 provisions of sections 5.01(g), 10.01, 10.02, 10.03, 10.04, or 10.06 of this Rule; or
- 19 (c) ~~he or she~~ is practicing in compliance with Tenn. Sup. Ct. R. 8, RPC 5.5(c), Tenn. Sup. Ct. R.
20 8, RPC 5.5(d), or Tenn. Sup. Ct. R. 19 (pro hac vice).

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

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

- 26 (a) expiration of bar examination or transferred UBE scores as provided in sections 3.05(b) and
27 4.07(c); or
- 28 (b) two years ~~of~~from:
 - 29 (1) (a) the date of the notice that the applicant successfully passed the bar examination; or
 - 30 (1)(2) (b) the date of the notice of the Board’s approval of the application for admission
31 under Section 3.05, or Article V, or section 10.06 of this Rule.
- 32 (c) All bar examination scores and transferred UBE scores and investigations are invalid upon
33 the expiration of the applicable three-year period provided in section 4.07(e) of this Rule. All
34 background investigations are invalid upon expiration of the two-year period applicable to
35 background investigations, as provided in ~~under~~ section 6.03. If the investigation expires after

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

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

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

- 41 (a) is at least 18 years of age;
- 42 (b) has satisfied the educational requirements for admission specified by this Rule;
- 43 (c) has passed the examination or examinations required by this Rule, or is eligible for admission
44 without examination as hereinafter provided in section 3.05, or in Article V, or section 10.06;
- 45 (e)(d) has achieved a passing score on the Multistate Professional Responsibility Examination
46 as provided in section 4.07(d);
- 47 (e) has demonstrated the reputation and character that in the opinion of the Board indicates no
48 reasonable basis for substantial doubts that the applicant will adhere to the standards of
49 conduct required of attorneys in this State; and
- 50 (f) has certified that he or she has read and is familiar with the Tennessee Rules of Professional
51 Conduct;
- 52 (g) has completed the Tennessee Law Course as provided in section 1.07;
- 53 (d)(h) has paid all fees for licensing and admission to this Board, the Clerk of the Appellate
54 Court, and the Board of Professional Responsibility; and
- 55 (e)(i) has evidenced a commitment to serve the administration of justice in this State.

56 Sec. 1.04. Waiver of Examination.

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

62 Sec. 1.05. Status of Persons Admitted.

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

68 Sec. 1.06. Existing Licenses.

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

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

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

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

78 (1) Section 3.01, Admission by Examination,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

151

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

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12 Court, unless the person:

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

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27 4.07(c); or
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31 Section 3.05, Article V, or section 10.06 of this Rule.
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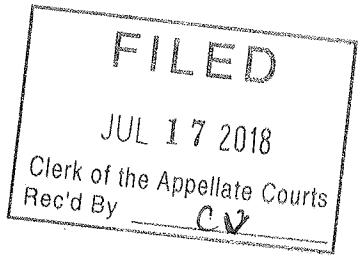
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112 stationed in the State of Tennessee or Fort Campbell, Kentucky;
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114 resort in at least one other jurisdiction of the United States;
- 115 (3) meets the educational requirements of sections 2.01 and 2.02 of this Rule;
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- 118 (5) is currently an active member in good standing in every jurisdiction to which the
119 applicant has been admitted to practice, or has resigned or been administratively revoked
120 while in good standing from every jurisdiction without any pending disciplinary actions;
- 121 (6) is not currently subject to lawyer discipline in any other jurisdiction;
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123 licensing in this State;
- 124 (8) is physically residing in Tennessee or Fort Campbell, Kentucky, due to the
125 servicemember's military orders;
- 126 (9) has never failed the Tennessee bar examination;
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128 Professional Conduct; and
- 129 (11) has paid such fees as may be set by the Board.
- 130 (b) **Application Requirements.** Any applicant seeking a temporary license under this section
131 10.06 to practice law in Tennessee shall:
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134 the manner established by the Board;
- 135 (2) submit a copy of the applicant's Military Spouse Dependent Identification and
136 documentation evidencing a spousal relationship with the servicemember;
- 137 (3) provide a copy of the servicemember's military orders to a military installation in
138 Tennessee or Fort Campbell, Kentucky, or a letter from the servicemember's command
139 verifying that the requirement in Paragraph (a)(8) of this section is met;
- 140 (4) submit certificate(s) of good standing from the highest court of each state to which the
141 applicant has been admitted and disciplinary history(ies) to demonstrate satisfaction of
142 the requirements of paragraph (a)(5) of this section 10.06;
- 143 (5) pay the fee established pursuant to section 11.01 of this Rule; and
- 144 (6) comply with the provisions of section 1.07 of this Rule.

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

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE



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

No. ADM2018-713

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

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

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

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

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

Tennessee Law Course Objectives and Content

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

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

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

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

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

Course Handbook

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

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

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

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

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

Course Delivery Method

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

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

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

Our Offer to Develop and Teach the Course

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

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

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

Course Timing

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

Course Fees

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

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

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

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

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

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

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

Conclusion

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

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

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

Dated: July 17, 2018

Respectfully submitted,

Eric Franklin Amarante
Brad Areheart
Wendy Bach
Teri Dobbins Baxter
Zack Buck
Judy Cornett
Joan MacLeod Heminway
Michael Higdon
Lucy Jewel
Brian Krumm
George Kuney
Michelle Kwon
Alex Long
Joy Radice
Briana Rosenbaum
Paula Schaefer
Valorie Vojdik
Penny White
David Wolitz

The University of Tennessee
College of Law
1505 W. Cumberland Ave.
Knoxville, TN 37922
865-974-6793



July 5, 2018

Knoxville Bar Association
505 Main Street, Suite 50
P.O. Box 2027
Knoxville, TN 37901-2027
PH: (865) 522-6522
FAX: (865) 523-5662
www.knoxbar.org

VIA E-Mail: appellatecourtclerk@tncourts.gov

James Hivner, Clerk of Appellate Courts
Tennessee Supreme Court
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

FILED

JUL - 5 2018

Clerk of the Appellate Courts
Rec'd By _____

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

Dear Mr. Hivner:

Officers

Keith H. Burroughs
President

Wynne du Mariau Caffey-Knight
President-Elect

Hanson R. Tipton
Treasurer

Cheryl G. Rice
Secretary

Amanda M. Busby
Immediate Past President

Board of Governors

Charme P. Allen
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Elizabeth K.B. Meadows
Mary D. Miller
Carrie S. O'Rear
T. Mitchell Panter
M. Samantha Parris
Robert E. Pryor, Jr.
Mikel A. Towe

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

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

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

Sincerely,

Keith H. Burroughs, President
Knoxville Bar Association

Executive Director
Marsha S. Watson
mwatson@knoxbar.org

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

Yvonne K. Chapman
Attorney at Law

1313 Pebble Creek Lane
Memphis, Tennessee 38120



Phone: 901-494-4420

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

FILED
JUN 18 2018
Clerk of the Appellate Courts
Rec'd By _____

Attn: James M. Hivner, Clerk of Appellate Courts

Transmitted via email to 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 course¹ 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*.²

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"³ 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.

¹ 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, (retrieved 2018-06-18).

² *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. (retrieved 2018-06-18).

More recently, in a Foreword to the 2007 *Best Practices Report*³, 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*⁴, “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.⁵ A pilot program offering CLE credits began July 1, 2013, but expired December 31, 2016.⁶

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.

³ 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”).

⁴ *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. (retrieved 2018-06-18).

⁵ 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).

⁶ 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,⁷ 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

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

¹Fundamental 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

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

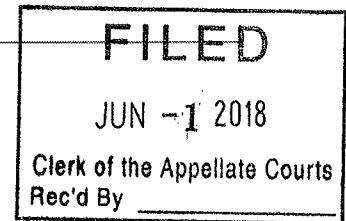
appellatecourtclerk - Tennessee Law Course

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 2nd law school *could* add to the struggle.

J. Myers Morton
Deputy Law Director
Knox County, Tennessee
400 W. Main Street
Suite 612 City-County Building
Knoxville, Tennessee 37902
Cell: (865) 680-8424
Phone: (865) 215-2327

CONFIDENTIAL:

This is a privileged and confidential communication under the common interest doctrine, joint defense agreement or attorney client privilege, and is intended only for the person(s) to whom it is addressed. It is not to be divulged in part or in whole, nor is the substance of it to be divulged in part or in whole, to anyone other than the addressee(s) without the express permission of the sender. If you have received this message and are not the intended recipient, please notify the Knox County Law Director's Office immediately at 865-215-2327, and delete the message from your system. Thank you.

appellatecourtclerk - RE: Tennessee Law Course

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

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=ZgU3o6fFrcmFoOBPa1INN6cOFhY%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]
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> 6/1/2018 6:03 AM >>>
Clerk Hivner:

The opportunity to comment is appreciated.

Lisa Marsh - Proposed Rule 6 comments

ADM 2018-713

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

FILED

MAY 10 2018

Clerk of the Appellate Courts
Rec'd By LM

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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