

FILED
MAR 15 2019
Clerk of the Appellate Courts
Rec'd By _____

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

**IN RE: AMENDMENT TO RULE 7, RULES OF THE
TENNESSEE SUPREME COURT RULE**

NO.: ADM2019-00108

**COMMENT OF THE BOARD OF LAW EXAMINERS TO THE
PROPOSAL TO AMEND TENN. SUP. CT. R. 7**

Comes now the Tennessee Board of Law Examiners (the Board), pursuant to the Order filed February 15, 2019, and submits the following Comments to Proposed Amendments to Tenn. Sup. Ct. R.7.

The Board previously requested an extension of time to file written comment on the proposal to Tenn. Sup. Ct. R. 7 ("Rule 7"), in order to allow the Board time to work with the law schools located in Tennessee on the changes to the law school approval process in Article II of Rule 7, and the law student practice provisions and approval of law school clinic faculty found in sections 10.02 and 10.03. The Board appreciates the time and attention given by the esteemed deans and faculty of the Tennessee law schools with whom the Board collaborated to update the provisions in Rule 7 related to approval of law schools, law school clinics and law student practice.

The first significant recommended change from this collaboration is found in Article II. Sections 2.03 through 2.15 have been moved from Article II, Educational Requirements for Admission, to new Article XVII, Tennessee-Approved Law Schools. The proposed amendments by operation of proposed sections 17.01 and 17.02 recognize that law schools accredited by the American Bar Association ("ABA") are regularly reviewed and approved based on established standards. Therefore, once a law school is provisionally-approved by the ABA, Board approval is not required unless the law school does not achieve full accreditation or subsequent to full approval, the law school's status changes. In the event of a change of status or failure to achieve full accreditation, the law school will be required to re-apply for ABA-accreditation for the Board to consider approving the school in the interim. Law schools must be approved by the state or accredited by the ABA in order to permit graduates of the school to seek admission in the state. To have additional Tennessee requirements for ABA-accredited

schools located in Tennessee would put the Tennessee schools at a disadvantage as compared to other ABA-accredited schools and are not warranted.

The Board will continue to investigate new law schools, provided the new law schools are seeking ABA-accreditation. Existing law schools that are Tennessee-approved only will continue in that status. As provided in the current rule, a law school in Tennessee that is not Tennessee-approved or ABA-accredited will be a substandard school. Proposed sections 17.03 through 17.10 mirror the provisions of current sections 2.07 through 2.15 and clarify that the Board will make recommendations regarding approval of law schools to the Court. Current sections 2.05 and 2.06 have been incorporated in proposed section 17.01.

The Board worked with clinic directors from all of the Tennessee law schools to update sections 10.02 and 10.03 of Rule 7, relating to law school clinics and law student practice. Approval of clinics, currently in section 10.03, has been moved to section 10.02 so that all provisions of section 10.03 relate to law student practice and all provisions of 10.02 related to law school programs and faculty. The “Explanatory Comments” to section 10.03 have been moved to the body of sections 10.02 and 10.03 and the provisions apply to experiential learning programs offered by law schools and tied to the definitions in the ABA Standards and Rules of Procedure for Approved Law Schools.

The definition of “Experiential Learning Program” in section 10.02 includes both law school clinics and field placements (externships). The Board will review a law school’s Experiential Learning Program and make a recommendation to the Court for approval, which is required for law students to practice under section 10.03. The Board recommends, in the event the Court approves the recommended changes, that the order approving the Amendments to Rule 7 include a provision that continues the approval of existing law school Experiential Learning Programs.

Section 10.02 also includes modifications to the approval of a limited license for attorneys who are employed by or associated with a law school as faculty for the Experiential Learning Program. Again, the Board will make a recommendation regarding approval of the attorneys to the Supreme Court.

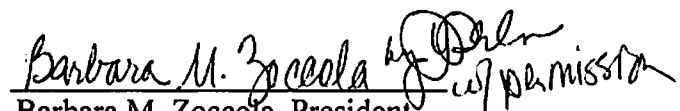
Changes to section 10.03 recognize the educational purpose of the law student practice provisions. The proposed revisions include new provisions regarding the duration of law student practice, short-term permission for previously approved students, the activities in which the law student may engage

and for whom they may offer services, supervision requirements, and jurisdiction over disciplinary complaints filed against law students.

The proposed changes are attached to this comment.

Wherefore, for the foregoing reasons, the Board respectfully requests that this Honorable Court enter an Order amending Tennessee Supreme Court Rule 7 as set forth herein.

Respectfully submitted,


Barbara M. Zoccola, President
Tennessee Board of Law
Examiners
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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Comment of The Board of Law Examiners to the Proposal to Amend Tenn. Sup. Ct. R. 7 has been served on the deans of the Tennessee Law Schools by email on this the 15th day of March, 2019.



Lisa Rorlen
Executive Director

Rule 7. Licensing of Attorneys.

ARTICLE II. EDUCATIONAL REQUIREMENTS FOR ADMISSION

Sec. 2.01. Bachelor's Degree.

- (a) Any applicant seeking admission must have received a Bachelor's Degree or higher from a college on the approved list of the Southern Association of Colleges and Secondary Schools, or the equivalent regional accrediting association, or any accreditation agency imposing at least substantially equivalent standards prior to taking his or her first bar examination. As part of the application for admission, an applicant shall provide evidence of the degree in the form required by the Board.
- (b) To be eligible to take the exam, an applicant shall provide evidence of the degree, earned prior to the examination, in the form required by the Board.
- (c) The Board in its discretion may waive the requirement of a degree from an accredited undergraduate school if the applicant has graduated with a Juris Doctor Degree (hereafter "J.D. Degree") from either: (1) a law school accredited by the American Bar Association (hereafter "ABA") or (2) a Tennessee law school approved by the Board pursuant to section 17.01 of this Rule, and the applicant submits a request for waiver and provides the Board satisfactory evidence that his or her undergraduate education is substantially equivalent an undergraduate degree awarded by a regional accrediting association.

Sec. 2.02. Legal Education Requirements.

- (a) Any applicant seeking admission must have completed a course of instruction in and graduated with a J.D. Degree from a law school accredited by the ABA at the time of applicant's graduation, or a Tennessee law school approved by the Board pursuant to section 17.01 of this Rule at the time of the applicant's graduation.
- (b) To be eligible to take the examination or for admission by transferred UBE score, an applicant must cause to be filed as part of the application a certificate from the dean or supervising authority of the school of law in which the applicant is enrolled or from which the applicant graduated, certifying that either the school is accredited by the ABA or the school is a Tennessee law school that has been approved by the Board under section 17.01 of this Rule and that:
- (1) the applicant has completed all the requirements for graduation, or
 - (2) the applicant will have the number of credit hours required for graduation by the date of the bar examination.
- (c) An applicant seeking admission by transferred UBE score under section 3.05 or without examination under section 5.01, or as the spouse of a military servicemember under section 10.06 shall provide evidence of the J.D. Degree in the form required by the Board.
- (d) An attorney who received a legal education in the United States or a U.S. Territory but is ineligible for admission because the law school attended was not accredited by the ABA or was a Tennessee law school not approved by the Board may be considered for admission by examination or transferred UBE score provided the attorney satisfies the following educational, licensing, and practice requirements:
- (1) The attorney holds a J.D. Degree, which is based on in-person attendance, from a law school approved by an authority similar to the Tennessee Board of Law Examiners in the jurisdiction where

the law school exists and which requires the equivalent of a three-year course of study that is the substantial equivalent of the legal education provided by approved law schools located in Tennessee.

(A) The applicant shall bear the cost of the evaluation of his/her legal education, as determined and as required by the Board, and the applicant shall not be eligible to sit for the bar examination until the applicant's legal education is approved by the Board.

(B) In evaluating the education received the Board shall consider, but not be limited to, such factors as the similarity of the curriculum taken to that offered in law schools approved by the ABA and that the school at which the applicant's legal education was received has been examined and approved by other state bar associations examining the legal qualifications of non-ABA law school graduates; and

(2) The attorney has passed a bar examination equivalent to that required by Tennessee in the state in which the law school exists; and

(3) The attorney has been primarily engaged in the active practice of law, as defined in section 5.01(c) of this Rule, in one or more states or territories of the United States, or the District of Columbia, for three of the five years immediately preceding the date upon which the application is filed; and

(4) The attorney meets all other requirements contained in the Rules of the Supreme Court of Tennessee pertaining to Admission of Persons to Practice Law.

(e) No correspondence course will be accepted by the Board as any part of an applicant's legal education to meet the requirements of this Rule. Distance, on-line or other instruction that is not in person will be accepted as part of a curriculum only to the extent approved by the ABA for accredited law schools.

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ARTICLE XVII. TENNESSEE-APPROVED LAW SCHOOLS

Sec. 17.01. Tennessee Law Schools.

(a) **Tennessee-Approved Law Schools Not Seeking ABA Accreditation.** Tennessee law schools that are not ABA-accredited or seeking ABA accreditation and that are currently approved by this Board and such approval is not subject to obtaining full ABA accreditation (herein, Tennessee-Approved Law School) shall remain approved so long as the school continues to comply with the requirements of this Rule as it may be amended and any standards adopted by the Board and approved by the Court.

(b) **Law Schools in Tennessee Seeking ABA-Accreditation.**

(1) The Board may recommend approval to the Supreme Court of any law school in Tennessee for the purpose of allowing its graduates to be eligible for admission in Tennessee if the law school is seeking provisional accreditation, and pending full accreditation by the ABA. The Supreme Court shall certify or deny the Board's recommendation to approve the law school by written order.

(2) The recommendation of the Board to the Supreme shall be subject to a site evaluation as provided in section 17.05. Until the ABA grants such provisional accreditation, the law school shall be considered a Tennessee-Approved Law School, as provided herein.

(3) Law schools in Tennessee that are seeking provisional accreditation from the ABA but that are not yet provisionally approved are subject to all of the requirements of a Tennessee-Approved Law School.

(4) Graduates of law schools provisionally or fully accredited by the ABA (herein, ABA Law School) are eligible to seek admission in Tennessee.

(c) Law Schools Seeking Approval of Substantial Change. Whether or not physically located in Tennessee, if an ABA Law School requests Approval of a Substantial Change from the ABA for purposes of opening a law school branch in Tennessee or moving an ABA Law School to Tennessee, the branch or relocated law school shall be treated as a new law school in Tennessee seeking ABA accreditation as provided in paragraph (b), above.

(d) Graduates of Tennessee-Approved Law Schools. Graduates of Tennessee-Approved Law Schools are eligible to seek admission in Tennessee.

(e) Notices from the ABA Regarding Compliance with Standards or Status of Accreditation.

(1) Reporting Requirements for ABA Law Schools in Tennessee. Upon receipt of notice from the ABA that an ABA-accredited law school located in Tennessee is out of compliance with the ABA standards or that the accreditation status of the law school has changed, the law school shall furnish to the Board copies of the notice and such documentation as the Board may request, including self-study analyses and evaluation reports, prepared, completed or received in connection with such school's accreditation status with the ABA. All documentation provided to the Board shall be confidential in order to ensure a frank, candid exchange of information.

(2) ABA Law Schools that are not approved for provisional accreditation by the ABA, do not achieve full accreditation or lose their ABA accreditation will not be recommended for approval to the Supreme Court by the Board until a new application or similar process for provisional or renewed accreditation has been initiated with the ABA, subject to a site evaluation as provided in section 17.05 below.

(f) Statement of Accreditation or Approval Status.

(1) In its catalogs or other informational material distributed to prospective students, a law school shall state whether it is accredited by the ABA or has been approved by the Board pursuant to section 17.01 of this Rule.

(2) Any law school in Tennessee that falsely advertises in its catalog or otherwise that it has been accredited by the ABA or approved by the Board shall be recognized by the Board as a substandard school and will be so classified and disapproved. Students of a substandard school shall not be eligible for admission in Tennessee.

(g) Substandard Law Schools.

(1) Any law school located in, or seeking to locate in Tennessee (whether offering a full-time or part-time curriculum), which permits the enrollment of students without first having obtained the written

approval of the Supreme Court as provided in section 17.01, shall be classified as a substandard school.

(2) Any ABA-Accredited Law School or Tennessee-Approved Law School that loses its accreditation or provisional approval and does not seek reinstatement of such accreditation or provisional approval shall be classified as a substandard school.

(3) Graduates at law schools that are not ABA-accredited or Tennessee-Approved shall be barred from admission in Tennessee unless the student meets the requirements of section 2.02(d) or section 7.01 of this Rule.

17.02 Functions of the Board in Review and Regulation of Tennessee-Approved Law Schools.

(a) For any Tennessee-Approved Law School as defined in section 17.01:

(1) the Board shall determine whether the law school is effectively achieving its mission and objectives, which includes meeting educational standards similar to those defined in the ABA Standards and any standards adopted by this Board. Upon determination by the Board that the law school has met the required standards, the Board shall recommend provisional or continued approval of the law school to the Supreme Court;

(2) the Board is authorized to make inquiry to the school and respond to inquiry by the school and to adopt such additional standards as in its judgment the educational needs of the school may justify, subject to the Supreme Court's approval;

(3) if the Board has reasonable cause to believe that a law school does not comply with the standards in sec. 17.02(a)(1) of this Rule, and/or the school is not effectively achieving its mission and objectives, it shall inform the school of its apparent non-compliance or failure to effectively achieve its mission or objectives and follow the procedures in sections 17.03 through 17.10 of this Rule; and

(4) the Board is authorized to:

(A) require a school to furnish such information, including periodic reports, as it deems reasonably appropriate for carrying out the Board's responsibilities; and

(B) investigate a law school in accordance with section 17.03 of this Rule, provided that such investigation shall be confidential to ensure a frank, candid exchange of information and evaluation.

(b) Self-Study.

(1) The dean and faculty of a Tennessee-Approved Law School shall develop and periodically revise a written self-study, including an evaluation of the following topics:

(A) the continuing relevance of the school's mission or objectives;

(B) the effectiveness of the program of legal education;

(C) the appropriateness of the school's admission policies;

(D) the significance of the trend in rates of graduation and attrition;

(E) the significance of the trends in the pass/fail rate on the bar examination;

(F) the strengths and weaknesses of the school's policies;

(G) goals to improve the educational program; and

(H) means to accomplish unrealized goals.

(2) The self-study shall be completed every seven years or earlier upon written request of the Board.

(3) Certification of Compliance. The dean and the chairperson of the board of directors of the law school shall certify annually in writing to the Board that the school is effectively achieving its mission and objectives or, if not effectively achieving its mission or objectives, identify areas of non-compliance or other deficiencies, as well as its intention and plan of action to attain compliance.

(c) Investigation and Evaluation by the Board. The Board may visit, investigate, and/or evaluate a Tennessee-Approved Law School, from time to time, with respect to the adequacy of its facilities, faculty and course of study. The refusal of any such school to cooperate or participate in the conduct of such evaluation shall be reported to the Supreme Court, which may, after hearing, take such actions as the facts may justify.

Sec. 17.03. Site Evaluation of Tennessee-Approved Law Schools.

(a) A site evaluation by the Board shall be conducted prior to approval of any law school in Tennessee.

(b) For a Tennessee-Approved Law School, a site evaluation by the Board shall be conducted in the third year following the granting of approval and every seventh year thereafter. The Board may order additional site evaluations of a school when special circumstances warrant.

(c) The Board shall arrange for the site evaluation or inspection of the law school by a team of qualified and objective persons who have no conflicts of interest as defined in section 17.10 of this Rule. The cost of the site evaluation or inspection, including the fees of any consultants engaged as part of the Board's site evaluation team, shall be paid by the law school.

(d) Before the site evaluation, the law school shall furnish to the Board and members of the site evaluation team:

(1) For a law school seeking provisional accreditation from the ABA or approval of a substantial change as provided in section 17.01(b), the completed application submitted to the ABA;

(2) the current self-study undertaken by the dean and faculty; and

(3) any complaints that the law school is not in compliance with the standards in section 17.02(a)(1).

(e) The Board shall schedule the site evaluation of the law school to take place during the academic year at a time when regular academic classes are being conducted. A site evaluation usually requires several days, as classes are visited, faculty quality assessed, admissions policies reviewed, records inspected, physical facilities examined, the library assessed, information reviewed, and consultations held with the chairperson of the board of directors of the law school, officers of the institution, the dean of the law school, members of the law school faculty, professional staff, law students, and members of the legal community. In the case of a law school seeking approval, such visit shall be scheduled within three months after receipt by the Board of an application for approval.

(f) Following a site evaluation, the team shall promptly prepare a written report based upon the site evaluation. The team shall not determine compliance or non-compliance with the standards, but shall

report facts and observations that will enable the Board and the Supreme Court to determine compliance. The report of the team should give as much pertinent information as feasible.

(g) The team shall promptly submit its report to the Board. After reviewing the report, the Board shall transmit the report to the chairperson of the board of directors of the law school and the dean of the law school in order to provide an opportunity to make factual corrections and comments. In the letter transmitting the report, the Board shall advise that any response to the report must be received by a specified date at least thirty days from the date the Board mailed the report to the school, unless the school consents to a shorter time period.

(h) Following receipt of the school's response to the site evaluation report, the Board shall forward a copy of the report with the school's response to members of the Board and the site evaluation team.

(i) The Board may not consider any additional information submitted by the school after the school's response to the report has been received by the Board, unless

- (1) the information is received in writing by the Board at least fifteen days before the Board meeting at which the report is scheduled to be considered, or
- (2) for good cause shown, the president of the Board authorizes consideration of the additional information that was not received in a timely manner.

(j) Upon the completion of the procedures, the Board shall consider the law school's evaluation and determine whether the school is in compliance with the standards and is effectively achieving its mission and objectives.

(k) A request for postponement of a site evaluation will be granted only if the law school is in the process of moving to a new physical facility or if extraordinary circumstances exist which would make it impossible for the scheduled site evaluation to take place. The postponement shall not exceed one year.

Sec. 17.04. Action Concerning Apparent Non-Compliance with Standards or Deficiencies in Mission.

(a) If the Board has reasonable cause to believe that a Tennessee-Approved Law School has not complied with the standards in section 17.02(a)(1) of this Rule or is not effectively achieving its mission or objectives, the Board shall inform the school it is not in compliance and request the school to furnish by a date certain further information about the matter and about action taken to bring the school in compliance with the standards or correct the deficiencies. The school shall furnish the requested information to the Board within the time prescribed.

(b) If upon a review of the information furnished by the law school in response to the Board's request and other relevant information, the Board determines that the school has not demonstrated compliance with the standards or is not effectively achieving its mission or objectives, the school may be required to appear at a hearing before the Board to be held at a specified time and place to show cause why the school should not be required to take appropriate remedial action, placed on probation, removed from the list of law schools approved by the Board, or be subject to other appropriate action.

(c) If the Board finds that a law school has failed to comply with the standards or is not effectively achieving its mission or objectives by refusing to furnish information or to cooperate in a site evaluation, the school may be required to appear at a hearing before the Board to be held at a specified time and place to show cause why the school should not be required to take appropriate remedial action, placed on

probation, removed from the list of law schools approved by the Board, or be subject to other appropriate action.

(d) The Board shall give the law school at least thirty days' notice of the show cause hearing. The notice shall specify the school's apparent non-compliance with the standards or its failure to effectively achieve its mission or objectives and state the time and place of the hearing. For good cause shown, the president of the Board may grant the school additional time, not to exceed thirty days. Both the notice and the request for extension of time must be in writing. The Board shall send the notice of hearing to the dean of the school by certified or registered U. S. mail.

Sec. 17.05. Fact Finder.

(a) The president of the Board may appoint a fact finder to elicit facts relevant to any matter before the Board. The fees of the fact finder and any reasonable and necessary expenses incurred shall be paid by the law school.

(b) The Board shall furnish the fact finder with a copy of the most recent site evaluation report, any action letters written subsequent to the most recent site evaluation report, notice of hearing and other relevant information.

(c) Following the fact finding visit, the fact finder shall promptly prepare a written report. The fact finder shall not determine compliance or non-compliance with the standards or whether the school is effectively achieving its mission or objectives, but shall report facts and observations that will enable the Board to determine compliance or deficiencies. The report of the fact finder should give as much pertinent information as feasible.

(d) The fact finder shall promptly submit the report to the Board. After reviewing the report, the Board shall transmit the report to the dean of the law school in order to provide an opportunity to make factual corrections and comments. In the letter of transmittal of the report, the Board shall include the date on which the Board will consider the report. The Board shall further advise the school as to the date upon which their response to the report must be received by the Board, which date shall be at least fifteen days prior to the date of the meeting at which the Board will consider the report. The school shall be given at least thirty days to prepare its response to the report, unless the school consents to a shorter time period. The thirty-day period shall run from the date on which the Board mailed the report to the school.

Sec. 17.06. Hearing on Show Cause Order.

(a) The Board shall have available for review at the show cause hearing:

- (1) the fact finder's report, if any;
- (2) the most recent site evaluation report;
- (3) any site evaluation questionnaire;
- (4) any action letters written subsequent to the most recent site evaluation report, which letters direct the school to rectify non-compliance or correct deficiencies;
- (5) notice of Board hearing; and
- (6) other relevant information.

(b) Representatives of the law school, including legal counsel, may appear at the hearing and submit information to demonstrate that the school is currently in compliance with all of the standards and is effectively achieving its mission or objectives or to present a reliable plan for bringing the school into compliance with all of the standards and to correct deficiencies within a reasonable time.

(c) The Board may invite the fact finder, if any, and the chairperson of the board of directors of the law school or other member of the most recent site evaluation team to appear at the hearing. The law school shall reimburse the fact finder and site evaluation team member for reasonable and necessary expenses incurred in attending the hearing.

(d) After the hearing, the Board shall determine whether the law school is in compliance with the standards and whether it is effectively achieving its mission and objectives and, if not, it shall direct the law school to take remedial action or shall impose sanctions, as appropriate.

(1) Remedial action may be ordered pursuant to a reliable plan for bringing the school into compliance with all of the standards and to help it achieve its mission and objectives.

(2) If matters of non-compliance or deficiencies are substantial or have been persistent, then the Board may recommend to the Supreme Court that the school be subjected to sanctions other than removal from the list of approved law schools regardless of whether the school has presented a reliable plan for bringing the school into compliance or to correct deficiencies.

(3) If matters of noncompliance or deficiencies are substantial or have been persistent, and the school fails to present a reliable plan for bringing the school into compliance with all of the standards or to correct deficiencies, the Board may recommend to the Supreme Court that the school be removed from the list of approved schools.

(e) If the Board determines that the law school is in compliance and has no deficiencies, it shall conclude the matter by adopting an appropriate resolution, a copy of which shall be transmitted to the dean of the school by the Board.

Sec. 17.07. Confidentiality of Approval and Evaluation Procedures.

The proceedings set forth in sections 17.02, 17.03, 17.04, 17.05, and 17.06 of this Rule shall be confidential to ensure a frank, candid exchange of information.

Sec. 17.08. Supreme Court Consideration of Board Recommendation for Imposition of Sanctions.

(a) If the Board determines that a Tennessee-Approved Law School is not in compliance with the standards or has effectively failed to achieve its mission and objectives and recommends that the school be placed on probation or removed from the list of Tennessee-Approved Law Schools, the Board shall notify the Supreme Court and request a hearing. The Board shall notify the dean of the school of the time and place of the Supreme Court hearing, which shall be open to the public.

(b) The Board shall file with the Supreme Court in the public record the Board's written recommendation, the fact finder's report, if any, the most recent site evaluation report and any action letters to the school written subsequent to the most recent site evaluation report.

(c) Representatives of the law school, including legal counsel, may appear at the Supreme Court hearing at which the Board's recommendations are considered. The president of the Board of Law Examiners (or his or her designee) shall present the Board's findings, conclusions and recommendations.

(d) The Supreme Court shall determine whether to affirm the Board's findings and conclusions, and whether to adopt the Board's recommendations. The Board's findings and conclusions shall be affirmed if there is a substantial and material evidence to support them, unless the school presents new information that demonstrates to the Supreme Court that the school is in compliance with the standards.

(e) The Supreme Court may direct the law school to take appropriate remedial action or subject it to sanctions other than removal from the list of approved law schools regardless of whether the school has presented a reliable plan for bringing the school into compliance with all of the standards.

(f) The Supreme Court shall render its decision by written order. If the decision is adverse to the law school, the order shall provide reasons for the decision.

(g) If the Supreme Court imposes sanctions in the absence of a reliable plan for bringing the school into compliance with all of the standards or to correct deficiencies, the Board shall monitor the steps taken by the school to come into compliance. If the Court imposes sanctions pursuant to a reliable plan for bringing the school into compliance with the standards and/or to correct deficiencies, the Board shall monitor the steps taken by the school for meeting its plan. At any time that the school is not making progress toward compliance with all of the standards or to correct deficiencies, or at any time that the school is not meeting the obligations of its plan, or if at the end of a period of time set by the Court for coming into compliance the school has not achieved compliance with all of the standards or corrected all deficiencies, the Board shall forward a recommendation that the school be removed from the list of approved schools. This recommendation shall be heard by the Court under the procedures of this section 17.08 of this Rule but the only issue for Court consideration will be whether the school has met the terms of its plan or is in compliance with all of the standards or has corrected deficiencies.

(h) At any time that the school presents information on which the Board concludes that the school is in full compliance with the standards or has corrected its deficiencies, the Board shall recommend to the Supreme Court that the school be taken off probation. This recommendation will be heard by the Court under the procedures of this section 17.08 of this Rule.

Sec. 17.09. Maximum Period for Compliance with Remedial or Probationary Requirements.

Upon communication to a law school of a final decision that it is not in compliance with the standards or has failed to effectively achieve its mission or objectives and informing it that it has been ordered to take remedial action or has been placed on probation, the school shall have a period as set by the Supreme Court to come into compliance. The period may not exceed two years unless such time is extended by the Supreme Court, as the case may be, for good cause shown.

Sec. 17.10. Conflicts of Interest.

Members of the Board and any site evaluation team, as well as any fact finders appointed under the provisions of sections 17.03 and 17.05, should avoid any conflict of interest or perceived conflict of interest arising because a person has an "associational interest" in the law school or the law school program under review by the Board or the Supreme Court. Alumni, faculty and directors of the school under review are deemed to have an associational interest in the school and should recuse themselves from the process of review. Former faculty and board members who have terminated their relationship with the school less than five years prior to the site inspection, evaluation or review process are also deemed to have an associational interest in the school and should recuse themselves from the process of review.

Sec. 10.02. Approval of Experiential Learning Programs and Attorneys in Experiential Learning and Related Law School Programs.

(a) **Experiential Learning Programs.** For the purpose of this section and section 10.03 herein, **Experiential Learning Program** means an academic program administered by a law school through which a law student may enroll for academic credit in a law clinic or field placement course.

(1) A law clinic offered through an Experiential Learning Program provides substantial lawyering experience that involves advising or representing one or more actual clients or serving as a third-party neutral, and includes the following:

- (A) direct supervision of the student's performance by a law school faculty member;
- (B) opportunities for performance, feedback from a faculty member, and self-evaluation; and
- (C) a classroom instructional component, regularly scheduled tutorials, or other means of ongoing, contemporaneous, faculty-guided reflection.

(2) A field placement course offered through an Experiential Learning Program provides substantial lawyering experience that is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a setting outside a law clinic under the supervision of a licensed attorney or an individual otherwise qualified to supervise, and includes the following:

- (A) direct supervision of the student's performance by a faculty member or field placement site supervisor;
- (B) opportunities for performance, feedback from either a faculty member or a field placement site supervisor, and self-evaluation;
- (C) a written understanding among the student, faculty member, and a person in authority at the field placement that describes both the substantial lawyering experience and opportunities for performance, feedback and self-evaluation; and the respective roles of faculty and any field placement site supervisor in supervising the student and in assuring the educational quality of the experience for the student, including a clearly articulated method of evaluating the student's academic performance;
- (D) a method for selecting, training, evaluating and communicating with field placement site supervisors, including regular contact between the faculty and field placement site supervisors through in-person visits or other methods of communication that will assure the quality of the student educational experience;
- (E) a classroom instructional component, regularly scheduled tutorials, or other means of ongoing, contemporaneous, faculty-guided reflection;
- (F) evaluation of each student's educational achievement by a faculty member; and
- (G) sufficient control of the student experience to ensure that the requirements set forth in section 10.02(a)(2)(A)-(F) are met.

(b) **Approval of Experiential Learning Programs.** The Board shall review a law school's Experiential Learning Program as the basis for a recommendation to the Supreme Court. Approval of the Experiential Learning Program is a prerequisite for the approval of law students who are practicing under section 10.03 in an experiential earning setting. The criteria that serve as a basis for approval shall be:

- (1) that the law school is approved under section 17.01 of this Rule;

(2) that if the law school has an in-house legal clinic which directly represents clients, that the program has either an attorney licensed to practice and in good standing in Tennessee or an attorney approved for limited practice as provided in paragraph (d), below, who directs the clinic and who is employed by or associated with the law school; and

(3) that the law school Experiential Learning Program is otherwise operated in a manner consistent with the requirements of this Rule.

(c) The Supreme Court must approve a law school's Experiential Learning Program, based on a recommendation from the Board, before any law student may practice under section 10.03 in an experiential learning setting. Certification of an Experiential Learning Program may be withdrawn by the Supreme Court upon recommendation of the Board if the program ceases to meet the foregoing criteria.

(d) Attorneys in Experiential Learning Law School Programs. An attorney who is employed by or associated with an ABA-accredited or Tennessee-Approved Law School as faculty for the Experiential Learning Program may be admitted to practice on a limited basis before the courts of this State on behalf of the Experiential Learning Program. The attorney must establish to the satisfaction of the Board that the attorney:

(1) is a member of a court of last resort of another state, a U.S. Territory or the District of Columbia;

(2) submits a certificate from the court of last resort referenced in (d)(1) certifying that the attorney is a member in good standing at the bar of that court;

(3) has not been denied admission to practice in any jurisdiction, including Tennessee;

(4) submits a statement signed by the dean of the law school where the attorney is employed or associated in a verifying employment;

(5) has paid all required fees.

(e) The Supreme Court, upon the recommendation of the Board that the attorney satisfies all the requirements of paragraph (d), shall enter an order authorizing the attorney to practice in connection with an approved Experiential Learning Program. Upon the entry of the Court's order, the Board shall provide the attorney with a certificate of admission.

(f) Admission to practice under this section shall cease upon the first of the following to occur:

(1) after 2 years from the date of admission under this section, except in the discretion of the Supreme Court in special situations for good cause shown, provided that attorneys who wish to continue to practice in this State must seek admission under sections 3.03, 3.05 or 5.01 of this Rule so that they are eligible for licensing prior to the expiration of the two-year period. Time in practice pursuant to this section will count as "active practice of law" for purposes of admission pursuant to Article V (without examination);
or

(2) cessation of the attorney's employment by or association with the law school, notice of which will be provided to the Board by the law school dean within ten days of the attorney's cessation of employment or association with the law school.

(g) Attorneys admitted to practice under this section are subject to the Rules of Professional Conduct and may be disciplined as provided for in Tenn. Sup. Ct. R. 9.

Sec. 10.03. Law Student Practice.

(a) **Purpose.** The purpose of this section is educational; consequently, its focus is on providing opportunities, whether credit-bearing or not, for students to further their legal training through properly supervised legal practice. Interpretation of this section should be in accordance with its educational goals.

(b) **Definitions.** Throughout this section:

(1) the term “approved law school” refers to any law school in the state of Tennessee that has been accredited by the ABA or any law school in the state of Tennessee approved under section 17.01 of this Rule;

(2) the term “Experiential Learning Program” shall incorporate the definition in section 10.02(a);

(3) the term “director” refers to the director of the law school Experiential Learning Program that has been approved by the board under section 10.02(b);

(4) the term “provide legal services” is to be construed broadly, so as to allow a law student who is admitted under this section to provide any and all services that could be provided by a licensed attorney, subject to supervision as provided in this Rule;

(5) “Person or entity financially unable to afford counsel” includes all persons whom any court could deem eligible for the appointment of counsel, as well as persons and entities unable to reasonably secure legal counsel for the subject matter of the representation, or who can otherwise demonstrate to the satisfaction of the director that they cannot reasonably afford counsel;

(6) the terms “director of a municipal or county law office” or “director of a municipal or county law department” includes an attorney employed full-time by a municipality or county to provide legal advice and representation to a municipality or county or to any department, agency, or office a municipality or county;

(7) the term “Experiential Learning Program” shall incorporate the definition in section 10.02(a);

(8) the term “director” refers to the director of the law school Experiential Learning Program that has been approved by the board under section 10.02(b);

(9) the term “governmental agency or agencies” refers to any state, county, municipal or federal government agency, department or entity located in Tennessee.

(c) **Qualified law students.** In order to perform the activities outlined in paragraph (g) below, a person shall be a qualified law student enrolled in an approved law school, except that the student is not required to be enrolled during a summer term or when the school is not in session.

(d) **Certification.** The qualified law student shall:

(1) be certified by the dean or director of the law student’s law school

(A) as having satisfactorily completed not less than one-half (1/2) of the required curriculum for graduation, computed on an hourly basis;

(B) as being in academic good standing at the law school;

(C) as meeting any other requirements the law school places on certification under this rule; and

(2) certify in writing that he or she has read, is familiar with, and will abide by Tennessee Supreme Court Rules 8 and 9.

(e) Approval by the Supreme Court.

(1) The dean or the director shall file with the Supreme Court of Tennessee for its approval, on such forms as may be adopted and in such format as may be required, certification that the qualified law students meet the requirements of paragraph (d)(1), above, and include the certification of the law student required in paragraph (d)(2), above.

(2) The Supreme Court shall issue an order approving the law student practice upon approval of the qualified law student.

(3) Upon the entry of the order approving a law student to practice under this rule, the Board shall provide the student with a certificate of admission.

(f) Duration of Law Student Practice.

(1) **Eligibility.** A law student's eligibility to provide service under this rule terminates upon the earlier of:

(A) expiration of the approval by the Supreme Court;

(B) cessation of law school enrollment prior to graduation;

(C) graduation from law school;

(D) completion of the experiential learning placement; or

(E) upon written notice from the dean or the director of the Experiential Learning Program.

(2) **Short-term Permission to Engage in Law Student Practice.** Qualified law students whose approval to practice has expired under paragraph (f)(1) may participate in a short-term pro bono event as an approved qualified law student, provided that:

(A) the qualified law student is approved by the director for the short-term pro bono event;

(B) the qualified law student is supervised by an attorney approved by the director;

(C) the short-term pro bono event is sponsored by the law school; and

(D) the pro bono event is held on consecutive days and does not exceed 10 days.

(3) **Notice Required.** Notice of an event of termination of a legal extern's eligibility, other than termination due to graduation from law school, shall be provided to the Supreme Court of Tennessee and the Tennessee Board of Law Examiners.

(g) Activities.

(1) An approved qualified law student may provide legal services on behalf of any person or entity financially unable to afford counsel or on behalf a governmental agency through:

(A) a law school clinical course;

(B) governmental agencies as defined in paragraph (b)(9);

(C) Office of the Attorney General and Reporter, District Public Defender or District Attorney

General;

(D) any program funded in whole or in part by Legal Services Corporation; or

(E) a non-profit organization that, as part of its mission, provides legal services to persons or entities financially unable to afford counsel.

(2) Any pleadings, briefs, abstracts or other documents prepared by a qualified law student acting pursuant to this rule must contain the name and signature of the qualified law student who participated in drafting it with the accompanying designation, "Qualified Law Student Approved under Tenn. Sup. Ct. R. 7, Sec. 10.03" but must also be signed by the Supervising Attorney as defined in paragraph (h) below.

(3) The rules of law and evidence relating to privileged communications between attorney and client shall govern communications made or received by qualified law students and their clients.

(h) Supervision.

(1) The qualified law student shall be under the immediate and personal supervision of an attorney (the "supervising attorney") who meets the requirements of paragraph (3) below. If the Supervising Attorney is not teaching in a law school clinic, the attorney must be approved in writing by the dean or director.

(2) It is the responsibility of the Supervising Attorney to ensure that the student is properly supervised and instructed, including compliance with Tenn. Sup. Ct. R. 8, RPC 5.3, and be present for administrative or adjudicatory proceedings; however, it is not necessary that the Supervising Attorney be personally present when the student engages in other activities such as interviewing, investigation, drafting and negotiation.

(3) The Supervising Attorney must:

(A) be a lawyer licensed and in good standing in Tennessee;

(B) have practiced for a minimum of three (3) years;

(C) assume professional responsibility for the direct and immediate supervision for the professional work of the qualified law student; and

(D) be a full-time employee of an entity identified in paragraph (g)(A) – (E), above, and supervise the qualified law student in connection to that employment .

(i) Disciplinary Complaints.

(1) In the event a disciplinary complaint is filed in a case in which a qualified law student has participated under these rules, the authority with whom such complaint is filed shall immediately report the same to the dean of the student's law school and the Board of Law Examiners. Upon receipt of notice of a complaint, the dean or director shall provide the Board of Professional Responsibility the name of the Supervising Attorney for the law student against whom the complaint is filed.

(2) By operation of this Rule, a disciplinary complaint against a qualified law student constitutes a complaint against the Supervising Attorney. The Board of Professional Responsibility shall have jurisdiction over the complaint against both the student and the Supervising Attorney and, in the discretion of the Board of Professional Responsibility, may refer the complaint against the student to the Office of the Attorney General and Reporter, the Board of Law Examiners, or the law school.

(j) Compensation. This rule does not preclude compensation of a qualified law student when consistent with the law school's academic policies. However, in no event shall the qualified law student be employed or compensated directly by a client for services rendered.

Lisa Marsh - IN RE: AMENDMENT OF RULE 7, RULES OF THE TENNESSEE SUPREME COURT (No. ADM2019-00108)

FILED
FEB 14 2019
Clerk of the Appellate Courts
Rec'd By LM

From: Matt Murphy <MMurphy@smythehuff.com>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 2/14/2019 9:31 AM
Subject: IN RE: AMENDMENT OF RULE 7, RULES OF THE TENNESSEE SUPREME COURT (No. ADM2019-00108)

To Whom It May Concern:

I am an active member of the Tennessee Bar, and respectfully submit this comment in the above reference matter. I support the proposed Amendments to Rule 7 of the Rules of the Tennessee Supreme Court (No. ADM2019-00108) as recommended by the Tennessee Board of Law Examiners, and as filed by the Court of January 17, 2019.

This is especially true for the proposed deletion of former Rules 3.05(a)(3) and 5.01(e) which defeated the entire purpose of a uniform licensing exam by needlessly restricting admission and creating an unintended situation where a test taker who had failed a prior exam sitting in another state would be admitted while a test taker who had failed a prior Tennessee exam would not be admitted, even if they scored the same score on the same test.

Respectfully submitted,
Matthew R. Murphy (BPR #24627)

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Lisa Marsh - Amendment of Rule 7, Rules of the Tennessee Supreme Court (No. ADM2019-00108)

FILED

FEB 11 2019

Clerk of the Appellate Courts
Rec'd By LM

From: "Hayden, Justin" <Justin.Hayden@PNFP.COM>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 2/8/2019 6:30 PM
Subject: Amendment of Rule 7, Rules of the Tennessee Supreme Court (No. ADM2019-00108)

I, Justin T. Hayden, an active member of the Tennessee Bar, respectfully submit this comment in the above-referenced matter. I strongly support and urge the Court to adopt all proposed Amendments to Rule 7, of Rules of the Tennessee Supreme Court (No. ADM2019-00108) as recommended by the Tennessee Board of Law Examiners, and as filed by the Court on January 17, 2019. Rules 3.05(a)(3) and 5.01(e) are unfair, prejudicial, and inconsistent with the over-whelming majority of jurisdictions that have adopted the Uniform Bar Exam. Accordingly, the same should be deleted in their entirety, as proposed. Respectfully submitted, /s Justin T. Hayden

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Lisa Marsh - Amendment of Rule 7, Rules of the Tennessee Supreme Court (No. ADM2019-00108)

FILED
FEB 11 2019
Clerk of the Appellate Courts
Rec'd By LM

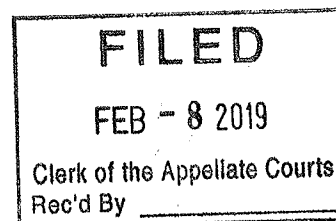
From: "Todd, Miranda" <Miranda.Todd@PNFP.COM>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 2/11/2019 10:30 AM
Subject: Amendment of Rule 7, Rules of the Tennessee Supreme Court (No. ADM2019-00108)

I, Miranda Todd, an active member of the Tennessee Bar, respectfully submit this comment in the above-referenced matter. I strongly support and urge the Court to adopt all proposed Amendments to Rule 7, of Rules of the Tennessee Supreme Court (No. ADM2019-00108) as recommended by the Tennessee Board of Law Examiners, and as filed by the Court on January 17, 2019. Rules 3.05(a)(3) and 5.01(e) are unfair, prejudicial, and inconsistent with the over-whelming majority of jurisdictions that have adopted the Uniform Bar Exam. Accordingly, the same should be deleted in their entirety, as proposed. Respectfully submitted, /s Miranda Todd

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BPR 003589
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IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE



IN RE: AMENDMENT OF RULE 7, RULES OF THE TENNESSEE
SUPREME COURT

No. ADM2019-00108

RESPONDENT COMMENTS TO PROPOSED RULE 7 AMENDMENTS

Respondent, David M. Smythe, an active member of the Tennessee Bar, submits the following comments to the Court's proposed Amendments to Rule 7 of the Tennessee Supreme Court's Rules:

1. Respondent is in favor of all proposed Amendments to Rule 7 as filed by the Court on January 17, 2019.

2. Respondent is particularly in favor of the Court's decision to delete former Rules 3.05(a)(3) and 5.01(e) in their entirety. Both of those Rules had provided that applicants who had been unsuccessful on the Tennessee Bar examination within the last five (5) years would be ineligible for admission to the Tennessee Bar by either Uniform Bar Exam ("UBE") transfer or by admission by comity / without exam (the "No Prior Bar Exam Failure Requirement").

3. Former Rule 3.05(a)(3) and its No Prior Bar Exam Failure Requirement was particularly troubling. Initially, this No Prior Bar Exam Failure Requirement in the Court's new UBE Transfer Rules appeared to have been included because Tennessee had a long standing similar provision in Rule 5.01(e) (admission by comity / without exam). The inclusion of that similar requirement, though, in former Rule 3.05(a)(3) did violence with the very purpose of the UBE - - which offers both uniformity of Bar Exam and portability. More importantly, though, this No Prior Bar Exam Failure Requirement in former Rule 3.05(a)(3) also put Tennessee in the

distinct minority (one of only three) of the thirty-four (34) states / territories which have adopted the UBE.¹

4. Moreover, former Rule 3.05(a)(3) was unfair and served no real purpose. It made no sense for Tennessee to delay admission (up to five (5) years) of a UBE transfer applicant who successfully scored 270 or more on a UBE exam in any states / territories which offer the UBE exam simply because the applicant had previously failed a Tennessee Bar exam within the last five (5) years. The only remedy for such an applicant under former Rule 3.05(a)(3) would be for the applicant to take again (in Tennessee) the very same UBE exam they had already successfully sat for in a sister UBE state or territory. This was unfair to the applicant and served no state purpose. The deletion of former Rule 3.05(a)(3) eliminates this potential dilemma and puts Tennessee with the majority of sister UBE states / territories which have no similar UBE restriction.

5. The Court's decision to also delete former Rule 5.01(e) and its No Prior Bar Exam Failure Requirement regarding comity / no exam admission in Tennessee is also well taken. Per **Exhibit A**, Tennessee was in the majority of other UBE jurisdictions which have similar No Prior Bar Exam Failure Requirement for this type of comity / no exam admission.

In practice, though, this Tennessee Rule (no prior exam failure in five (5) years) infrequently applied to applicants as most comity / no exam applicants were relying on five (5) of last seven (7) years of active law practice in another jurisdiction (without any disciplinary actions or other issues). For those comity / no exam applicants under former Rule 5.01(e) who

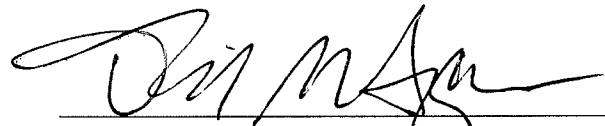
¹ See Uniform Bar Exam info summary attached as **Exhibit A** - - setting out the (34) jurisdictions which have (or are in the process) of adopting the UBE, the UBE minimum score required for each jurisdiction, and a comparison of the No Prior Bar Exam Failure Requirement in many jurisdictions regarding reciprocity / comity (without exam) versus any similar requirements for admission by UBE transfer.

had taken and failed a Tennessee Bar exam within the last five (5) years, though, this Rule deletion is well taken.

CONCLUSION

For all these reasons, all of Tennessee’s proposed Amendments to Rule 7 should be approved in their entirety. Further, the Tennessee Bar and all future Tennessee Bar admission applicants - - whether by UBE transfer or by comity / without exam - - are better served by no longer having either of these former No Prior Bar Exam Failure Requirement rules in force.

Respectfully submitted,



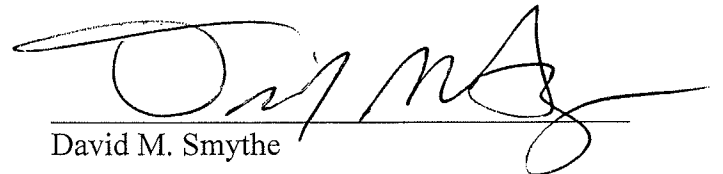
David M. Smythe (TN Reg. No) 10114)
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been placed in the U. S. mail, postage pre-paid and properly addressed to:

Tennessee Board of Law Examiners
511 Union Street
Nashville, Tennessee 37219
Attn: Lisa Perlan

this 5th day of February, 2019.



David M. Smythe

Uniform Bar Exam Info Summary

No.	State/Territory	In-State/ Transfer Score	UBE Transfer Eligibility Months	UBE Transfer Admission No Prior Bar Exam Failure Requirement(s)	Reciprocity (Comity) / Without Exam Admission No Prior Bar Exam Failure Requirement(s)
1	Alabama	260/260	25	NONE	10 Years
2	Alaska	280/280	60	NONE	5 Years
3	Arizona	273/273	60	NONE	3-5 Years
4	Colorado	276/276	36	NONE	None
5	Connecticut	266/266	36	NONE	5 Years
6	Dist. of Columbia	266/266	60	NONE	None
7	Idaho	272/280	37	NONE	5 Years
8	Illinois	266/266	48	NONE	3 Years
9	Iowa	266/266	60	NONE	5 Years
10	Kansas*	266/266	36	Lifetime	Lifetime
11	Maine	276/276	36	NONE	5 Years
12	Maryland*	266/266	?	YES	3 of Last 5 yrs. or 10 yrs.
13	Massachusetts	270/270	36	NONE	None
14	Minnesota	260/260	36	NONE	3 of Last 5 Years
15	Missouri	260/260	24	NONE	None
16	Montana	266/266	36	NONE	5 Years
17	Nebraska	270/270	36	NONE	5 Years
18	New Hampshire	270/270	36	NONE	5 of Last & Years
19	New Jersey	266/266	36	NONE	5 of Last 7 Years
20	New Mexico	260/260	36	NONE	5 Years
21	New York	266/266	36	NONE	None
22	North Carolina	270/270	36	NONE	4 of Last 6 Years
23	North Dakota	260/260	24	NONE	5 Years
24	Ohio	TBA (2020)	60	NONE	5 of Last 10 years
25	Oregon	274/274	36	NONE	5 Years
26	Rhode Island	276/276	24	NONE	5 of Last 10 Years
27	South Carolina	266/266	36	NONE	No Reciprocity
28	Tennessee*	270/270	36	5 Years	5 Years
29	Utah	270/270	24	NONE	2 Years
30	Vermont	270/270	36	NONE	5 Years
31	Washington	270/270	40	NONE	3 of Last 5 Years
32	West Virginia	270/270	36	NONE	None
33	Wyoming	270/270	36	NONE	10 Years
34	U.S. Virgin Island	266/266	36	NONE	None

