

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED

05/24/2022

Clerk of the
Appellate Courts

**IN RE: AMENDMENT OF RULE 7, SECTION 5.01(c), RULES OF THE
TENNESSEE SUPREME COURT**

No. ADM2022-00522

ORDER

The Network of Enlightened Women (“Petitioner”) has filed a petition asking the Court to amend the definition of “active practice of law” under Tennessee Rule 7, section 5.01(c)(1). First, the Petitioner asks that “full-time private or public practice as a licensed attorney” in section 5.01(c)(1)(A) be replaced with “representation of one or more clients in private or public practice as a licensed attorney.” Second, the Petitioner asks that “teaching law full-time at a law school approved by the ABA” in section 5.01(c)(1)(B) be amended by deleting “full-time.”

The Court hereby publishes the petition for public comment and solicits written comments on the proposed amendments from judges, lawyers, bar associations, members of the public, the Board of Law Examiners, and any other interested parties with respect to the attached proposed amendments to Tennessee Supreme Court Rule 7. The deadline for submitting written comments is July 25, 2022. Comments should reference the above docket number and should be e-mailed to appellatecourtclerk@tncourts.gov or mailed to: James M. Hivner, Clerk, Tennessee Appellate Courts, 100 Supreme Court Building, 401 7th Avenue North, Nashville, TN 37219-1407.

The Clerk shall provide a copy of this order, including the appendix, to LexisNexis and to Thomson Reuters. In addition, this order, including the appendix, shall be posted on the Tennessee Supreme Court’s website.

PER CURIAM

APPENDIX

PETITION OF THE NETWORK OF ENLIGHTENED WOMEN TO AMEND TENNESSEE
SUPREME COURT RULE 7, SECTION 5.01(C)

FILED
APR 25 2022
Clerk of the Appellate Courts
Rec'd By Lmm

IN THE SUPREME COURT OF TENNESSEE

IN RE:

PETITION FOR THE ADOPTION)
OF AMENDED TENNESSEE)
SUPREME COURT)
RULE 7, SECTION 5.01(c)1)

No. ADM2022-00522

**PETITION FOR THE ADOPTION OF AMENDED TENNESSEE SUPREME COURT
RULE 7, SECTION 5.01(c)1**

The Network of Enlightened Women (“Petitioner”) petitions the Court to amend Tennessee Rule 7, Sec. 5.01(c)1. The Petitioner asks the Court to replace the “full-time” requirement in Section 5.01(c)(1)(A) with “representation of one or more clients in the” and remove “full-time” from Section 5.01(c)(1)(B).

Rule 7: Licensing of Attorneys governs who may engage in the “practice of law” or the “law business” in Tennessee. Article V: Persons Admitted to Other Jurisdictions Seeking Waiver of Examination prescribes the Tennessee rules for admission for applicants to be admitted to the practice of law without taking the examination, known as comity.

One requirement of comity is that an applicant shall, “have been primarily engaged in the active practice of law, as defined below, in one or more states or territories of the United States, or the District of Columbia, for five of the seven years immediately preceding the date upon which the application is filed.” Rule 7, Sec. 5.01(a)(3).

The “active practice of law” is defined as including: (A) “full-time private or public practice as a licensed attorney; (B) teaching law full-time at a law school approved by the ABA; (C) service as a judicial law clerk or staff attorney; and (D) service as a Judge, Attorney General,

Public Defender, U.S. Attorney, District Attorney, or duly registered In-House Counsel or Military Spouse.” Rule 7, Sec. 5.01(c)(1).

Thus, for an applicant in private or public practice to be admitted without examination by Tennessee, the applicant must be practicing full-time: 40 or more hours per week.

Tennessee is one of the few states with a full-time requirement for lawyers in private or public practice to be admitted without examination.

The American Bar Association Model Rule on Admission by Motion does not mandate full-time work. It requires that an applicant has “been primarily engaged in the active practice of law in one or more states, territories or the District of Columbia for three of the five years immediately preceding the date upon which the application is filed.” ABA Model Rule on Admission by Motion (As amended August 6, 2012). The “active practice of law” includes, “(a) Representation of one or more clients in the private practice of law; (b) Service as a lawyer with a local, state, territorial or federal agency, including military service; (c) Teaching law at a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association; (d) Service as a judge in a federal, state, territorial or local court of record; (e) Service as a judicial law clerk; or (f) Service as in-house counsel provided to the lawyer’s employer or its organizational affiliates.”

Furthermore, in the Model Rule, the ABA specifically “urges jurisdictions that have adopted admission by motion procedures to eliminate any restrictions that do not appear in the Model Rule on Admission by Motion.”

The purpose of the examination is to make sure applicants are competent. Specifically, Rule 7 states that the purpose of the examination is to, “enable applicants to demonstrate to the

Board that they possess the knowledge, skills and abilities basic to competence in the profession.” Rule 7, Sec. 4.01.

The Tennessee examination does not test on Tennessee law. An applicant passing another examination does not teach Tennessee anything additionally about a lawyer’s competence beyond what the state could learn from knowing the applicant already passed one examination.

The difference between a lawyer practicing full-time and part-time is the number of hours she works, not her expertise, experience, or skill.

The Petitioner asks the Court to end the full-time work requirement for comity, which makes it more difficult for part-time lawyers to practice law. Many of those adversely affected by the full-time requirement are women. Overall, women make up two-thirds of voluntary part-time workers. About one in five working women worked part-time voluntarily in 2016. Women now earn half (or more) of law degrees each year. Of the 6.2 percent of lawyers at law firms working part-time, more than 70 percent are women.

Tennessee has signaled its interest in this area by amending its rules in 2015 to make it easier for military spouses to obtain temporary law licenses. Then–chief justice Sharon Lee recognized the impact that this would have on women, in particular. She said, “because 95 percent of military spouses are women, this change will lend even more support to females in our profession.”

Accordingly, the Network of Enlightened Women petitions this Court to adopt the amendment to Tennessee Supreme Court Rule 7, Sec. 5.01(c)1 as reflected in Exhibit A.

Respectfully submitted,

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EXHIBIT A

Tennessee Supreme Court Rule 7, Section 5.01(c)(1)

(c) Active Practice of Law.

(1) For the purposes of this Rule, in addition to the definitions of "Practice of Law" and "Law Business" in section 1.01 of this Rule, the "active practice of law" shall include the following activities, if performed in a jurisdiction in which the applicant is admitted, or if performed in a jurisdiction that permits such activity by a lawyer not admitted to practice:

- (A) representation of one or more clients in the private or public practice as a licensed attorney;
- (B) teaching law at a law school approved by the ABA;
- (C) service as a judicial law clerk or staff attorney; and
- (D) service as a Judge, Attorney General, Public Defender, U.S. Attorney, District Attorney, or duly registered In-House Counsel or Military Spouse.