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Clerk of the Courts  
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IN THE SUPREME COURT OF TENNESSEE

In re: PETITION TO AMEND )  
TENNESSEE SUPREME )  
COURT RULE 7, § 7.01 )

No.: ADM2017-00785

**PETITION TO AMEND TENNESSEE SUPREME COURT RULE 7, § 7.01**  
**GOVERNING EDUCATIONAL REQUIREMENTS FOR ADMISSION TO THE BAR OF**  
**TENNESSEE**

The University of Tennessee College of Law recently established an LL.M. degree designed so that foreign-educated lawyers who are eligible to be admitted to practice or who are admitted to practice in their foreign jurisdictions may gain the education needed to become eligible to sit for the bar exam in Tennessee (as well as other states with similar admission requirements). Vanderbilt Law School offers a similar LL.M. degree to foreign-educated lawyers. By an Order dated October 13, 2016, the Tennessee Board of Law Examiners (“the Board”) denied the admission of an applicant to the bar from another country under Tennessee Supreme Court Rule 7, § 7.01, on the grounds that the applicant’s undergraduate education and legal education were not substantially equivalent to the education received by applicants receiving their legal education in the United States. Order Denying Petition to Reconsider Denial of Eligibility, In re: Maximiliano Gabriel Gluzman, Case No. 16-p-4 (hereinafter “Order”). The University of Tennessee and Vanderbilt filed a joint petition with the Board, requesting that the Board reconsider its interpretation of § 7.01. The two schools have since withdrawn this petition because the Board clarified that its interpretation of § 7.01 does not require a foreign-educated applicant to obtain two separate foreign degrees.

Mr. Gluzman’s case illustrates well the inadequacies of the current rule. He is an attorney with substantial practice experience in his home country who earned nearly a 4.0 grade

point average in Vanderbilt Law School's LL.M. program. If § 7.01 as currently enacted does not permit Mr. Gluzman even to sit for the Tennessee bar examination, then the Petitioners respectfully submit that the current rule operates to "prevent qualified applicants from taking the bar." In re Application of Gluckselig, 697 N.W.2d 686, 691 (Neb. 2005). If that is the case, the Petitioners respectfully suggest the rule should be changed.

Because the interpretation of § 7.01 impacts both the University of Tennessee College of Law and Vanderbilt Law School, the law schools respectfully petition this Court to amend § 7.01 to provide greater clarity to applicants and law schools regarding the admission requirements for foreign lawyers.

#### I. The Special Bar Admission Rules Regarding Foreign-Educated Lawyers

The underlying purpose of all bar admission rules is to ensure that bar applicants possess the requisite knowledge and skill to provide competent legal services within a state upon admission to the bar. Therefore, by their nature, bar admission rules exist to protect the public. See Jia v. Board of Bar Examiners, 696 N.E.2d 131, 139 (Mass. 1998) ("The scrutiny of each applicant's qualifications is delegated to the board to ensure that we admit to practice here only those applicants who are versed in our legal rules so that the public may rely on appropriately trained professionals to protect their interests."); People v. Adams, 243 P.3d 256, 266 (Colo. 2010) ("The purpose of the bar and our admission requirements is to protect the public from incompetent legal advice and representation."); Shortz v. Farrell, 193 A. 20, 24 (Pa. 1937) (explaining that the purpose of admission rules is "to assure to the public adequate protection in the pursuit of justice"). Foreign-educated lawyers who seek admission to the bar in a U.S. state present special concerns for courts given the potential differences in an applicant's educational

and professional background. States have taken a variety of approaches in their attempts to ensure that foreign-educated lawyers possess the requisite knowledge and skill to provide legal services to clients.

A. Practice-Focused Admission Rules

Some states focus on a foreign-educated lawyer's practice experience as a prerequisite to taking the state bar exam. These states either require a minimum number of years of active practice or establish a pathway to admission based on practice experience and completion of an LL.M. degree. For example, Wisconsin permits a foreign-educated lawyer to sit for the bar examination if the applicant received a legal education from a country whose jurisprudence is based on the principles of English common law, is a member of good standing in the bar of his or her home country, and was substantially engaged in the practice of law in a common-law jurisdiction for three of the preceding ten years. Wis. Sup. Ct. R. 40.05. In Pennsylvania, a lawyer who is a member in good standing in the bar of another country, has been engaged in the practice of law for three of the five preceding years, and who has completed an LL.M. degree in the U.S. is eligible to sit for the bar. Pa. Bar Admission Rules R. 205.

B. Education-Focused Rules

In some states, the fact that a foreign-educated lawyer has obtained an LL.M. degree from an accredited U.S. law school is, by itself, sufficient to permit the lawyer to sit for a bar examination. See Rules Governing Admission to the Alabama State Bar R. IV(B)(2)(d); Wisconsin Sup. Ct. R. 40.055(2).

The more common approach, however, is to focus on whether the *entirety* of a foreign lawyer's legal education – including the lawyer's first law degree *and* an LL.M. degree – is equivalent or substantially equivalent to that of a U.S. lawyer. For example, in New Hampshire,

a foreign-educated lawyer who has received a legal education in a country whose jurisprudence is based on English common law and who has completed an LL.M. degree is deemed to have received an education that is substantially equivalent in substance to that received by a lawyer educated in the U.S. Rules of the Supreme Court of the State of New Hampshire R. 42. In New York, a foreign-educated lawyer may sit for the bar exam based on a foreign legal education substantially equivalent to a U.S. legal education, without having to complete an LL.M. degree. Alternatively, if the applicant's foreign legal education is not substantially equivalent to the education received at an ABA-accredited law school, the applicant may cure any educational deficiencies through completion of an approved LL.M. degree. N.Y. Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law § 520.6(b)(1). Other states take a similar approach. See Maine Bar Admission Rules R. 11(A)(a)(3) & Maine Board of Bar Examiners Regulations for Determining Equivalence of Foreign Legal Education (establishing that a lawyer who received legal education in an English-speaking, common-law-based country and who completed an approved LL.M. degree has received the substantially equivalent education necessary to permit the applicant to sit for the bar examination), available at <http://mainebar-examiners.org/foreign-legal-education/>; Rules Governing Admission to the Bar of Maryland R. 19-201(b)(2) & Board Rule 7 (permitting a foreign-educated lawyer to sit for the bar examination upon a certification that the lawyer's original legal education combined with that of approved additional instruction in U.S. law is the equivalent of an LL.B or J.D. degree).

### C. Hybrid Approaches

Some states have adopted a hybrid approach that establishes different paths for admission based upon the nature of the lawyer's original legal education, practice experience, and

completion of an LL.M. degree. For example, Texas establishes essentially four tracks for possible admission by a foreign educated lawyer, briefly summarized as follows:

(1) an applicant who received a legal education that is substantially equivalent in terms of duration to that of a U.S. law school from an accredited school in a country whose jurisprudence is based on the principles of English common law and who has been engaged in the practice of law for three of the preceding five years is eligible to sit for the bar examination without having to pursue an LL.M. degree;

(2) an applicant who received a legal education that was at least two years in duration from an accredited school in a country whose jurisprudence is based on the principles of English common law is eligible to sit for the bar if the applicant completes an approved LL.M degree;

(3) an applicant who is authorized to practice law in a foreign jurisdiction whose jurisprudence is based on the principles of English common law but who does not satisfy the other requirements listed above is eligible to sit for the bar examination if the applicant completes an approved LL.M. degree; or

(4) an applicant who received a legal education that is substantially equivalent in terms of duration to that of a U.S. law school at an accredited school in a country whose jurisprudence is not based on the principles of English common law is eligible to sit for the bar examination if the applicant is authorized to practice law in the other country and has completed an approved LL.M. degree.

Tex. R. Governing Admission to the Bar of Texas R. XIII.

Michigan has adopted a totality of the circumstances approach that takes into account a lawyer's original legal education, practice experience, and LL.M. degree. In Michigan, the Board of Law Examiners "may in its discretion permit applicants who do not possess a JD degree from an ABA-approved law school to take the examination based upon factors including, but not limited to, relevant legal education, such as an LLM degree from a reputable and qualified law school, and experience that otherwise qualifies the applicant to take the examination." Rules for the Mich. Board of Law Examiners R. 2(B). Foreign lawyers applying for admission to the bar in Vermont do not need to complete an LL.M. program if they completed a legal education equivalent to graduation from an accredited U.S. law school and

have been admitted to and remain in good standing with the bar of their home country. Rules of Admission to the Bar of the Vermont Supreme Court R. 8(b).

D. Tennessee

Tennessee takes an unusual approach to the issue of foreign-educated lawyers. Article VII of the Supreme Court Rules contains the educational requirements for foreign-educated lawyers. Section 7.01 provides that notwithstanding the requirements of § 2.01 (which requires a U.S. educated lawyer to have a bachelor's or higher degree and a law degree from an accredited school), an applicant who has completed a course of study in and graduated from an accredited law school in a foreign country may be eligible to sit for the bar examination if the applicant satisfies the Board "that his or her undergraduate education and legal education were substantially equivalent to the requirements of this Rule." Tenn. Sup. Ct. R. 7, §7.01(a). In addition, § 7.01 requires that the applicant must have received an LL.M. degree from a Tennessee law school approved by the Board or by an ABA-accredited law school. Id. §7.01(b).

This makes Tennessee one of the few states in the country to require that a foreign-educated applicant must attain both (1) a legal education that is "substantially equivalent" to that of a U.S.-educated lawyer *and* (2) an LL.M. degree from a U.S. law school.<sup>1</sup> Unlike most states that emphasize a lawyer's education in setting eligibility requirements for foreign-educated lawyers to take the bar exam, Tennessee does not treat an LL.M. degree as "curing" any deficiencies in the lawyer's original education, thereby rendering the lawyer's education substantially equivalent to that of a U.S.-educated lawyer. Instead, a foreign applicant must

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<sup>1</sup> West Virginia also takes this approach. W. Va. Rules for the Admission to the Practice of Law R. 3.0(4).

attain an LL.M. degree from an accredited U.S. law school in addition to the applicant's original, substantially equivalent degree.

## II. The Lack of Guidance Provided for in § 7.01 and by the Board of Law Examiners Creates Uncertainty for Applicants

Section 7.01 requires that an applicant "satisfy the Board that his or her undergraduate education and legal education were substantially equivalent to the requirements of this Rule." The phrase "substantially equivalent" is undefined in the rule. As such, the current language of § 7.01 poses difficult interpretive problems.

The term "substantially equivalent" is an inherently ambiguous phrase. Most states that incorporate the phrase into their admissions rules provide at least some clarification as to its meaning. For example, Vermont's rule lists a number of factors to consider in making the equivalence determination, including whether the foreign law school's graduates are regularly admitted to the practice of law in that country. Rules of Admission to the Bar of the Vermont Supreme Court R. 8(c)(3). New York's rule explains that there must be substantial equivalence both in terms of the duration of the original education and in terms of the course of study. N.Y. Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law § 520.6(b)(1)(i)(a)(b). New York's rule also makes plain that a foreign degree is only substantially equivalent to a J.D. where the country in question is one whose jurisprudence is based on English common law principles. Id. While Texas requires substantial equivalence in terms of duration, its admission rule does not expressly require equivalence in terms of areas of study. Instead, it requires that the education be based on English common law principles. Tex. R. Governing Admission to the Bar of Texas R. XIII § 3.

Unfortunately, the failure to define the term “substantially equivalent” opens a host of difficult interpretive issues under § 7.01 for prospective applicants and schools that offer LL.M. degrees. Applicants and law schools are unable to predict with any measure of assurance whether an applicant’s prior background will satisfy the standard. The Tennessee Board of Law Examiners also provides only limited guidance on the issue.<sup>2</sup>

According to its website, the Board has delegated its responsibility under Rule 7 to two outside private companies. <http://www.tnble.org/tnlaw/first-time/how-to-apply> (emphasis added) (last visited March 8, 2017). Foreign applicants are required to submit material to one of these two companies so that the company can assess whether their prior backgrounds satisfy the substantial equivalence requirement. Unfortunately, the website provides no clarification as to what criteria these private companies will use to determine substantial equivalence. Nor is it clear from the website whether determination by one of these companies definitively establishes substantial equivalence or whether the Board still retains the discretion to overrule that determination. Thus, applicants must undertake the costs and burdens associated with submitting

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<sup>2</sup> In its October 13, 2016 Order denying the application of Mr. Gluzman, the Board appeared to take the position that § 7.01 requires that an applicant who has received a legal education in another country must have obtained *two* separate degrees prior to receiving an LL.M. from a law school in the United States: a Bachelor’s Degree or higher *and* a post-secondary Juris Doctorate degree or equivalent. Order at 1-2. In addition, the Board’s website advised that an applicant’s foreign education “must include a degree that is equivalent to a Bachelor’s degree or higher *followed by* a degree that is equivalent to a Juris Doctorate degree.” <http://www.tnble.org/tnlaw/first-time/how-to-apply> (emphasis added) (visited Feb. 9, 2017). Thus, for at least some period of time, the Board appeared to take the position that the term “substantially equivalent” required receipt of separate undergraduate and law degrees. The University of Tennessee College of Law actually had students withdraw from its LL.M. program for fear that their prior education would not satisfy this standard. However, the Board has recently indicated in a brief filed with this Court that two prior degrees are not, in fact, required. Response of Tennessee Board of Law Examiners in Opposition to Verified Petition for Review and Writ of Certiorari, n.2. The Board has also amended its website to eliminate the reference to two degrees. While the Board’s recent clarification helps to alleviate some of the concerns associated with the interpretation of the rule, significant uncertainty remains.



their material for review without any guidance as to whether their backgrounds might satisfy Rule 7's substantial equivalence language.

In short, the current rule provides insufficient guidance for applicants who are contemplating their careers and law schools which offer LL.M. programs on the issue of what qualifies as a substantially equivalent education. Clear guidance is needed because foreign-educated lawyers need to know whether they will be allowed to take the bar examination before they invest the time and money necessary to complete an LL.M. program.

### III. This Court Should Amend § 7.01

In light of the substantial problems associated with current language, this Court should amend § 7.01 to remove the “substantially equivalent” language. As the Nebraska Supreme Court has put it well, “admission rules [are] intended to ‘weed’ out unqualified applicants, not to prevent qualified applicants from taking the bar.” In re Application of Gluckselig, 697 N.W.2d 686, 691 (Neb. 2005). Section 7.01 should not be drafted in a way that weeds out qualified applicants, either because would-be applicants choose not to apply given the uncertainties of the process or because those applying the “substantially equivalent” language apply the language in a manner different than this Court intended.

It bears emphasizing that in virtually every state (including Tennessee), a foreign-educated applicant is required to pass the bar exam before the applicant can be admitted to the bar. Thus, the bar exam itself serves as a means of helping to ensure that a foreign lawyer is familiar with U.S. and Tennessee legal principles. Therefore, the language of § 7.01 should further this Court's legitimate interest in protecting the public from incompetent legal advice and representation while taking into account the reality that any applicant gaining admission under

§ 7.01 will, by definition, have already received a law degree, completed a rigorous LL.M. program,<sup>3</sup> and passed the bar examination.

As discussed, courts in other jurisdictions have taken a number of approaches in ensuring that their admission rules weed out only those foreign-educated lawyers who are unqualified to practice law. Some have imposed a prior practice requirement – either standing alone or in conjunction with a requirement that a foreign-educated lawyer obtain an LL.M. degree. See supra Part I.A. Others have focused on education as the means to ensure that foreign applicants possess the requisite knowledge and allow an LL.M. degree to cure any deficiencies in the applicant’s original legal education. See supra Part I.B. But, as these other rules illustrate, the substantial equivalence standard is unnecessary and unhelpful in furthering this Court’s compelling interest in protecting the public.

The Court has numerous options from which to choose. Petitioners respectfully offer three suggestions. The first, based on Texas’ admission rule, is a hybrid approach that takes into account education and practice experience as prerequisites for taking the Tennessee bar exam. The second, based on Pennsylvania’s admission rule, is focused primarily on practice experience

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<sup>3</sup> Among other requirements, §7.01(b) requires an LL.M. program to “prepare[] students for admission to the Bar and for effective and responsible participation in the United States legal profession.” The Master of Laws (LL.M.) in United States Business Law at the University of Tennessee College of Law involves a demanding course of study, requiring a total of at least 24 credit hours. Students are required to take a course on legal research, analysis, and writing as well as Professional Responsibility and a general course on American law called Structure and Operation of the American Legal System. Students are also required to take two subjects – Business Associations and Secured Transactions – which are routinely tested on the Tennessee bar exam. Finally, students are required to take several courses related to U.S. business law (*e.g.*, Fundamentals of Federal Income Tax). See <http://law.utk.edu/academics/llm/>. Likewise, Vanderbilt Law School’s LL.M. degree requires students to take a minimum of 24 credit hours, including two LL.M.-specific courses: Life of the Law and Introduction to Legal Research, Writing and Analysis in the United States. In all of their other courses, they are jointly enrolled with J.D. students in conventional law school classes.

and completion of an LL.M. program.<sup>4</sup> The third would retain the current “substantially equivalent” language but add language that clarifies its meaning.

A. The Hybrid Approach

Should it choose, this Court could amend this portion of § 7.01(a) to better further its goal of ensuring an adequate foundation for taking the Tennessee Bar Examination. Specifically, the law schools suggest the following language, based on the approach of Texas:

(a) Notwithstanding the provisions of sections 2.01 and 2.02 of this Rule, an applicant who has completed a course of study in and graduated from a law school in a foreign country, which law school was then recognized and approved by the competent accrediting agency of such country, may take the bar examination, in any one of the following circumstances:

(1) the Applicant:

(A) has completed a course of study at a foreign law school that is accredited in the jurisdiction where it is located, and the course of study is:

(i) based on the principles of English common law; and

(ii) substantially equivalent in duration to the legal education provided by a law school accredited by the ABA or approved by the Board;

(B) is authorized to practice law in a foreign jurisdiction or another state; and

(C) has been actively and substantially engaged in the lawful practice of law for at least three of the last five years immediately preceding the Applicant’s most recent Application;

(2) the Applicant:

(A) has completed a course of study at a foreign law school that is accredited in the jurisdiction where it is located, and the course of study is:

(i) based on the principles of English common law; and

(ii) at least two years in duration; and

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<sup>4</sup> In making these changes, the Court should also clarify that the amendments should apply to students currently enrolled in an LL.M. program.

(B) has completed an LL.M. degree that meets the curricular requirements of § 7.01(b) of this Rule; and

(C) is authorized to practice law in a foreign jurisdiction or in another state; or

(3) the Applicant

(A) has completed a course of study at a foreign law school that is accredited in the jurisdiction where it is located, and the course of study is:

(i) not based on the principles of English common law; but

(ii) is substantially equivalent in duration to the legal education provided by a law school accredited by the ABA or approved by the Board;

(B) has completed an LL.M. degree that meets the curricular requirements of § 7.01(b) of this Rule; and

(C) is authorized to practice law in a foreign jurisdiction or in another state.

Applicants shall furnish such additional information as may be required by the Board to enable the Board to determine the applicant's eligibility for such admission.

This proposed amendment directly furthers the Court's ultimate goal of ensuring that foreign-educated lawyers are adequately prepared to sit for the Tennessee bar exam by recognizing that such preparation may be attained in any number of ways. In addition, the proposed amendment furthers this goal in a narrowly-tailored manner. Finally, the proposed amendment provides clear guidance to applicants that enables them to make an informed choice as to whether they wish to invest the time and money required to pursue an LL.M. degree.

**B. The Practice-Focused Approach**

Alternatively, the law schools suggest the following language, based on the approach in Pennsylvania:

(a) Notwithstanding the provisions of sections 2.01 and 2.02 of this Rule, an applicant who has completed a course of study in and graduated from a law school in a foreign country, which law school was then recognized and approved by the

competent accrediting agency of such country, may qualify, in the discretion of the Board, to take the bar examination if the applicant:

(1) has been admitted to practice law in and is in good standing at the bar of a foreign country or another state, as evidenced by a certificate from the highest court or agency of such foreign country or state having jurisdiction over admission to the bar and the practice of law;

(2) has for a period of three of the last five years immediately preceding the date of filing of the application for admission to the Tennessee bar engaged in the active practice of law in such foreign country or another state. For purposes of this paragraph, the phrase "engaged in the active practice of law" shall, to the extent feasible, be construed in a manner consistent with the definition of the phrase as it appears elsewhere in this Rule. The practice of law must be performed in a foreign country or state in which the applicant was admitted to practice law or in a foreign country or state that affirmatively permitted such activity by a lawyer not admitted in that jurisdiction. The term "practice of law" shall not include providing legal services when such services as undertaken constituted the unauthorized practice of law in the foreign country or state in which the legal services were performed or in the foreign country or state in which the clients receiving the unauthorized services were located; and

(3) has completed an LL.M. degree that meets the curricular requirements of § 7.01(b) of this Rule;

This proposed language reflects the reality that a combination of practice experience and additional education grounded in U.S. law is adequate to ensure that foreign lawyers have the necessary knowledge and skills to sit for the Tennessee bar examination and ultimately provide legal services in the state. In addition, the proposed amendment has the advantage of simplicity.

C. Clarification to the "Substantially Equivalent" Language


Should this Court choose not to amend the rule as suggested above, the Court should at least provide some clarity to the "substantially equivalent" language. For example, the Court could clarify that the term should be construed to mean that an applicant has received a legal education from a foreign law school that satisfies the prerequisites for admission to the bar in the other country and whose graduates are regularly admitted to practice law in that jurisdiction. Such an applicant possesses an educational background that is substantially equivalent to that of

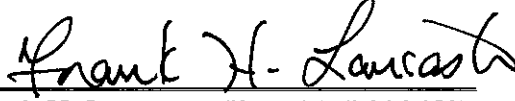
a lawyer educated in the U.S. (who is eligible for admission under §§ 2.01 and 2.02 of this Court's Rule 7 regarding licensing of attorneys) insofar as both individuals have received the education generally considered necessary to begin the competent practice of law within their respective countries.

Respectfully submitted, this 20<sup>th</sup> day of April 2017,

**VANDERBILT UNIVERSITY**

**THE UNIVERSITY OF TENNESSEE**

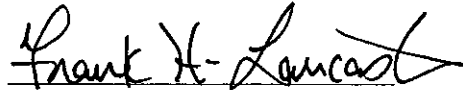
  
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**CERTIFICATE OF SERVICE**

I hereby certify that on April 20, 2017, a copy of the foregoing has been served on the persons listed by first class U.S. Mail addressed as follows:

Lisa Perlen  
Executive Director  
Tennessee Board of Law Examiners  
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Nashville, TN 37219

A handwritten signature in black ink that reads "Frank H. Lancaster". The signature is written in a cursive style with a horizontal line underneath the name.

Frank H. Lancaster