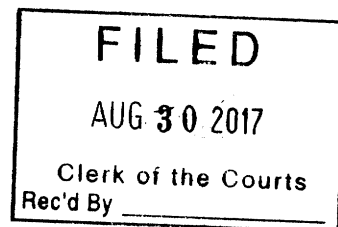


IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

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



No. ADM2017-01659

ORDER

On August 15, 2017, the Tennessee Board of Law Examiners (“the TBLE”) filed a petition seeking to amend specific provisions of Tennessee Supreme Court Rule 7. The TBLE asserts that Rule 7 was “repealed and replaced in its entirety by order filed December 21, 2015, effective January 1, 2016,” and that it “has discovered some corrections that are required to clarify revised Rule 7.” The petition is attached as an appendix to this Order.

The Court hereby solicits written comments from judges, lawyers, bar associations, members of the public, and any other interested parties. The deadline for submitting written comments is September 29, 2017. Written comments should reference the docket number set out above and may be e-mailed to appellatecourtclerk@tncourts.gov or mailed to:

James M. Hivner, Clerk
Re: Tenn. Sup. Ct. R. 7
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.

IT IS SO ORDERED.

PER CURIAM

APPENDIX

PETITION TO AMEND RULE 7, RULES OF THE TENNESSEE SUPREME COURT

FILED BY THE TENNESSEE BOARD OF LAW EXAMINERS

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

2017 AUG 15 PM 1:30

APPELLATE COURT CLERK
NASHVILLE

IN RE: PETITION TO AMEND)
TENNESSEE SUPREME COURT)
RULE 7)

No.: Adm 2017-01659

PETITION TO AMEND TENNESSEE SUPREME COURT RULE 7
GOVERNING LICENSING OF ATTORNEYS

The Tennessee Board of Law Examiners (the "TBLE") hereby respectfully petitions this Honorable Court to amend specific provisions of Tennessee Supreme Court Rule 7 ("Rule 7"). In support of its Petition, the TBLE would respectfully show as follows:

1. Background: Rule 7 was repealed and replaced in its entirety by order filed December 21, 2015, effective January 1, 2016. After a year of working under revised Rule 7, the Board has discovered some corrections that are required to clarify revised Rule 7.

2. Proposed Changes

- (i) Sec. 2.01(b) – The change to this section clarifies that the Board may waive the requirement of a degree from an accredited undergraduate institute if the applicant has graduated with a Juris Doctorate degree from an ABA-approved law school or a Tennessee law school approved by the Board pursuant to section 2.03 of Rule 7. This prevents an applicant from erroneously submitting a petition to waive the educational requirement if the applicant did not receive a J.D. degree.
- (ii) Sec. 2.02(a) – The phrase "with a J.D. degree" was inadvertently omitted from the final draft of revised Rule 7. By including the type of degree, it is clear

that an applicant must have earned a J.D. degree in order to be eligible for admission by examination.

- (iii) Sec. 2.02(c)(3) – The modification to this section is requested in order to make the practice requirement for applicants from an out of state, non-ABA law school consistent with the practice requirement in Article V of Rule 7 and applies the definition of “active practice of law” from section 5.01(c). By doing so, the Board may enforce the same standards in determining what constitutes practice of law.
- (iv) Sec. 4.07(c) – There are three changes to this section. The first change to this section makes clear that an applicant must achieve an MPRE score equal to or greater than the minimum score required by the Board in order to be eligible for licensing; a license will not be issued until the applicant has achieved a passing MPRE score. The next change removes reference to a specific minimum score as the Board sets minimum scores as a Policy of the Board that is approved by the Court. The last change provides for the mechanism for the Board to adopt and for the Court to approve the minimum passing score.
- (v) Sec. 5.01(a)(3) – A reference to the definition of active practice of law in subparagraph (c) of the Rule has been added.
- (vi) Sec. 5.01(c)(3) – The modification makes clear that an applicant must have an active license in good standing for any work to count as active practice of law except work as a full-time professor at an ABA-approved law school.
- (vii) Sec. 5.01(g) and Sec. 10.04(f) – These sections are modified to authorize the Board to disclose to anyone making inquiry that an applicant is authorized to

practice pending admission and when such authorization is terminated. If the Board is not permitted to provide this information, there is not a way for the public to know if such practice has been authorized.

- (viii) Sec. 6.03(c) – This section is modified to make clear that only applicants seeking admission by examination or re-examination are required to participate in an in-person interview.
- (ix) Sec. 10.01(d)(1) and Sec. 10.01(f)(4) - Attorneys who register to practice as In-House Counsel are required to register on the rolls of the Board of Professional Responsibility (“BPR”). Although the section currently requires registered In-House Counsel to pay all annual fees and fulfill the continuing legal education requirements, there is not a requirement in Rule 7 that requires the registered In-House Counsel to complete registration with the BPR. Without registering, the BPR is unable to assess the fees or determine if continuing legal education requirements have been met. New sub-paragraph (d)(1) is added to provide a deadline for registration with BPR. New sub-paragraph (f)(4) provides that the lawyer’s privilege under section 10.01 terminates if the lawyer fails to comply with any of the requirements in sub-paragraph (d).

A copy of the amended sections delineating the deletions and additions outlined above is attached as “Exhibit A.”

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

[signatures next page]

Respectfully submitted,

TENNESSEE BOARD OF LAW EXAMINERS

By: Jeffrey M. Ward by Lisa Perlen
Jeffrey M. Ward, President *with permission*

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing Petition to Amend Tennessee Supreme Court Rule 7 has been served upon the individuals and organizations identified in "Exhibit B" by U.S. Mail, postage prepaid, and posted on the Board's website at www.tnble.org on this 15th day of August, 2017.



Lisa Perlen, Executive Director

1 **Rule 7. Licensing of Attorneys.**

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4 **Sec. 2.01. Bachelor's Degree.**

5
6 (a) To be eligible to take the examination or to be eligible for licensing without examination
7 pursuant to Article V, an applicant, prior to taking the bar examination, must have received a
8 Bachelor's Degree or higher from a college on the approved list of the Southern Association of
9 Colleges and Secondary Schools, or the equivalent regional accrediting association, or any
10 accreditation agency imposing at least substantially equivalent standards. As part of the bar
11 examination application, an applicant shall provide evidence of the degree in the form required
12 by the Board.

13
14 (b) The Board in its discretion may waive the requirement of a degree from an accredited
15 undergraduate school if the applicant has graduated with a Juris Doctorate Degree (herein, "J.D.
16 Degree") from either: (1) a law school accredited by the American Bar Association (hereafter
17 "ABA") or (2) a Tennessee law school approved by the Board pursuant to section 2.03 of this
18 Rule.

19
20 **Sec. 2.02. Legal Education and Approval of Law Schools.**

21
22 (a) To be eligible to take the examination or to be eligible for licensing without examination
23 pursuant to Article V, an applicant must have completed a course of instruction in and graduated
24 with a J.D. Degree from a regularly organized law school accredited by the ABA at the time of
25 applicant's graduation, or a Tennessee law school approved by the Board pursuant to section
26 2.03 of this Rule at the time of the applicant's graduation.

27
28 ...

29
30 (c) Notwithstanding the provisions of sections 2.01 and 2.02 of this Rule, an attorney who
31 received a legal education in the United States or U.S. Territories but is not eligible for
32 admission by virtue of not having attended a law school accredited by the ABA or a Tennessee
33 law school approved by the Board nevertheless may be considered for admission by examination
34 provided the attorney satisfies the following requirements:

35
36 (1) The attorney holds a J.D. Degree, which is not based on study by correspondence or
37 other than in-person attendance, from a law school approved by an authority similar to
38 the Tennessee Board of Law Examiners in the jurisdiction where it exists and which
39 requires the equivalent of a three-year course of study that is the substantial equivalent of
40 the legal education provided by approved law schools located in Tennessee. The
41 applicant shall bear the cost of the evaluation of his/her legal education, as determined by
42 the Board, and the applicant shall not be eligible to sit for the bar examination until the
43 applicant's legal education is approved by the Board; and

44
45 (2) The attorney has passed a bar examination equivalent to that required by Tennessee in
46 the state in which the law school exists; and

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(3) ~~The attorney has been actively and substantially engaged in lawful practice of law as his or her principal business or occupation for at least five of the last seven years immediately preceding the filing of the application 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 five of the seven years immediately preceding the date upon which the application is filed; and~~

...

Sec. 4.07. Grading the Examination and Score Expiration.

(a) The Board shall continue to maintain procedures which assure that the identity of each applicant in the grading process is not known to any person having responsibility for grading or determining whether the applicant passes or fails until the grades of all applicants have been finally determined.

(b) Tennessee bar examination scores are valid to determine eligibility for licensing for two years after the date grades are released; after two years, the scores expire.

(c) In order to be determined eligible for licensing pursuant to section 9.01, Aa score equal to or greater than that required by Tennessee on the Multistate Professional Responsibility Examination (MPRE) must be achieved within two years of successfully completing the Tennessee bar examination; provided, however, that an applicant who:

- (1) is licensed by examination in another state in the United States, the District of Columbia, or U.S. Territories,
- (2) provides certification that the license is active and in good standing, and
- (3) ~~achieved a score of 75 or higher~~ achieved a score equal to or greater than the score required by Tennessee on the MPRE two (2) or more years before successful completion of the Tennessee bar examination

may provide proof of that earlier score to satisfy the MPRE requirement. It is the responsibility of the applicant to cause MPRE score reports to be furnished to the Board. The minimum MPRE score will be adopted as a statement of policy and approved by the Supreme Court pursuant to section 12.05 of this Rule.

...

Sec. 5.01. Minimum Requirements for Admission of Persons Admitted in Other Jurisdictions.

(a) **Requirements.** An applicant who meets the requirements of (1) through (6) of this paragraph may, upon motion, be admitted to the practice of law in this jurisdiction. The applicant shall:

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- (1) meet the educational requirements imposed by this Rule;
- (2) have been admitted by bar examination to practice law in one or more states or territories of the United States, or the District of Columbia;
- (3) 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;
- (4) establish that the applicant is currently a member in good standing in all jurisdictions where admitted;
- (5) establish that the applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any other jurisdiction; and
- (6) establish that the applicant possesses the character and fitness to practice law in this jurisdiction.

...

(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) 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.
- (2) 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” may be construed in the Board’s discretion as being actively engaged in other full-time employment requiring interpretation of law and application of legal knowledge 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; however, in no event shall any activities that were performed pursuant to a provision similar to section 10.04 or section 5.01(g) of this Rule in advance of bar admission in a state or territory of the United States or the District of Columbia be accepted toward the

139 durational requirement. The Board shall consider such evaluative criteria as time devoted
140 to legal work, the nature of the work, whether legal training or a law license was a
141 prerequisite of employment, and other similar matters.

142
143 (3) For work to meet the requirement of "active practice of law," the lawyer must have
144 been licensed, in active status, and good standing in at least one jurisdiction at the time the
145 work was performed, unless the work was performed pursuant to paragraph(c)(1)(B).
146

147 ...

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149 **(g) Practice Pending Admission by Applicant Licensed in Another Jurisdiction.** A lawyer
150 currently holding an active license to practice law in another state in the United States, the
151 District of Columbia, or U.S. Territories and who has submitted an application for admission
152 upon motion in compliance with this section 5.01 of this Rule or an application for examination
153 in compliance with section 3.03 of this Rule may provide legal services in this jurisdiction
154 through an office or other systematic and continuous presence during the pendency of the
155 application for admission on motion but for no more than 365 days, provided that the lawyer:

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157 (1) is not disbarred or suspended from practice in any jurisdiction;

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159 (2) has not been denied admission to practice in any jurisdiction, including Tennessee,
160 unless the Board determines otherwise;

161
162 (3) reasonably expects his/her application for admission to be granted;

163
164 (4) notifies the Board of Professional Responsibility in writing within 30 days of first
165 establishing an office or other systematic and continuous presence for the practice of law
166 in this jurisdiction that the lawyer has done so pursuant to the authority in this section
167 5.01;

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169 (5) associates with a lawyer who is admitted to practice in Tennessee;

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171 (6) complies with Tenn. Sup. Ct. R. 8, RPC 7.1 and RPC 7.5 in all communications with
172 the public and clients regarding the nature and scope of the lawyer's practice authority in
173 Tennessee;

174
175 (7) pays the fee associated with the Application to Practice Pending Admission;

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177 (8) does not appear before a tribunal in Tennessee that requires *pro hac vice* admission
178 unless the lawyer is granted such admission;

179
180 (9) has never before practiced in Tennessee pursuant to this provision, unless the Board
181 determines otherwise; and
182

183 (10) notifies the Board of Professional Responsibility and the Board if the lawyer
184 becomes the subject of a pending disciplinary investigation in any other jurisdiction at
185 any time during the period of practice authorized under this provision.

186
187 Notwithstanding the provisions of section 12.11, the Board may disclose that an applicant is
188 authorized to practice pursuant to this section and when such authorization terminated.

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191
192 **Sec. 6.03. Investigating Procedures.**

193
194 (a) Each application for admission with examination or without examination shall be referred
195 first to a member of the Board for preliminary review for the purpose of:

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197 (1) detecting any deficiencies in the application; and
198
199 (2) determining whether any additional information is needed with respect to any aspect
200 of the application.

201
202 (b) As part of the character and fitness requirement for licensing, each applicant, other than an
203 applicant pursuant to section 10.01 of this Rule, is required to have a current completed
204 background investigation conducted by the National Conference of Bar Examiners (NCBE). It is
205 the responsibility of each applicant to make the request to the NCBE for a background
206 investigation and pay the required fee directly to the NCBE. In the event an applicant has not
207 been licensed within two years of submission of the original background investigation, the
208 applicant must request a supplemental investigation at that time and every two years thereafter,
209 until the applicant is licensed or the application is withdrawn or denied.

210
211 (c) The Executive Director shall transmit the application and the results of the background
212 investigation, if available at the time of the interview, for each applicant for admission by
213 examination or re-examination to the chair of the appropriate investigating committee. The chair
214 shall assign applications to committee members for review, interview and investigation.

215
216 (d) On the receipt of an application, the investigating committee member to whom the
217 application has been assigned shall review same and such other information as may be
218 transmitted by the Executive Director and shall conduct such investigation as appears to him or
219 her to be appropriate. In any event, each applicant referred to a committee shall be interviewed in
220 person by a member of that committee. In conducting such investigations, the investigating
221 committee member may take statements from the applicant and from such other persons as may
222 be considered appropriate.

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224 (e) On the completion of the investigation, the investigating committee member shall report his
225 or her findings to the Board, in the form directed by the Board, and shall recommend fully,
226 recommend with reservations or not recommend the applicant for licensing and admission.

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Sec. 10.01. Registration of In-house Counsel.

(d) A lawyer registered under this section shall:

(1) Complete the registration process with the Board of Professional Responsibility within 30 days of approval of the application to register under this section;

~~(2)~~ Pay all annual fees payable by active members of the bar;

~~(3)~~ Fulfill the continuing legal education requirements that are required of active members of the bar;

~~(4)~~ Report to the Board, within 30 days, the following:

(A) Termination of the lawyer's employment;

(B) Whether or not public, any change in the lawyer's license status in another jurisdiction, including by the lawyer's resignation;

(C) Whether or not public, any disciplinary charge, finding, or sanction concerning the lawyer by any disciplinary authority, court, or other tribunal in any jurisdiction.

(e) A lawyer who is registered or who is required to register under this section shall be subject to Tenn. Sup. Ct. R. 8 (Rules of Professional Conduct) and all other laws and rules governing lawyers admitted to the active practice of law in this State. The Board of Professional Responsibility has and shall retain jurisdiction over the lawyer who is registered or required to register with respect to the conduct of the lawyer in this or another jurisdiction to the same extent as it has over lawyers generally admitted in this State.

(f) A registered lawyer's rights and privileges under this section automatically terminate when:

(1) The lawyer's employment terminates;

(2) The lawyer is suspended or disbarred from practice in any jurisdiction or any court or agency before which the lawyer is admitted; or

(3) The lawyer fails to maintain active status in at least one jurisdiction; or

(4) The lawyer fails to comply with the requirements in paragraph (d)(1) – (4) above.

Upon the occurrence of one or more of the foregoing events, the registered lawyer shall give notice in writing within 30 days to the Board and to the Board of Professional Responsibility.

274 (g) A registered lawyer whose registration is terminated under paragraph (f)(1) above, may be
275 reinstated within 180 days of termination upon submission to the Board of the following:

276
277 (1) An application for reinstatement in a form prescribed by the Board;

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279 (2) A reinstatement fee set by the Board pursuant to Article XI; and

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281 (3) An affidavit from the current employing entity as prescribed in paragraph (a)(4).
282

283 (h) A lawyer under this rule who fails to register within 180 days shall be:

284
285 (1) Subject to professional discipline in this jurisdiction;

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287 (2) Ineligible for admission pursuant to Article V of this rule;

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289 (3) Referred by the Board to the Board of Professional Responsibility; and

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291 (4) Referred by the Board to the disciplinary authority of the jurisdiction(s) of licensure.
292

293 (i) A lawyer's rendering of service to the lawyer's employer prior to timely registration under
294 this Rule shall not constitute the unauthorized practice of law or otherwise be treated as violating
295 Tenn. Sup. Ct. R. 8, RPC 5.5 as long as the services are permitted under this Rule for registered
296 lawyers and the lawyer files the application for registration under section 10.01(a) of this Rule
297 within 180 days of the commencement of the lawyer's employment.
298

299 (j) A lawyer seeking to practice in this State under the authority of Tenn. Sup. Ct. R. 8, RPC
300 5.5(d)(1) and who complies fully with the requirements of this Rule on or before December 31,
301 2016, shall not be barred from registration under this Rule, admission pursuant to Article V of
302 this Rule, or from practicing under the authority of RPC 5.5(d)(1) solely by the fact of prior
303 noncompliance with Tennessee law concerning licensure of in-house counsel.
304

305 **Sec. 10.04. Practice before Admission by Examination.**

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307 (f) Notwithstanding the provisions of section 12.11, the Board may disclose that an applicant is
308 authorized to practice pursuant to this section and may disclose if and when that authorization is
309 terminated.

Exhibit B: Service List
Petition to Amend Tenn. Sup. Ct. R. 7

Name	Organization	Address	City	State	Zip
Deborah Taylor Tate, Director	Administrative Office of the Courts	511 Union Street, Suite 600	Nashville	TN	37219
Sandy L. Garrett, Chief Disciplinary Counsel	Board of Professional Responsibility	10 Cadillac Drive, Suite 220	Brentwood	TN	37027
Hon. Alberto Gonzales, Dean	Belmont University College of Law	1900 Belmont Blvd.	Nashville	TN	37212
Peter Letsou, Dean	Cecil C. Humphreys School of Law	1 N. Front Street	Memphis	TN	38103
Lynda Hood	Chattanooga Bar Association	801 Broad Street Suite 420	Chattanooga	TN	37402
Marsha Watson	Knoxville Bar Association	P.O. Box 2027	Knoxville	TN	37901
Hon. William C. Koch, Jr., Dean	Nashville School of Law	4013 Armory Oaks Drive	Nashville	TN	37204
Hon. Gary Wade, Dean	Duncan School of Law	601 W. Summit Hill drive	Knoxville	TN	37902
Monica Mackie	Nashville Bar Association	150 4th Avenue North, Suite 1050	Nashville	TN	37219
Joycelyn Stevenson	Tennessee Bar Association	221 4th Avenue North, Suite 400	Nashville	TN	37219
Herbert H. Slatery, III	Attorney General, State of Tennessee	P.O. Box 20207	Nashville	TN	37202-0207
Barri Bernstein	Tennessee Bar Foundation	618 Church Street, Suite 120	Nashville	TN	37219
Ann Pruitt	Tennessee TN Association for Justice	1220 Vintage Place	Nashville	TN	37215
Judy McKissack	Comm. On Continuing Legal Education	1321 Murfreesboro Pike, Suite 810	Nashville	TN	37217
Karol Lahrman	TN Lawyers Association for Women	P.O. Box 331214	Nashville	TN	37203
James Kirby	TN District Attorney General Conf	226 Capitol Blvd, Suite 800	Nashville	TN	37243
Jeffrey Henry	TN Public Defenders Conference	211 Seventh Avenue N, Suite 320	Nashville	TN	37219
Melanie Wilson, Dean	UT College of Law	1505 W. Cumberland Ave., Ste 278	Knoxville	TN	37996
Chris Guthrie, Dean	Vanderbilt University School of Law	131 21st Ave. South, Suite 108	Nashville	TN	37203
Suanne Bone	TN Association of Criminal Defense Lawyers	530 Church Street, Suite 300	Nashville	TN	37219
Anne Fritz	Memphis Bar Association	145 Court Avenue, Suite 1	Memphis	TN	38103-2292
Barry Kolar	TN Bar Association	221 4th Avenue North, Suite 400	Nashville	TN	37219
Laura McClendon	TN Lawyers Assistance Program	214 2nd Avenue N., Suite 1	Nashville	TN	37201
Jeffrey M. Ward	Milligan & Coleman	230 W. Depot Street	Greeneville	TN	37743
Barbara Zoccola	US Attorney's Office	167 N. Main Street, 8th Floor	Memphis	TN	38103-1898
William L. Harbison	Sherrard Roe Voight & Harbison	150 3rd Avenue S., Suite 1100	Nashville	TN	37201
William M. Barker	Chambliss, Bahner & Stopfel	605 Chestnut Street, Suite 1700	Chattanooga	TN	37450