

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 8th day of March, 2012, the following order was made and entered:

RE: REQUEST FOR COMMENT ON PROPOSED AMENDMENTS TO THE RULES FOR ADMISSION TO THE OF PRACTICE LAW

On a former day came The Board of Law Examiners, by Madeleine Nibert, Bar Admissions Administrator, and presented to the Court proposed amendments to the Rules for Admission to the Practice of Law.

Upon Consideration whereof, the Court is of the opinion to and does hereby approve a period of public comment on the proposed amendments, to conclude on May 21, 2012, with comments to be filed in writing with the Clerk of this Court. Additions are indicated by underlining, deletions are indicated by strikethrough, to read as follows:

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RULE 3.0. ADMISSION BY EXAMINATION.

(a) *Course of study.* Unless otherwise specified herein, any person who wishes to take the bar examination in the State of West Virginia shall satisfy the Board that he or she has completed a full course of study in a law school accredited by the American Bar Association, or its equivalent, and has been granted and holds a

degree of L.L.B. or J.D., or their equivalents, and a degree of A.B. or B.S., or higher degree, from an accredited college or university, or its equivalent.

(b) *Policy on equivalency.* The Board of Law Examiners will consider the following circumstances to be the equivalent of completion of a full course of study in a law school accredited by the American Bar Association, and an applicant meeting the standards set forth herein shall be presumed to be eligible to take the West Virginia Bar Examination; providing that all other requirements set forth in Rule 3.0, et seq., for admission to the bar examination are met; *Provided*, That graduates of correspondence law courses, including Internet-based law courses, shall not be eligible to take the West Virginia Bar Examination

(1) The applicant is a graduate of a non-ABA accredited law school who has successfully passed the bar examination of another state, the District of Columbia, or commonwealth or territory of the United States, and has been admitted to practice in such state, district, commonwealth, or territory, or

(2) (a) The applicant is a graduate of a non-ABA accredited law school, which school is of such stature that its graduates are eligible to take the bar examination of the state, District of Columbia, commonwealth or territory of the United States in which such law school is located, and (b) The applicant has completed three (3) years of law office study and work in this state as a legal assistant or paralegal, under the supervision of an attorney or attorneys admitted to practice in West Virginia, and ~~or~~ (c) Two attorneys admitted to practice in West Virginia, at least one of whom shall have actively supervised the applicant for a period of not less than six months, certify to the Board that they believe that the applicant is knowledgeable in the law, competent to practice law, and of good moral character, or

(3) (a) The applicant is a graduate of a reputable law school which, although not accredited by the ABA, has been determined by the Board of Law Examiners to be substantially the equivalent of an ABA-accredited school. (b) The Board shall consider applications for admission under paragraph 3 only at a regular meeting of the Board, with the Board's determination to become effective commencing with the next successive examination. All information required for such determination must

be provided to the Board at least 60 days prior to its regular meeting. The Board reserves the right to require additional information from the applicant or the institution if it determines that it has insufficient information to make a determination of equivalency. (c) Once a determination of substantial equivalency has been made by the Board, the graduates of such school shall be presumed eligible to take the West Virginia Bar Examination for such period as the Board may designate unless a situation arises requiring review at an earlier time. Said determination may be renewed by the Board. Upon expiration of said determination, the institution or the applicant shall have the burden of establishing that said institution continues to be substantially the equivalent of an ABA- accredited law school, or

(4) (a) The applicant is a graduate of a law school of a foreign country where the common law of England exists as the basis of its jurisprudence, and (b) The educational requirements for admission to the bar in said country are substantially the same as those of this State, and that the applicant has satisfied those requirements, and (c) The applicant has successfully completed study at an ABA- accredited law school, with a minimum of 30 credit hours of basic courses selected from the following areas of law: Professional Responsibility/Legal Ethics, Contracts, Property (Real and Personal), Uniform Commercial Code, Criminal Law, Evidence, Business Organizations/Corporations, Domestic Relations, Wills, Trusts and Estates, Constitutional Law, Civil Procedure, Criminal Procedure, Torts, Federal Taxation and Conflict of Laws, and which such study shall be completed within a period of 36 calendar months from the date of the inception of such study.

The burden of establishing eligibility to take the bar examination to the satisfaction of the Board of Law Examiners shall be on the applicant and upon the institution seeking admission to the bar examination for its graduates. The applicant or the institution shall furnish to the Board all information and documents necessary to enable the Board to make a determination as to whether or not the requirements of this policy have been met. Any costs incurred by the Board in the determination of equivalency under this Rule shall be assessed against the applicant.

The Board may require the applicant to appear before the Board at its next regular meeting if the Board determines that it has insufficient information upon which to make a decision. Decisions by the Board pursuant to this policy shall be subject to the administrative hearing procedure provided by Rule 6.0 of the Rules for Admission to the Practice of Law in West Virginia.

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RULE 3.2. WEST VIRGINIA BAR EXAMINATION.

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(d) *Multistate Professional Responsibility Examination.* Prior to admission on examination, an applicant, in addition to passing the General Bar Examination, must have successfully completed the Multistate Professional Responsibility Examination ("MPRE") prepared and administered by the National Conference of Bar Examiners. To successfully complete the MPRE, the applicant must have achieved a scaled score of at least 8075 as determined by the National Conference of Bar Examiners within twenty-five (25) months of successful completion of the General Bar Examination. Arrangements to take such examination, including the payment of any fees therefor, shall be made directly with the National Conference of Bar Examiners.

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RULE 3.3. BAR EXAMINATION PROCEDURES.

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(b) *Typing of answers.* — The Board of Law Examiners shall have discretion to permit applicants to use laptop computers, in conjunction with secure software approved by the Board and paid for by the applicant, to complete the MPT and MEE sections of the bar examination. The Board may direct the manner in which applicants register their laptop computers for this purpose; the dates by which that registration must be completed; and the procedures for submission of MPT and MEE answers after completion of the examination. The Board may direct an applicant to handwrite any portion of the examination at any time if the applicant's behavior is disruptive to other examinees or if technical difficulties, security

concerns, or other problems arise. Where a reasonable suspicion arises that an applicant has cheated, attempted to cheat, or aided or assisted another applicant in cheating, the Board may take possession of an applicant's laptop computer as necessary to determine the extent of the applicant's conduct and to ensure the security of examination materials.

~~If an applicant desires to type answers, the Board may make provision for a separate room, segregated from other applicants who are not typing answers to the examination: *Provided, That* in the instance in which an applicant demonstrates through medical opinion to the Board that he or she has a disability which requires the typing of answers as a reasonable accommodation for that disability, the Board must make provision for such qualifying applicant to type his or her answers in a separate room, segregated from other applicants who are not typing answers to the examination. The applicant, including an applicant with a relevant disability, must submit a written request for permission to type not later than December 1st preceding the February examination, and not later than May 1st preceding the July examination: *Provided, That* an applicant with a relevant disability that has a sudden, medically verified change in circumstances directly relating to the accommodations needed in order to take the bar examination, may apply to the Board for a waiver of the time restriction as forth above, to be judged by the Board on a case by case basis. Each such applicant, excluding applicants with relevant demonstrated disability as referenced above, shall be responsible for providing a typewriter and the necessary equipment (ribbons, extension cord, etc.) for the operation of the typewriter, for the functioning and safekeeping of the typewriter and equipment, and for stapling together the answer pages. No word processors or memory typewriters shall be permitted. Applicants with a disability are subject to the prohibition against word processors and memory typewriters in the exact same manner as any other applicant as set forth herein: *Provided, That* the Board will review the circumstances of each such case to determine reasonableness of the test taking accommodations requested on a case by case basis pursuant to 3.3(e). For the purpose of this rule, "disability" means physical or mental impairment that substantially limits one or more of the major life activities of such individual.~~

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(e) *Examination of applicants with a disability.* - All reasonable steps shall be taken by the Board to facilitate the examination of applicants with a disability or disabilities as defined by the Americans with Disabilities Act. Applicants with a disability or disabilities must notify the Board of any reasonable accommodation(s) needed at the time of the filing of the application on forms provided by the Board. For the purpose of this rule, “disability or disabilities” means physical or mental impairment that substantially limits one or more of the major life activities of such individual. Applicants with a disability or disabilities must notify the Board of any reasonable accommodation(s) needed at the time of the filing of the application on forms provided by the Board. The Board will consider accommodations requests submitted after December 1st preceding the February examination or May 1st preceding the July examination only where the applicant demonstrates that the disability in question arose after submission of the application.

(f) *Appeal of accommodations decision.* – The Board will notify an applicant promptly in writing of its decision regarding the applicant’s accommodations request. If the request is denied in whole or in part, the applicant may submit further documentation in support of the request only if the application deadline has not yet passed or if further documentation is specifically requested by the Board in the notice of decision. An applicant may appeal the Board’s denial of accommodations by submitting a written request for a hearing under Rule 6.0 within ten (10) calendar days of receipt of the Board’s decision; however, the evidence introduced at such a hearing shall be limited to evidence the applicant submitted in support of the accommodations request or evidence that is necessary to clarify existing documentation. The Board shall make every reasonable effort to complete the Rule 6.0 hearing process prior to the examination for which the applicant has applied.

(g) *Anonymity of applicants.* - The identity of the writer of the Multistate Performance Test and the Multistate Essay Exam shall not be known to the graders until the grades of all applicants have been finally determined. The Board shall have discretion to release unofficial bar passage information by anonymous applicant

number on the Board's website.

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RULE 3.4. REVIEW; REEXAMINATION.

(a) Review of failed examination by applicant. If an applicant fails to pass an examination conducted by the Board, the applicant may, within twenty (20) days after the results of the examination are mailed to the applicant by ~~the secretary of the Board,~~ review at the Board's offices ~~of the secretary of the Board,~~ the applicant's examination papers, which shall include questions posed by the Board, the applicant's answers to the questions and the grades given to the applicant by the Board as regards the West Virginia Essay Examination and the Multistate Essay Examination. The applicant may have the Multistate Bar Examination graded by hand upon payment of a fee established by the National Conference of Bar Examiners.

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RULE 4.4. MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION.

Prior to admission on motion, an applicant must have successfully passed the Multistate Professional Responsibility Examination ("MPRE") prepared and administered by the National Conference of Bar Examiners. To successfully complete the MPRE, the applicant must have achieved a scaled score of at least 8075 as determined by the National Conference of Bar Examiners. Arrangements to take such examination, including the payment of any fees therefore, shall be made directly with the Multistate Bar Examination Committee of the National Conference of Bar Examiners. The Board may, if requested by the applicant, accept any Multistate Professional Responsibility Examination score achieved in another jurisdiction in a prior examination conducted within twenty-five months of application for admission. All applicants for admission on motion shall notify the Board of their intention to use the Multistate Professional Responsibility Examination score achieved in another jurisdiction at the time their application is filed.

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RULE 6.0. ADMINISTRATIVE HEARING PROCEDURE.

(a) *Request for hearing.* - ~~In the event that the Board determines that an applicant does not meet the requirements of the Rules for Admission to the Practice of Law for any reason, except the failure to pass the bar examination, and the applicant requests a hearing to review the Board's action, a formal hearing is authorized when the applicant requests in writing to the Board a hearing. A formal hearing is authorized under this Rule under the following circumstances if requested in writing by the applicant or scheduled by the Bar Admissions Administrator: where the Board determines that an applicant does not meet the requirements of the Rules for Admission to the Practice of Law for any reason, except the failure to pass the bar examination; where the Board denies in whole or in part an applicant's request under Rule 3.3 for special accommodations during the bar examination; or as authorized by Rule 8.0 with respect to an applicant admitted under a Conditional Admission Agreement. Unless otherwise specified herein, R~~requests for a formal hearing must be received by the Board of Law Examiners within sixty days from the receipt of notice by the applicant of the Board's adverse decision. ~~that he or she does not meet the requirements of the Rules for Admission to the Practice of Law.~~ After a request for hearing has been made, an application may not be withdrawn, except upon written motion and for good cause shown and, further, upon payment of costs.

(b) *Formal hearing.* The Board shall appoint a hearing officer, who shall be a disinterested, practicing attorney in the State of West Virginia, to conduct a formal hearing. The Board shall, by a written notice mailed to the applicant by certified mail at his or her address as stated in the application, specify the date, time and place of the hearing and the name of the hearing officer.

(c) *Time for hearing.* Unless otherwise provided in these Rules, ~~the~~ time of the hearing shall not be less than twenty (20) days nor more than forty (40) days from the date of the receipt of the applicant's written request for a formal hearing. The Board or hearing officer may extend or shorten the time period for good cause shown. At the hearing before the hearing officer, the Board may designate a lawyer to represent it and to present evidence in support of the Board's decision. ~~such evidence bearing on the lack of qualifications of the applicant.~~ The applicant may be

represented by counsel and shall have the right to present evidence in support of his or her qualifications, request for special accommodations, or compliance with a Conditional Admission Agreement, and shall have the right to cross-examine witnesses; *Provided*, that evidence presented with regard to a request for special accommodations shall be limited as set forth in Rule 3.3. A record shall be made of the proceedings.

(d) *Subpoena and contempt power*. The Board shall have power to issue subpoenas through the Clerk of the Supreme Court of Appeals. The Clerk shall prepare and have available for issuance at the request of any party, subpoenas returnable before the Board for attendance of witnesses or for the production of documentary evidence. Subpoenas, and other process of the Board, may be served in the same manner provided for service of subpoenas to the circuit courts of this State and may be served by mail or by any person designated by the Board or Clerk. The Board shall have jurisdiction co-extensive with the circuit courts of this State to compel the attendance of witnesses and the production of documents; and the failure of any person without adequate excuse to obey a subpoena or other process of the Board shall constitute contempt of the Board. All witnesses shall be entitled to such witness fees and expenses as in any civil proceeding in this State.

The Board or its appointed hearing officer may punish breaches of order and unprofessional conduct committed in its presence on the part of counsel, or any other person, by censure or exclusion from any hearing or may invoke the aid of any circuit court in keeping order. Such court, in case of the refusal of any person to maintain order before the Board or hearing officer, shall issue an order requiring such person to maintain order. Any failure to obey such order of the court may be punished by such court as contempt thereof. The Board or hearing officer may designate a person, or persons to act as bailiff or bailiffs to be in attendance at all its hearings.

(e) *Review by Board and Court*. Upon completion of the hearing before the hearing officer, the hearing officer shall make a written recommendation ~~as to the eligibility of the applicant~~ based upon the requirements of these rules and upon the evidence

submitted. Such written report, together with a copy of the transcript of the hearing, shall be forwarded as soon as practicable to the Board of Law Examiners. The Board, within forty-five (45) days from the receipt of said written report and the record, shall review the report and shall advise the applicant in writing as to whether he or she has been found eligible to take the bar examination or to be admitted, if examination is not required, or, in the case of a conditionally admitted applicant, whether the applicant has been found to have violated the Conditional Admission Agreement. In cases appealing the Board's denial of testing accommodations, the Board shall advise the applicant in writing within fifteen days from the receipt of the written report and the record whether the requested accommodations will be granted. ~~In the event that the Board finds that the applicant is not eligible~~ In the event that the Board makes a finding adverse to the applicant, the applicant may file exceptions to the Board's recommendations. Exceptions shall be filed with the Clerk of the Supreme Court of Appeals within thirty (30) days from the date of the receipt of the Board's written recommendation. If the Court determines that the matter has merit, it shall docket the case for full argument.

RULE 7.0. ADMISSION PROCEDURE.

(a) *Certificate of eligibility.* The Board shall issue a certificate of eligibility, which shall be filed, along with a character report, with the Clerk of the Supreme Court of Appeals, for every applicant who has complied with the requirements of the applicable rules and who has paid the statutory fee.

(b) *General procedure.* An applicant who is eligible for admission may be admitted to the practice of law in the State of West Virginia by appearing before the Supreme Court of Appeals within twelve months of issuance of the certificate of eligibility, by taking the oath hereinafter set forth, and by signing the roll of attorneys maintained by the Clerk of the Supreme Court of Appeals. No applicant shall be admitted without taking the oath administered by the Clerk of the Supreme Court of Appeals and by signing the roll of attorneys in the office of the Clerk of the Supreme Court of Appeals. An affirmation may be given in lieu of an oath. The oath is administered and the roll is signed at a ceremony held in the courtroom of the

Supreme Court of Appeals of West Virginia approximately one month after issuance of the certificate of eligibility. Failure to be sworn within twelve months of issuance of the certificate of eligibility causes the right to admission to lapse. The date of oath is the actual admission date of new attorneys.

~~(c) *Conditional admission.* An applicant's admission to practice may be conditioned for a specified period of time, not to exceed two years, either upon the recommendation of the Board and approval by the Supreme Court of Appeals, or by the Court upon its own motion. Conditions imposed may include supervised practice, substance abuse treatment and counseling, mental health treatment and counseling, financial counseling, or other terms. Recommendations for conditional admission shall be considered, but not binding upon the Court. At the conclusion of the conditional admission period, the Board shall make a written recommendation to the Court as to whether the applicant is eligible for admission as having satisfied the terms of the conditional admission. Not later than two years after the conditional admission was granted, the Court shall remove the conditions placed upon admission or decline to admit the applicant to the practice of law. The Court may revoke the conditional admission at any time.~~

~~(d)~~(c) *Oath of attorney.* Upon being admitted to the practice of law in the State of West Virginia, each applicant shall take and subscribe to the following oath or affirmation:

"I do solemnly swear or affirm that: I will support the Constitution of the United States and the Constitution of the State of West Virginia; that I will honestly demean myself in the practice of law; and, to the best of my ability, execute my office of attorney-at-law; so help me God."

~~(e)~~(d) *Certificate of admission.* Each applicant admitted may receive a certificate of admission suitable for framing. Such certificate shall be issued, upon payment of a fee as set forth in the fee schedule, in the name of the Supreme Court of Appeals of West Virginia and shall be signed by the Clerk of the Supreme Court of Appeals."

RULE 7.1. CONDITIONAL ADMISSION.

(a) Terms of conditional admission. An applicant's admission to practice may be conditioned for a specified period of time, not to exceed two years at its commencement, either upon the recommendation of the Board and approval by the Supreme Court of Appeals, or by the Court upon its own motion. Recommendations for conditional admission shall be considered, but not binding upon the Court. Conditions imposed shall be tailored to detect recurrence of behavior which could render an applicant unfit to practice law, or which could pose a risk to clients or the public, and to encourage continued treatment, abstinence, or other support. Conditions may include supervised practice, substance abuse treatment and counseling, medical treatment, random drug or alcohol screening, mental health treatment and counseling, financial counseling, or other terms appropriate under the circumstances. The terms adopted by the Court shall be set forth in a Conditional Admission Order filed with the Clerk of the Supreme Court of Appeals, and copies of the Order shall be provided to the Board, the Office of Disciplinary Counsel, the applicant, and the West Virginia State Bar.

(b) Conditional Admission Agreement. The terms ordered by the Court shall be set forth in a Conditional Admission Agreement, which may also include terms deemed necessary by the Board for monitoring of the applicant's compliance with the Court's order. Unless otherwise ordered by the Court, the contents of the Conditional Admission Agreement shall remain confidential to anyone not directly involved in the monitoring of the applicant's compliance with the Agreement. The Agreement shall be signed by the Board's President or designee, by the applicant, and by the Clerk. The applicant's compliance with the Agreement shall be monitored by the Bar Admissions Administrator, who may take such action as is necessary to monitor compliance with the terms of the Agreement, including, without limitation, referral for local monitoring by an attorney in the applicant's community, referral to a lawyer assistance program, requiring that the applicant maintain residency in a specific area if necessary to monitor compliance with the Agreement, requiring the applicant to submit physical or written evidence or other

verification of compliance with the Agreement, and requiring the applicant to submit to an assessment by a medical or mental health professional.

(c) *Modification and revocation of conditional term.* Where the Bar Admissions Administrator has a reasonable belief either that the applicant is in violation of the Conditional Admission Agreement or that the applicant's circumstances have changed such that a modification of the agreement is necessary, the Bar Admissions Administrator shall give written notice to the applicant of the alleged violation or proposed modification. Unless, within twenty days of receipt of the written notice, the applicant consents to the modification or revocation of the Agreement, the Administrator shall schedule a hearing under Rule 6.0, and shall proceed as set forth under that rule. An applicant whose conditional admission has been revoked is prohibited from reapplying for admission until two years have passed from the date of the revocation, unless the Court orders otherwise.

(d) *Completion of conditional term.* At the conclusion of the conditional admission period, the Board shall make a written recommendation to the Court as to whether the conditions attached to the applicant's admission should be lifted, modified, or extended, or whether the applicant's conditional admission should be revoked. Not later than five years after the conditional admission was first granted, the Court shall remove the conditions placed upon admission or decline to admit the applicant to the practice of law. Copies of the Court's final Order on the conditional admission shall be provided to the Board, the Office of Disciplinary Counsel, the applicant, and the West Virginia State Bar.

(e) *Authority of the Lawyer Disciplinary Board.* Nothing in these rules shall restrict or diminish the authority of the Lawyer Disciplinary Board or the Office of Disciplinary Counsel with respect to complaints filed against conditionally admitted applicants. Where the Board of Law Examiners has probable cause to believe that a conditional admission applicant has violated the terms of the Conditional Admission Order or Conditional Admission Agreement in a manner implicating the Rules of Professional Conduct, the Board may inform the Office of Disciplinary Counsel of the same.

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RULE 9.0. LIMITED PERMISSION OF ATTORNEYS OF OTHER STATES.

(a) *Indigent legal services or public defender program attorneys.* An attorney who is enrolled in a criminal law or poverty law and litigation graduate program in an approved law school or who, after graduation from an approved law school, is employed by or associated with an organized legal services or public defender program providing legal assistance to indigents and who is a member of a court of last resort of another state (the term "state" including Territories and the District of Columbia), shall be permitted to practice before the courts of this State in all causes in which he or she is associated with an organized legal services or public defender program sponsored, approved or recognized by the Board of Law Examiners. Permission to practice under this rule shall become effective upon filing with the Board of Law Examiners (1) a certificate of any court of last resort certifying that the attorney is a member in good standing at the bar of that court; and (2) a statement signed by a representative of the law school that the attorney is enrolled in the above specified graduate program; or (3) a statement signed by a representative of the organized legal services or public defender program that the attorney is currently associated with such program; and (4) an application in the form required by Rule 5.0, et seq., and reviewed in accordance with that rule; and (5) the issuance of a certificate of limited permission by the Board following the oath or affirmation required by Rule 7.0(c).

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A True Copy

Attest:



Deputy Clerk, Supreme Court of Appeals