

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN RE:

BOARD OF BAR EXAMINERS
OF THE DELAWARE SUPREME
COURT RULES 1 – 54

SUPREME COURT RULES 51 - 55

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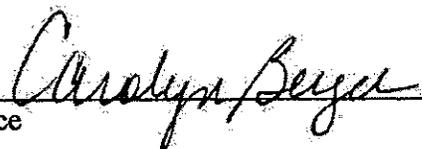
ORDER

This 5th day of March 2012, it appears to the Court that it is desirable to amend the Board of Bar Examiners of the Delaware Supreme Court Rules 1 through 54 and Supreme Court Rules 51 through 55. The following amendments shall be effective immediately.

NOW, THEREFORE, IT IS ORDERED that:

Board of Bar Examiner Rules 1 – 54 and Supreme Court Rules 51 - 55 are amended by deleting the Rules in their entirety and substituting in lieu thereof new Rules as attached.

BY THE COURT:



Justice

ATTACHMENT 1

PART V. ATTORNEYS.

Rule 51. Board of Bar Examiners.

(a) Appointment and term of office. -- The Court shall appoint a Board of Bar Examiners (the "Board") consisting of such number of members of the Bar as the Court shall determine. Each of the counties shall be represented on the Board. Each member of the Board shall be appointed for a term of 3 years, unless the Court shall order otherwise. No member shall be appointed to serve for more than 3 consecutive terms, unless otherwise ordered by the Court. At the request of the Board, the Court may appoint as a temporary Board member (to perform such duties as shall be prescribed by the Board) any former Board member.

(b) Duties. -- It shall be the duty of the Board to administer Rules 51 through 55. The Board shall examine applicants for admission to the Bar upon principles of law and equity at least once a year. The Court shall select a Chair and a Vice Chair. The Court may also appoint a Secretary and an Assistant Secretary who, if appointed, may be members of the Board. The duties of the Secretary and Assistant Secretary shall be prescribed by the Board. The Court may also appoint an Executive Director who shall not be a member of the Board.

(c) Powers. -- The Board shall have the power:

(1) Internal operating rules. -- To adopt rules of procedure for the conduct of its duties;

(2) Bar admission rules. -- Subject to the approval of the Court, to adopt general rules, in furtherance of and supplemental to the Rules of the Court, relating to the admission to the Bar;

(3) Subpoenas. -- In connection with the performance of its duties, to take testimony under oath and to compel the attendance of witnesses and the production of documents by the filing of a praecipe for a subpoena with the Clerk of the Supreme Court, service of such subpoena to be made in a manner prescribed by the Clerk;

(4) Fees. -- To require the payment by each applicant for admission to the Bar, prior to or after examination, of reasonable fees relating to the application process, the administration of the Bar Examination and the admission process, including without limitation expenses incurred in connection with the character investigation set forth in subparagraph (6);

(5) Stenographers. -- To employ such stenographic or other assistance as may from time to time be necessary or proper; and

(6) Character investigation. -- To conduct such investigation of an applicant for admission to the Bar prior to or after the Bar Examination as shall be necessary to determine the fitness of such applicant and the applicant's compliance with the Rules of the Court and the Rules of the Board, and to charge any such applicant for expenses incurred in connection with such investigation in addition to the fees generally applicable to all applicants.

(d) Associate members. -- The Court may appoint associate members of the Board to assist each member of the Board. Each associate member shall have been a member of the Bar for at least 5 years. Each associate member shall be appointed for a term of 1 year and shall have such duties and functions as shall be prescribed by the Board. Associate members of the Board shall not have the power to vote upon any determination or decision of the Board.

(e) Members-Elect. -- The Court may appoint up to 2 Members-Elect per year to assist in the function and operation of the Board. Each Member-Elect shall be appointed for a term of 1 year and shall have such duties and functions as shall be prescribed by the Board. Members-Elect shall not have the power to vote upon any determination or decision of the Board.

Rule 52. Admission to the Bar -- General.

(a) Requirements for admission. -- No person shall be admitted to the Bar unless the applicant shall have qualified by producing evidence satisfactory to the Board:

(1) Character and aptitude. -- That the applicant is a person of good moral character and reputation and that the applicant possesses such qualities, aptitudes and disposition as fit the applicant for the practice of law.

(2) Preceptor. -- That the applicant is vouched for by a member of the Bar of this State who shall have been a member of the Bar of this State for at least 10 years, and such person shall be designated as the Preceptor for such applicant.

(3) Age. -- That the applicant is at least 21 years of age.

(4) College or university. -- That the applicant has completed the pre-legal education necessary to meet the minimum requirements for admission to a law school that at the time of graduation was listed on the American Bar Association list of approved law schools. In the event that the applicant was admitted to such a law school without having first received a baccalaureate degree or its equivalent from an accredited college or university (the method of such accreditation to be determined by the Board), the applicant shall supply to the Board a copy of the law school's statement of considerations in the applicant's file or other supporting statement from the law school, satisfactory to the Board, setting forth the basis for the law school's decision to admit notwithstanding the absence of such a degree.

(5) Law school. -- That the applicant has been regularly graduated with a juris doctor degree or its equivalent from a law school which at the time of conferring such degree was listed on the American Bar Association list of approved law schools.

(6) Multistate Professional Responsibility Examination. -- That the applicant has taken the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners at such time as the Board shall determine and has achieved such score as the Board shall determine to be necessary for admission.

(7) Bar Examination. -- That the applicant has been examined upon principles of law and equity and has been found by the Board based upon the applicant's performance on such examinations to be qualified to practice as an attorney.

(8) Clerkship. -- That, as shall be certified by both the applicant and the applicant's Preceptor, the applicant has served a clerkship in the State of Delaware under the direct and constant supervision of a member of the Bar of this State qualified as set forth in subparagraphs (i)-(iii) aggregating substantially full-time service for at least 5 months' duration, which period need not be continuous but which may not begin prior to matriculation at a law school described in subparagraph (5) of paragraph (a) of this Rule 52. For purposes of this Rule 52(a)(8), 5 months is 21 forty-hour work weeks.

(i) Law office/legal department. -- In the office of or under the direct and constant supervision of the applicant's Preceptor, or under the direct and constant supervision of such other member of the Bar of this State who is satisfactory to the applicant's Preceptor and who has been a member of the Bar of this State for at least 5 years;

(ii) Law clerk. -- As a law clerk of a justice or judge of the courts of this State or of a United States judge residing in Delaware; or

(iii) Public office. -- In the office of the Department of Justice of the State of Delaware, the office of the Public Defender of the State of Delaware, the office of the United States Attorney for the District of Delaware, the office of the City Solicitor of the City of Wilmington, the office of Community Legal Aid Society, Inc., the office of Delaware Volunteer Legal Services, Inc. or in the office of a related or similar organization approved by the Board upon the request of an applicant, under the direct and constant supervision of a member of the Bar of this State who has been a member of the Bar of this State for at least 5 years.

(9) Checklist of legal activities. -- That the applicant has performed such legal tasks and activities related to the practice of law in Delaware as the Board shall direct and furnish in the form of a checklist to all applicants for admission, with the completion of such tasks and activities to be certified by both the applicant and the applicant's Preceptor.

(10) Pre-admission program. -- That the applicant has satisfactorily attended a pre-admission session of instruction called by the Court or by the Board upon such subjects as the Court or the Board shall from time to time determine to be appropriate instruction for those seeking admission to the Bar, and has paid a fee established by the Court or the Board to the Clerk of the Supreme Court.

(11) Other requirements. -- That the applicant has complied with such other requirements as the Board may prescribe from time to time, with the approval of the Court.

(12) Military service exception. -- In the event that an applicant satisfies all of the requirements for admission to the Bar except completion of the clerkship and/or attendance at the pre-admission program, and the applicant made a good faith effort to complete those requirements but was unable to do so because he or she was called to active duty in any of the armed services of the United States after taking the Bar Examination, then, in the discretion of

the Court, the applicant shall be qualified to be admitted to the Bar conditionally. Upon taking the oath, the applicant would then become a member of the Bar for all purposes, subject to the following: (i) if the applicant completes the clerkship requirement within six months after release from active duty and attends the next pre-admission program called by the Court or the Board, his or her admission to the Bar will be made unconditional; (ii) if the applicant fails to complete those requirements, the applicant's conditional admission to the Bar may be revoked by the Court and the Court may order such other sanctions as may be warranted in the circumstances.

(b) Application for admission to the Bar. -- A person seeking admission to the Bar shall complete and file an application for admission to the Bar at such time prior to the administration of the Bar Examination as the Board shall determine. The Board may deny an applicant permission to take the Bar Examination if the applicant has failed to comply with the instructions of the Board regarding the application process.

(c) Deadline for completion of requirements for admission. -- An applicant for admission to the Bar must have satisfied the requirements for admission and be admitted by December 31 of the calendar year following the year in which the applicant passes the Bar Examination. Except for good cause shown to the Board, an applicant who fails to satisfy the requirements for admission to the Bar within the time prescribed shall not be admitted without retaking the Bar Examination.

(d) Certification. -- Upon approval of the qualifications of any applicant for admission to the Bar, the Board shall execute and deliver to the applicant a certificate of the applicant's qualifications for admission to the Bar.

(e) Appeals from actions of the Board. -- Any person aggrieved by final action of the Board may appeal to the Court for relief if such action affects the substantial rights of the person claimed to be aggrieved, except that decisions of the Board with respect to a specific grade or grades assigned to any individual applicant are final and shall not be subject to review by the Court. The appeal shall be commenced by serving 2 copies thereof upon the Chair and the Executive Director of the Board and by filing the original and 1 copy with the Clerk of the Court in compliance with Rule 7, such service and filing to be accomplished within 30 days of the action of the Board. No appeal shall be accepted unless the provisions of this paragraph have been timely fulfilled. Appeals from the Board's action to the Court shall be briefed in accordance with Rule 15, argued and determined from the record of the matter before the Board of Bar Examiners and not by means of a hearing de novo. Findings by the Board relating to disputed issues of fact and credibility will not be reversed by the Court if such findings are sufficiently supported by the record and are the product of an orderly and logical deductive process.

Rule 53. Admission to the Bar -- Attorneys admitted elsewhere.

Repealed effective Feb. 21, 1984.

Rule 54. Admission in open court; oath.

Application for admission to the Bar shall be made in open court at any session of the Court or in the chambers of any Justice of the Court. Upon the admission of any person, the name of such person shall be forwarded by the Clerk of the Court to the Prothonotary and to the Register in Chancery in each of the counties of this State to be properly recorded by them. Every attorney shall, on the attorney's admission, subscribe to the roll of attorneys and take and subscribe 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 Delaware; that I will behave myself in the office of an Attorney within the Courts according to the best of my learning and ability and with all good fidelity as well to the Court as to the client; that I will use no falsehood nor delay any person's cause through lucre or malice."

Rule 55. Limited permission to practice in certain public programs.

(a) Limited permission to practice. -- Attorneys admitted to practice in other jurisdictions or graduates of law schools prescribed by Rule 52(a)(5) who are employed by or associated with Delaware Volunteer Legal Services, Community Legal Aid Society, Inc., Legal Services Corporation of Delaware, Inc., the Department of Justice of the State of Delaware, the Office of the City Solicitor of the City of Wilmington, the Office of the Public Defender, Office of the

Child Advocate of the State of Delaware, the New Castle County Office of Law or attorneys who are admitted to practice in other jurisdictions and are associated with a legal assistance program approved or recognized by the Board, may, in the discretion of the Board, be permitted to practice in the courts and administrative tribunals of this State in matters involving such office or the clients of such program. The requirements, qualifications and procedures for such permission shall be set forth in the Rules of the Board.

(b) Application and oath. -- Application for permission to practice before the courts and administrative tribunals of this State under paragraph (a) of this Rule shall be made in open court at any session of the Court or in the chambers of any Justice of the Court. Each applicant shall, on being granted such permission, take and subscribe 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 Delaware and that I shall conduct myself strictly in accordance with all the terms and conditions of the Rules of the Delaware Supreme Court and the Rules of the Board of Bar Examiners; that I will behave myself within the Courts and administrative tribunals according to the best of my learning and ability and with all good fidelity as well to the Court as to the client; that I will use no falsehood nor delay any person's cause through lucre or malice."

(c) Limited permission is not admission to Bar. -- Applicants who are granted limited permission to practice under this Rule shall not be deemed to have been duly admitted to the practice of law before the Court.

ATTACHMENT 2

RULES OF THE BOARD OF BAR EXAMINERS OF THE STATE OF DELAWARE
I. STRUCTURE AND SCOPE OF BOARD OF BAR EXAMINERS.

Rule 1. Duties and powers of the Board.

Supreme Court Rules 51 through 55 are incorporated herein by reference. The Board shall have the duties and powers set forth in Supreme Court Rule 51 and it shall also have the power to institute and defend actions in its name in any court of competent jurisdiction and to take such other and further action as the Board deems prudent and necessary to fulfill its duties and responsibilities.

Rule 2. Officers and Members.

(a) Chair and Members. -- The Chair, Vice Chair, Members of the Board and, if applicable, the Secretary and Assistant Secretary, and Members-Elect, shall be appointed by the Supreme Court in accordance with Supreme Court Rule 51.

(b) Associate Members. -- Associate Members of the Board may be appointed by the Supreme Court to assist the Members in fulfilling their duties and responsibilities; provided, however, that Associate Members shall not have the power to vote with respect to any determination or decision of the Board.

(c) Compensation and expenses. -- Members, Members-Elect and Associate Members shall receive no compensation for their services but may be reimbursed for travel and other expenses incidental to the performance of their duties, if authorized by the Board.

Rule 3. Abstention of Board Members.

Members shall refrain from taking part in any meeting, hearing or portion thereof in which a judge, similarly situated, would be required to abstain and shall only be considered "disqualified" for the purposes of that meeting, hearing or portion thereof.

Rule 4. Meetings and quorum.

(a) Meetings. -- The Board shall conduct meetings at such times as the Board shall determine. Meetings may be called at any time by the Chair or Vice Chair upon 2 days' notice.

(b) Quorum. -- A majority of the total number of Members shall constitute a quorum for the transaction of business by the Board. A majority of the total votes cast at a meeting at which a quorum is present shall be the act of the Board.

(c) *Ad hoc* members. -- If, in any given meeting or hearing, the number of Board Members not disqualified is less than a quorum, the Supreme Court may appoint, for that meeting or hearing only, that number of *ad hoc* Members (which may include Associate Members) necessary to establish a quorum. Each *ad hoc* Member shall have the powers and fulfill the duties of a Member of the Board for the purposes of that meeting or hearing only.

(d) Committees and panels. -- The Chair, Vice Chair, or, if both are absent or disqualified, the Board may appoint committees or panels of the Board, which shall have such powers, general or specific, as the Chair, Vice Chair or Board, as the case may be, shall designate. Any committee or panel (except Hearing Panels under Rule 32) may consist of 1 or more members.

(e) Telephone meetings. -- Except with respect to hearings, the Board, and any of the members thereof, may participate in any meeting of the Board, or a committee or panel thereof, by means of conference telephone or similar communications equipment through which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting.

II. APPLICATION PROCESS.

Rule 5. Filing of application and fee.

(a) Time. -- An applicant who desires to take the Bar Examination shall electronically file with the Board, on forms provided by the Board, an application for admission to the Bar. The application shall be filed with the Board no later than May 15 of the year in which an applicant seeks to take the examination. Notwithstanding anything to the contrary contained herein, under no circumstances will an application be accepted after May 15. Instructions regarding the application process shall be posted on the Board's website.

(b) Fees. -- A timely application shall be accompanied by a non-refundable application fee as follows:

- (i) For Applications filed on or before April 1:
 - Applicants not yet admitted in another jurisdiction \$700
 - Applicants admitted to practice in another jurisdiction \$800

- (ii) For Applications filed after April 1 but on or before May 15:
 - Applicants not yet admitted in another jurisdiction \$1400
 - Applicants admitted to practice in another jurisdiction \$1600

(c) Application. -- The application form shall identify all information and documents that must be filed electronically together with the application. No application shall be deemed filed until and unless (i) it includes all such information and documents; and (ii) the application fee is paid in full. The application fee shall be paid online as provided in the application form, unless prior to the timely filing of the application, the applicant receives written authorization from the Executive Director of the Board to pay by certified check or money order.

(d) Additional documentation -- The application form may also identify additional documentation that must be provided after the electronic filing of the application. If the application is not complete by July 1, the Board may deny an applicant permission to take the Bar Examination.

(e) Applicant's duty to update application. -- Until the applicant is admitted to the Bar, the applicant is under an ongoing duty to update the application as necessary to ensure that all of the applicant's answers are current, complete, and accurate. Updated information must be filed with the Board within ten (10) days of the event triggering the need to update the application.

Rule 6. Deleted.

Rule 7. Applicant's duty of candor.

Consistent with the requirements of Rule 8.1 of the Delaware Lawyers' Rules of Professional Conduct, each applicant for admission to the Bar has a duty to be candid and to make full, detailed and accurate responses and disclosures in all phases and aspects of the application and admission process and to respond fully to all inquiries from the Board. The Board's investigation of the applicant's fitness for admission to the Bar is a continuing one and, accordingly, the applicant must continue to provide any information or material not previously disclosed that relates to the Board's ongoing fitness investigation until the applicant is admitted to the Bar.

III. MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION.

Rule 8. Multistate Professional Responsibility Examination.

An applicant must achieve a scaled score of not less than 85 on the Multistate Professional Responsibility Examination ("MPRE") taken between January 1 of the calendar year four (4) years preceding and December 31 of the calendar year following the year in which the applicant passes the Delaware Bar Examination. The MPRE is administered in all respects by the National Conference of Bar Examiners ("NCBE"). The MPRE shall be given on such dates, at such locations and under such conditions as the NCBE shall designate, and applications to take the MPRE and all matters relating thereto, including requests for special accommodations, shall be made directly to the NCBE and not to the Board. The applicant shall be responsible to assure that the results of the MPRE are transmitted to the Board.

IV. PRECEPTORS.

Rule 9. Duty to obtain preceptor.

Each applicant shall have the duty to obtain an attorney who is qualified and willing to serve as the applicant's preceptor in accordance with Supreme Court Rule 52 and these Rules. Applicants who have been unable to obtain a preceptor despite a reasonable and good faith effort may contact the Preceptor Bank to request assistance in this regard. Information regarding the Preceptor Bank may be found on the Board's website.

Rule 10. Qualifications and duties of a preceptor.

(a) Qualifications. -- An attorney is qualified to act as a preceptor if the attorney has been admitted to the Bar of the Supreme Court for at least 10 years prior to undertaking the duties of a preceptor, and if the attorney attends during the year in which the attorney serves as preceptor, or has attended within the previous 5 years, a meeting of the preceptors held in conjunction with the annual Bench and Bar Conference or at such other time or times as the board may designate.

(b) Duty to investigate. -- A preceptor has a duty to conduct a reasonably comprehensive personal interview with the applicant before agreeing to act as a preceptor and to make a reasonable investigation into the applicant's background from independent sources other than the applicant or the applicant's family, in order that the preceptor may make the required

certifications freely and without reservation. In making any such certifications, the preceptor must state the basis of the preceptor's knowledge.

(c) Duty to review. -- A preceptor must personally review the application of the applicant filed pursuant to these Rules and discuss the application with the applicant to the extent necessary to allow the preceptor to reasonably conclude that the application is factually accurate and contains no omission of any fact required to be disclosed.

(d) Duty to confer and monitor. -- In order to confirm the applicant's compliance with the clerkship and checklist of legal activities requirements set forth in Supreme Court Rules 52(a)(8) and 52(a)(9), a preceptor shall confer on a frequent and regular basis with the applicant and shall advise the applicant of the expected conduct and obligations of a member of the Bar.

(e) Duty to certify. -- A preceptor shall have a duty to execute the following:

(1) A Preceptor's Certificate certifying to the Board that the preceptor knows the applicant; that the preceptor is satisfied, either from personal knowledge or after reasonable investigation into the applicant's background from independent sources other than the applicant or the applicant's family, that the applicant is a person of good moral character and reputation; that the applicant is fit for the practice of law; and that the applicant is qualified to take the Bar Examination and to be admitted to the Bar upon passing the Bar Examination. The Preceptor's Certificate shall also include an acknowledgment by the preceptor that he or she understands that the Board and the Supreme Court rely on the Preceptor's Certificate and the Clerkship Certificate and that the preceptor may be held accountable to the Supreme Court for failure to perform adequately the duties and obligations of a preceptor; and

(2) A Clerkship Certificate certifying to the Board at the appropriate time that the applicant has completed the 5 month clerkship and checklist of legal activities requirements set forth in Supreme Court Rules 52(a)(8) and 52(a)(9) and reviewed the Statement of Principles of Lawyer Conduct in Supreme Court Rule 71. For purposes of this Rule 10(e)(2), 5 months is 21 forty-hour work weeks.

V. BAR EXAMINATION FORM AND PROCESS.

Rule 11. Time of the examination.

(a) Time of the examination. -- The Bar Examination shall be given each year on such days as the Board shall designate.

(b) Administration of examination. -- The Bar Examination shall be administered under the joint supervision of the Executive Director of the Board of Bar Examiners and an official of the Supreme Court to be designated by the Supreme Court. Those individuals shall establish and implement procedures relating to the administration of the Bar Examination.

Rule 12. Matters covered by the examination.

The Bar Examination shall consist of the Multistate Bar Examination ("MBE"), two Multistate Performance Tests ("MPT"), and 8 essay questions which shall include such of the following subjects as the Board shall determine each year:

- Agency
- Constitutional Law
- Contracts
- Corporations
- Criminal Law (including the Delaware Criminal Code)
- Equity
- Evidence
- Partnerships

Procedure in the Supreme Court of the State of Delaware, the Court of Chancery of the State of Delaware, the Superior Court of the State of Delaware (Civil and Criminal), the Family Court of the State of Delaware, the United States District Court for the District of Delaware and the original and appellate jurisdiction of the courts of Delaware

- Property
- Torts
- Trusts
- Uniform Commercial Code
- Wills

Rule 13. Passing grade on the examination.

An applicant shall be deemed to have passed the Bar Examination if, in a single administration of that Examination, the applicant achieves a "total scale score" of 145.00 or higher. "Total scale scores" are computed as follows: (a) the raw scores on each of the eight essay questions are converted to a score distribution that has a mean of 50 and a standard deviation of 7, (b) the raw scores on each of the two MPT questions are converted to a score distribution that has a mean of 50 and a standard deviation of 14, (c) a given applicant's "total converted score" is the sum of that applicant's converted essay and converted MPT scores, (d) the distribution of the "total converted scores" is scaled to the MBE to yield a "total written scale score," (e) the applicant's "total written scale score" is combined with that applicant's MBE scale score (with the written score weighted at 60% and the MBE score weighted at 40%) to produce a "total scale score." The term "scaled to the MBE" as used herein means that the distribution of "total scale scores" is scaled to a distribution that has the same mean and standard deviation as the MBE scale scores in Delaware.

Rule 14. Anonymous administration and grading.

The Bar Examination shall be administered and graded on an anonymous basis. Each applicant will be assigned a number at random by the Executive Director, which will be used by the Board to identify the applicant's answers to the Bar Examination during the grading process. The information connecting the identity of the applicant with an examinee number shall not be provided to any member of the Board until the Board has posted the results in accordance with Rule 16.

Rule 15. Non-discriminatory administration.

- (a) *Non-discriminatory administration.* The Board will provide special accommodations at no additional cost to applicants with disabilities as defined under the Americans with Disabilities Act (ADA). The Bar Examination shall be administered in a manner that does not discriminate against individuals with disabilities. An applicant who is eligible to take the Bar Examination may request special accommodations with respect to the manner in which the examination is administered, if, by virtue of a temporary or permanent disability, the applicant is unable to take the examination under normal testing conditions.
- (b) *Form and timing of requests.* An applicant seeking special accommodations in connection with the administration of the Bar Examination must timely file with the Board a completed Application for Special Accommodations, which form may be secured upon request to the Board (the "Application"). The Application shall be deemed filed with the Board for purposes of this Rule only if it is filed on the same date as the applicant's timely application to take the Bar Examination pursuant to Rule 5(a), except that the Board may accept a later-filed Application upon a showing by the applicant that demonstrates to the satisfaction of the Board that the disability on which the request for special accommodations is based first manifested itself after the date of filing of that applicant's application to take the Bar Examination and that an Application was thereafter promptly filed with the Board. When filed, the Application must contain all information and supporting documentation upon which the applicant will rely in support of the accommodation requested. The Board shall not thereafter accept or consider any additional oral or written information or documentation in support of the accommodation requested, except as provided below in Rule 15(c) and (d)(i). In connection with the Application, an applicant must submit, among other things, a report or documentation of recent testing and a current assessment of the impact of the applicant's disability. This means that testing must have been conducted within three years prior to the request for accommodations. If, however, an applicant was tested as an adult, after the age of 21, testing conducted within five years prior to the request for accommodations is acceptable. If the documentation submitted is insufficient or outdated, the request for accommodations will be denied.

- (c) *Procedure for ruling upon the Application.* The Application shall first be submitted for disposition to a committee of three (3) or more Board members designated by the Chair or Vice Chair of the Board (the "Committee"). In ruling on the Application, the Committee may seek such assistance from medical, psychological, or other professionals as it may deem appropriate, and may require that the applicant undergo a physical or other examination, at the applicant's expense. The analysis and results of any such examination shall be submitted to the Committee in writing. The record upon which the Committee rules shall consist only of the Application and the materials, if any, submitted to the Committee by the consulting professional(s). In ruling upon the Application, the Committee may grant or deny the accommodation sought, or grant an accommodation different from that requested in the Application.
- (d) *Procedures relating to a denied Application.* If in its initial ruling the Committee does not grant in full the accommodation sought, it shall so notify the applicant electronically with a copy sent by first class mail, and shall set forth in the notification a statement of the basis for the Committee's decision and append the report of any consulting professional submitted to and relied upon by the Committee in its decision. If the applicant wishes to challenge the Committee's ruling, he or she may do so by filing with the Board a petition for a hearing on the denial of the request, in whole or in part (the "Petition"). The Petition shall be in the form required by Rule 31 and must be filed no later than ten (10) days after the date of the Committee's written decision. The Petition must state with specificity the relief to be requested and may set forth the applicant's argument as to why the record before the Committee supports the relief sought and does not support the Committee's ruling. Upon receipt of the Petition, the Chair and Vice Chair of the Board shall appoint a hearing panel of three (3) disinterested persons, at least two (2) of whom shall be current or former members of the Board (the "Hearing Panel"). The Hearing Panel shall thereupon convene a hearing upon notice to the applicant.
- (i) *Proceedings before the Hearing Panel.* The Hearing Panel's consideration of the Application is *de novo*. The applicant may be represented by counsel before the Hearing Panel. Evidence admissible at the hearing shall be limited as provided in subsection (ii) below. Witnesses at the hearing shall be limited to the applicant, the expert upon whom the applicant relied in his or her Application, and any expert relied upon by the Committee in connection with its ruling on the Application. The expert witnesses may appear in person or telephonically and shall be sworn. The applicant, directly or through counsel, may cross-examine the opposing expert. The Hearing Panel may examine all witnesses.
- (ii) *The Record.* The Hearing Panel shall not accept or consider any written materials other than the Petition and the materials before the Committee in connection with its ruling. The oral testimony of the expert witnesses before the Hearing Panel shall be limited to opinions based upon the materials before the Committee, the Committee's ruling, the Petition and the opposing expert's testimony at the hearing. The hearing proceedings shall be recorded and preserved for appeal, if any.
- (iii) *Decision of the Hearing Panel and Appeal.* The Hearing Panel shall render its decision within ten (10) days of the conclusion of the hearing. If the Hearing Panel does not grant the full accommodation sought, the Hearing Panel shall issue a written decision within the ten (10) day period setting forth its reasons therefore, which decision shall be issued to the applicant or applicant's counsel electronically and by first class mail. The applicant may appeal the decision of the Hearing Panel by filing a Notice of Appeal with the Supreme Court no later than ten (10) days after the date of the Hearing Panel's written decision. The record on appeal shall consist of the record before the Hearing Panel, including a transcript of the hearing which the

applicant shall procure at his or her expense, and the written decision of the Hearing Panel.

Rule 16. Posting of results.

Promptly upon its final determination of the results of the Bar Examination, the Board shall post the results at such place or places and by such means as it may determine and the names of the successful applicants shall be made public.

Rule 17. Deleted.

Rule 18. Individual notification of results.

After the results have been posted in accordance with Rule 16, the Executive Director shall individually notify each applicant, electronically or in writing, whether he or she has passed or failed the Bar Examination and shall notify each failing applicant of the applicant's score on each of the essay questions, on each MPT and on the MBE. The Board shall authorize the NCBE to release MBE scores to all applicants in accordance with Board Rule 52(f).

Rule 19. Receipt of answers.

Any applicant who failed to achieve a passing score on the Bar Examination may obtain, upon written request made within 14 days after the examination results are posted and accompanied by \$10.00 fee for each question requested, a copy of any or all of the applicant's answers to the essay and MPT questions together with two representative answers to each such question.

Rules 20-22. Deleted.

VI. BAR REEXAMINATION.

Rules 23-27. Deleted.

Rule 28. No limitation on reapplication opportunities.

There shall be no limitations on the number of times an applicant may take or apply to take the Bar Examination.

VII. HEARINGS AND APPEAL RIGHTS.

Rule 29. Petition for a hearing.

If an application has not been approved by the Board because there exist disputed issues of fact with regard to the subject matter of Supreme Court Rule 52(a)(1) or (4), Board of Bar Examiners Rule 7, Rule 15 or questions as to the applicant's character or fitness or events in connection with the administration of the Bar Examination, the applicant may petition the Board for a hearing; provided, however, that any decisions of the Board with respect to a specific grade or grades assigned to any individual applicant, once posted according to Rule 16, are final and not subject to review by the Board.

Rule 30. Time for filing petition for a hearing.

A petition for hearing under Rule 29 shall be filed with the Executive Director at the offices of the Board of Bar Examiners within 15 days after the date of the letter informing the applicant of the Board's decision with respect to the items set forth in Rule 29 not to approve the application.

Rule 31. Form and content of petition for a hearing.

A petition for a hearing shall consist of not more than 10 pages, shall be verified under oath and shall set forth with specificity the grounds upon which the applicant claims to be aggrieved and the remedy the applicant seeks. The petition shall be submitted on paper measuring 8-1/2 by 11 inches with double spacing of at least 1/4 inch between each line of text (measured from the bottom of the preceding line to the top of the highest letters in the next line). Side margins of petitions shall not be less than 1 inch. All typed matter must be of a size and type permitting not more than 11 characters or spaces per linear inch. Failure to comply with the requirements of this Rule may result in the denial of the petition.

Rule 32. Hearing Panels.

(a) Hearings shall be conducted by a Panel of not fewer than 3, consisting of current members of the Board, or former members of the Board, or both, appointed by the Chair or Vice Chair for that purpose. The vote of the majority of the members of the Panel shall be the

action of the Board. The Chair of the Hearing Panel shall insure that all pertinent evidence is placed in the record for the Hearing Panel's consideration.

(b) In addition to having the authority to grant or deny permission to sit for the Bar Examination or gain admission to the Bar, the Hearing Panel shall be vested with the authority to fashion and impose such remedies as it shall deem appropriate under the circumstances, including but not limited to the imposition of conditions to be satisfied by the applicant prior to his or her admission to the Bar.

Rule 33. Deleted

Rule 34. Prehearing conference.

(a) A Hearing Panel, in its discretion, may hold prehearing conferences to be conducted by one or more of its members for the purpose of resolving or simplifying issues by consent, disposing of procedural requests or disputes, or regulating and expediting the conduct of the hearing.

(b) A Hearing Panel may, in its discretion, request submissions from the applicant prior to the hearing, including a list of witnesses, copies of exhibits to be submitted at the hearing, and such other and further information or material as the Panel may deem appropriate.

Rule 35. Notice of hearing.

Whenever the Board schedules a hearing, it shall give written notice to the applicant by certified mail, return receipt requested, at the mailing address supplied by the applicant on the application, at least 10 days in advance of the proposed hearing date, or such lesser period of time as is agreed upon by the Board and the applicant. A copy of the notice shall also be sent to each Board Member.

Rule 36. Contents of notice of hearing.

The notice of the hearing shall:

- (a) Describe the subject matter of the hearing;
- (b) Give the date, time and place of the hearing;
- (c) Give the date, time and place of a prehearing conference, if one is to be conducted pursuant to Rule 34;
- (d) Inform the applicant of the applicant's right to present evidence, to have witnesses and other sources of evidence subpoenaed, to be represented by counsel and to appear personally; and
- (e) Inform the applicant that the Hearing Panel is obligated to reach its decision based on the evidence received and that the applicant has the burden of proof.

Rule 37. Conduct of hearings.

(a) Subpoenas. -- A Hearing Panel is empowered to issue subpoenas as follows:

(1) At the request of the Hearing Panel, the Chair (or the Vice Chair, in the Chair's absence), prior to any hearing or for the hearing, shall compel by subpoena the attendance of witnesses (including the applicant) and the production of such books, papers and documents before the Panel as are relevant to the issues that are the subject matter of the hearing.

(2) At the written request of the applicant, the Chair (or the Vice Chair, in the Chair's absence), prior to any hearing or for the hearing, shall compel by subpoena the attendance of such witnesses and the production of such books, papers and documents before the Panel as are relevant to the issues that are the subject matter of the hearing.

(3) Subpoenas issued during the course of a proceeding shall clearly indicate on their face that the subpoenas are issued in connection with a hearing under these Rules.

(4) Any challenge to the validity of a subpoena so issued shall be heard and determined by the chair of the Panel.

(5) The Supreme Court may, upon proper application, enforce the attendance and testimony of any witnesses and the production of any documents subpoenaed.

(b) Oaths. -- Any member of the Hearing Panel is empowered to administer oaths and affirmations to witnesses.

(c) Evidence. -- A Panel is not bound by the Rules of Evidence but may, in its discretion, exclude plainly irrelevant, immaterial or cumulative evidence.

(d) Burden of proof. -- The burden of proof shall always be on the applicant.

Rule 38. Record of hearings.

The proceedings of all hearings shall be recorded in a manner that will allow a verbatim transcript to be prepared. The record of the hearing shall consist of the petition, if any, the notice of the hearing, testimony and stipulations, exhibits admitted into evidence, and the Panel's decisions.

Rule 39. Hearing decisions.

A decision by a Panel which is adverse to the applicant shall include:

- (a) Findings of fact based on the evidence;
- (b) Conclusions of law;
- (c) A concise statement of the Panel's determination or action; and
- (d) Dissenting views, if any, of any member of the Panel.

Rule 40. Hearing costs.

The cost of any hearing requested by an applicant, including the costs of investigation, service of process, witness fees, and a court reporter's services, may, at the discretion of the Board, be assessed against the applicant.

Rule 41. Appeal rights.

An applicant who receives an adverse decision affecting the applicant's substantial rights may appeal that decision to the Supreme Court pursuant to Supreme Court Rule 52(e). As provided therein, however, decisions of the Board with respect to a specific grade or grades assigned to any individual applicant are final and shall not be subject to review by the Court.

VIII. SPECIAL ADMISSION UNDER SUPREME COURT RULE 55.

Rule 42. Attorneys admitted elsewhere.

An attorney who is of good character and reputation, who is admitted and licensed in the court of last resort of a state or territory of the United States or the District of Columbia, and who qualifies under Supreme Court Rule 55 may, in the discretion of the Board, be permitted to practice before the courts of this State and before any administrative tribunal in all causes in which the attorney is associated with or employed by the office of Community Legal Aid Society, Inc., the office of the Department of Justice of the State of Delaware, the office of the city Solicitor of the City of Wilmington, the office of the Public Defender of the State of Delaware, the New Castle County Office of Law or the office of a related or similar organization approved by the Board upon the request of the attorney, provided that said program ensures that attorneys practicing under this Rule shall do so under general supervision of a member in good standing of the Bar of the Delaware Supreme Court.

Rule 43. Required application for Rule 42 admission.

An attorney who meets the requirements of Rule 42 shall be permitted to practice under Rule 42 only upon recommendation of the Board and the filing of the following documents with the Board:

- (a) An application including such information as shall be required on forms therefor supplied by the Board;
- (b) An application for admission to the Bar as provided by Rule 5, except in the case of an attorney who is associated with an approved legal assistance program and who seeks to practice under this Rule without compensation;
- (c) A certificate of the court wherein such attorney is admitted, certifying that the attorney is a member in good standing of the Bar of that court;
- (d) A certificate by a member of the Bar of the Supreme Court admitted to practice in the courts of this State for at least 10 years that the attorney is a person of good character and reputation, and competent legal ability; and
- (e) An affidavit of a representative of the office or program by which the attorney is employed or with which the attorney is associated attesting that the attorney is currently employed by or associated with such office or program.

Rule 44. Continuing certification requirement.

An attorney admitted elsewhere who is permitted to practice under Rule 42 because of the attorney's association with an approved legal assistance program, as a condition to continued permission to practice, shall file with the Chair of the Board at the offices of the Board of Bar Examiners a certification, in a form prescribed by the Board, after November 1 and before November 30 of each year succeeding the year of the attorney's admission to limited practice.

The certification shall state that the attorney is associated with a legal assistance program approved or recognized by the Board; that the attorney continues to be a member in good standing of the Bar of the State or territory of the United States or the District of Columbia to which the attorney has been admitted; and that the attorney is practicing without compensation. Failure to file such certification within the time provided shall result in the automatic suspension of permission to practice until further permission is applied for and granted by the Board.

Rule 45. Law school graduates.

A person who has been regularly graduated from a law school qualified under Supreme Court Rule 52(a)(5) may, in the discretion of the Board, be permitted to engage in the activities permitted under this Rule if the person is associated with or employed by Community Legal Aid Society, Inc., the office of the Department of Justice of the State of Delaware, the office of the City Solicitor of the City of Wilmington, the office of the Public Defender of the State of Delaware, the New Castle County Office of Law or the office of a related or similar organization approved by the Board upon the request of the person, provided that said program ensures that persons practicing under this Rule do so under the general supervision of a member in good standing of the Bar of the Delaware Supreme Court.

Rule 46. Required application for Rule 45 admission.

An attorney who meets the requirements of Rule 45 shall be permitted to practice under Rule 45 only upon recommendation of the Board and the filing of the following documents with the Board:

(a) An application including such information as shall be required on forms therefor supplied by the Board;

(b) An application for admission to the Bar as provided by Rule 5;

(c) Certificates from the person's preceptor and the dean of the person's law school that the person is of good character and reputation, competent legal ability and adequately trained to perform as a legal intern; and

(d) An affidavit of a representative of the office by which the person is employed attesting that the person is currently employed by or associated with such office.

Rule 47. Representation with client's consent.

A person who is permitted to practice under Rule 45 and who is employed by or associated with the office of Community Legal Aid Society, Inc. may appear in any administrative tribunal or in any court of this State except the Delaware Supreme Court, on behalf of any indigent person, if the client has consented in writing to that appearance. The required written consent shall be filed in the record of the case and shall be brought to the attention of the judge or administrative tribunal.

Rule 48. Approval of supervising attorney.

In addition to the consent of the client required by Rule 47, such persons shall also obtain the written approval for their appearance from the supervising lawyer and such supervision shall be handled in the following manner:

(a) In any civil matter the supervising lawyer is not required personally to be present in court;

(b) In any criminal matter in which the defendant does not have the right to the assignment of counsel under any constitutional provision, statute or rule of the court, the supervising lawyer is not required personally to be present in court; and

(c) In any criminal matter in which the defendant has the right to the assignment of counsel under any constitutional provision, statute or rule of court, the supervising lawyer must personally be present in court. The written approval of the supervising attorney shall be filed in the record of the case and shall be brought to the attention of the judge or the administrative tribunal.

Rule 49. Other qualified activities.

A person who is permitted to practice under Rule 45 and who is employed by or associated with the office of Community Legal Aid Society, Inc., an approved legal assistance organization, the office of the Department of Justice of the State of Delaware or the office of Public Defender of the State of Delaware and the New Castle County Office of Law may engage in activities other than those set forth in rules 47 and 48 under the general supervision

of the supervising lawyer, including preparation of pleadings and other documents to be filed in any matter in which the person is eligible to appear, but such pleadings or documents must be signed by the supervising lawyer.

Rule 50. Qualifications and duties of supervising lawyer.

The supervising lawyer referred to in these Rules shall:

- (a) Be a member in good standing of the Bar of the Supreme Court;
- (b) Assume personal and professional responsibility for guidance of the eligible person in any work undertaken and for supervising the quality of the eligible person's work; and
- (c) Assist the eligible person's preparation to the extent the supervising lawyer considers necessary.

Rule 51. General requirements applicable to all persons practicing under Supreme Court Rule 55.

(a) No person who is granted permission to practice in certain public programs pursuant to Supreme Court Rule 55 shall accept or request any compensation or remuneration from any client.

(b) No person shall be permitted to practice under Supreme Court Rule 55 until the person has been introduced to the Supreme Court by a member of the Bar and has taken the oath or affirmation required by Supreme Court Rule 55(b).

(c) Permission to practice under Supreme Court Rule 55 shall cease whenever the person ceases to be employed by or associated with a qualified office or program. Notice of such cessation shall be filed by a representative of such office or program within 5 days with the Clerk of the Delaware Supreme Court and with the Board.

(d) No person shall be permitted to practice pursuant to Supreme Court Rule 55 unless a certificate stating that the person named therein has complied with the applicable provisions of those Rules shall have been filed with the Supreme Court by the Board. Certification of any person may be terminated by the Supreme Court at any time without notice or hearing and without any showing of cause.

(e) Persons permitted to practice under Supreme Court Rule 55 are not, and shall not represent themselves to be, members of the Bar of this State.

(f) Any person who is permitted to practice pursuant to Supreme Court Rule 55 shall be required to sit for the Bar Examination at the earliest opportunity following such person's authorization to practice under such Rule and shall continue to do so until such person has satisfied the requirements for admission and has been admitted to the Delaware Bar, or until such person has become disqualified to practice pursuant to Supreme Court Rule 55 by reason of the provisions of subparagraph (g) hereof.

(g) A person who has failed the Bar Examination twice may not be approved to practice and may not continue to practice under Supreme Court Rule 55.

(h) Persons employed by or associated with the office of the City Solicitor of the City of Wilmington may be permitted to practice under Supreme Court Rule 55 only in misdemeanor cases in the Court of Common Pleas or before a Justice of the Peace, and only under the general supervision of a supervising lawyer as defined in Rule 49.

(i) Persons employed by or associated with the office of the Department of Justice of the State of Delaware may be permitted to practice under this Rule in the Superior Court (except for trials in felony cases), in misdemeanor and civil proceedings before the Family Court, and in all proceedings before the Court of Common Pleas, a Justice of the Peace, and an administrative body of the State of Delaware, only under the general supervision of the supervising lawyer as defined in Rule 49.

(j) After November 1 and before November 30 of each year, Community Legal Aid Society, Inc., the Department of Justice of the State of Delaware, the City Solicitor of the City of Wilmington, the Public Defender of the State of Delaware, the New Castle County Office of Law and any legal assistance program approved or recognized by the Board shall each file a report with the Board which sets forth those persons who are then employed by or associated with such organization and are permitted to practice with such organization under these Rules. In the event an agency shall fail to file such a report or shall fail to file any other report which

the Board may from time to time require, the limited permission to practice accorded under these Rules to persons practicing with that agency shall be automatically suspended.

IX. MISCELLANEOUS PROVISIONS.

Rule 52. Confidentiality.

The Board shall keep confidential all information, documents and Board meetings or hearings concerning persons who apply for admission to the Bar, except:

(a) The Board may release statistical information and representative answers to essay and MPT questions not identified with any particular applicant, and it may release the names and addresses of applicants who have passed the Bar Examination or who have been admitted to the Bar;

(b) The Board may release to an applicant information and documents used by the Board in connection with any hearing of the Board concerning denial of the applicant's admission on the ground that the applicant fails to satisfy Supreme Court Rule 52(a)(1) or Board of Bar Examiners Rule 7;

(c) The Board may release to failing applicants their MBE scores and their answers to their essay and MPT questions;

(d) The Board may release such confidential information concerning an applicant as the Board in its sole and exclusive discretion deems necessary to further its investigation of the applicant;

(e) The Board may release the names and addresses of applicants to the administrators of Bar Review courses recognized by the Board and it may release confidential information concerning an applicant to licensing, disciplinary or law enforcement agencies of any jurisdiction and to the NCBE;

(f) The Board shall release applicant names, examinee numbers and MBE scores to the NCBE after the exam results have been posted. The Board shall authorize the NCBE to release to a requesting applicant, under any terms and conditions set by the NCBE, that applicant's MBE score and to transfer that score to another jurisdiction;

(g) The Board may inform a law school, upon request from the law school, whether particular graduates of the requesting law school passed or failed the Bar Examination;

(h) The Board may release, without identifying any individual applicants, statistical information regarding the passing and failing rates of applicants categorized by law school attended; and

(i) The Board shall release confidential information as directed by Order of the Supreme Court.

Rule 53. Extensions of time.

Any request by an applicant to extend any deadline must be supported by the filing of a petition and supporting affidavit, under oath, setting forth the reasons for the request. Such petition shall be filed with the Executive Director. Except as otherwise specifically provided in these rules, the Board, in its discretion, may grant such petition only upon a finding that good cause exists for the extension.

Rule 54. Citation.

These Rules shall be referred to as the "Board of Bar Examiners Rules" and may be cited in short form as "BR".

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