

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN RE §
BOARD OF BAR EXAMINERS OF §
THE DELAWARE SUPREME §
COURT RULES 4, 5, 10, 15 and 29 §

Before **STRINE**, Chief Justice, **HOLLAND**, **RIDGELY**, **VALIHURA**, and **VAUGHN**, Justices (constituting the Court *en Banc*).

ORDER

This 8th day of January 2015, it appears to the Court that it is desirable to amend Rules 4, 5, 10, 15, and 29 of the Rules of the Board of Bar Examiners of the Delaware Supreme Court. The amendments shall be effectively immediately.

NOW, THEREFORE, IT IS ORDERED as follows:

(1) Rule 4(a) is amended by adding the language shown below in underline:

(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 by the Vice Chair if the Chair is absent, upon two (2) days' notice.

(2) Rule 4(d) is amended by deleting existing paragraph (d) in its entirety and substituting in lieu thereof the language shown below:

(d) *Committees and panels*. The Board may create committees or panels of the Board, and may delegate any of its powers and authority to such committees or panels to the fullest extent permitted by these Rules and the Supreme

Court Rules. Each committee and panel so created shall consist of at least one (1) Board Member, unless these Rules require a greater number of Board Members with respect to a particular committee or panel. The membership of any committees or panels created by the Board shall be determined by the Chair, or by the Vice Chair if the Chair is absent, unless these Rules or the Board resolution creating such committee or panel provides otherwise. A majority of the Members of the committee or panel shall constitute a quorum for the transaction of business by the committee or panel, unless these Rules or the Board by resolution provides otherwise. The vote of a majority of a committee's or panel's Members shall be the act of that committee or panel, unless these Rules or a Board resolution requires a greater number. The act of a committee or panel shall be the act of the Board only if these Rules or the Board by resolution expressly provides for it.

(3) Rule 4(e) is amended by deleting the language shown below in strikethrough and adding the language shown below in underline:

(e) ~~Telephone~~Remote meetings. Except with respect to hearings, the Board, ~~and any of the members thereof, may participate in any meeting of the Board, or aor any~~ committee or panel thereof, may hold a meeting by means of conference telephone, web conferencing, or similar communications ~~equipment~~method 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.

(4) Rule 5 is amended by deleting the word "form" in the first sentence of paragraph(c), and by deleting the last sentence of paragraph (d).

(5) Rule 10(a) is amended by adding the language shown below in underline in paragraph (a):

(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 ten (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 three (3) years, a meeting of the preceptors held at such time or times as the Board may designate.

(6) Rule 10(c) is amended by deleting existing paragraph (c) in its entirety and substituting in lieu thereof the language shown below:

(c) *Duty to review.* A preceptor must personally review the applicant's Application for Admission to the Delaware Bar ("Application") and First Affidavit of Completeness and discuss the Application and First Affidavit of Completeness with the applicant to the extent necessary to allow the preceptor to reasonably conclude that (1) the applicant has either (i) provided all information and documents required to be submitted with the Application or (ii) provided a reasonable explanation why missing information and documents have not been submitted and identified when the applicant expects the Board will receive the information or documents, (2) the information and documents disclosed in and with the Application are factually accurate, and (3) the First Affidavit of Completeness is factually accurate and contains no omission of any fact required to be disclosed.

(7) Rule 10(d) is amended by deleting the language shown below in strikethrough and adding the language shown below in underline:

(d) *Duty to certify.* A preceptor shall have a duty to execute: (i) a Preceptor's Certificate, in the form made available by the Board, certifying to the Board on or before September 1 that the preceptor has complied with the requirements of paragraphs (a)-(c) of this Rule; and (ii) a Clerkship Preceptor's Law Clerk Schedule Certificate, in the form made available by the Board, certifying to the Board at the appropriate time that the applicant has completed the 5 month (21 forty-hour work weeks) 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(d), 5 months is 21 forty-hour work weeks.

(8) Rule 15 is amended by deleting Rule 15 in its entirety and substituting in lieu thereof amended Rule 15 shown below:

Rule 15. Testing Accommodations for Applicants with Disabilities.

(a) *Policy.* The Board will provide accommodations with respect to the manner in which the Bar Examination is administered to applicants who, by virtue of a temporary or permanent disability (as defined under the Americans with Disabilities Act of 1990, as amended), are unable to take the Bar Examination under normal testing conditions, provided that such applicants are otherwise eligible and qualified to take the Bar Examination, and provided that the accommodations are timely requested, reasonable, consistent with the nature and purpose of the Bar Examination, not unduly burdensome, and necessitated by the applicant's disability. The provisions of this Rule shall apply to the submission, handling, and appeal of

Applications for Testing Accommodations notwithstanding anything to the contrary in the Board Rules.

(b) *Form and timing of requests.* Applicants with a disability seeking accommodations with respect to the manner in which the Bar Examination is administered must timely file with the Board a completed Application for Testing Accommodations. An Application for Testing Accommodations must be filed at the same time as the applicant's Application for Admission to the Delaware Bar, and must contain all information, verifications, and supporting documentation upon which the applicant is relying in support of the accommodations requested. If the disability for which an applicant is seeking accommodations existed more than fifteen (15) days prior to the final filing deadline, this deadline will not be extended for any reason. Applicants may file an Application for Testing Accommodations on an emergency basis after the filing deadline only if the disability for which the applicant is seeking accommodations is based on an injury or impairment acquired after the final filing deadline or within fifteen (15) days prior to the final filing deadline. Failure to get an appointment with or diagnosed by a specialist or treating professional prior to the final filing deadline is not grounds to file an Application for Testing Accommodations on an emergency basis. The Application for Testing Accommodations, verification forms, and instructions for requesting accommodations with respect to the manner in which the Bar Examination is administered are available online at the Board's website.

(c) *Procedure for ruling upon the Application.* The Application for Testing Accommodations shall first be submitted for disposition to a committee of three (3) or more Board members designated by the Chair, or by the

Vice Chair if the Chair is absent (the “Committee”). In ruling on the Application for Testing Accommodations, the Committee may engage one or more persons with expertise relevant to the applicant’s disability or the requested accommodations, to render such assistance as the Committee deems appropriate, and any analysis or opinion provided by a consulting professional upon which the Committee relies in its decision must be in writing. The Committee may require that the applicant undergo a physical or other examination, and the analysis and results of any such physical or other examination shall be submitted to the Committee in writing. The record upon which the Committee rules shall consist only of the complete Application for Testing Accommodations, the reports provided by any consulting professionals, and the written analysis and results of a physical or other examination. The Committee shall notify the applicant in writing, both electronically and by United States First Class Mail, of its ruling upon the Application for Testing Accommodations, and the Committee may grant or deny the accommodation sought, or grant an accommodation different from that requested in the Application for Testing Accommodations.

(d) *Procedures relating to a denied Application.* If in its initial ruling the Committee does not grant in full the accommodation sought, the written ruling shall set forth 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, the applicant 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 with the Executive Director 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 of the Board, or Vice Chair if the Chair is absent, 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. The form, content, and timing of the notice of the hearing shall comply with the requirements of Rules 35 and 36.

(i) *Proceedings before the Hearing Panel.*

The Hearing Panel's consideration of the Application for Testing Accommodations 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 the Application for Testing Accommodations, and any expert relied upon by the Committee in connection with its ruling on the Application for Testing Accommodations. 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, the materials before the Committee in connection with its ruling, and the Committee's written notification of its ruling to the applicant. 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. The vote of a majority of the members of the Hearing Panel shall be the action of the Board. 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 and to applicant's counsel (if any) both electronically and by United States 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.

(9) Rule 29 is amended by deleting the term “Rule 15” where it appears.

BY THE COURT:

/s/ Karen L. Valihura
Justice