

MEMORANDUM

TO: ALL PRECEPTORS

FROM: The Board of Bar Examiners

DATE: July 14, 2015

RE: PRECEPTOR DUTIES AND CLERKSHIP REQUIREMENTS

As a Preceptor, you have a unique opportunity to be a guiding force and mentor to an applicant. Your frequent meetings with your applicant provide an opportunity to impart principles of appropriate lawyer conduct as a member of the Delaware Bar. By your own example, you can demonstrate the professionalism that is a hallmark of the Delaware Bar – professionalism that embodies a dedication to the principles of ethics, civility, skill, businesslike practice and a focus on service to the public, the Court and the Bar (see Supreme Court Rule 71). Our legacy as Delaware lawyers will be judged in part by the effectiveness with which we communicate the expectations of our profession to those who follow us, and you are in a unique position to impart those expectations at the earliest stage of a Delaware lawyer’s career.

Each Preceptor should carefully study all Rules of the Delaware Supreme Court relating to the admission process (Rules 51-56); rules 5-15 of the Board of Bar Examiners (the “Board”); and Board of Professional Responsibility rules 8.1 and 8.3.

The rules relating to Preceptors and clerkships are designed to accomplish three primary objectives:

1. Character and Fitness of the Applicant. The duties imposed upon a Preceptor under BR-10 are designed to make the Preceptor’s sponsorship of the applicant a meaningful part of the admission process rather than a pro forma exercise. BR-10 requires Preceptors to provide a supporting role in the character and fitness investigation process.
2. Review Bar Application for Completeness. BR-10 requires a Preceptor to review and discuss with the applicant the Bar Application and an applicant’s affidavits of completeness. In connection with this review, Preceptors must **reasonably conclude** that the Applications and affidavits of completeness (a) are factually accurate and do not omit any facts required to be disclosed, and (b) have provided all required information and documents or a reasonable explanation why they have not been provided. We note that Preceptors are not guarantors of completeness, but Preceptors must **reasonably conclude** that Applications and affidavits are complete and accurate.
3. Practical training of the applicant. The clerkship requirements are intended to make the clerkship a meaningful teaching mechanism to help ensure that an

applicant's preparation for admission includes a bona fide exposure to the practical aspects of law practice and the traditions of the Delaware Bar. This training can only be accomplished if the Preceptor is actively and closely involved in the process. Thus, Supreme Court Rule 52(8)(i) requires "**direct and constant**" supervision of the applicant, to which the Preceptor must certify. If the Preceptor delegates this supervisory role, the other attorney must be satisfactory to the Preceptor and such attorney must be a member of the Delaware Bar for at least 5 years. In addition, if the Preceptor delegates supervision to such qualified attorney, communication between and among the Preceptor, supervising attorney and applicant should be frequent and substantive.

Delaware's five-month clerkship requirement has been highly praised by the Boards of several larger states. The preceptor's close association with the applicant also affords the preceptor the opportunity to expose the applicant at the outset of his or her career to this Bar's high standards of professionalism and civility. Indeed, BR-10(d) provides that the preceptor "shall confer on a frequent and regular basis . . . to advise the applicant of the expected conduct and obligations of a member of the Bar."

A. Preceptor's Responsibility – Preceptor Certificate

Under BR-10 a Preceptor is required to submit a Preceptor's Certificate on or before September 1 certifying that the Preceptor has complied with the requirements of BR-10. In making BR-10 certifications, a Preceptor represents to the Court and the Board that the duties imposed by the Rule have been satisfied, including (by way of example only) that the Preceptor has:

- Studied carefully Supreme Court Rule 52 and BR-10;
- Mentored an applicant with respect to civility, legal ethics, professionalism and expected conduct and obligations of a member of the Bar; and
- Reviewed the applicant's Application and Affidavit of Completeness as further discussed below.

B. Preceptor's Responsibility – Duty to Review Application and Affidavits of Completeness

The applicant is required to file two affidavits certifying the completeness of the Application: First Affidavit of Completeness and Second Affidavit of Completeness. The First Affidavit of Completeness is submitted when the applicant files the Application. It requires the applicant to certify under oath or affirmation that the applicant has, among other things, (1) accurately and completely answered all questions on your applications, (2) submitted true and correct copies of all documents required in the Application or provided a detailed explanation why not, (3) sent a request to complete a Certification of Employment to each employer identified in the Application, and (4) submitted full payment of the Application fee.

The applicant is also required to file a Second Affidavit of Completeness on or before September 1. This Affidavit serves as a follow-up to the First Affidavit and is designed to identify which passing applicants will be reviewed by the Board's character and fitness members after the July Bar Examination is announced. This Affidavit requires the applicant to certify under oath or affirmation

that, among other things, (1) the applicant has submitted true and correct copies of all documents the applicant is required to submit with the Application or provided a detailed explanation of why not (including describing all efforts the applicant made to obtain those documents since the applicant filed the First Affidavit of Completeness), and (2) each employer identified in the Application has completed and returned a Certification of Employment (and, if not, you must describe all efforts you have made since you filed your First Affidavit of Completeness to follow up with those employers to have them complete a Certification of Employment.)

The Preceptor's duty to review the applicant's affidavits of completeness modifies past practice. A Preceptor is now required to be more involved in reviewing the completeness of the Application. In the years since the Board went to an online/electronic application process, the Board found that many applicants took a surprisingly casual view of what it means to have a "complete" application and to certify its completeness. When Board members reviewed applicant files during their character and fitness investigation, it was all too common to come across files that were missing information in the Application and/or the applicant failed to provide any explanation of why information was missing. This year BR-10 was amended to require applicants to sign under oath that the Application is complete **and** to require Preceptors to **reasonably conclude** that the applicants complied with these requirements.

Under BR-10, a Preceptor must personally review with the applicant the Application and applicant's affidavits of completeness to the extent necessary to allow the Preceptor to **reasonably conclude** that the (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/or documents have not been submitted and identified. If information and/or documents are missing, the Preceptor is required to make sure that the applicant has informed the Board when he/she expects the Board will receive them.

As stated above, the Preceptor's Certificate must be filed by September 1. In it, the Preceptor must certify to (1) having personally reviewed and discussed with the applicant the applicants' affidavits of completeness, (2) determining that the applicant has either 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 that information or documents, (3) determining that the information and documents in or submitted with the Application are factually accurate, and (4) determining that the affidavits of completeness are factually accurate and contain no omission of any fact required to be disclosed.

C. Preceptor's Responsibility – Training of the Applicant.

Supreme Court rule 52(a)(8) requires that each applicant must have “. . . served a clerkship in the State of Delaware aggregating substantially full-time service for at least 5 months' duration . . .” of a member of the Delaware Bar qualified under the Rule. The 5 month period need not be continuous, but must have been served after the applicant began law school. Supreme Court Rule 52(a)(8)(iv).

Each Preceptor has an affirmative duty to be satisfied that the requirements of the Rule have been met fully. The Court and the Board recognize that compliance with this

requirement may be difficult to determine in some instances. However, the Court and Board rely on you to make sure this requirement is satisfied.

The Board cannot issue guidelines which will cover each case. Each Preceptor will have to rely on his or her own conscience and professional judgment. Some of the following Board guidelines may be helpful in interpreting the Rule in specific instances.

- Time spent studying for the Bar Examination (whether it is in a bar review course or in individual study) will not count.
- Only **practical** work done **in the State of Delaware** “in the office of or under the direct and constant supervision” of a qualified member of the Bar will count.
- Five months is approximately 21 five-day work weeks. It may be aggregated over a period of time by reasonably combining full working days (8 hours) with partial working days (4 hours). The Board has received inquiries as to whether an applicant can ‘stack hours’ if he or she works more than 40 hours in a week. The Board has taken the position that ‘stacking hours’ is not permitted.
- There is not rigid opinion held by the Board that a full day must be at least 8 hours or that a half day must be at least 4 hours or that partial day of less than 4 hours may not be aggregated or that bona fide clerkship time may not be served outside normal business hours. The preceptor as an officer of the Court must make a judgment in good faith that the total aggregate time has been fully served in a meaningful and practical clerkship in Delaware.
- The Law Clerk Schedule of minimum requirements must also be completed as a separate and independent requirement under Supreme Court rule 52(a)(8)(v). Please review with the applicant the schedule carefully. It has come to the Board’s attention that some applicants are attending sessions of Court for a limited amount of time. As a Preceptor, you should counsel the applicant to complete each item in a meaningful and substantive manner. The Law Clerk Schedule requires applicants to attend one “complete civil trial in JP court.” The applicants are also required to ‘attend’ trials in Court of common Pleas, Superior Court and other Courts. What constitutes “attendance” is a frequent question. The Board has taken the position and Preceptors should so advise applicants that to the extent a trial lasts one day or less, the applicant should attend the complete trial. To the extent trials exceed one day (other than the Justice of the Peace trial), attendance beyond one day is not required.
- Although under supreme Court Rule 52(8)(i), a Preceptor may delegate personal supervision to another member of the Bar who qualifies under the rule and has been admitted in Delaware for at least five years, the Preceptor remains ultimately responsible for and must certify compliance with the supervision requirement to

the same extent as if the Preceptor had not delegated the supervision.

Law Clerk Schedule

Each assignment must be completed in Delaware under the direct and constant supervision of the Preceptor or other qualified Delaware lawyer.