

THE DELAWARE CLERKSHIP REQUIREMENT: A LONG-STANDING TRADITION

by Hon. Randy J. Holland

A clerkship requirement has long been a part of Delaware's bar admission procedures. A two-volume treatise on Delaware practice written more than a century ago by Judge Victor Woolley describes admission to the bar as follows:

Admission to the Bar. Upon application for the admission of a student to practice as an attorney, it is required that he be a resident of this State, of full age, that he shall have studied the law at least three years after the filing of his certificate as a student of law, under the direction of a member of the bar of this State who has been in practice for at least ten years theretofore; that he be a person of integrity and good character, and that he shall have been privately and fully examined by the Board of Bar Examiners.¹

Once graduation from an approved law school and taking the bar examination became conditions for admission to the bar, the Delaware clerkship requirement reduced over time and is now a term of five months. In 2008, 165 applicants were admitted to the Delaware Bar, all of whom completed the clerkship process.

The Delaware clerkship requirement is part of a valuable and venerable professional training tradition for lawyers, and can trace its roots back to the

legal system of England. The four English Inns of Court in London have been mentoring lawyers for centuries. In fact, the idea for the American Inns of Court (a voluntary mentoring organization with six chapters in Delaware) originated with Chief Justice Warren Burger following an Anglo-American exchange program.² He was impressed with the mentoring structure at the English Inns of Court for barristers prior to their being called to the bar. Chief Justice Burger was particularly impressed with how the English Inns of Court had preserved and perpetuated integrity, civility, ethics, and legal excellence.

The requirements for admission to the bar of the Delaware Supreme Court are set forth in its rules. Rule 52(a)(8) provides that no applicant shall be admitted to the bar unless the applicant has passed the bar examination and served a clerkship in the State of Delaware aggregating substantially full-time service for at least five months' duration as follows:

(i) Law Office. 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 has been in practice for at least 5 years theretofore;

(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;

(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, under the direct and constant supervision of a member of the Bar of this State qualified under these Rules.³

The five-month clerkship period does not have to be continuous. The clerkship period can only commence, however, after the applicant has matriculated at an approved law school. During the clerkship, the applicant must complete a list of legal activities related to the practice of law that is prepared and furnished by the Delaware Board of Bar Examiners (see Delaware Clerkship Checklist on pages 31–33). The legal activities include the following:

- attendance at specific courts for various trials and hearings, arbitration or mediation, motion, arraignment, sentencing, jury selection, pretrial conference, argument, client/witness/litigant interview, deposition, real estate closing

- participation in the preparation of papers, memoranda of law, draft will and/or trust instrument
- participation in the administration of an estate and incorporation of a new company
- review of rules, case records, briefs
 - complete title search

THE CLERKSHIP CAN BE PERFORMED DURING OR AFTER THE CONCLUSION OF LAW SCHOOL. ALMOST ALL APPLICANTS ACCOMPLISH THE MAJORITY OF THE ACTIVITIES DURING ONE OR MORE SUMMERS WHILE THEY ARE IN LAW SCHOOL AND FINISH ANY REMAINING ACTIVITIES IN THE MONTHS IMMEDIATELY AFTER THEY HAVE TAKEN THE BAR EXAMINATION.

The clerkship can be performed during or after the conclusion of law school. Almost all applicants accomplish the majority of the activities during one or more summers while they are in law school and finish any remaining activities in the months immediately after they have taken the bar examination. There is no time limit on the length of any activities,

and applicants can be compensated while they are completing the clerkship requirements; in fact, most applicants perform the clerkship requirements during the course of their employment with a private law firm or in the public sector. The activities can be completed in any order and are usually done based upon the availability of the particular task (e.g., attendance at a deposition or trial when such is scheduled).

Each applicant for admission to the bar must be vouched for by a member of the Delaware Bar who has been in practice for at least 10 years and who has been designated by the board to be the applicant's preceptor or mentor. The definition of *mentor* in WEBSTER'S COLLEGIATE DICTIONARY is "a trusted counselor or guide." The Delaware Board of Bar

Examiners' memorandum of instructions to preceptors starts with the following paragraph:

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 a wonderful 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.⁴

There is only one preceptor for each applicant. Generally, either the applicant knows a Delaware attorney with 10 years of experience, or one of the attorneys or judges where he or she plans to work agrees to be the preceptor. If an applicant is not able to locate a preceptor, the Board of Bar Examiners assigns one from the "preceptor bank" of volunteers.

Prior to admission to the bar, both the applicant and the applicant's preceptor must certify to the Board of Bar Examiners that the applicant has completed the five-month clerkship and the list of legal activities. The preceptor must also represent to the Delaware Supreme Court "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."⁵ The character and fitness assessment by the preceptor is in addition to the character and fitness investigation by the Board of Bar Examiners.

Under Board of Bar Examiners Rule 10, a preceptor has an affirmative duty to base all certifications upon specific personal knowledge and/or investigation and supervision. In making those certifications, a preceptor represents to the Delaware Supreme Court and the Board of Bar Examiners that the duties imposed by the rules have been satisfied, including (by way of example only):

- personal knowledge of or reasonable investigation of the character and fitness of the applicant,
- factual accuracy and completeness of the candidate's application for admission, and
- full compliance with the clerkship requirements set forth in Supreme Court Rule 52(a)(8).⁶

A preceptor may be held accountable to the Delaware Supreme Court for failure to perform adequately the duties and obligations of a preceptor.

The rules of the Delaware Supreme Court and the Board of Bar Examiners relating to preceptors and the five-month clerkship are designed to assess and instruct the applicant to the bar in two important areas, as stated in the board's memorandum of instructions to preceptors:

1. Character and fitness of the applicant.

The duties imposed upon a preceptor under Board Rule 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. Board Rule 10(d)(1)

(Continued on page 34)

Delaware Clerkship Checklist

Revised 5/09

Clerk's Name: _____ Date: _____

Address: _____

Phone Number: _____

Preceptor's Name: _____

LAW CLERK SCHEDULE OF LEGAL ACTIVITIES

The following items are to be considered minimum requirements for each law clerk, to be completed during the five months' clerkship and prior to admission to the Bar, whether that clerkship is performed during or after the conclusion of law school. Responsibility for scheduling rests on the clerk; making these arrangements is regarded as an important part of the clerkship training. Either the preceptor or a qualified member of the Bar of this state must sign each completed assignment. See Supreme Court Rule 52(a)(8) and Board of Bar Examiners Rule 10.

ASSIGNMENT

1. Attendance at one complete civil trial in a Justice of the Peace Court.
Date Completed _____ Supervised by/Bar ID _____
2. One half-day visit to Family Court, including attendance at a Trial or a Dependency and Neglect hearing if permitted by the sitting judge.
Date Completed _____ Supervised by/Bar ID _____
3. Review of the Rules of Family Court.
Date Completed _____ Supervised by/Bar ID _____
4. Attendance at (or audit of a tape recording of) one civil trial in Court of Common Pleas. (Warning: These cases often settle at the last minute. Therefore, you should begin your efforts to meet this requirement early in your clerkship.)
Date Completed _____ Supervised by/Bar ID _____
5. Attendance at one criminal trial in the Court of Common Pleas.
Date Completed _____ Supervised by/Bar ID _____
6. Attendance at one ADR Proceeding under Superior Court Civil Rules or, alternatively, attendance at one arbitration or mediation in Delaware under the Rules of the American Arbitration Association or any similar ADR organization.
Date Completed _____ Supervised by/Bar ID _____
7. Attendance at one session of arraignments in Superior Court.
Date Completed _____ Supervised by/Bar ID _____
8. Attendance at one session of sentencing in Superior Court.
Date Completed _____ Supervised by/Bar ID _____
9. Attendance at one selection of a jury in Superior Court.
Date Completed _____ Supervised by/Bar ID _____
10. Attendance at a criminal trial in Superior Court.
Date Completed _____ Supervised by/Bar ID _____

(Continued)

ASSIGNMENT

11. Attendance at a pre-trial conference in District Court, Court of Chancery or Superior Court.
Date Completed _____ Supervised by/Bar ID _____
12. Participation in the preparation of papers relating to an actual or mock motion in the Superior Court, and attendance at presentation of a Superior Court motion after study of the applicable motion papers and a review of the principal authorities relied upon by the parties.
Date Completed _____ Supervised by/Bar ID _____
13. Attendance at a civil jury trial in Superior Court.
Date Completed _____ Supervised by/Bar ID _____
14. Attendance at a trial or hearing in the Court of Chancery.
Date Completed _____ Supervised by/Bar ID _____
15. Review of record of a case which has been tried and appealed.
Date Completed _____ Supervised by/Bar ID _____
16. Participation in preparation of papers relating to perfecting an actual or mock appeal to the Delaware Supreme Court, including designation of the record on appeal, or preparation of papers relating to a certification of a question of law or interlocutory appeal to the Supreme Court, including designation of the record on appeal.
Date Completed _____ Supervised by/Bar ID _____
17. Attendance at (or audit of a tape recording of) an argument in the Supreme Court after a study of applicable briefs, and a review of some of the principal authorities relied on.
Date Completed _____ Supervised by/Bar ID _____
18. Attendance at a civil or criminal trial in the District Court.
Date Completed _____ Supervised by/Bar ID _____
19. Attendance at one Sheriff's Sale.
Date Completed _____ Supervised by/Bar ID _____
20. Attendance at one interview of a client, witness or litigant with a matter.
Date Completed _____ Supervised by/Bar ID _____
21. Preparation of papers relating to commencement of actual or mock lawsuit including complaint, praecipe, and instruction to Sheriff.
Date Completed _____ Supervised by/Bar ID _____
22. Preparation of three memoranda of law.
Date Completed _____ Supervised by/Bar ID _____
23. Attendance at one deposition.
Date Completed _____ Supervised by/Bar ID _____
24. Preparation of one draft will and/or trust instrument or review and digest of three recently probated wills with the Register of Wills.
Date Completed _____ Supervised by/Bar ID _____

ASSIGNMENT

- 25. Participation in administration of one estate, or review of the records of two estates recently closed at the Register of Wills.
Date Completed _____ Supervised by/Bar ID _____
- 26. Attendance at one real estate closing.
Date Completed _____ Supervised by/Bar ID _____
- 27. Participation in a complete incorporation of a new company or review and digest of a recently filed certificate of incorporation.
Date Completed _____ Supervised by/Bar ID _____
- 28. Complete title search under supervision.
Date Completed _____ Supervised by/Bar ID _____
- 29. Attendance at a hearing of the Delaware Alcoholic Beverage Control Commission, Industrial Accident Board, or other administrative agency.
Date Completed _____ Supervised by/Bar ID _____

I, _____, hereby certify that I have completed a clerkship in the State of Delaware under the supervision of a Delaware attorney aggregating substantially full-time service for at least five months' duration in full compliance with Delaware Supreme Court Rule 52(a)(8) and have completed all of the items so indicated on this Law Clerk Schedule.

Signature

Date

I, _____, preceptor for _____, an applicant for admission to the Bar of the State of Delaware, do hereby certify pursuant to the Board of Bar Examiners Rule BR-10(d)(2) that said applicant has served a clerkship in the State of Delaware, aggregating substantially full-time service for at least five months' duration in full compliance with Delaware Supreme Court Rule 52(a)(8) and has completed the items indicated on the Law Clerk Schedule.

Signature of Preceptor

Date

Source: Board of Bar Examiners of the Supreme Court of Delaware, Clerkship Checklist, <http://courts.state.de.us/forms/download.aspx?id=28478> (last visited Sept. 22, 2009).

explicitly recognizes that the Court and the Board rely on the preceptor's certification. [The] preceptor [has] an affirmative duty to investigate the character and fitness of the applicant and to examine carefully the truthfulness and completeness of the application that provides needed assistance to the Board in making its investigation.

2. Practical training of the applicant. The clerkship requirements are intended to make the clerkship a meaningful teaching mechanism to help insure 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. . . . Board Rule 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."⁷

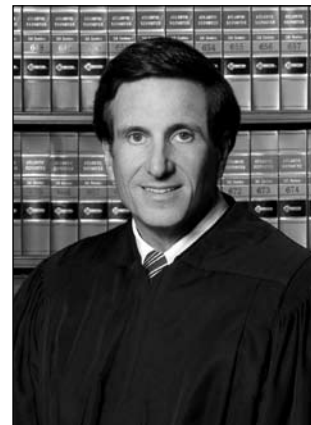
The strength of Delaware's clerkship program has been the voluntary participation of judges and senior lawyers as preceptors. The Delaware Supreme Court continues to believe that it is important for senior members of the bar to supervise practical and substantive legal training for new lawyers, while at the same time mentoring them about civility, legal ethics, and professionalism.

The Delaware clerkship requirement has worked well and continues to be a very important part of Delaware's legal landscape for two reasons. First, it has been embraced by the preceptors, who welcome the opportunity to pass on Delaware's best practices,

and it is appreciated by the applicants as a valuable complement to their formal legal education. Second, it gives the Supreme Court confidence that the public will be well served by the men and women who are admitted to the Delaware Bar. Delaware continues to believe in the timeless tradition of mentoring as a crucial factor in ensuring professional excellence. ■

ENDNOTES

1. Victor Baynard Woolley, *PRACTICE IN CIVIL ACTIONS AND PROCEEDINGS IN THE LAW COURTS OF THE STATE OF DELAWARE (WOOLLEY ON DELAWARE PRACTICE)* (Star Printing Company 1906).
2. The American Inns of Court is a national organization with more than 400 chapters throughout the United States. Each chapter meets monthly for educational programs focusing on ethics and civility. Senior members of the bench and bar serve as mentors to new lawyers. Delaware has six American Inns of Court. They are all logical voluntary extensions of the pre-admission clerkship experience.
3. DEL. SUP. CT. R. 52(A)(8).
4. Memorandum to Preceptors from the Board of Bar Examiners, "RE: Preceptor Duties and Clerkship Requirements," April 5, 2006.
5. DEL. SUP. CT. R. 52(A)(1).
6. DEL. SUP. CT. R. 10.
7. Memorandum to Preceptors from the Board of Bar Examiners, "RE: Preceptor Duties and Clerkship Requirements," April 5, 2006.



HON. RANDY J. HOLLAND has served on the Delaware Supreme Court since 1986. Justice Holland is a past president of the American Inns of Court Foundation. He chaired the National Advisory Committee for the American Judicature Society's Center for Judicial Ethics and also chaired the American Bar Association's National Joint Committee on Lawyer Regulation. Justice Holland is a member of the American Law Institute and is an adjunct professor at several law schools.