

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ORDER AMENDING THE RULES §
OF THE BOARD OF BAR §
EXAMINERS OF THE STATE OF §
DELAWARE and RULES 51 AND §
52 OF THE RULES OF THE §
SUPREME COURT OF §
DELAWARE §

Before **SEITZ**, Chief Justice, **VALIHURA**, **VAUGHN**, and **TRAYNOR**, Justices,
constituting a quorum of the Court.

ORDER

This 21st day of February 2023, it appears to the Court that it is desirable to
amend the Rules of the Board of Bar Examiners and Rules 51 and 52 of the Supreme
Court Rules, effective immediately.

(1) Supreme Court Rule 51(b) and (d) shall be amended to add the
underlined text and to delete the strikethrough text as follows:

(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 and a Secretary. ~~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.

(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 three years 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.

(2) Supreme Court Rule 52(a)(8) shall be amended to add the underlined text and to delete the strikethrough text as follows:

(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~~ 12 weeks’ 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~~ a week means a forty-hour work weeks.

(3) The Rules of the Board of Bar Examiners shall be amended to add the underlined text and to delete the strikethrough text as set forth in the attached Exhibit A.

(4) These amendments are not retroactive. Specifically, but without limitation, neither the Court nor the Board of Bar Examiners will entertain any petitions seeking admission to the Bar premised on a petitioner having received a score on an earlier administration of the Bar Examination that would have been passing under the amended rules.

(5) The Clerk of this Court is directed to transmit a certified copy of the Order and Exhibit A to the clerk for each trial court in each county.

BY THE COURT:

/s/ Collins J. Seitz, Jr.
Chief Justice

EXHIBIT A

Rules of the Board of Bar Examiners of the State of Delaware

(As amended through February 21, 2023)

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, [Secretary](#), 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 by the Vice Chair if the Chair is absent, upon two (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 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.

(e) *Remote meetings*. Except with respect to hearings, the Board, or any committee or panel thereof, may hold a meeting by means of conference telephone, web conferencing, or similar communications 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.

II. Application Process

Rule 5. Filing of ~~a~~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 an~~ "Application" consisting of (1) [the application to sit for the Bar Examination found at bbede.org](http://bbede.org) ~~for admission to the Bar~~ and (2) [the application for a character and fitness investigation provided by the National Conference of Bar Examiners \("NCBE"\)](#). The ~~a~~Application shall be [electronically filed](#) ~~with the Board~~ no later than ~~May 1 of the year in which an applicant seeks to take the examination~~ [the deadline established by the Board for each of the administrations of the Bar Examination \(the "Application Deadline"\)](#). Notwithstanding anything to the contrary contained herein, under no circumstances will an ~~a~~Application be accepted after ~~May 1~~ [the applicable Application Deadline](#). Instructions regarding the ~~a~~Application [and the filing](#) process shall be posted on the Board's website.

(b) *Fees*. A timely ~~a~~Application shall be accompanied by a non-refundable application fee as ~~follows: set by the Board~~.

~~(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 1:~~

~~Applicants not yet admitted in another jurisdiction \$1400~~

~~Applicants admitted to practice in another jurisdiction \$1600~~

(c) *Application.* The ~~a~~Application shall identify all information and documents that must be filed electronically together with the ~~a~~Application. No ~~a~~Application shall be deemed filed until and unless (~~1~~) it includes all such information and documents; and (~~2~~) the ~~a~~Application fee is paid in full. The ~~a~~Application fee shall be paid online as provided in the application form, unless prior to the timely filing of the ~~a~~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~~Board may require that applicants provide such additional documentation or information as it deems appropriate.

(e) *Applicant's duty to update ~~a~~Application.* Until the applicant is admitted to the Bar, the applicant is under an ongoing duty to update the ~~a~~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 ~~a~~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 ~~a~~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 ~~NCBE 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 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.

(b) *Duty to confer and monitor.* A preceptor shall mentor an applicant with respect to civility, legal ethics, professionalism and the expected conduct and obligations of a member of the Bar. 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.

(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.

(d) *Duty to certify.* A preceptor shall have a duty to execute: ~~(#1)~~ a Preceptor's Certificate, in the form made available by the Board, certifying to the Board on or before ~~September 1~~ a deadline established by the Board that the preceptor has complied with the requirements of paragraphs (a)-(c) of this Rule; and ~~(#2)~~ a Preceptor's ~~Law Clerk Schedule~~ Clerkship 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.

V. Bar Examination Form and Process

Rule 11. Time of the Bar eExamination.

(a) *Time of the Bar eExamination.* The Bar Examination shall be given in July and February each year on such days as the Board shall designate.

(b) *Administration of Bar eExamination.* 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 Bar eExamination.

The Bar Examination shall consist of the Multistate Bar Examination ("MBE"), two Multistate Performance Tests ("MPT"), and 84 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~~

- [Business entities \(Delaware corporations, limited liability companies and limited partnerships\);](#)
- [Civil 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;
- [Constitutional law;](#)
- [Contracts;](#)
- [Criminal law and procedure \(including the Delaware Criminal Code, provided, however, that the essay questions will not include identification of degree of offense or quantity tiers for drug offenses\);](#)
- [Equity;](#)
- [Evidence;](#)
- [Property;](#)
- [Torts; and](#)
- [Wills & Trusts.](#)

~~Property~~

~~Torts~~

~~Trusts~~

~~Uniform Commercial Code~~

~~Wills~~

Rule 13. Passing grade on the [Bar Examination](#).

An applicant shall be deemed to have passed the Bar Examination if, in a single administration of that [Bar Examination](#), the applicant achieves a “total scale score” of ~~145~~[143](#).00 or higher. “Total scale scores” are computed as follows: (a) the raw scores on each of the ~~eight~~[four](#) 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~~[50](#)% and the MBE score weighted at ~~40~~[50](#)%) 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. 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 by the deadline established by the Board for each of the administrations of the Bar Examination ~~no later than April 1 of the year in which an applicant seeks to take the examination~~ 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 be extended only upon good cause shown ~~and will under no circumstances be extended beyond May 1.~~ 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 for Testing Accommodations.* 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 for Testing Accommodations.* 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.* 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.

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, whether he or she has passed or failed the Bar Examination. Reasonably promptly after providing such notice, the Executive Director shall send to each failing applicant

the following materials: (1) applicant's scaled score on each essay question, each MPT and the MBE; (2) copies of applicant's essay and MPT answers; and (3) two representative answers for each essay question and MPT question. The Board shall authorize the NCBE to release MBE scores to all applicants in accordance with Board Rule 52(f).

Rule 19. Deleted.

Rule 20-22. Deleted.

VI. Bar Reexamination

Rule 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 been denied or deferred 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, 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 based on a denial 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](#). An applicant is not required to file a petition for a hearing based on a deferral under Rule 29 within any specific period of time.

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.

(b) Whenever the Board schedules a hearing, the Chair, or if the Chair is unavailable the Vice Chair, shall appoint a Board member, an Associate Board member (other than the Associate Board member assigned to the Board member investigating the applicant), or the Secretary ~~or the Assistant Secretary~~ to act as the Board's Presenter. The Presenter shall insure that all pertinent evidence is placed in the record for the Hearing Panel's consideration.

(c) 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.

(d) The Hearing Panel has discretion to continue a hearing or hold such other proceedings as may be necessary to require or permit submission of supplemental evidence, issuance of subpoenas pursuant to Rule 37, or as otherwise may be necessary to address matters that arise at a hearing or during the proceedings.

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 aApplication, 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~~The aApplication 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 eExaminers 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~~person 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~~The aApplication 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, the office of Public Defender of the State of Delaware, the New Castle County Office of Law or the office of the City Solicitor of the City of Wilmington 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 any 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) Except as provided in Rule 43(b) as to persons who serve without compensation, 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 three times 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 under the general supervision of a supervising lawyer as defined in Rule ~~49~~50.

(i) Persons employed by or associated with the office of the Department of Justice of the ~~s~~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~~50.

(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 Bar Examination 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."