

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ORDER AMENDING THE RULES §
OF THE SUPREME COURT OF §
DELAWARE AND THE RULES §
OF THE BOARD OF BAR §
EXAMINERS RELATING TO §
LIMITED PERMISSION TO §
PRACTICE IN CERTAIN PUBLIC §
PROGRAMS §

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

ORDER

This 8th day of May 2023, it appears to the Court that it is desirable to amend Rule 55 of the Rules of the Supreme Court of Delaware and Rules 45, 47-49, and 51 of the Rules of the Board of Bar Examiners of the State of Delaware, effective immediately.

(1) Supreme Court Rule 55(a) shall be amended to add the underlined text and to delete the strikethrough text as follows:

(a) *Limited permission to practice.* —Attorneys admitted to practice in other jurisdictions or graduates of law schools described by Rule 52(a)(5) who are employed by or associated with Delaware Volunteer Legal Services, Community Legal Aid Society, Inc., Legal Services Corporation of Delaware, Inc., the Department of Justice of the State of Delaware, the Office of the City Solicitor of the City of Wilmington, the ~~Office of the~~ Public Defender's Office within the Office of Defense Services of the State of Delaware, Office of the Child Advocate of the State of Delaware, the New Castle County Office of Law, the Non-profit Pro Bono Committee of the Delaware State Bar Association, the

United States District Court for the District of Delaware's Federal Civil Panel, or attorneys who are admitted to practice in other jurisdictions and are associated with a legal assistance program approved or recognized by the Board, may, in the discretion of the Board, be permitted to practice in the courts and administrative tribunals of this State in matters involving such office or the clients of such program. The requirements, qualifications and procedures for such permission shall be set forth in the Rules of the Board.

(2) Board of Bar Examiners Rule 45 shall be amended to add the underlined text and to delete the strikethrough text as follows:

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's~~ Office within the Office of Defense Services 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.

(3) Board of Bar Examiners Rule 47 shall be amended to add the underlined text as follows:

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. or the Public Defender's Office within the Office of Defense Services of the State of Delaware 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.

(4) Board of Bar Examiners Rule 48 shall be amended to add the underlined text and to delete the strikethrough text as follows:

Rule 48. Approval of supervising ~~attorney~~lawyer.

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 or delinquency 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~~lawyer shall be filed in the record of the case and shall be brought to the attention of the judge or the administrative tribunal. The supervising lawyer must personally be present in court except as set forth below:

(i) In the Justice of the Peace Court, the Court of Common Pleas, and Family Court, the supervising lawyer's personal presence is not required in matters involving misdemeanors or other non-felony violations or offenses under Titles 11, 16, or 21 of the Delaware Code where the client and judge or judicial officer waive the appearance after accepting the representation made by the supervising lawyer that the person permitted to practice under Supreme Court Rule 55 has practiced in similar actions under the direct supervision and control of the supervising lawyer and is prepared to proceed alone; however, the supervising lawyer or designated lawyer must be present during the entry of a plea agreement, trial, and sentencing; and

(ii) In Superior Court, in capias return proceedings only, the supervising lawyer's personal presence is not required where the client and judge or judicial officer waive the appearance after accepting the representation made by the supervising lawyer that the person permitted to practice under Supreme Court Rule 55 has practiced in capias return proceedings under the direct supervision and control of the supervising lawyer and is prepared to proceed alone; however, the supervising lawyer must be available as the court may at any time require the supervising lawyer to be personally present for such period and under such circumstances as the court may direct. This exception does not apply to capias hearings at which a Deputy Attorney General appears on behalf of the State or to any hearing on a bail motion filed on behalf of an indigent person or on behalf of the State.

(5) Board of Bar Examiners Rule 49 shall be amended to add the underlined text as follows:

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's Office within the Office of Defense Services 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.

(6) Board of Bar Examiners Rule 51(j) shall be amended to add the underlined text as follows:

(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's Office within the Office of Defense Services 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.

(7) The Clerk of this Court is directed to transmit a certified copy of this

Order to the clerk for each trial court in each county.

BY THE COURT:

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