

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on June 12, 2018, the following order was made and entered:

RE: Request for Public Comment on Proposed Amendments to the Rules for Admission to the Practice of Law 18-Rules-08

On a prior day the Board of Law Examiners presented to the Court proposed amendments to the Rules for Admission to the Practice of Law. On this day, the Court proceeded to consider the proposed amendments and is of the opinion that the proposed amendments should be published for a sixty-day period of public comment. Comments must be filed in writing with the Clerk of the Court on or before **August 15, 2018**.

The proposed additions to the rules are indicated by underscoring, and deletions are indicated by strikethrough, to read as follows:

Rules for Admission to the Practice of Law

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RULE 2.0. GENERAL REQUIREMENTS FOR ADMISSION.

An applicant is eligible for admission to the practice of law in West Virginia upon establishing to the satisfaction of the Board of Law Examiners: (1) age of at least eighteen (18) years; (2) good moral character and fitness; (3) graduation from an approved college or university with an A.B., B.S., or higher degree, or its equivalent; (4) graduation from an approved law school with an L.L.B., J.D., or its equivalent under Rule 3.0(b); (5) passing score on the West Virginia ~~General~~ Bar Examination, the Uniform Bar Examination (“UBE”), or qualification under Rule 4.0, et seq.; and (6) passing score on the Multistate Professional Responsibility Examination (“MPRE”) within twenty-five months of achieving a passing score on the West Virginia Bar Examination, within twenty-five months of achieving a passing score on the UBE, or within twenty-five months of an application for admission on motion. Any conviction for false swearing, perjury or any

felony, and the applicant's prior and subsequent conduct, shall be considered in the determination of good moral character and fitness.

RULE 3.0. ADMISSION BY EXAMINATION.

(a) *Course of study.* Unless otherwise specified herein, any person who wishes to take the bar examination in the State of West Virginia shall satisfy the Board that he or she has completed a full course of study in a law school accredited by the American Bar Association, or its equivalent, and has been granted and holds a degree of L.L.B. or J.D., or their equivalents, and a degree of A.B. or B.S., or higher degree, from an accredited college or university, or its equivalent.

(b) *Policy on equivalency.* The Board of Law Examiners will consider the following circumstances to be the equivalent of completion of a full course of study in a law school accredited by the American Bar Association, and an applicant meeting the standards set forth herein shall be presumed to be eligible to take the West Virginia Bar Examination; providing that all other requirements set forth in Rule 3.0, et seq., for admission to the bar examination are met. ~~;~~ *Provided,* ~~That graduates of correspondence law courses, including law schools providing more than 50% of classes as Internet-based classes, shall not be eligible to take the West Virginia Bar Examination.~~

(1) The applicant is a graduate of a non-ABA accredited law school who has successfully passed the bar examination of another state, the District of Columbia, or commonwealth or territory of the United States, and has been admitted to practice in such state, district, commonwealth, or territory, or

~~(2)(A) The applicant is a graduate of a non-ABA accredited law school, which school is of such stature that its graduates are eligible to take the bar examination of the state, District of Columbia, commonwealth or territory of the United States in which such law school is located, and~~

~~(B) The applicant has completed three (3) years of law office study and work in this state as a legal assistant or paralegal, under the supervision of an attorney or attorneys admitted to practice in West Virginia, and~~

~~(C) Two attorneys admitted to practice in West Virginia, at least one of whom shall have actively supervised the applicant for a period of not less than six months, certify to the Board that they believe that the applicant is knowledgeable in the law, competent to practice law, and of good moral character, or~~

~~(3)(A) The applicant is a graduate of a reputable law school which, although not accredited by the ABA, has been determined by the Board of Law Examiners to be substantially the equivalent of an ABA-accredited school.~~

~~(B) The Board shall consider applications for admission under paragraph 3 only at a regular meeting of the Board, with the Board's determination to become effective commencing with the next successive examination. All information required for such determination must be provided to the Board at least 60 days prior to its regular meeting. The Board reserves the right to require additional information from the applicant or the institution if it determines that it has insufficient information to make a determination of equivalency.~~

~~(C) Once a determination of substantial equivalency has been made by the Board, the graduates of such school shall be presumed eligible to take the West Virginia Bar Examination for such period as the Board may designate unless a situation arises requiring review at an earlier time. Said determination may be renewed by the Board. Upon expiration of said determination, the institution or the applicant shall have the burden of establishing that said institution continues to be substantially the equivalent of an ABA-accredited law school, or~~

~~(2)(4)(A) The applicant is a graduate of a law school of a foreign country where the common law of England exists as the basis of its jurisprudence, and~~

~~(B) The educational requirements for admission to the bar in said country are substantially the same as those of this State, and that the applicant has satisfied those requirements, and~~

~~(C) The applicant has successfully completed study at an ABA-accredited law school, with a minimum of 30 credit hours of basic courses selected from the following areas of law: Professional Responsibility/Legal Ethics, Contracts, Property (Real and Personal), Uniform Commercial Code, Criminal Law, Evidence, Business Organizations/Corporations, Domestic Relations, Wills, Trusts and Estates, Constitutional Law, Civil Procedure, Criminal Procedure, Torts, Federal Taxation and Conflict of Laws, and which such study shall be completed within a period of 36 calendar months from the date of the inception of such study.~~

~~The burden of establishing eligibility to take the bar examination to the satisfaction of the Board of Law Examiners shall be on the applicant. and upon the institution seeking admission to the bar examination for its graduates. The applicant or the institution shall furnish to the Board all information and documents necessary to enable the Board to make a determination as to whether or not the requirements of this policy have been met. Any costs incurred by the Board in the determination of equivalency under this Rule shall be assessed against the applicant.~~

The Board may require the applicant to appear before the Board at its next regular meeting if the Board determines that it has insufficient information upon which to make a decision. ~~Decisions by the Board pursuant to this policy shall be subject to the administrative hearing procedure provided by Rule 6.0 of the Rules for Admission to the Practice of Law in West Virginia.~~

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RULE 3.5. ADMISSION BY TRANSFERRED UBE SCORE.

(a) *Requirements for transferring of UBE score.* An applicant who has taken the UBE in a jurisdiction other than West Virginia and who otherwise meets the requirements of Rules 2.0, 3.0, 3.4(c), and 5.0, may be admitted to the practice of law in West Virginia based upon a UBE score transfer at any time on or after July 1, 2017. The applicant under this rule shall have earned a combined, scaled UBE score of no less than 270 in an administration of the UBE taken within three years immediately preceding the date upon which application is made and a scaled MPRE score of no less than 80 achieved within twenty-five months of the applicant's successful UBE administration.

(b) *Only certified UBE scores will be accepted.* The Board will not accept transferred scores unless they are certified as UBE scores by the NCBE and will not address petitions to treat a noncertified score as a UBE score.

(c) *Form of application.* The Board of Law Examiners shall prepare suitable application forms for admission by transferred UBE score, and may require that the applications be accompanied by appropriate evidence that the applicant meets the requirements of Rules 2.0, 3.0, 3.4(c), and 5.0, et seq.

(d) *Application fee.* A fee, as set forth in the fee schedule, shall accompany the filing of an application for admission by transferred UBE score.

(e) *Expiration of transferred UBE score.* A UBE score transferred under this rule shall remain eligible to be used for admission to practice law in West Virginia for no more than eighteen months from the date of application to West Virginia.

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RULE 4.5. NOTICE OF ADVERSE DETERMINATION.

In the event that the Board determines that an applicant does not meet the requirements for reciprocity, it shall advise the applicant in writing of the reasons why the applicant is disqualified, and the applicant may request a formal hearing if authorized under Rule 6.0.

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RULE 5.1. DISTRICT CHARACTER COMMITTEES.

Appointment and term. There shall be District Character Committees, consisting of such members as shall be deemed necessary by the Supreme Court of Appeals of West Virginia~~three members in each bar district of the West Virginia State Bar~~. The members of these committees shall be appointed by the Supreme Court of Appeals ~~of West Virginia~~ from lists of nomination submitted to the Court by all of the judges of courts of record within the particular ~~bar~~ district. The terms of the members of the District Character Committees shall be for five years and committee members shall be eligible for reappointment. The District Character Committees shall elect a Chairman ~~and a Secretary~~ from within their number. The members of the District Character Committees shall serve without compensation. Any vacancy on the District Character Committees shall be filled in the same manner as the initial appointment of members of the Committees.

RULE 5.2. PROCEDURE OF DEMONSTRATION OF GOOD MORAL CHARACTER.

(a) *Form of application.* — The applicant for admission to the bar shall file with the Board an application, in such form as may be prescribed by the Board from time to time, designed to obtain from the applicant such information concerning the applicant's personal history and previous conduct as may be necessary to determine his or her moral character and qualification for membership in the bar. A copy of the application shall be forwarded to the National Conference of Bar Examiners for investigation and preparation of a character report. Upon receipt of the report, the Board shall forward the report and a copy of the application to the District Character Committee in the district closest to the applicant's permanent residence or the district where the applicant proposes to practice law.

(b) *Burden of proof.* — The applicant shall at all times have the burden of proving his or her good moral character before the District Character Committee, the Board, and the Court. If an

applicant fails to answer any question on the application or propounded by any member of the District Character Committee, or to supply any documentary material requested by them, the Board or the Court may find that the applicant has not met the burden of proving his or her good moral character.

(c) *Documentary material.* — The applicant agrees that any and all documentary materials filed by the applicant in connection with his or her application may be offered into evidence, without objection, by the District Character Committee or by the Board of Law Examiners in any proceeding in regard to the applicant's admission to the practice of law.

(d) *Procedure.* — After receiving the application from the Board and the character report from the National Conference of Bar Examiners, the District Character Committee shall promptly, through one or more of its members: (1) ~~determine whether to~~schedule an interview with the applicant; (2) verify the facts stated in the application and character report, determine whether to communicate with the references given therein, and make such further investigation as it may deem desirable or necessary; (3) consider the character and fitness of the applicant to be admitted to the bar; and (4) transmit to the Board of Law Examiners a report of its investigation and its recommendation in regard to the character and fitness of the applicant for admission to the bar. If the Board ultimately determines that an applicant should not be recommended for admission, it shall make written findings of fact and conclusions of law in support of such recommendation.

(e) *Continuing nature of investigation.* — The District Character Committee shall continue to have all applicants under observation and subject to further report to the date set by the Court for admission to the bar. Applicants shall be under the continuing obligation to notify the Board in writing of any change, and the nature of such change, relating to any information sought in the application.

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RULE 6.0. ADMINISTRATIVE HEARING PROCEDURE.

(a) *Request for hearing.* — A formal hearing is authorized under this Rule under the following circumstances if requested in writing by the applicant or scheduled by the Bar Admissions Administrator: where the Board determines that an applicant does not meet the requirements of ~~the Rules 4.0, 4.2(b), or 5.0 for Admission to the Practice of Law for any reason, except the failure to pass the bar examination;~~ where the Board denies in whole or in part an

applicant's request under Rule 3.3 for special accommodations during the bar examination; or as authorized by Rule ~~8.07.1~~ with respect to an applicant admitted under a Conditional Admission Agreement. Unless otherwise specified herein, requests for a formal hearing must be received by the Board of Law Examiners within ~~sixty~~thirty days from the receipt of notice by the applicant of the Board's adverse decision. After a request for hearing has been made, an application may not be withdrawn, except upon written motion and for good cause shown and, further, upon payment of costs.

(b) *Formal hearing.* — The Board shall appoint a hearing officer, who shall be a disinterested, practicing attorney in or a senior status circuit court judge for the State of West Virginia, to conduct a formal hearing. The Board shall, by a written notice mailed to the applicant by certified mail at his or her address as stated in the application, specify the date, time and place of the hearing and the name of the hearing officer.

(c) *Time for hearing.* — Unless otherwise provided in these Rules, the time of the hearing shall not be less than twenty (20) days nor more than ~~forty~~fifty (~~40~~50) days from the date of the receipt of the applicant's written request for a formal hearing. The Board or hearing officer may extend or shorten the time period for good cause shown. At the hearing before the hearing officer, the Board may designate a lawyer to represent it and to present evidence in support of the Board's decision. The applicant may be represented by counsel and shall have the right to present evidence in support of his or her qualifications, a request for special accommodations, or compliance with a Conditional Admission Agreement, and shall have the right to cross-examine witnesses, *Provided*, that evidence presented with regard to a request for special accommodations shall be limited as set forth in Rule 3.3. A record shall be made of the proceedings.

(d) *Burden of proof.* — The burden of proof in such hearings shall be on the applicant to establish by clear and convincing evidence the applicant's present character, fitness, and qualifications for admission to the practice of law.

~~(d)~~(e) *Subpoena and contempt power.* — The Board shall have power to issue subpoenas through the Clerk of the Supreme Court of Appeals. The Clerk shall prepare and have available for issuance at the request of any party, subpoenas returnable before the Board for attendance of witnesses or for the production of documentary evidence. Subpoenas, and other process of the Board, may be served in the same manner provided for service of subpoenas to the circuit courts of this State and may be served by mail or by any person designated by the Board or Clerk. The Board shall have jurisdiction co-extensive with the circuit courts of this State to compel the

attendance of witnesses and the production of documents; and the failure of any person without adequate excuse to obey a subpoena or other process of the Board shall constitute contempt of the Board. All witnesses shall be entitled to such witness fees and expenses as in any civil proceeding in this State.

The Board or its appointed hearing officer may punish breaches of order and unprofessional conduct committed in its presence on the part of counsel, or any other person, by censure or exclusion from any hearing or may invoke the aid of any circuit court in keeping order. Such court, in case of the refusal of any person to maintain order before the Board or hearing officer, shall issue an order requiring such person to maintain order. Any failure to obey such order of the court may be punished by such court as contempt thereof. The Board or hearing officer may designate a person, or persons to act as bailiff or bailiffs to be in attendance at all its hearings.

~~(e)~~(f) *Review by Board and Court.* — Upon completion of the hearing before the hearing officer, the hearing officer shall make a written recommendation based upon the requirements of these rules and upon the evidence submitted. Such written report, together with a copy of the transcript of the hearing, shall be forwarded as soon as practicable to the Board of Law Examiners. The Board, within forty-five (45) days from the receipt of said written report and the record, shall review the report and shall advise the applicant in writing as to whether he or she has been found eligible to take the bar examination or to be admitted, if examination is not required, or, in the case of a conditionally admitted applicant, whether the applicant has been found to have violated the Conditional Admission Agreement. In cases appealing the Board's denial of testing accommodations, the Board shall advise the applicant in writing within fifteen days from the receipt of the written report and the record whether the requested accommodations will be granted. In the event that the Board makes a finding adverse to the applicant, the applicant may file exceptions to the Board's recommendations. Exceptions shall be filed with the Clerk of the Supreme Court of Appeals within thirty (30) days from the date of the receipt of the Board's written recommendation. If the Court determines that the matter has merit, it shall docket the case for full argument.

RULE 6.1. PETITION FOR REVIEW OF ADVERSE BOARD DECISION NOT AUTHORIZED FOR HEARING UNDER RULE 6.0.

(a) *Petition for review.* — Where the Board determines that an applicant does not meet the requirements of the Rules for Admission to the Practice of Law for a reason for which a hearing

is not authorized under Rule 6.0, the applicant may file a petition for review with the Clerk of the Supreme Court of Appeals. Such petition shall be filed within thirty days of receipt by the applicant of the Board's final adverse decision and shall be filed together with proof of service of the petition on the Bar Admissions Administrator. The petition shall briefly state the facts that form the basis for the complaint, and the applicant's reasons for believing the Court should review the decision.

(b) Response and disposition. — Within thirty days of service of the petition, the Board shall serve and file a response to the petition and a copy of the final decision of the Board. Thereupon the Court shall give such directions, hold such hearings, and make such order as it may in its discretion deem appropriate.

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A True Copy

Attest: /s/ Edythe Nash Gaiser
Clerk of Court

