IN THE SUPREME COURT OF THE STATE OF UTAH

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In re: Matter of Emergency Modifications to
Utah Supreme Court Rules of Professional Practice,
Rules Governing Admission to the Utah State Bar

**ORDER FOR TEMPORARY AMENDMENTS
TO BAR ADMISSION PROCEDURES
DURING COVID-19 OUTBREAK**

Based upon the Utah Supreme Court's constitutionally granted authority to regulate the practice of law in Utah, and in consideration of the public health threat currently posed by the novel infectious coronavirus (COVID-19), the Utah Supreme Court orders that the Bar Examination passage requirement be modified on an emergency basis for certain eligible Qualified Candidates as defined herein.

I. Definitions

a. Unless otherwise defined in this Order, all terms defined in Rule 14-701 of the Supreme Court Rules of Professional Practice are hereby incorporated into this Order.

b. "Qualified Candidate" means a person who:

1. Is either:

A. A law school graduate who:

i. Has graduated by June 30, 2020 with a First Professional Degree in law from an ABA-approved law school that had an overall first-time taker bar examination passage rate in 2019 of 86% (rounded to the nearest whole number) or greater; and

ii. Has not, as of the date of this Order, previously sat for any bar examination

in any state or territory in the United States and will not be taking the bar examination in any state or territory in the United States in July 2020; or

B. An attorney admitted by bar examination to another jurisdiction and meets all requirements of Rule 14-704(a) except for passing the Utah Bar Examination; and

2. Submitted an application for the Utah Bar Examination on or before April 1, 2020, in accordance with the information and instructions on the admissions website, including all fees and necessary application forms, along with any required supporting documentation, character references, and a photo. Late or incomplete applications will not be accepted.

c. "Supervised Practice" means the 360 hours of supervised legal practice that a Qualified Candidate must complete under the supervision of a Supervising Attorney in accordance with and under section III of this Order.

d. "Supervising Attorney" means a person (or persons) who supervises the Qualified Candidate in accordance with and under section III of this Order and is either:

1. An attorney who has:

A. An active Utah Bar license,

B. A minimum of 5 years as a licensed attorney in any U.S. state or territory,

C. A minimum of 2 years as a licensed attorney in the State of Utah, and

D. No record of public discipline in any jurisdiction in the United States; or

2. A state court or federal court judge.

II. Emergency Admission of Qualified Candidates

a. Qualified Candidates who meet all the requirements of subsection II(b) by no later than December 31, 2020, shall be admitted to the Utah Bar without passing the Utah Bar Examination. This admission will be effected as soon as practically possible.

b. The burden of proof is on the Qualified Candidate to establish by clear and convincing evidence that she or he:

    1. Is a Qualified Candidate as defined in subsection I(b);

    2. Meets all requirements of Rule 14-703 (if applied to take the Bar Examination as a Student Applicant) or Rule 14-704(a) (if applied to take the Bar Examination as an Attorney Applicant), except for passing the Utah Bar Examination;

    3. Has passed or does pass the Multistate Professional Responsibility Examination by no later than December 31, 2020 unless no MPRE is offered in 2020 after the publication of this Order, in which case Qualified Candidates who have not yet passed the MPRE but have fulfilled all other requirements for admission under this Order will be given an extension to pass the MPRE until after scores are published following the first MPRE administered in 2021;

    4. Has provided a completed criminal background check by no later than December 31, 2020;

    5. Has submitted proof of law school graduation by June 30, 2020; and

    6. Has completed 360 hours of Supervised Practice by no later than December 31, 2020.

c. Nothing herein shall prevent a law school graduate who does not meet the definition of a Qualified Candidate from performing legal services under Rule 14-807 of the Supreme Court Rules of Professional Practice.

III. Supervised Practice Requirement

a. The purpose of the Supervised Practice requirement is to provide eligible Qualified Candidates with supervised training in the practice of law and to assist the Bar and the judiciary in discharging their responsibilities to help create a just legal system that is accessible to all.

b. Subject to the inherent power of each judge to have direct control of the proceedings in court and the conduct of attorneys and others who appear before the judge, the courts of Utah are authorized to allow eligible Qualified Candidates to participate in matters pending before the courts consistent with this Order.

c. All time spent in any activity related to developing the Qualified Candidate's legal competence (whether paid, unpaid, pro bono, or low bono) shall be counted toward the 360-hour requirement including, but not limited to, representing clients, providing direct assistance and counsel to judges, advising businesses and their employees, developing or implementing policies and practices for nonprofit organizations or government agencies, and meeting with the Supervising Attorney or attorneys for whom the Supervising Attorney has delegated direct supervision under subsection III(e). CLE courses and other professional trainings or workshops as would be typical of an attorney in that area of practice may be counted toward the 360-hour requirement but shall not exceed more than 10% of the Qualified Candidate's total hours. The determination of whether a specific position or activity qualifies for the purpose of this provision shall be at the Supervising Attorney's discretion.

d. Subject to all applicable rules, regulations, and statutes, a Qualified Candidate may engage in the following activities during the 360 hours of Supervised Practice, so long as the client and Supervising Attorney consent in writing to each activity, and the Supervising Attorney remains fully responsible for the manner in which the activities are conducted:

    1. Negotiate for and on behalf of the client, subject to the Supervising Attorney's final approval, or give legal

advice to the client, provided that the Qualified Candidate:

A. obtains the Supervising Attorney's approval regarding the legal advice to be given or plan of negotiation to be undertaken by the Qualified Candidate; and

B. performs the activities under the general supervision of the Supervising Attorney.

2. Appear on behalf of the client in depositions, provided that the Qualified Candidate has passed a course in evidence and performs the activity under the direct supervision and in the personal presence of the Supervising Attorney.

3. Appear in any court or before any administrative tribunal in this state. In order to participate in any evidentiary hearing, the Qualified Candidate must have passed a course in evidence, and in the case of a criminal evidentiary hearing, must have also passed a course in criminal procedure. The Supervising Attorney's and the client's written consent and approval, along with a law school certification regarding the required coursework, must be filed in the record of the case and must be brought to the attention of the judge of the court or the presiding office of the administrative tribunal. In addition, the Qualified Candidate must orally advise the court at the initial appearance in a case that he or she is certified to appear pursuant to this rule. A Qualified Candidate may appear in the following matters:

A. *Civil Matters*. In civil cases in any court, the Supervising Attorney is not required to be personally present in court if the person on whose behalf an appearance is being made consents to the Supervising Attorney's absence.

B. *Felony or Class A Misdemeanor Criminal Matters on Behalf of the Prosecuting Attorney*. In any felony or Class A misdemeanor prosecution

matter in any court, the Supervising Attorney must be personally present throughout the proceedings.

C. *Infraction of Class B or Class C Misdemeanor Criminal Matters on Behalf of the Prosecuting Authority*. In any infraction or Class B or Class C misdemeanor matter in any court with the Supervising Attorney's written approval, the Supervising Attorney is not required to be personally present in court; however, the Supervising Attorney must be personally present during any Class B or Class C misdemeanor trial.

D. *Felony or Class A Misdemeanor Criminal Defense Matters*. In any felony or Class A misdemeanor criminal defense matter in any court, the Supervising Attorney must be personally present throughout the proceedings.

E. *Infraction or Class B or Class C Misdemeanor Criminal Defense Matters*. In any infraction or Class B or Class C misdemeanor criminal defense matter in any court, the Supervising Attorney is not required to be personally present in court, so long as the person on whose behalf an appearance is being made consents to the Supervising Attorney's absence; however, the Supervising Attorney must be personally present during any Class B or Class C misdemeanor trial.

F. *Appellate Oral Argument*. In any appellate oral argument, the Supervising Attorney must be personally present and the court must give specific approval for the Qualified Candidate's participation in that case.

G. *Indigent defense*. Provide assistance to indigent inmates of correctional institutions or other persons who request such assistance in preparing applications and supporting documents for post-conviction relief, except

when the assignment of counsel in the matter is required by any constitutional provision, statute, or rule of this Court; if there is an attorney of record in the matter, all such assistance must be supervised by the attorney of record, and all documents submitted to the court on behalf of such a client must be reviewed and signed by the attorney of record and the Supervising Attorney.

4. Perform other appropriate legal services, but only after prior consultation with the Supervising Attorney.

5. Notwithstanding the terms above, the court may at any time and in any proceeding require the supervising attorney to be personally present for such period and under such circumstances as the court may direct.

e. The Supervising Attorney is responsible for ensuring that the Supervised Practice of the eligible Qualified Candidate complies with this Order. The Supervised Practice requirement provides an opportunity for the Supervising Attorney to demonstrate professionalism and impart principles of ethics, civility, and service that should characterize all members of the Utah Bar. This training can be accomplished only if the Supervising Attorney is actively involved in the process. The Supervising Attorney may delegate direct supervision of a Qualified Candidate to another attorney who, in the professional judgment of the Supervising Attorney, would effectively promote these goals. If the Supervising Attorney delegates direct supervision to another attorney, communication between and among the two attorneys and the Qualified Candidate should be regular and substantive. Pro bono programs preapproved by the Utah State Bar's Access to Justice program effectively promote the goals of the Supervised Practice requirement, and Supervising Attorneys shall count hours served by the Qualified Candidate in such programs without the need of express delegation or regular and substantive communication with any attorneys directly supervising the Qualified Candidate in those programs.

f. A Qualified Candidate's eligibility to provide services under this Order will terminate immediately upon the Bar's determination that the Qualified Candidate lacks the requisite character and fitness to practice law in Utah.

g. Prior to beginning the 360 hours of Supervised Practice, the Qualified Candidate must:

    1. Obtain the consent of a Supervising Attorney,

    2. Provide the Bar Admissions' office with the Supervising Attorney's name, and

    3. Provide the Bar Admissions' office with a signed and dated letter from the Supervising Attorney stating that she or he is qualified and willing to serve as a Supervising Attorney and has read this Order and agrees to comply with its conditions.

h. A Qualified Candidate's 360 hours shall be recorded in one-tenth hour increments and submitted pursuant to the requirements set forth by the Bar Admissions' office.

i. Upon completing 360 hours of Supervised Practice, the Qualified Candidate must provide the Bar Admissions' office with a statement from the Supervising Attorney attesting to the veracity of the Qualified Candidate's submitted record. If the Qualified Candidate has more than one Supervising Attorney, each Supervising Attorney shall sign the portion of the record that he or she supervised.

j. Completion of the 360 hours of Supervised Practice required for admission under this Order does not excuse the Qualified Candidate from completing the requirements currently imposed upon newly admitted attorneys, including the requirements of the New Lawyer Training Program (if applicable), and the 360 hours shall not be counted toward any post-admission requirements.

IV. The July 2020 Bar Examination

a. No Bar Examination shall be administered in Utah in July 2020.

b. The Utah Supreme Court intends that the Bar Examination be scheduled at the earliest possible date in 2020 after the public health crisis abates and the Bar Examination can be administered safely.

c. Persons who are currently scheduled to sit for the July 2020 Bar Examination in Utah who do not qualify for admission under the emergency modifications outlined in Section I or are unwilling to do so may elect one of the following options for proceeding with their application:

    1. Withdraw the application for a full and complete refund of all application fees paid;

    2. Transfer the application and fees, without further charge, to the February 2021 Bar Examination or the July 2021 Bar Examination; or

    3. Maintain a pending application to remain registered for the Bar Examination in the event a Bar Examination is scheduled to take place at some later point in 2020. If such a Bar Examination does not take place, the individual will be able to select from option (1) or (2) above.

d. Nothing herein shall prevent a Qualified Candidate admitted pursuant to this Order from applying to take a future Bar Examination, but the applicant will be required to submit a new application and fees.

DATED this 21st day of April, 2020.

Matthew B. Durrant
Chief Justice