STATE OF VERMONT
VERMONT SUPREME COURT
JANUARY TERM, 2021

Order Promulgating Amendments to Rules 2(a), 7(f), 9(c), 12(a), and 15(c) of the Vermont Rules of Admission to the Bar of the Vermont Supreme Court

Pursuant to Chapter II, § 37, of the Vermont Constitution, it is hereby ordered:

1. That Rule 2(a) of the Vermont Rules of Admission to the Bar be amended to read as follows (new matter underlined; deleted matter struck through):

Rule 2. Definitions

(a) **"Actively Engage in the Practice of Law"** means: ~~Any of the~~ The following qualified work performed for at least 25 hours per week and subsequent to the admission to the practice of law in another U.S. jurisdiction:

(1) representing one or more clients in the private practice of law;

(2) serving as a lawyer with a local, state, or federal agency, including military service;

(3) serving as a judge in a local, state, or federal court of record;

(4) serving as a judicial law clerk; ~~or~~

(5) serving as in-house corporate counsel (i.e., practice as an employed attorney for an entity or individual, in which the primary duties involve furnishing legal counsel, interpreting and providing advice regarding the law, drafting legal documents, and/or preparing for and prosecuting or defending cases or claims before agencies, boards, bureaus, commissions, panels, executive departments, or courts);

(6) teaching law at a law school approved by the American Bar Association;

(7) engaging in work as an arbitrator or mediator for which the primary duty is the interpretation of law and the application of legal knowledge and skill, provided that such work is performed in a jurisdiction in which the applicant is admitted to the practice of law; or

(8) engaging in any other employment of which the primary duty is the interpretation of law and the application of legal knowledge and skill, provided that such employment is available only to licensed attorneys and is performed in a jurisdiction in which the applicant is admitted.

The "practice of law'' does not include work that, as undertaken, constituted the unauthorized practice of law in the jurisdiction in which it was performed or in the jurisdiction in which the clients receiving the unauthorized services were located.

Board's Notes—2021 Amendment

Rule 2(a)(6) and (7) are added to broaden the definition of "actively engage in the practice of law" to specifically allow law professors and qualified arbitrators and mediators to be eligible for admission without examination. New Rule 2(a)(8) contains a catchall provision.

2. That Rule 7(f) of the Vermont Rules of Admission to the Bar be amended to read as follows (new matter underlined; deleted matter struck through):

Rule 7. The Law Office Study Program

(f) **Reporting Requirements.** The Registrant is responsible for satisfying all reporting requirements. The Registrant must comply with all deadlines and submit all required notices, certificates, and reports/affidavits to the Board on Board-approved forms.

(1) *Commencement Notice.* The Registrant must file the commencement notice within 30 days after beginning the LOS Program or changing offices where he or she is pursuing the LOS Program. The commencement notice must include:

(A) the date that study began;

(B) the judge's or attorney's representation that he or she has personally investigated the moral character and fitness of the Registrant, and, that to the best of his or her knowledge, the Registrant, at the time of commencement, meets the requirements of good moral character and fitness; and

(C) the supervising judge's or attorney's certification.

(2) *Six-Month Report.*

(A) General Requirements. Each report must be:

(i) in the form of an affidavit;

(ii) filed with the Board within 30 days of the expiration of the current, six-month study period;

(iii) signed by the Registrant/affiant; and

(iv) accompanied by the supervising judge's or attorney's certification that to the best of his or her knowledge, the report is accurate.~~; and~~

~~(v) filed in duplicate.~~

(B) Contents. Each report must:

(i) include the number of weeks dedicated to study under the LOS Program;

(ii) describe in detail the areas of study pursued, the tasks performed, and any other relevant study or work completed during the reporting period; and

(iii) outline the Registrant's plan of study for the next reporting period.

(3) *Completion Notice.* Within 30 days of completing the LOS Program, and together with the required six-month report, the Registrant must file with the Board a signed completion notice.

(4) *Failure to Timely Report.* In the Board's discretion, a Registrant's failure to timely file any notice, certificate, or report required may result in the withholding of credit for study, disqualification to take the bar examination, and/or disqualification to be admitted.

(5) *Extensions.* For good cause, the Board may extend by up to 60 days the period to file any notice, certificate, or report.

(6) *Review of Six-Month Reports.* An Examiner will review the Registrant's report and may forward the report to the Board for further review. The Registrant may be required to provide additional information to support a report. The Board will notify the Registrant within 60 days whether the report has been approved for credit or disapproved.

(7) *Deemed Approval.* Commencement notices, six-month reports, and completion notices that are timely filed will be deemed approved unless the Board notifies the Registrant in writing within 60 days of submission that the notice or report is disapproved or that further review is pending.

Board's Notes—2021 Amendment

Rule 7(f) is amended to remove the requirement in former 7(f)(2)(A)(v) that Law Office Study registrants submit their six-month reports in duplicate, as this is no longer administratively necessary and places a burden on registrants.

3. That Rule 9(c) of the Vermont Rules of Admission to the Bar be amended to read as follows (new matter underlined; deleted matter struck through):

Rule 9. Admission by Examination

(c) **Application Process.** To be eligible to take the Uniform Bar Examination, an Applicant must file an Application with the Board. It is the Applicant's burden of proof to establish compliance with the Application process.

(1) *Application Contents.* Each Application must:

(A) be on the appropriate Board-approved forms;

(B) include the Applicant's NCBE number; and

(C) include a signed authorization and release form.

(2) *Deadlines for Filing.* An Application must be received on or before the applicable deadline.

(A) July Examination: Application must be received by the preceding May 1.

(B) February Examination: Application must be received by the preceding December 1.

(3) *Late-Filed Application.* A late-filed Application must be accompanied by an official law school transcript and a written request to the Board seeking permission for the late filing. The Applicant must demonstrate extraordinary circumstances to justify the late filing. The Board has discretion to accept or deny a late-filed petition.

(4) *Proving Fulfillment of Education Requirements.* Before taking the Uniform Bar Examination, the Applicant must prove fulfillment of the education requirements. The NCBE verification will suffice to demonstrate graduation from law school, but the Board has the discretion to request an official law school transcript to ensure compliance.

(5) *Early Examination.* An Applicant studying at an Approved Law School may ~~apply to take~~ sit for the UBE before graduation~~.~~ if ~~The~~ the Applicant has ~~must~~ successfully completed the equivalent of five semesters of full-time study (including academic instruction on each of the subjects tested on the UBE) prior to taking the UBE. ~~and~~ Before sitting for the examination, the Applicant must submit an official law school transcript documenting that study ~~before sitting for the examination~~ and a letter from the law school stating that the school has determined that the Applicant is academically prepared for early testing. To qualify for admission, the Applicant must graduate from an Approved Law School within ~~six~~ seven months after sitting for the UBE. The Applicant must also satisfy all other requirements for admission.

(6) *Continuing Application.* An Application is considered a continuing application, meaning the Applicant has a duty to supplement all information provided to the Board up to and including the date of admission to the Bar.

(7) *Refiling Application.* An Application must be refiled if an Applicant:

(A) does not sit for the examination as previously permitted;

(B) does not achieve a score of 270 or higher on the UBE;

(C) withdraws the Application; or

(D) is denied admission.

Board's Notes—2021 Amendment

Rule 9(c)(5), which details the eligibility requirements to sit for the UBE prior to graduation, is amended to require that applicants take the academic instruction necessary to prepare for the UBE and are approved by their law school to sit for the UBE prior to graduation. The purpose of this amendment is to ensure that early examination applicants are properly prepared for the UBE and that the Board is not overwhelmed by too many such applicants.

The time in which an early examination applicant must submit proof of graduation is increased to accommodate applicants who sit for the July bar and graduate at the end of the following fall semester.

4. That Rule 12(a) of the Vermont Rules of Admission to the Bar be amended to read as follows (new matter underlined; deleted matter struck through):

Rule 12. Additional CLE and Experiential Requirements for Applicants Qualifying for Admission by Examination

(a) **Requirements.** An Applicant who qualifies for admission by examination must satisfy the following requirements.

(1) *Continuing Legal Education* (*CLE).* The Applicant must attend at least 15 hours of CLE on Vermont practice and procedure in courses approved by the Board of Continuing Legal Education and certified by the Board of Bar Examiners as satisfying the requirements of this rule. A minimum of ~~6~~ 9 of the 15 CLE hours must be earned by attendance at programs delivered either as Moderated Programming or Non-Moderated Programming with Interactivity as a Key Component, as those terms are defined in the Vermont Rules for Mandatory Continuing Legal Education ~~live courses~~. All CLE courses that satisfy this requirement must be completed no earlier than 1 year before, and no later than 1 year after, the Applicant is admitted to the Vermont Bar. For good cause, the Board may extend the time necessary to satisfy this CLE requirement.

(2) *Mentorship.* Once the Applicant is admitted to the Vermont Bar, the Applicant must complete a mentorship under the supervision of a judge or attorney practicing in Vermont. The supervising judge or attorney must be admitted to the Vermont Bar for at least 3 years when the mentorship begins. The mentorship must last at least 6 months and all requirements must be completed within one year of the Applicant's admission to the Vermont Bar. For good cause, the Board may extend the time necessary to satisfy this mentorship requirement. To complete the mentorship, the Applicant must:

(A) meet regularly with the supervising judge or attorney, no less than 10 times, to discuss the Applicant's practice and issues relevant to Vermont practice and procedure; and

(B) engage in at least 40 hours of activities on the mentorship program list compiled by the Board of Continuing Legal Education and certified by the Board of Bar Examiners as satisfying the requirements of this Rule.

Board's Notes—2021 Amendment

Rules 12(a)(1) and 15(c) are amended to make the first-year CLE requirement consistent with recent changes to the Rules for Mandatory Continuing Legal Education. Specifically, the prior distinction between live and self-study in 12(a)(1) is replaced with the distinction between Moderated Programming, Non-Moderated Programming with Interactivity as a Key Component, and other. Further, the minimum number of hours of programming that is Moderated or Non-Moderated with Interactivity as a Key Component is increased from 6 to 9.

5. That Rule 15(c) of the Vermont Rules of Admission to the Bar be amended to read as follows (new matter underlined; deleted matter struck through):

Rule 15. Requirements for Attorney-Applicants

An Attorney-Applicant must meet all the following requirements.

(c) **Continuing Legal Education (CLE) Requirement.** An Attorney-Applicant must attend at least 15 hours of CLE on Vermont practice and procedure in courses approved by the Board of Continuing Legal Education and certified by the Board of Bar Examiners as satisfying the requirements of this rule. A minimum of ~~6~~ 9 of the 15 CLE hours must be earned by attendance at programs delivered either as Moderated Programming or Non-Moderated Programming with Interactivity as a Key Component, as those terms are defined in the Vermont Rules for Mandatory Continuing Legal Education ~~live courses~~. The Attorney-Applicant must satisfy this requirement within one year before or one year after admission to the Vermont Bar. The Applicant must timely certify satisfaction of this requirement or the Applicant's license will be suspended. For good cause, the Board may extend the time necessary to satisfy this CLE requirement.

Board's Notes—2021 Amendment

Rules 12(a)(1) and 15(c) are amended to make the first-year CLE requirement consistent with recent changes to the Rules for Mandatory Continuing Legal Education. Specifically, the prior distinction between live and self-study is replaced with the distinction between Moderated Programming, Non-Moderated Programming with Interactivity as a Key Component, and other. Further, the minimum number of hours of programming that is Moderated or Non-Moderated with Interactivity as a Key Component is increased from 6 to 9.

6. That these rules as amended are prescribed and promulgated effective March 8, 2021. The Board's Notes are advisory.

7. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont this 5th day of January, 2021.

Signed by the Vermont Supreme Court

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice