

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on June 7, 2016, the following order was made and entered:

**IN RE: REQUEST FOR PUBLIC COMMENT ON AMENDMENTS TO THE
 RULES FOR ADMISSION TO THE PRACTICE OF LAW**

On a former day, May 11, 2016, Madeleine J. Nibert, Bar Admissions Administrator, presented to the Court a recommendation from the Board of Law Examiners (“Board”) that West Virginia adopt the Uniform Bar Examination (“UBE”). Together with the recommendation, the Board presented proposed amendments to the West Virginia Rules for Admission to the Practice of Law to implement the UBE. The Board recommends that upon adoption, the UBE begin with the July 2017 bar examination. Letters in support of the recommendation were received from the West Virginia State Bar Board of Governors and the Dean of the West Virginia University College of Law.

The Court carefully reviewed and studied the recommendation. Upon review and consideration, the Court does approve and hereby adopts the Uniform Bar Examination in West Virginia, with an effective date of July 2017. The Court hereby approves publication of the proposed amendments to the Rules for Admission to the Practice of Law for a sixty-day period of public comment. Justice Benjamin would require a West Virginia state law specific component to the examination. Comments may be filed, in writing, with the Clerk of the Court on or before August 8, 2016. The proposed additions are indicated by underscoring and deletions are indicated by strikethrough 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.

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Rule 3.2. West Virginia Bar Examination.

(a) *West Virginia Bar Examination.* The West Virginia Bar Examination shall consist of a General Bar Examination and the ~~Multistate Professional Responsibility Examination ("MPRE")~~ MPRE. The purposes of the West Virginia Bar Examination are to test the applicant's ability to reason logically, to analyze accurately the problems presented, to demonstrate a thorough knowledge of the fundamental principles of law and their application, ~~in general and in the State of West Virginia,~~ and ultimately to determine whether an applicant is sufficiently prepared to render legal advice and representation to the public within the bounds of the Rules of Professional Conduct.

(b) *General Bar Examination.* The General Bar Examination will consist of three parts. Part A will consist of the Multistate Performance Test ("MPT") which will include two (2) performance test questions prepared by the National Conference of Bar Examiners and administered by the Board of Law Examiners. Part B will consist of the Multistate Essay Examination ("MEE") which will include six (6) essay questions prepared by the National Conference of Bar Examiners and administered by the Board of Law Examiners. ~~MEE questions are to be answered according to the laws of the State of West Virginia.~~ Part C will consist of the Multistate Bar Examination ("MBE") which will include two hundred (200) multiple choice questions prepared by the National Conference of Bar Examiners and administered by the Board of Law Examiners.

(c) *Passing the examination.* All answers to the ~~Multistate Performance Test~~ MPT and the ~~Multistate Essay Examination~~ MEE will be graded and the scores combined. The total MPT/MEE raw score will be scaled to the ~~Multistate Bar Examination~~ MBE by the National Conference of Bar Examiners in accordance with Uniform Bar Examination policies. ~~using the standard deviation method.~~ The MPT/MEE scaled score and the MBE scaled score will be combined to

determine an applicant's final score on the examination. Applicants who earn a combined scaled score of 270 shall pass the examination. Applicants whose combined scaled scores are below 270 shall fail the examination. A passing score on the West Virginia Bar Examination shall remain eligible to be used for admission to practice law in West Virginia for no more than three years from the date of the examination.

(d) *Multistate Professional Responsibility Examination.* Prior to admission on examination, an applicant, in addition to passing the General Bar Examination, must have successfully completed the ~~Multistate Professional Responsibility Examination~~ (“MPRE”) MPRE prepared and administered by the National Conference of Bar Examiners. To successfully complete the MPRE, the applicant must have achieved a scaled score of at least 80 as determined by the National Conference of Bar Examiners within twenty-five (25) months of successful completion of the General Bar Examination. Arrangements to take such examination, including the payment of any fees therefor, shall be made directly with the National Conference of Bar Examiners.

(e) *Transfer of MBE scores from other jurisdictions.* In lieu of taking the ~~Multistate Bar Examination~~ MBE portion of the first West Virginia Bar Examination taken by the applicant, the Board may, if requested by the applicant, accept any ~~Multistate Bar Examination~~ MBE score achieved in another jurisdiction in a prior examination conducted within thirteen months of the current examination, provided the applicant successfully completed the entire bar examination in the other jurisdiction. If the applicant fails the West Virginia Bar Examination, the ~~Multistate Bar Examination~~ MBE may not be used in any succeeding West Virginia Bar Examination. All applicants shall notify the Board of their intention to use the ~~Multistate Bar Examination~~ MBE achieved in a prior examination at the time their application is filed. Provided, that an applicant who does not sit for the MPT, MEE, and MBE in the same administration of the West Virginia Bar Examination will not earn a UBE score pursuant to subsection (f) below.

(f) *The Uniform Bar Examination.* Beginning with the July 2017 administration of the West Virginia Bar Examination, applicants who complete the MPT, MEE, and MBE portions of the West Virginia Bar Examination in the same examination administration and in compliance with the standards and requirements followed by UBE jurisdictions, as coordinated by NCBE, may earn a UBE score that is transferable to other UBE jurisdictions.

Rule 3.3. Bar Examination Procedures.

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(g) *Anonymity of applicants.* - The identity of the writer of the ~~Multistate Performance Test~~MPT and the ~~Multistate Essay Exam~~MEE shall not be known to the graders until the grades of all applicants have been finally determined. The Board shall have discretion to release unofficial bar passage information by anonymous applicant number on the Board's website.

Rule 3.4. Review; Reexamination.

(a) *Review of failed examination by applicant.* If an applicant fails to pass an examination conducted by the Board, the applicant may, within twenty (20) days after the results of the examination are mailed to the applicant by the Board, review at the Board's offices the applicant's examination papers, which shall include questions posed by the Board, the applicant's answers to the questions and the grades given to the applicant by the Board as regards the ~~West Virginia Essay Examination and Multistate Performance Test~~MPT and the ~~Multistate Essay Examination~~MEE. The ~~Multistate Bar Examination~~MBE questions and answers may not be reviewed, nor may an applicant review his or her original MBE answer sheet. The applicant may request to have the Multistate Bar ExaminationMBE graded by hand upon payment of a fee established by the National Conference of Bar Examiners.

(b) *Appeal by failing applicants.* The grades assigned to the West Virginia Bar Examination shall be final and no appeal shall be considered.

(c) *Reexamination.* If an applicant fails to pass his or her first examination he or she will be permitted to take subsequent examinations. An applicant who has failed to earn the minimum score required to pass in this State after a fourth examination taken in this or any other UBE jurisdiction state shall not again be admitted to an examination or be admitted by transferred permitted to transfer a UBE score except upon permission of the Board of Law Examiners for good cause shown. The Board so granting the permission may, as a condition to the granting of another examination, prescribe a further course of study.

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.

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Rule 4.4. Multistate Professional Responsibility Examination.

Prior to admission on motion, an applicant must have successfully passed the ~~Multistate Professional Responsibility Examination~~ ("MPRE") MPRE prepared and administered by the ~~National Conference of Bar Examiners~~ NCBE. To successfully complete the MPRE, the applicant must have achieved a scaled score of at least 80 as determined by the ~~National Conference of Bar Examiners~~ NCBE. Arrangements to take such examination, including the payment of any fees therefore, shall be made directly with the ~~Multistate Bar Examination Committee of the National Conference of Bar Examiners~~ NCBE. The Board may, if requested by the applicant, accept any ~~Multistate Professional Responsibility Examination~~ MPRE score achieved in another jurisdiction in a prior examination conducted within twenty-five months of application for admission. All applicants for admission on motion shall notify the Board of their intention to use the ~~Multistate Professional Responsibility Examination~~ MPRE score achieved in another jurisdiction at the time their application is filed.

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Rule 4.6. Resident Professors of Law.

A bona fide resident of this State who currently holds a position as a full-time member of the faculty of law at the College of Law at West Virginia University, may be admitted to practice without examination provided the applicant has been admitted to practice before the court of last resort of another state, except that if such applicant has not, within twenty-five months next

preceding his or her application, previously passed the Multistate Professional Responsibility Examination with a score satisfactory to the Board of Law Examiners, the applicant shall be required to pass such examination. Such admission shall be on a temporary basis for a period of five years. Such faculty member shall file for admission on a form prescribed by the Board of Law Examiners who shall also approve his or her character in accordance with Rule 5.2. The faculty member shall pay an application fee as set forth in the fee schedule and shall pay such fees as are required by the National Conference of Bar Examiners. The dean of the College of Law at West Virginia University shall file an annual report of all full-time members of the faculty of law who are currently admitted to practice under this rule with the Clerk of the Supreme Court of Appeals between the first and fifteenth day of July of each year. After satisfactory completion of the five-year period, such faculty member may be granted admission without limitation of time.

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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. ~~The application shall be filed pursuant to the requirements of Rule 3.1, with regard to admission by examination, or Rule 4.1, with regard to admission without examination.~~ 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.

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Rule 9.0. Limited Permission of Attorneys of Other States.

(a) *Indigent legal services or public defender program attorneys.* An attorney who is enrolled in a criminal law or poverty law and litigation graduate program in an approved law school or who, after graduation from an approved law school, is employed by or associated with an organized legal services or public defender program providing legal assistance to indigents and who is a member of a court of last resort of another state (the term "state" including Territories and the

District of Columbia), shall be permitted to practice before the courts of this State in all causes in which he or she is associated with an organized legal services or public defender program sponsored, approved or recognized by the Board of Law Examiners. Permission to practice under this rule shall become effective upon filing with the Board of Law Examiners (1) a certificate of any court of last resort certifying that the attorney is a member in good standing at the bar of that court; and (2) a statement signed by a representative of the law school that the attorney is enrolled in the above specified graduate program; or (3) a statement signed by a representative of the organized legal services or public defender program that the attorney is currently associated with such program; and (4) an application in the form required by Rule 5.0, et seq., and reviewed in accordance with that rule; ~~and~~ (5) an application fee as set forth in the fee schedule; and (6) the issuance of a certificate of limited permission by the Board following the oath or affirmation required by Rule 7.0(c).”

A True Copy

Attest: //s// Edythe N. Gaiser
Deputy Clerk of Court

