

STATE OF VERMONT
VERMONT SUPREME COURT
_____ TERM, 2018

Order Promulgating Amendments to Rules 7(c), 9(b)(1), 11, 12(a), and 13(b) and (e) of the Vermont Rules of Admission to the Bar of the Vermont Supreme Court

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

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

Rule 7. The Law Office Study Program.

(a) **Definition.** “Law Office Study Program” (or “LOS Program”) means apprenticing for the prescribed term under the supervision of a judge or an attorney who practices in Vermont and has been admitted to practice before this Court not less than 3 years prior to the Registrant’s commencement of the apprenticeship.

(b) **Requirements for Study.** The purpose of the LOS Program is to prepare a Registrant to engage in the general practice of law. To ensure this purpose is met:

(1) a Registrant must carefully arrange with the supervising judge or attorney a systematic course of study to prepare the Registrant for the general practice of law, including, but not limited to, the subjects tested on the Uniform Bar Examination and related Vermont law; and

(2) a supervising judge or attorney may, and is encouraged to, enlist the assistance of other judges and attorneys to provide the greatest breadth of experience and instruction to the Registrant.

(c) **Minimum Education Requirements for an LOS Program Registrant.** Prior to enrollment in the LOS Program, a Registrant must have earned a bachelor’s degree from a ~~college or university~~ an institution of higher education whose accreditor has been approved by the U.S. Department of Education within the United States that is authorized to grant a bachelor’s degree by the law of the state in which it is located. This requirement may also be satisfied if the Registrant has earned an undergraduate degree in a foreign jurisdiction and can establish that the degree is equivalent to a bachelor’s degree from an institution of higher education whose accreditor has been approved by the U.S. Department of Education.

(d) **Measurement of Study.** Study under the supervision of a judge or an attorney is measured as follows:

(1) A week of study consists of (A) not less than 25 hours of study during a period of 7 consecutive days, or (B) not less than 30 hours of study during a period of 14 consecutive days; and

(2) A year of study consists of 12 calendar months during which not less than 44 weeks of study were pursued.

(e) Term of Study; Credit Awarded Towards Term. The LOS Program requires four years of approved study. Subject to Court approval, the Board has discretion to award a Registrant partial credit for up to 2 years towards the 4-year term based on a Registrant's prior legal study, if the Registrant demonstrates to the Board's satisfaction that the prior study:

(1) satisfies the purpose of the LOS Program;

(2) is recent and not stale; and

(3) was acquired:

(A) from an Approved or non-Approved Law School, whether or not the Applicant has graduated;

(B) from a program in another U.S. jurisdiction, which the Registrant can demonstrate is substantially equivalent to the LOS Program; or

(C) through the study of law in a foreign, common-law jurisdiction if the Applicant has been admitted to the practice of law before a court of general jurisdiction.

(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;
- (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—2018 Amendment

Rule 7(c) is revised to allow for all institutions of higher education whose accreditor has been approved by the U.S. Department of Education to satisfy the LOS educational requirement. Rule 7(c) is also revised to allow an applicant with an undergraduate degree from a foreign jurisdiction to satisfy that requirement, provided the applicant can establish that such degree is equivalent to a bachelor's degree from a Department of Education-approved institution. This latter change aligns the rule with Rule 8(b), which allows an applicant with a J.D.

from a foreign law school to satisfy the Rule 8 educational requirements if the applicant can establish that the J.D. is equivalent to that from an ABA-approved law school within the United States.

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

Rule 9. Admission by Examination

(a) **Administration of the UBE.** The Uniform Bar Examination is administered twice each year, in February and in July, on dates designated by the NCBE. The Board may administer the UBE in Vermont or, in its discretion, may cooperate with a neighboring state that has adopted the UBE to jointly administer the examination, so long as the examination is offered at a location reasonably convenient to Vermont.

(b) **Examination Requirements and Passing Score.**

(1) *Within Five Years.* ~~Except where an Applicant is already licensed to practice law in another U.S. jurisdiction, a~~ An Applicant must sit for the UBE within five years of graduating from law school or completing the LOS Program, unless the time is extended for good cause. An Applicant seeking to sit for the UBE beyond the required five-year time period must obtain Board approval. This requirement does not apply to an Applicant already currently licensed to practice law in another U.S. jurisdiction.

(2) *Sitting for Entire Examination.* An Applicant must sit for all parts of the UBE at a single administration of the Exam.

(3) *Passing Score.* To pass the UBE for admission to the Vermont Bar, an Applicant must attain a score of 270.

(4) *Limitation on Continued Sitzings.* An Applicant who has failed the bar examination four times will not be permitted to sit for the UBE in Vermont. For purposes of this rule, attempts to achieve a passing score on the UBE count toward the limit of four regardless of where the Applicant sat for the UBE. The four-attempt limitation may be waived upon a strong showing, to the Board's satisfaction, that the Applicant has substantially improved his or her Exam preparation and there is good cause warranting the requested waiver.

(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 the UBE before graduation. The Applicant must successfully complete the equivalent of five semesters of full-time study prior to taking the UBE and must submit an official law school transcript documenting that study before sitting for the examination. To qualify for admission, the Applicant must graduate from an Approved Law School within six 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.

(d) **Notifying Applicants.** The Board will send an informational letter to each Applicant, which will include at least the following:

(1) The dates, times, and locations for the UBE;

(2) An anonymous identification number to be used on all examination materials;

(3) An admission ticket to be used for admission to the UBE;

(4) The rules and procedures for the administration of the UBE; and

(5) The procedure for reporting of scores.

For the February Examination, the informational letter will be sent before February 1. For the July Examination, the informational letter will be sent before July 1.

(e) **Identifying Applicants.** At the examination site, Applicants are required to present government-issued photo-identification. Applicants may also be required to have their fingerprints taken for identification purposes.

(f) **Deadline to Request Reasonable Accommodations.** A request for reasonable accommodations for the UBE must be filed no later than the Application deadline, except upon a showing of extraordinary circumstances.

Board's Notes—2018 Amendment

Rules 9(b)(1), 11, and 13(e) have been revised to ensure consistency and clarity with regards to the permitted age of UBE and MPRE scores. Rule 9(b)(1) is revised to make it clear that applicants must be active attorneys to waive the five-year limitation and that Board approval is not necessary for such a waiver. Also, Rule 9(b)(1) now allows for an extension to the time limitation for good cause, consistent with existing Rule 13(d) and the revisions to Rules 11 and 13(e). See Board's Notes to simultaneous amendments to Rules 11 and 13.

3. That Rule 11 of the Vermont Rules of Admission to the Bar be amended to read as follows (new matter underlined; deleted matter overstruck):

Rule 11. Multistate Professional Responsibility Examination

An Applicant for admission by examination must achieve a scaled score of 80 on the MPRE within a period beginning three years before achieving a ~~initially sitting for the~~ Uniform Bar Examination score that meets Vermont's passing score requirement and concluding one year after written notification to the Applicant of achieving such a ~~Uniform Bar Examination~~ score that meets Vermont's passing score requirement, unless time is extended for good cause. The Applicant is responsible for ensuring that the Board receives an official report from the NCBE certifying the Applicant's score and the MPRE administration date at which the score was achieved.

Board's Notes—2018 Amendment

Rules 9(b)(1), 11, and 13(e) have been revised to ensure consistency and clarity with regards to the permitted age of UBE and MPRE scores. Rule 11 is revised to make it clear that the triggering date for the time limit for the age of the MPRE score is the date the applicant achieves a passing UBE score, consistent with the prior Board's Notes and the three-year age limit for the MPRE in Rule 13(e). Also, Rule 11 now allows for an extension to the time limitation for good cause, consistent with existing Rule 13(d) and

the revisions to Rules 9(b)(1) and 13(e). See Board's Notes to simultaneous amendments to Rules 9 and 13.

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

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 of the 15 CLE hours must be earned by attendance at live courses. All CLE courses that satisfy this requirement must be completed no earlier than ~~6 months~~ 1 year before, ~~the Applicant sits for the bar exam~~ 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.

(b) **Reporting.** The Applicant and supervising judge or attorney must certify completion of the requirements of Rule 12(a) within one year of the date of admission, or the Applicant's license will be suspended. In the event that an Applicant's license is suspended for failing to complete the requirements of Rule 12, the Applicant must submit a plan for completing the requirements. If the Applicant asserts that he or she has completed some portion of the requirements for the mentorship under Rule 12(a)(2), the Applicant must submit verification to support this assertion certified by the supervising judge or attorney. In its discretion, the Board may reinstate the Applicant's license pending successful completion of the plan approved by the Board.

Board's Notes—2018 Amendment

Rule 12(a)(1) is revised to make the time period to take the first-year CLE courses for admittees by examination consistent with the corresponding time period for admittees without examination in Rule 15. In removing the reference to the bar exam, this revision also clarifies the corresponding time period for admittees by transferred UBE score.

Rule 12(a)(2) is revised to clarify that for good cause the Board can grant an extension to the time limit for satisfying the first-year mentorship requirement. This aligns Rule 12(a)(2) with Rule 12(a)(1), which similarly allows the Board to grant an extension for good cause shown to the time limit for satisfying the first-year CLE requirement.

5. That Rule 13 of the Vermont Rules of Admission to the Bar be amended to read as follows (new matter underlined; deleted matter overstruck):

Rule 13. Admission by Transferred Uniform Bar Examination Score

(a) **General Requirements.** To be admitted by transferred UBE score earned in another U.S. jurisdiction, the Applicant must file an Application on forms required by the Board, pay the required fee, and arrange for the NCBE to transfer the Applicant's UBE score to Vermont. The following additional requirements must be met.

(b) **Age of Score.** The Applicant must ~~have earned~~ achieve a UBE score of 270 or higher ~~either:~~

(1) in the administration of the UBE immediately subsequent to the date on which the application for admission by transferred UBE score was filed; or

~~(2)~~ (1) in an administration of the UBE which occurred within 3 years before the date on which the application for admission by transferred UBE score was filed; or

~~(2)~~ (3) in an administration of the UBE which occurred more than 3 years but less than 5 years before the date of filing of the application for admission by transferred UBE score, ~~and if the Applicant has~~ been Actively Engaged in the Practice of Law for at least 2 years in another U.S. jurisdiction in which the ~~a~~Applicant was a member in good standing.

(c) **Attempts.** The required score must have been achieved within no more than 4 sittings for the UBE. For purposes of this rule, attempts to achieve the required score count toward the limit of 4 regardless of where the Applicant sat for the UBE.

(d) **Timing of UBE.** The required score must have been achieved at an administration of the UBE no later than 5 years after the Applicant completed the educational requirements set forth in Rule 6, unless time is extended for good cause.

(e) **MPRE.** The Applicant must have achieved a scaled score of 80 or higher on the MPRE taken within a period beginning 3 years before, and concluding 1 year after, the date on which the application for admission by transferred UBE score was filed, unless time is extended for good cause.

(f) **Educational Requirement.** The Applicant must meet the educational requirements set forth in Rule 6.

(g) **Additional CLE and Experiential Requirements.** The Applicant must satisfy the requirements set forth in Rule 12.

Board's Notes—2018 Amendment

Rules 9(b)(1), 11, and 13(e) have been revised to ensure consistency and clarity with regards to the permitted age of UBE and MPRE scores. Rule 13(e) is revised to impose a one-year outer limit for the MPRE score, consistent with the outer limit in Rule 11. Also, Rule 13(e) now allows for an extension to the time limitation for good cause, consistent with existing Rule 13(d) and the revisions to Rules 9(b)(1) and 11. See Board's Notes to simultaneous amendments to Rules 9 and 11.

In addition to the above change, Rule 13(b) is revised to specifically permit concurrent applications for admission by transferred UBE score, meaning that an applicant can apply to sit for the UBE in a UBE jurisdiction other than Vermont and at the same time apply for admission by transferred UBE score to the Vermont bar, although the UBE score has not yet been earned.

6. That these rules, as amended, are prescribed and promulgated effective _____ . 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.

Done in chambers at Montpelier, Vermont this ____ day of _____, 2018.

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

PROPOSED