

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 26th day of November, 2002, the following order was made and entered:

IN RE: AMENDMENTS TO RULES 1.0, 3.3(b), (e) AND (f), 4.0(b), 5.2(a) AND (d), AND 6.0(a), AND ABROGATION OF RULES 5.3 AND 5.4 OF THE RULES FOR ADMISSION TO THE PRACTICE OF LAW

On a former day, to-wit, February 21, 2002, the Court approved a period of public comment on proposed amendments to Rules 1.0, 3.3(b), (e) and (f), 4.0(b), 5.2(a) and (d), and 6.0(a), and on the proposed abrogation of Rules 5.3 and 5.4 of the Rules for Admission to the Practice of Law, with the public comment period to conclude on April 15, 2002.

Thereafter, on this day, came the Court on its own motion, and proceeded to consider amendments to the aforesaid rules in light of the comments received. Upon consideration whereof, the Court is of opinion to and doth hereby adopt the following amended and abrogated rules, effective immediately. Justice Maynard would refuse. Deletions are indicated by strikethroughs and insertions are indicated by underscoring, to read as follows:

“RULES FOR ADMISSION TO THE PRACTICE OF LAW

**Rule 1.0 Board of law examiners.**

(e) *Civil immunity.* - The Board of Law Examiners and its District Character Committees, their members and employees, shall be absolutely immune from civil suit in the same manner as members of the judiciary in this State for any conduct or communication in the course of their official duties. “Official duties” for the purpose of this Rule includes but is not limited to any conduct or communication dealing with the Bar examination, the character and fitness qualification review and investigation, and any other conduct involved in the licensing of persons seeking to be admitted to the practice of law in West Virginia.

(f) *Qualified immunity.* - Those persons, including any person, firm, or institution, providing records, statements of fact or fact and opinion, or other information regarding an applicant for admission to the practice of law to the Board of Law Examiners, the District Character Committee members, their employees or agents, shall be immune from civil suit for any conduct or communication sought or given in connection with the licensing of persons seeking to be admitted to the practice of law in West Virginia absent a clear and convincing showing that the information provided is defamatory and published by the informant with “actual malice”. For purposes of this rule, “actual malice” means the informant provided the defamatory information with (a) knowledge by the informant that the defamatory information was false at the time of its publication or, with (b) willful and reckless disregard of truth by

the informant at the time of its publication. For purposes of this rule, “defamatory” means that the statements or information tends to cast shame, contumely and disgrace upon the person referenced by the statement or information in question.

(g) Discoverability of investigative materials. - All information provided, documents filed, or testimony given with respect to any investigation or proceeding under these rules shall be privileged and nondiscoverable in any civil suit absent a court order finding that the movant seeking the discovery is (1) the person who is referenced by the alleged defamatory statement or information which is the subject of the discovery request (2) the information, document or testimony is sought to prove an action pursuant to Rule 1 (f) only and (3) the movant establishes a prima facie showing to the court of the elements necessary to sustain an action under Rule 1 (f) in regard to the document or information sought in the discovery request . Any materials released pursuant to such court order will remain privileged as to any other use.

### **Rule 3.3. Bar examination procedures.**

(b) *Typing of answers.* - If an applicant desires to type answers, the Board may make provision for a separate room, segregated from other applicants who are not typing answers to the examination: Provided, That in the instance in which an applicant demonstrates through medical opinion to the Board that he or she has a disability which requires the typing of answers as a reasonable accommodation for that disability, the Board must make provision for such qualifying applicant to type his or her answers in a separate room, segregated from other applicants who are not typing answers to the examination. The applicant, including an applicant with a relevant disability, must submit a written request for permission to type not later than December 1st preceding the February examination, and not later than May 1st preceding the July examination: Provided, That an applicant with a relevant disability that has a sudden, medically verified change in circumstances directly relating to the accommodations needed in order to take the bar examination, may apply to the Board for a waiver of the time restriction as forth above, to be judged by the Board on a case by case basis. The applicant must notify the Board of such decision at the time of the filing of the application. Each such applicant, excluding applicants with relevant demonstrated disability as referenced above, shall be responsible for providing a typewriter and the necessary equipment (ribbons, extension cord, etc.) for the operation of the typewriter, for the functioning and safekeeping of the typewriter and equipment, and for stapling together the answer pages. No word processors or memory typewriters shall be permitted. Applicants with a disability are subject to the prohibition against word processors and memory typewriters in the exact same manner as any other applicant as set forth herein: Provided, That the Board will review the circumstances of each such case to determine reasonableness of the test taking accommodations requested on a case by case basis pursuant to 3.3(e). For the purpose of this rule, “disability ” means physical or mental impairment that substantially limits one or more of the major life activities of such individual.

(e) *Examination of handicapped candidates applicants with a disability.* - All

reasonable steps shall be taken by the Board to facilitate the examination of applicants ~~having physical handicaps~~ with a disability or disabilities. Applicants with a disability or disabilities must notify the Board of their needs any reasonable accommodation(s) needed at the time of the filing of the application on forms provided by the Board. For the purpose of this rule, “disability or disabilities” means physical or mental impairment that substantially limits one or more of the major life activities of such individual.

(f) *Anonymity of applicants.* - The identity of the writer of ~~an examination~~ the Multistate Performance Test and the Multistate Essay Exam shall not be known until the grades of all applicants have been finally determined.

#### **Rule 4.0. Admission without examination.**

(b) *Reciprocity requirements.* - To be eligible for admission to practice in the State of West Virginia upon the basis of admission in any other state, an applicant must have been lawfully engaged in the active practice of law for five (5) of the seven (7) years next preceding his or her application and must have held a valid license to practice law from some state throughout such five year period; and, must demonstrate to the Board that the standards of admission in at least one of the states where he or she was previously admitted ~~was~~ were, at the time of the applicant’s admission in that state, and ~~is~~ are now, substantially equivalent to the standards for admission in West Virginia.

#### **Rule 5.2. Procedure for 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. ~~The Board may make such further investigation as it may deem desirable or necessary, which may include the use of the services of the National Conference of Bar Examiners in connection with such investigation.~~

(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 interview 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 recommendation of the District Character Committee is against admission, the report of the District Character Committee shall set forth the facts upon which the adverse recommendation is based and its reasons for rendering an adverse recommendation, and the~~ The Board may make such further investigation as it may deem desirable or necessary. , which may include the use of the services of the National Conference of Bar Examiners in connection with such investigation. 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.

**Rule 6.0. Administrative hearing procedure.**

(a) *Request for hearing.* - In the event that the Board determines that an applicant does not meet the requirements of the Rules for Admission to the Practice of Law for any reason, except the failure to pass the bar examination, and the applicant requests a hearing to review the Board's action, a formal hearing is authorized when the applicant requests in writing to the Board a hearing. Requests for a formal hearing must be received by the Board of Law Examiners within sixty days from the receipt of notice by the applicant that he or she does not meet the requirements of the Rules for Admission to the Practice of Law. 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.

**ABROGATED**

**Rule 5.3. Procedure upon adverse character determination**

**Rule 5.4. Review by District Character Committee.”**

A True Copy

Attest: \_\_\_\_\_  
Clerk, Supreme Court of Appeals

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 26<sup>th</sup> of November, 2002, the following order was made and entered:

IN RE:           AMENDMENT TO RULE 8.0(b) OF THE RULES FOR  
                  ADMISSION TO THE PRACTICE OF LAW

This day came the Court and considered an amendment to Rule 8.0(b) of the Rules for Admission to the Practice of Law. Upon consideration whereof, the Court is of opinion to and doth hereby provisionally approve said amendment, effective immediately, with a period of public comment to conclude on February 14, 2003, with comments to be filed with the Clerk of this Court. Deletions are indicated by strikethroughs and insertions are indicated by underscoring, to read as follows:

**“RULES FOR ADMISSION TO THE PRACTICE OF LAW**

**Rule 8.0. Admission pro hac vice.**

\*\*\*\*\*

(b) Admission process. Before such privilege of appearance is granted, the applicant shall provide to the judge, tribunal or other body before which the applicant desires to appear, as well as to The West Virginia State Bar, a verified statement of application for pro hac vice admission listing (1) the action, suit, proceeding or other matter which is the subject of the application; (2) the name, address and telephone number of the registration or disciplinary agency of all state courts, the District of Columbia or of the country in which such person is admitted; (3) the name and address of the member of The West Virginia State Bar who will be a responsible local attorney in the matter; (4) all matters before West Virginia tribunals or bodies in which such person is or has been involved in the preceding 24 months; (5) all matters before West Virginia tribunals or bodies in which any member of the petitioner’s firm, partnership, corporation or other operating entity is or has been involved in the preceding 24 months; (6) a representation by the applicant for each State, the District of Columbia or any other country where said applicant has been admitted to practice, stating whether the applicant is in good standing with the bar of every such jurisdiction and that he or she has not been disciplined in any such jurisdiction within the preceding 24 months; (7) an agreement to comply with all laws, rules and regulations of West Virginia state and local

governments, where applicable, including taxing authorities and any standards for pro bono civil and criminal indigent defense legal services. A fee of ~~one hundred dollars (\$100)~~ one hundred fifty dollars (\$150) shall be paid to The West Virginia State Bar for each individual applicant in each individual pro hac vice admission. The fee shall accompany the verified statement of application for pro hac vice admission which is sent to The West Virginia State Bar, and the applicant's motion for pro hac vice admission shall include a verified statement that the fee of one-hundred fifty dollars has been paid to The West Virginia State Bar. Separate pro hac vice admission shall be required in every case in which the applicant seeks to act as counsel. For purposes of this rule, each civil action with a case number shall constitute a single case."

A True Copy

Attest: \_\_\_\_\_  
Clerk, Supreme Court of Appeals