



SUPREME COURT OF VIRGINIA

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Supreme Court of Virginia

Call for Comments

Contact: Muriel-Theresa Pitney, Acting Clerk

Release Date: August 12, 2021

THE SUPREME COURT OF VIRGINIA REQUESTS PUBLIC COMMENT ON PROPOSED AMENDMENTS TO RULE 1A:1, REGULATIONS, AND NEW RULE 1A:9

RICHMOND – The Supreme Court of Virginia is considering proposed amendments to Rule 1A:1, Regulations, and new Rule 1A:9. Additions to the existing rule are displayed in red; deletions are denoted by red strikethrough. Comments on the proposed amended rules must be **received** by October 11, 2021, and must be addressed to:

Muriel-Theresa Pitney, Acting Clerk

Supreme Court of Virginia

Via email (scvclerk@vacourts.gov) with the subject line “Comment on Rule 1A:1, etc.”

In the alternative, comments may be mailed to the Clerk’s office at:

Clerk, Supreme Court of Virginia

100 N 9th Street

5th Floor

Richmond, VA 23219

RULES OF SUPREME COURT OF VIRGINIA
PART ONE A
FOREIGN ATTORNEYS

Rule 1A:1. Admission to Practice in This Commonwealth Without Examination

(a) *Reciprocity* — Any person who has been admitted to practice law before the court of last resort of any state or territory of the United States or ~~of~~ the District of Columbia may file an application to be admitted to practice law in this Commonwealth without examination, if counsel licensed to practice law in this Commonwealth may be admitted in that jurisdiction without **taking a bar** examination.

(b) *Application* — An applicant for admission to practice law without examination in this Commonwealth must:

(1) File with the Secretary of the Virginia Board of Bar Examiners (the Board) an application under oath on a form furnished by the Board;

(2) Furnish a certificate, signed by the presiding judge of the court of last resort or other proper official for every jurisdiction in which the applicant is or has been licensed to practice law, stating:

(i) that the applicant is in good standing, and if not the reasons why;

(ii) the length of time the applicant has been or was licensed in that jurisdiction; and

(iii) any restriction or condition placed on the applicant's license to practice law in that jurisdiction.

(3) Certify in writing under oath that the applicant has completed 12 hours of instruction approved by the Virginia Continuing Legal Education Board on Virginia substantive and/or procedural law within the preceding six-month period;

(4) Certify in writing under oath that the applicant has read and is familiar with the Virginia Rules of Professional Conduct;

(5) Complete the Applicant's Character and Fitness Questionnaire and furnish a report of the National Conference of Bar Examiners, or such other report as the Board may require, concerning the applicant's past practice and record, and pay the fee for such report; and

(6) Pay such filing fee as may be fixed from time to time by the Board.

(c) *Board Review* — Upon receipt of a completed application, the Board will determine in accordance with the regulations issued by the Supreme Court of Virginia whether the applicant has established by satisfactory evidence that he or she:

(1) Is a proper person to practice law; and

(2) Pursuant to Code § 54.1-3931, has been admitted to practice law before the court of last resort of any state or territory of the United States or ~~of~~ the District of Columbia for at least five years; and

(3) Has practiced law for at least three of the immediately preceding five years and has made such progress in the practice of law that it would be unreasonable to require the applicant to take an examination. The Board may require the applicant to appear personally before the Board, the Character and Fitness Committee (the Committee) of the Board, or a member of either the Board or the Committee, and furnish any such additional information as may be required. If the applicant's license to practice law in any other jurisdiction is subject to any restriction or condition, the Board will determine whether the nature of such restriction or condition is inconsistent with the practice of law and, if so, will deny the application. If the Board determines that the applicant is qualified to be admitted to the practice of law in this Commonwealth without examination, the Board will approve the application and notify the applicant of its decision.

(d) *Admission* — Upon notification by the Board that the applicant's application has been approved, the applicant may be issued a certificate, pursuant to Code § 54.1-3931, to practice law in this Commonwealth if:

(1) A member of the Virginia State Bar who is qualified to practice before the Supreme Court moves the applicant's admission to practice law in this Commonwealth in open court;

(2) The motion is granted; and

(3) The applicant takes and subscribes to the oaths required of attorneys at law.

(e) *Active Membership* — Upon payment of applicable dues, and completion of other membership obligations set forth in Part 6, Section IV of the Rules of the Supreme Court of Virginia, the applicant will become an active member of the Virginia State Bar. An attorney admitted pursuant to the Rule is subject to the same membership obligations as other active members of the Virginia State Bar, and all legal services provided in Virginia by an attorney admitted pursuant to this Rule will be deemed the practice of law and will subject the attorney to all rules governing the practice of law in Virginia, including the Virginia Rules of Professional Conduct. The rules set forth in Part 6, Section IV, governing how members may change their status to associate, judicial, disabled, retired or emeritus, apply to attorneys admitted pursuant to this Rule.

(f) An attorney admitted to practice law in this Commonwealth without examination under prior versions of this Rule is no longer subject to the requirement that he or she intends to practice law full time as a member of the Virginia State Bar.

Last amended by Order dated November 23, 2020; effective March 1, 2021.

Regulations Governing Applications for Admission to Virginia **State** Bar Pursuant to Rule of the Supreme Court of Virginia 1A:1, effective December 1, 2018.

INTRODUCTION

Each person who has met the educational requirements and has proved that he or she satisfies the character and fitness requirements as established by the law of Virginia may seek admission to the Virginia **State** Bar by taking the Virginia Bar Examination. A primary purpose of the Virginia Bar Examination is to determine whether an applicant is able to demonstrate his or her current minimum competency to engage in the practice of law in Virginia.

In addition to admission to the Bar by examination, the Supreme Court of Virginia, in its discretion under Code § 54.1-3931, has determined that a person who has been admitted to practice law before the court of last resort of a state or territory of the United States or **of** the District of Columbia for a minimum of five years, who has been admitted to the bar of a Reciprocal Jurisdiction, hereinafter defined, and who has been engaged in the lawful practice of law on a full-time basis for at least three of the immediately preceding five years, may seek to demonstrate that he or she has made such progress in the practice of law that it would be unreasonable to require the person to take an examination to demonstrate current minimum competency. In other words, an applicant's experience in the practice of law may, at the discretion of the Court, be accepted as adequate evidence of current minimum competency in lieu of the bar examination. For purposes of admission without examination, "full-time" means practicing law for a minimum of 32 hours per week.

The Supreme Court of Virginia has assigned to the Virginia Board of Bar Examiners (the "Board") the responsibility to assess the information furnished by an applicant for admission without examination and to determine, from the information so furnished, whether the applicant's experience in the practice of law is sufficient to demonstrate his or her current competence, good character, and fitness to practice law in Virginia.

In order to guide the Board in its determinations, the Court has adopted the following criteria to be applied by the Board in assessing applications for admission to the bar of Virginia without examination:

THRESHOLD REQUIREMENTS

1. Reciprocity. The Board will consider an application for admission without examination only from a person who has been admitted to practice before the court of last resort of a jurisdiction (i.e., a state or territory of the United States, or the District of Columbia) that permits lawyers licensed in Virginia to be admitted to practice without **taking a bar** examination in such jurisdiction (a "Reciprocal Jurisdiction"). The purpose of the reciprocity requirement is to encourage other jurisdictions to grant the same privilege to Virginia lawyers.

2. Minimum Period of Bar Admission. Before being eligible to apply for admission without examination, the applicant must have been admitted to practice law before the court of last resort

of a state or territory of the United States, or ~~of~~ the District of Columbia, for at least five ~~(3)~~ years.

3. Requirement of Minimum Current Practice. An applicant may apply for admission without examination only if the applicant has been engaged in the full-time practice of law for at least three ~~(3)~~ of the last five ~~(5)~~ years immediately preceding his or her application for admission to the Virginia **State** Bar. Except as provided in Threshold Requirement 4 below, the applicant must have been licensed to engage in the practice of law in the jurisdiction where such practice occurred. Practice from an office located in a foreign country will not be accepted as qualifying practice. Persons holding a Virginia Corporate Counsel Certificate under Part I of Rule 1A:5 may receive credit as provided in such Rule. **Persons holding a Virginia Legal Aid Counsel Certificate under Rule 1A:9 may receive credit as provided in such Rule.**

4. Practice of law. For purposes of admission without examination, “practice of law” ordinarily means (i) private practice as a sole practitioner or for a law firm, legal services office, legal clinic, or similar entity; (ii) practice as an attorney for a corporation, limited liability company, partnership, trust, individual or other entity, provided such practice involved the primary duties of furnishing legal counsel, drafting legal documents and pleadings, interpreting and giving advice regarding the law, and preparing, trying or presenting cases before courts or administrative agencies; (iii) practice as an attorney for the federal or a state or local government with the same primary duties as described above regarding attorneys for a corporation; (iv) employment as a judge for the federal or a state government; (v) service as a judicial law clerk for a state or federal court; or (vi) service on active duty in a branch of the armed forces of the United States as a judge advocate or law specialist, as those terms are defined in the Uniform Code of Military Justice, 10 U.S.C. § 801, as amended, provided that such position requires a valid license to practice law and involves the same primary duties as described above regarding attorneys for a corporation. With the exception of the positions described in (iv) and (v) above, qualifying law practice must have involved an attorney-client relationship and, with the exception of the positions described in (iv), (v) and (vi) above, must have occurred subsequent to having been issued a license to engage in the practice of law in the jurisdiction where the law practice was conducted, unless the applicant establishes, by satisfactory evidence, that such practice is permitted by statute, rule, court order, or by written confirmation from the admitting or disciplinary authority of the jurisdiction where the practice occurred. The applicant must demonstrate that he or she meets the practice of law requirement to the satisfaction of the Board. The Board may require the applicant to produce substantiating evidence which may include, but is not limited to, a detailed description of legal services provided, letters from clients and/or opposing counsel, certification of a judge, samples of work product, and detailed time records. In addition, the Board may require the applicant to appear personally before the Board and furnish such additional information as may be required. For purposes of admission without examination, “practice of law” ordinarily does not mean document review work.

5. Legal Education. The applicant must have received **either (i) a J.D. degree from a law school that was approved by the American Bar Association at the time of such applicant’s graduation, or (ii) a J.D. degree from a law school not approved by the American Bar Association at the time of such applicant’s graduation (including a J.D. degree from a foreign law school), and an LL.M. from a law school approved by the American Bar Association at the time of such applicant’s**

graduation, and passed a bar exam in a state or territory of the United States, or the District of Columbia.

6. Bar Examination History. The applicant must have failed no more than two bar examinations of any of the states or territories of the United States (including Virginia), or the District of Columbia, and must have failed no bar examination within the five years immediately preceding the application for admission to the Virginia **State Bar**.

7. Instruction in Virginia Law. The applicant must have completed twelve (~~12~~) hours of instruction approved by the Virginia Continuing Legal Education Board on Virginia substantive and/or procedural law within six (~~6~~) months immediately prior to filing an application and must have read and be familiar with the Virginia Rules of Professional Conduct.

ASSESSMENT OF FITNESS AND PROGRESS

If an applicant provides satisfactory evidence that he or she meets all of the above threshold requirements, the Board will thereafter determine from the evidence provided by the applicant and the results of any investigation conducted by the Board or its designee whether such applicant (i) is a person of honest demeanor and good moral character and possesses the requisite fitness to perform the obligations and responsibilities of a practicing attorney, and (ii) has made such progress in the practice of law that it would be unreasonable to require the applicant to take an examination to demonstrate current minimum competency. The applicant has the burden to prove by clear and convincing evidence that he or she is a person of honest demeanor and good moral character and possesses the requisite fitness to perform the obligations and responsibilities of a practicing attorney and thus is a proper person to practice law in Virginia. If an applicant fails to answer any question on the Character and Fitness Questionnaire or which is otherwise propounded by the Board, or to supply any requested documentary material, the Board may find that the applicant has not met the burden of proving his or her good moral character.

The primary purposes of character and fitness screening before admission to the Virginia **State Bar** are to assure the protection of the public and safeguard the system of justice. An attorney should be one whose record of conduct justifies the trust of clients, adversaries, courts, and others with respect to the professional duties owed to them. A record manifesting a significant deficiency in the honesty, trustworthiness, diligence, or reliability of an applicant may constitute a basis for denial of admission. The revelation or discovery of any of the following may be treated as cause for further inquiry before the Board decides whether the applicant possesses the character and fitness to practice law:

- A. commission or conviction of a crime;
- B. violation of the honor code of the applicant's college or university, law school, or other academic misconduct;
- C. making of false statements or omissions, including failing to provide complete and accurate information concerning the applicant's past;
- D. misconduct in employment;
- E. other than an honorable discharge from any branch of the armed services;
- F. acts involving dishonesty, fraud, deceit or misrepresentation;

- G. abuse of legal process;
- H. neglect of financial responsibilities;
- I. neglect of professional obligations;
- J. violation of an order of a court;
- K. denial of admission to the bar in another jurisdiction on character and fitness grounds;
- L. disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction, including pending, unresolved disciplinary complaints against the applicant;
- M. commission of an act constituting the unauthorized practice of law, or unresolved complaints involving allegations of the unauthorized practice of law; **or**
- N. any other conduct which reflects adversely upon the character or fitness of an applicant.

The Board will determine whether the present character and fitness of an applicant qualifies the applicant for admission to the practice of law. In making this determination, the following factors will be considered in assigning weight and significance to the applicant's prior conduct:

- i. age of the applicant at the time of the conduct;
- ii. recency of the conduct;
- iii. reliability of the information concerning the conduct;
- iv. seriousness of the conduct;
- v. factors underlying the conduct;
- vi. cumulative effect of the conduct or information;
- vii. evidence of rehabilitation;
- viii. positive social contributions of the applicant since the conduct;
- ix. candor of the applicant in the admissions process; and
- x. materiality of any omissions or misrepresentations.

~~The Board's obligation to the public requires the Board to address recent mental health and chemical or psychological dependency matters, which may affect, or if untreated could affect, an applicant's ability to perform any of the obligations and responsibilities of a practicing lawyer in a competent and professional manner. Accordingly, the Board will inquire concerning~~

~~i. mental or emotional instability, and~~

~~ii. existing and untreated drug or alcohol dependency.~~

~~The mere fact of treatment for mental health problems or chemical or psychological dependency is not, in itself, a basis on which an applicant is ordinarily denied admission in Virginia, and the Board of Bar Examiners regularly recommends the issuance of certificates to individuals who have demonstrated personal responsibility and maturity in dealing with mental health and chemical or psychological dependency issues. The Board encourages applicants who may benefit from treatment or counseling to seek it. A license or certificate may be denied or deferred when an applicant's ability to function is impaired in a manner relevant to the practice of law at the time the admission decision is made, or when an applicant demonstrates a lack of candor by his or her responses.~~

In addition, an application will not be approved unless the applicant is a member in good standing of the bar of the Reciprocal Jurisdiction at the time the Board receives the character report and conducts its review of that report. If the applicant's license has ever been suspended or revoked in any jurisdiction, it must be fully reinstated and in good standing (no pending disciplinary charges).

In evaluating whether an applicant has demonstrated satisfactory progress in the practice of law for admission to the practice of law in Virginia without examination, the Board considers whether the following requirements are evident from the information supplied by the applicant and from the investigative report:

1. Knowledge of the fundamental principles of law and the ability to recall that knowledge, to reason, to analyze, and to apply one's knowledge to relevant facts;
2. The ability to communicate clearly, candidly and civilly with clients, attorneys, courts, and others;
3. The ability to exercise good judgment in conducting one's professional business;
4. The ability to conduct oneself with a high degree of honesty, integrity, and trustworthiness in all professional relationships and with respect to all legal obligations;
5. The ability to conduct oneself with respect for and in accordance with the law and the Rules of Professional Conduct;
6. The ability to avoid acts that exhibit disregard for the health, safety and welfare of others;
7. The ability to conduct oneself diligently and reliably in fulfilling all obligations to clients, attorneys, courts, and others;
8. The ability to use honesty and good judgment in financial dealings on behalf of oneself, clients, and others;
9. The ability to comply with deadlines and time constraints; and
10. The ability to conduct oneself professionally and in a manner that engenders respect for the law and the profession.

Last amended by Order dated November 23, 2020; effective March 1, 2021.

Add Rule 1A:9 as follows:

Rule 1A:9. Virginia Legal Aid Counsel

Introduction

Notwithstanding any rule of this Court to the contrary, any person employed in Virginia as a lawyer exclusively for a Virginia Licensed Legal Aid Society, for the purpose of providing free and reduced fee legal services, must either (i) be a regularly admitted active member of the Virginia State Bar; or (ii) be issued a Legal Aid Counsel Certificate as provided in this rule and thereby become an active member of the Virginia State Bar with their practice limited as provided herein; provided, however, no person who is or has been a member of the Virginia

State Bar, will be issued a Legal Aid Counsel Certificate under this rule. For purposes of this rule, “Legal Aid Employer” is a Virginia Licensed Legal Aid Society.

a. A lawyer admitted to the practice of law in a state (other than Virginia), or territory of the United States, or the District of Columbia, may apply to the Virginia Board of Bar Examiners (“Board”) for a certificate as a Virginia Legal Aid Counsel (“Legal Aid Counsel Certificate”) to practice in Virginia when they are employed by a Legal Aid Employer in Virginia.

b. Required Evidence. Each applicant for a Legal Aid Counsel Certificate must file with the Secretary of the Board an application under oath on a form furnished by the Board and must submit evidence satisfactory to the Board that they:

(1) have been admitted by examination to practice law before the court of last resort of any state or territory of the United States or the District of Columbia;

(2) hold a Juris Doctor degree from a law school accredited by the American Bar Association at the time of their graduation;

(3) are currently an active member of the bar and in good standing in at least one state or territory of the United States, or the District of Columbia, where they are admitted to the practice of law, and are in good standing in all jurisdictions where they have been admitted;

(4) have practiced law continuously in another jurisdiction for at least two years preceding their application for a certificate under this Rule;

(4) are not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any other jurisdiction;

(5) possess the good moral character and general fitness to practice law in Virginia, and have submitted all requested information, in a manner and to the extent established by the Board, including all required supporting documents;

(6) have read and are familiar with the Virginia Rules of Professional Conduct;

(7) have paid such fees as may be set by the Board to cover the costs of the character and fitness investigation and the processing of the application; and

(8) have filed an affidavit, upon a form furnished by the Board, from an officer of their Legal Aid Employer attesting to the fact that the applicant is employed as legal counsel to provide free and reduced fee legal services exclusively on behalf of the Legal Aid Employer; that the applicant is supervised for a minimum of two years by a licensed attorney employed by the Legal Aid Employer; that the nature of the applicant’s employment conforms to the requirements

of this rule; and that the Legal Aid Employer must notify the Virginia State Bar immediately upon the termination of the applicant's employment. For purposes of this rule, the applicant may appear in court without the presence of a supervisor.

c. Provisional Certificate. During the period in which an application for a Legal Aid Counsel Certificate is pending with the Board until the applicant is notified that either (i) their application is rejected; or (ii) they are eligible to practice pursuant to this rule, the applicant may be employed in Virginia as Legal Aid Counsel on a provisional basis by a Legal Aid Employer furnishing the affidavit required by Part (b)(8) of this rule.

d. Admission. Upon a finding by the Board that the applicant has complied with the requirements of Part (b) of this rule, the Board will notify the applicant that they are eligible to be issued a Legal Aid Counsel Certificate. After the applicant has taken and subscribed to the oath required of attorneys at law, the applicant will be issued a Legal Aid Counsel Certificate, which will permit the applicant to practice law in Virginia solely as provided in Part (e) of this rule. The applicant may take the required oath by appearing before the Justices of the Supreme Court of Virginia at an appointed date and time.

e. Scope. The practice of a lawyer certified pursuant to this rule will be limited to practice exclusively for the Legal Aid Employer furnishing the affidavit required by Part (b)(8) of this rule, and may include appearing before a Virginia court or tribunal as counsel for clients of the Legal Aid Employer. No lawyer certified pursuant to this rule may (i) undertake to represent any person other than a client of their Legal Aid Employer before a Virginia court or tribunal; (ii) offer or provide legal services in Virginia to any person other than a client of their Legal Aid Employer; or (iii) hold themselves out to be authorized to provide legal services or advice in Virginia to any person other than a client of their Legal Aid Employer.

f. Rights and Obligations. A lawyer issued a Legal Aid Counsel Certificate will immediately become an active member of the Virginia State Bar, with their practice limited as provided in Part (e) of this rule, and must pay to the Virginia State Bar the annual dues required of regularly admitted active members of the Virginia State Bar.

(1) All legal services provided in Virginia by a lawyer certified pursuant to this rule will be deemed the practice of law in Virginia and will subject the lawyer to all rules governing the practice of law in Virginia, including the Virginia Rules of Professional Conduct and Part 6, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia. Jurisdiction of the

Virginia State Bar will continue whether or not the lawyer retains the Legal Aid Counsel Certificate and irrespective of the lawyer's presence in Virginia.

(2) A lawyer certified pursuant to this rule will be subject to the same membership obligations as other active members of the Virginia State Bar, including Mandatory Continuing Legal Education requirements. A lawyer certified pursuant to this rule must use as their address of record with the Virginia State Bar a business address in Virginia of the Legal Aid Employer furnishing the affidavit required by Part (b)(8) of this rule.

(3) A lawyer certified pursuant to this rule must promptly report to the Virginia State Bar any change in employment, any change in bar membership status in any state, territory of the United States or the District of Columbia in which the lawyer has been admitted to the practice of law, or the imposition of any disciplinary sanction in a state, territory of the United States, ~~or~~ the District of Columbia, or by any federal court or agency before which the lawyer has been admitted to practice.

(4) The period of time a lawyer practices law under a Legal Aid Counsel Certificate issued pursuant to this rule will be considered in determining whether the lawyer has fulfilled the active practice of law requirement for admission to practice law in Virginia without examination pursuant to Rule 1A:1 and any guidelines approved by the Supreme Court of Virginia for review of applications for admission without examination.

g. Termination. A lawyer's authority to practice law which may be permitted pursuant to this rule will be automatically suspended when (i) employment by the Legal Aid Employer furnishing the affidavit required by Part (b)(8) of this rule is terminated, (ii) the lawyer fails to comply with any provision of this rule, or (iii) when the lawyer is suspended or disbarred for disciplinary reasons in any state, territory of the United States, the District of Columbia, or by any federal court or agency before which the lawyer has been admitted to practice. Any lawyer whose authority to practice is suspended pursuant to (i) above will be reinstated upon evidence satisfactory to the Virginia State Bar that the lawyer is in full compliance with the requirements of this rule, which must include an affidavit furnished by the lawyer's new Legal Aid Employer. Any lawyer whose authority to practice is suspended pursuant to (ii) above may be reinstated by compliance with applicable provisions of Part 6, Section IV, Paragraph 19 of the Rules of the Supreme Court of Virginia. Any lawyer whose authority to practice is suspended or terminated

under (iii) above must petition for reinstatement pursuant to Part 6, Section IV, Paragraph 13-25. of the Rules of the Supreme Court of Virginia.

h. The Board and the Virginia State Bar may adopt regulations as needed to implement the requirements of this rule.