

Tuesday

18th

November, 2008.

On March 19, 2008 came the Virginia Board of Bar Examiners, by W. Scott Street, III, its Secretary-Treasurer, and presented to the Court a petition, approved by the Virginia Board of Bar Examiners, praying that the new regulations governing applications for admission to the Virginia Bar, pursuant to the Rules of the Supreme Court of Virginia, be amended to read as follows:

**Regulations Governing Applications for Admission to the Virginia  
Bar Pursuant to the Rules of the Supreme Court of Virginia -  
Rule 1A:1**

**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 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 general practice of law in Virginia.

In addition to admission to the Bar by examination, the Supreme Court of Virginia, in its discretion, has determined that a person currently engaged in the active practice of law, who has been so engaged for at least 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.

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 purpose of the reciprocity requirement is to encourage other jurisdictions to grant the same privilege to Virginia lawyers. The Board shall consider applications for admission without examination only from a person who is 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 examination in such jurisdiction (a "Reciprocal Jurisdiction"), and who has either:

(a) taken and passed the general bar examination of such Reciprocal Jurisdiction, is currently an active member in good standing of the bar of such Reciprocal Jurisdiction, and has held an unrestricted license to practice law therein for at

least two years; or

(b) been admitted without examination (*i.e.*, on motion) to the bar of such Reciprocal Jurisdiction, is currently an active member in good standing of the bar of such Reciprocal Jurisdiction, holds an unrestricted license to practice law therein, and has been engaged in the full-time active practice of law within such Reciprocal Jurisdiction for at least five of the of the seven years immediately preceding the date the application is filed.

**2. Minimum Period of Active Law Practice.** The applicant must have been engaged in the active practice of law for at least five years.

**3. Requirement of Current Active Practice.** An applicant may apply for admission without examination only if the applicant has been engaged in the active practice of law (as defined in these Regulations) for at least five (5) of the last seven (7) years immediately preceding his or her application for admission to the Virginia Bar. The applicant must have been engaged in this practice on a full-time basis (as defined in these Regulations) in a jurisdiction other than Virginia. Only practice occurring subsequent to the applicant's having been issued an unrestricted license to practice law in such other jurisdiction shall qualify. Practice from an office located in a foreign country shall 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.

**4. Active Practice.** For purposes of admission without examination, "active practice of law" ordinarily shall mean (i)

private practice as a sole practitioner or for a law firm, legal services office, legal clinic, or similar entity, provided such practice was subsequent to having been issued an unrestricted license to practice law in the jurisdiction in which that practice occurred; (ii) practice as an attorney for a corporation, partnership, trust, individual or other entity, provided such practice was subsequent to having been issued an unrestricted license to practice law in the jurisdiction in which the practice occurred, and 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, provided such practice was subsequent to having been issued an unrestricted license to practice law in the jurisdiction in which that practice occurred; (iv) employment as a judge for the federal or a state government, provided that such position requires a valid unrestricted license to practice law in the jurisdiction in which such employment occurred; (v) service as a judicial law clerk for a state or federal court subsequent to having been issued an unrestricted license to practice law in the jurisdiction where the court is located; 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, each qualifying position must have involved an attorney-client relationship. For purposes of determining whether an applicant's practice was in a jurisdiction subsequent to having been issued an unrestricted license to practice law therein, only the jurisdiction where the applicant's primary office was located shall be considered.

**5. Legal Education.** The applicant must have received a J.D. law degree from a law school that was approved by the American Bar Association at the time of such applicant's graduation.

**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 Bar.

**7. Intent to Practice Full Time in Virginia.** An applicant must intend, promptly after being admitted to practice in Virginia without examination, to establish his or her office in Virginia and to practice full time from such Virginia office. Full time is defined as being engaged in the active practice of law (as defined above) as one's primary occupation for at least thirty-five (35) hours weekly and having an office where clients can be seen on the premises. The Board shall not approve an application unless the applicant has verifiable plans to practice in Virginia (*i.e.*, a job offer from a Virginia firm, a relocation to the Virginia office of the applicant's firm, an executed lease for office space in

Virginia, etc.). Practice from one's residence shall not constitute satisfactory evidence of intent to practice law full time unless the applicant's residence is in a zoning classification which permits seeing clients on the premises and displaying an exterior sign identifying the law office. Virtual offices or shared occupancy arrangements shall not be acceptable. In addition, an applicant shall not divide his or her time between an office within Virginia and one in another jurisdiction. An applicant who is a member of or associated with a firm which has offices outside Virginia must be resident at such firm's Virginia office, shall not maintain an office at a location outside Virginia, and may work at one of his or her firm's other offices only on an occasional and not on a regular basis. The Court will monitor to determine whether an applicant maintains his or her Virginia office.

#### **ASSESSMENT OF FITNESS AND PROGRESS**

If an applicant provides satisfactory evidence that he or she meets all of the above threshold requirements, the Board shall 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 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;

N. any other conduct which reflects adversely upon the character or fitness of an applicant.

The Board shall 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 issues 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 an active member in good standing of the reciprocal bar 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.

Upon consideration whereof, the said regulations are adopted,  
effective December 1, 2008.

A Copy,

Teste:

Clerk