

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

IN RE:) **PROMULGATION No. 2017-005**
)
ADOPTION OF THE UNIFORM BAR)
EXAMINATION and ADMISSION ON)
MOTION.)
)
)
)
)

ORDER OF THE COURT

Pursuant to its inherent authority and the authority granted to it by section 21(c) of the Revised Organic Act of 1954, and title 4, sections 24, 32(f), and 74a of the Virgin Islands Code, the Supreme Court of the Virgin Islands hereby states:

WHEREAS, the Supreme Court of the Virgin Islands possesses inherent and statutory authority to oversee the practice of law in the Virgin Islands and to govern the admission of all attorneys to the Virgin Islands Bar; and

WHEREAS, the Virgin Islands Bar Examination currently consists of the Multistate Bar Examination (MBE), the Multistate Essay Examination (MEE), and the Multistate Performance Test (MPT); and

WHEREAS, the MBE, the MEE, and the MPT are the components of the Uniform Bar Examination (UBE), which has been adopted by 26 states and the District of Columbia; and

WHEREAS, although the Virgin Islands Bar Examination consists of the components of the UBE, to date the Virgin Islands is not amongst the jurisdictions that has adopted the UBE; and

WHEREAS, the purpose of the UBE is to establish a bar examination that is uniformly administered, graded, and scored by all of the jurisdictions that have adopted it, so that examinees who take the UBE may earn a portable score that can be transferred to seek admission in other UBE jurisdictions; and

WHEREAS, the jurisdictions that adopt the UBE may nevertheless, among other things,

independently decide who may sit for the bar exam and be admitted to practice, determine minimum educational requirements, make all character and fitness decisions, set their own policies regarding retaking the bar examination, grade the MEE and MPT, set their own pre-release grading policies, set their own passing scores, and determine how long incoming UBE scores will be accepted; and

WHEREAS, at its 2010 Annual Meeting, the Conference of Chief Justices passed Resolution 4, which urged all state and territorial courts of last resort to consider adopting the UBE; and

WHEREAS, in urging that state and territorial courts of last resort consider adopting the UBE, the Conference of Chief Justices emphasized that the score portability feature of the UBE will facilitate lawyer mobility, which will facilitate access to justice by eliminating unnecessary barriers to licensure while ensuring the protection of the public; and

WHEREAS, at its 2016 Midyear Meeting, the House of Delegates of the American Bar Association passed Resolution 109, which urged the bar admission authorities of all states and territories to adopt the UBE expeditiously; and

WHEREAS, in the report accompanying Resolution 109, the American Bar Association cited the declining state of the legal employment market and the tremendous challenges of recent law school graduates obtaining employment, which would be alleviated through the score portability feature of the UBE; and

WHEREAS, the current rules governing admission to the Virgin Islands Bar permit attorneys admitted to the Bar of another United States jurisdiction who are employed by the Government of the Virgin Islands and other select entities to obtain special admission to practice law in the Virgin Islands on a limited basis without first passing the Virgin Islands Bar

Examination, but do not provide a general right to admission on motion without examination; and

WHEREAS, forty-two (42) states and territories permit attorneys admitted to the Bar of another United States jurisdiction to be admitted on motion without examination, subject to the attorney possessing a minimum number of years of practice; and

WHEREAS, although adoption of the UBE and its score portability features will enable recent and future law school graduates to seek admission in other UBE jurisdictions on the basis of their UBE scores without taking the bar examination again, these benefits do not automatically accrue to experienced lawyers or young lawyers who were admitted to the bar of a non-UBE jurisdiction or sat for the bar before adoption of the UBE; and

WHEREAS, to ensure that experienced lawyers and young lawyers are not disadvantaged with respect to admission to the Virgin Islands Bar relative to recent and future law school graduates, it is necessary for this Court to adopt a rule authorizing reciprocal admission on motion in addition to a rule adopting the UBE;

NOW, THEREFORE, IT IS ORDERED that Supreme Court Rule 204(a) **SHALL BE AMENDED** to strike and insert language as indicated:

- (a) **Regular Admission~~Compulsory Examination~~**. An applicant for regular admission to the Virgin Islands Bar must comply with the requirements of this rule. ~~No one may obtain regular admission to the Virgin Islands Bar unless and until the Virgin Islands Bar Examinations have been successfully undertaken as described in this rule.~~

It is further

ORDERED that Supreme Court Rule 204(e) and (f) **SHALL BE AMENDED** to strike and insert language as indicated:

- (e) **Composition of Examination**. Each applicant is required to pass the following examinations:

- (1) The Virgin Islands Bar Examination, consisting of the components of

the Uniform Bar Examination (UBE), including the Multi-State Bar Examination (MBE), and an essay portion, consisting of the Multistate Essay Examination (MEE) and the Multistate Performance Test (MPT);

~~(2) Multistate Essay Examination (MEE) and Multistate Performance Test (MPT) (collectively the 'Essay exam')~~

~~(3) The Multi-State Professional Responsibility Examination (MPRE);~~
and

~~(4) Character Examination and Personal Interview.~~

The ~~MBE and Essay exams~~ Virgin Islands Bar Examination shall be held semi-annually in February and July on St. Thomas, Virgin Islands, and when warranted by the number of applicants, may be held simultaneously on St. Croix, Virgin Islands. The ~~dates of the MBE exam~~ UBE and the MPRE will coincide with the ~~national dates published~~ established by the National Conference of Bar Examiners; ~~and the date of the Essay exam will be the day before the MBE exam. The MPRE exam shall be held on the dates established by the National Conference of Bar Examiners which are different from the MBE and Essay exam dates. The MPRE shall become effective in the Virgin Islands on and after November, 1994. The Committee shall also examine applicants as to their character and may conduct such character investigations and personal interviews as are required. In so doing, the applicants may be required to appear before it for questioning or furnish it with answers to such questions as are appropriate. The committee may employ the administrative staff necessary to satisfactorily perform its work, and coordinate the character examinations with the National Conference of Bar Examiners.~~

An applicant needing special accommodations for the administration of the Virgin Islands Bar Examination, or any component thereof, due to a disability shall submit a written request for such accommodations to the Committee, on a form to be approved by the Committee for that purpose. Unless the chair of the Committee determines there is good cause to allow a late request, written requests for special accommodations must be submitted by January 1st for the February administration and June 1st for the July administration.

(f) Scoring of Examination. In order to pass the ~~written bar examinations~~ Virgin Islands Bar Examination, each applicant must receive a minimum combined score of ~~266 on the UBE components, 70% or more on the MBE and Essay portions of the examination, and a~~ A minimum scaled score of 75% ~~shall be required to pass on the MPRE. For purposes of the MBE, a scaled score of 133 is equivalent to 70%. For purposes of grading the Essay exam, the MEE shall be weighed at 60% while the MPT shall be weighed at 40%. An applicant who has passed only one of the two portions of the exam, and whose combined score in the MBE and Essay does not amount to 70%, may take the exam for the failed portion. However, an applicant who passes one portion may~~

~~retake that portion simultaneously with the retaking of the failed portion in order to obtain the benefits, if any, of combining the MBE and Essay scores. An applicant's scores cannot be combined unless both the MBE and the Essay portions are taken during the same scheduled examination period. When calculating a combined score for the UBEMBE and essay portions, the MBE, MEE, and MPT shall be weighed at 50%, the MEE shall be weighed at 30%, and the MPT shall be weighed at 20% as provided for by the National Conference of Bar Examiners.~~

~~MBE and MPRE scores obtained in another United States jurisdiction may be accepted by the committee, provided that minimum passing score required by the Virgin Islands Bar has been achieved and certified in writing by the other jurisdiction, and provided further that the scores certified are no more than five years old.~~

No applicant shall be given access to the answers the applicant submitted during the Virgin Islands Bar Examination, or any component thereof. The results reported for the examination are final, and no applicant shall be allowed to seek re-grading or any other review of the results of the examination.

It is further

ORDERED that Supreme Court Rule 204(g) **SHALL BE AMENDED** to strike all existing language in its entirety and replacing it with the following new language:

(g) Score Transfers.

(1) *Application for Admission by UBE Score Transfer, Generally.* Applicants may apply for admission to the Virgin Islands Bar using a UBE score transferred from another UBE jurisdiction, provided that:

- (i) the score attained on the UBE meets or exceeds 266;
- (ii) no more than three years have passed since the applicant sat for the administration of the UBE for which the qualifying UBE score was attained; and
- (iii) the applicant meets all other application requirements set forth in this Rule 204, including holding a J.D. or LL.B. degree from a law school approved by the American Bar Association at the time the applicant matriculated or graduated.

(2) *Application for Admission by UBE Score Transfer, Three to Five Years.* Notwithstanding section (g)(1)(ii) of this Rule, an applicant may qualify for admission under this Rule if the transferred UBE score was earned more than three years but less than five years before the date upon which the motion was filed, provided that the applicant also establishes that the applicant has been primarily engaged in the active practice of law, as defined in section (j)(2) of this Rule, for at least two years immediately preceding the date of the application in a jurisdiction of the United States wherein the applicant is a member in good standing and authorized to

practice law throughout the aforesaid two-year period.

(3) *Transfer of MBE Score.* An MBE score obtained in another United States jurisdiction, or from a prior administration of the Virgin Islands Bar Examination, may be accepted by the committee, provided that a scaled score of at least 133 has been achieved and provided further that the score certified is no more than three years old.

An applicant who transfers a passing MBE score may sit for the MEE and MPT in the Virgin Islands, but shall not earn a portable UBE score. In such a case, the transferred MBE score shall not be combined with the applicant's score on the MEE and MPT. Rather, the MEE shall be weighed at 60% and the MPT at 40%, and the applicant shall have passed the exam if a score of 70% has been achieved.

(4) *Transfer of MPRE Score.* An MPRE score obtained in another United States jurisdiction may be accepted by the committee, provided that the minimum passing scaled score of 75 has been achieved and provided further that the score certified is no more than three years old.

Notwithstanding this amendment to Rule 204(g), scaled MBE scores of at least 133 and scaled MPRE scores of at least 75 that were earned on or before the February 2017 administration of the MBE or the November 2016 administration of the MPRE may be accepted by the Committee if they are no more than five years old at the time the transfer request is made. It is further

ORDERED that Supreme Court Rule 204(h) **SHALL BE AMENDED** to strike all existing language in its entirety and replacing it with the following new language:

An applicant who is not admitted to practice within three (3) years after passing any or all parts of the bar examination shall be required to retake the entire examination and must re-apply for admission and for re-examination, including submitting an updated character report, and paying the appropriate fees. The result of any bar examination that is more than three (3) years old shall not be acceptable for current admission.

Notwithstanding this amendment to Rule 204(h), portions of the Virgin Islands Bar Examination that were passed by an applicant on or before the February 2017 administration may be accepted by the Committee if they are no more than five years old. It is further

ORDERED that Supreme Court Rule 204 **SHALL BE AMENDED** to designate the following new language as Supreme Court Rule 204(j):

(j) Application for Admission on Motion.

(1) *Eligibility.* An applicant may be admitted to the Virgin Islands Bar on motion without taking the Virgin Islands Bar Examination if the applicant satisfies the following criteria:

- (i) holds a J.D. or LL.B. degree from a law school approved by the American Bar Association at the time the applicant matriculated or graduated;
- (ii) has been admitted after passage of a written examination to the practice of law in another United States jurisdiction that admits members of the Virgin Islands Bar to the practice of law in that jurisdiction on motion without oral or written examination;
- (iii) is currently in good standing in all jurisdictions where licensed to practice law;
- (iv) is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any jurisdiction;
- (v) has been primarily engaged in the active practice of law in one or more United States jurisdictions for five of the seven years immediately preceding the date upon which the application is filed; and
- (vi) produces satisfactory evidence of good moral character, an adequate knowledge of the standards and ideals of the profession, and proof that the applicant is otherwise fit to take the oath and perform the obligations and responsibilities of a lawyer as required of all other applicants for admission to the Virgin Islands Bar.

(2) *Active Practice of Law.* For purposes of this rule, the “active practice of law” includes the following activities, if performed in a jurisdiction in which the applicant is admitted and authorized to practice, or if performed in a jurisdiction that affirmatively permits such activity by a lawyer not admitted in that jurisdiction; however, in no event will any activities that were performed in advance of bar admission in a state, territory, or the District of Columbia be accepted towards the durational requirement:

- (i) representation of one or more clients in the practice of law;
- (ii) service as a lawyer with a local, state, territorial, or federal agency, including military service;
- (iii) teaching law at a school approved by the American Bar Association;
- (iv) service as a judge, magistrate, hearing examiner, administrative law judge, or similar official of the United States, including the independent agencies thereof, or of any state, territory or municipality of the United States with the duties of hearing and deciding cases and controversies in judicial or administrative proceedings, provided such employment is available only to a lawyer;
- (v) service as a judicial law clerk;
- (vi) service as in-house counsel provided to the lawyer’s employer or its organizational affiliates; or
- (vii) any combination of subparagraphs (i)-(vi) above.

For purposes of this rule, the “active practice of law” does not include work that, as undertaken, constituted the unauthorized practice of law in the jurisdiction in which it was performed or in the jurisdiction in which the clients receiving the unauthorized services were located.

(3) *Fees and Filing Instructions.* An applicant for admission on motion shall file under oath or affirmation the Supreme Court’s form application for admission on motion, together with documents proving that the applicant qualifies for admission on motion under this rule.

Applicants for admission on motion shall pay a fee of \$2,500.00, of which \$500.00 shall be retained by the clerk as a filing fee and the remaining \$2,000.00 remitted to the Committee of Bar Examiners to defray the local costs of investigations and administration. Applicants shall submit two checks or money orders, one for \$500.00 payable to the Clerk of the Supreme Court and the other \$2,000.00 payable to the Committee of Bar Examiners. In addition to the aforesaid fees, each applicant will be responsible for paying all ancillary fees, including the fee for undergoing the character and fitness examination by the National Conference of Bar Examiners.

(4) *Recommendations and Jurisdiction.* When an applicant has satisfactorily demonstrated that he or she meets all requirements of this rule, the Committee of Bar Examiners shall so certify to the Supreme Court by written motion for the applicant’s admission. The motion shall be reviewed by the Supreme Court and if satisfactory, the applicant shall be admitted to the Virgin Islands Bar in open court upon taking the oath (or affirmation) prescribed in Rule 204(i). The clerk of the court shall thereafter issue to the applicant a Certification of Admission as a member of the Virgin Islands Bar and shall enter the applicant’s name on the Roll of Attorneys; provided, however, that the Committee of Bar Examiners may retain jurisdiction over the applicant for up to one year following admission.

An applicant for admission on motion is not authorized to practice law in the Virgin Islands until and unless the motion for admission is granted and the applicant has taken the oath prescribed in this Rule 204(i). Failure of an applicant to take the required oath or affirmation within one year of notification by the Supreme Court that the motion has been granted shall result in the application being dismissed for failure to prosecute.

It is further

ORDERED that, pursuant to Supreme Court Rule 37, the Advisory Committee on Rules, as well as the public and members of the local Bench and Bar, **MAY SUBMIT WRITTEN COMMENTS** on these proposed amendments to the Clerk of the Court within thirty (30) days of

entry of this order. It is further

ORDERED that, unless modified as a result of comments submitted to the Court, the proposed amendments to Supreme Court Rules 204 **SHALL TAKE EFFECT IMMEDIATELY**, so that they may be implemented beginning with the July 2017 administration of the Virgin Islands Bar Examination. It is further

ORDERED that copies of this order be directed to the appropriate parties.

SO ORDERED this 14th day of March, 2017.

/s/ Ive Arlington Swan
IVE ARLINGTON SWAN
Associate Justice

/s/ Maria M. Cabret
MARIA M. CABRET
Associate Justice

/s/ Rhys S. Hodge
RHYS S. HODGE
Chief Justice

ATTEST:
VERONICA J. HANDY, ESQ.
Clerk of the Court