

MEMORANDUM

TO: ALL PRECEPTORS

FROM: The Board of Bar Examiners

DATE: May 15, 2023

RE: PRECEPTOR DUTIES AND CLERKSHIP REQUIREMENTS

Preceptors have a unique opportunity to be a guiding force and mentor to an applicant. Frequent meetings with applicants provide an opportunity to impart principles of appropriate lawyer conduct as a member of the Delaware Bar. By the Preceptor's own example, they can demonstrate the professionalism that is a hallmark of the Delaware Bar—professionalism that embodies a dedication to the principles of ethics, civility, skill, businesslike practice and a focus on service to the public, the Court and the Bar. Our legacy as Delaware lawyers will be judged in part by the effectiveness with which we communicate the expectations of our profession to those who follow us, and Preceptors are in a unique position to impart those expectations at the earliest stage of a Delaware lawyer's career.

Each Preceptor should carefully study all Rules of the Delaware Supreme Court relating to the admission process (Rules 51-56); Rules 5-15 of the Board of Bar Examiners (the "Board"); and Board of Professional Responsibility Rules 8.1 and 8.3. Members of the Board of Bar Examiners are not permitted to serve as Preceptors.

The Rules relating to Preceptors and clerkships are designed to accomplish three primary objectives:

1. Character and Fitness of the Applicant. The duties imposed upon a Preceptor under BR-10 are designed to make the Preceptor's sponsorship of the applicant a meaningful part of the admission process rather than a *pro forma* exercise. BR-10 requires Preceptors to provide a supporting role in the character and fitness investigation process.

2. Review Bar Application for Completeness. BR-10 requires a Preceptor to review and discuss with the applicant the Bar Application

(“Application”) and an applicant’s Affidavits of Completeness (“Affidavits”).¹ In connection with this review, Preceptors must *reasonably conclude* an applicant’s Application and Affidavits (a) are factually accurate and do not omit any facts required to be disclosed, and (b) have provided all required information and documents or a reasonable explanation why they have not been provided. Preceptors are not guarantors of completeness, but Preceptors must *reasonably conclude* that an applicant’s Application and Affidavits are complete and accurate.

3. Practical training of the applicant. The clerkship requirements are intended to make the clerkship a meaningful teaching mechanism to help ensure an applicant’s preparation for admission includes a bona fide exposure to the practical aspects of the practice of law and traditions of the Delaware Bar. This training can only be accomplished if the Preceptor is actively and closely involved in the process. Thus, Supreme Court Rule 52(8)(i) requires that the clerkship be done under the “*direct and constant*” supervision of a Delaware lawyer. The Preceptor must certify that the clerkship met this requirement. If the Preceptor delegates this supervisory role, the other attorney must be satisfactory to the Preceptor and such attorney must be a member of the Delaware Bar for at least 5 years. In addition, if the Preceptor delegates supervision to such qualified attorney, communication between and among the Preceptor, supervising attorney and applicant should be frequent and substantive.

Delaware’s 12-week clerkship requirement has been highly praised by the Boards of several states. The Preceptor’s close association with the applicant also affords the Preceptor the opportunity to expose the applicant at the outset of his or her career to Delaware Bar’s high standards of professionalism and civility. Indeed, BR-10(d) provides that the Preceptor “shall confer on a frequent and regular basis . . . to advise the applicant of the expected conduct and obligations of a member of the Bar.”

¹ The applicant is required to file three Affidavits certifying the completeness of the Application: the First Affidavit of Completeness is due at the time of filing the July/February Application; the Second Affidavit of Completeness is due on or before July 1/February 1; and the Third Affidavit of Completeness is due on or before September 1/April 1.

PRECEPTORS' DUTIES

Review Application and Affidavits of Completeness

Under BR-10, a Preceptor must personally review with the applicant the Application and the Affidavits to the extent necessary to allow the Preceptor to reasonably conclude the (1) the applicant has either (i) provided all information and documents required to be submitted with the Application or (ii) provided a reasonable explanation why missing information and/or documents have not been submitted and identified. If information and/or documents are missing, the Preceptor is required to make sure the applicant has informed the Board when he/she expects the Board will receive them.

Training of the Applicant

1. 12 Week Clerkship

Supreme Court Rule 52(a)(8) requires each applicant must have “served a clerkship in the State of Delaware aggregating substantially full-time service for at least 12 weeks’ duration . . .” of a member of the Delaware Bar qualified under the Rule. The 12-week period need not be continuous, but must have been served after the applicant began law school. Supr. Ct. R. 52(a)(8)(iv).

Each Preceptor has an affirmative duty to be satisfied the requirements of the Rule have been met fully. The Court and the Board recognize compliance with this requirement may be difficult to determine in some instances. However, the Court and Board rely on Preceptors to make sure this requirement is satisfied.

The Board cannot issue guidelines that will cover each case. Each Preceptor will have to rely on his or her own conscience and professional judgment. Some of the following Board guidelines may be helpful in interpreting the Rule in specific instances.

- Time spent studying for the Bar Examination (whether it is in a bar review course or in individual study) will not count.
- Only *practical* work done *in the State of Delaware* “in the office of or under the direct and constant supervision” of a qualified member of the Bar will count.
- The 12 weeks of approximately five-day work weeks may be aggregated over a period of time by reasonably combining full working

days (approximately 8 hours) with partial working days (approximately 4 hours). The Board has received inquiries as to whether an applicant can stack hours if he or she works more than 40 hours in a week. The Board has taken the position that “stacking hours” is not permitted.

- The Board has not taken the position that a full day must be at least 8 hours or that a half day must be at least 4 hours, or that a partial day of less than 4 hours may not be aggregated, or that bona fide clerkship time may not be served outside normal business hours. The Preceptor as an officer of the Court must make a judgment in good faith that the total aggregate time has been *fully* served in a *meaningful* and *practical* clerkship *in Delaware*.

Although under Supreme Court Rule 52(8)(i), a Preceptor may delegate personal supervision to another member of the Bar who qualifies under the Rule and has been admitted in Delaware for at least five years, the Preceptor remains ultimately responsible for and must certify compliance with the supervision requirement to the same extent as if the Preceptor had not delegated the supervision.

2. Checklist of Legal Activities

The Checklist of Legal Activities must also be completed as a separate and independent requirement under Supreme Court Rule 52(a)(8)(v). Each assignment must be completed in Delaware under the direct and constant supervision of the Preceptor or other qualified Delaware lawyer. Please review with the applicant the Checklist of Legal Activities carefully. Preceptors should counsel the applicant to complete each item in a meaningful and substantive manner. What constitutes “attendance” is a frequent question. The Board has taken the position and Preceptors should so advise applicants that to the extent a trial lasts one day or less, the applicant should attend the complete trial. To the extent trials exceed one day, attendance beyond one day is not required.

Submit a Preceptor’s Certificate

Under BR-10, a Preceptor is required to submit a Preceptor’s Certificate on or before September 1/April 1 certifying the Preceptor has complied with the requirements of BR-10. In making BR-10 certifications, a Preceptor represents to the Court and the Board that the duties imposed by the Rule have been satisfied, including (by way of example only) that the Preceptor has:

- Studied carefully Supreme Court Rule 52 and BR-10;

- Mentored an applicant with respect to civility, legal ethics, professionalism and expected conduct and obligations of a member of the Bar; and
- Reviewed the applicant's Application and Affidavits.

The Preceptor must certify to (1) having personally reviewed and discussed with the applicant the Affidavits, (2) determining the applicant has either provided all information and documents required to be submitted with the Application or provided a reasonable explanation why missing information and documents have not been submitted and identified when the applicant expects the Board will receive that information or documents, (3) determining that the information and documents in or submitted with the Application are factually accurate, and (4) determining the Affidavits are factually accurate and contain no omission of any fact required to be disclosed.