

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN RE CERTIFIED LIMITED §
PRACTICE PRIVILEGE FOR 2020 §
DELAWARE BAR APPLICANTS §

**AUGUST 12, 2020 ORDER REGARDING
CERTIFIED LIMITED PRACTICE
PRIVILEGE FOR 2020 DELAWARE BAR APPLICANTS**

1. Purpose. In recognition of the exceptional circumstances arising from the COVID-19 pandemic, which has caused cancellation of the 2020 Delaware Bar Examination, the Delaware Supreme Court adopts this emergency temporary Order to allow certain applicants registered for the 2020 Delaware Bar Examination who otherwise meet the requirements of this Order the privilege of temporarily engaging in the limited practice of law as a Certified Limited Practice Licensee pending administration of the next Delaware Bar Examination.

2. Eligibility. To be eligible as a Certified Limited Practice Licensee, an applicant must:

- (A) have submitted a timely application for admission to the Delaware Bar in 2020 that (i) was accepted by the Board of Bar Examiners (the “Board”) and (ii) had not been withdrawn as of July 24, 2020;
- (B) not have failed the Delaware Bar Examination on two or more occasions;
- (C) submit an Application For A Certificate of Limited Practice to the Board;
- (D) produce evidence satisfactory to the Board that the applicant satisfies each of the requirements of Supreme Court Rule 52(a)(1), (2), (3), (4), (5), and (6);
- (E) identify a supervising attorney qualified under Paragraph 4 below (the “Supervising Attorney”);
- (F) provide an unsworn affidavit in accordance with 10 *Del. C.* § 3927 from the Supervising Attorney containing the information required by paragraph 4 below; and

- (G) read and agree to abide by the Delaware Lawyers' Rules of Professional Conduct and Principles of Professionalism for Delaware Lawyers.

3. Notification. Upon finding that the applicant has complied with the requirements of this Order, the Supreme Court shall notify the applicant that he or she is eligible to be issued a Delaware Certificate of Limited Practice. Each applicant shall take and subscribe to the following oath or affirmation:

I _____, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Delaware; and that I shall conduct myself strictly in accordance with all the terms and conditions of the Rules of the Delaware Supreme Court and the requirements of the Certified Limited Practice Privilege; that I will behave myself as a Certified Limited Practice Licensee according to the best of my learning and ability and with all good fidelity as well to the Court as to the client; that I will use no falsehood nor delay any person's cause through lucre or malice.

After the applicant has taken and subscribed to the foregoing oath or affirmation, the applicant shall be issued a Delaware Certificate of Limited Practice entitling the applicant to practice law in the State on a limited basis as provided in this Order. A copy of the Delaware Certificate of Limited Practice also will be sent to the Clerk of the Supreme Court and to the Supervising Attorney.

4. Supervision. An applicant may become a Certified Limited Practice Licensee only if a supervising attorney who meets the requirements of this Order has agreed to supervise the applicant. Under no circumstances may a Certified Limited Practice Licensee engage in the practice of law as a solo practitioner.

(A) Eligibility of Supervising Attorney. A member of the Delaware Bar is eligible to be a Supervising Attorney if he or she: (i) is admitted and in good standing in the Delaware Bar; (ii) has been engaged in the active practice of law in Delaware for at least five years; (iii) is currently engaged in the active practice of law in Delaware; and (iv) is not the subject of any pending disciplinary matters in any jurisdiction at the time of the applicant's registration under this Order.

(B) Supervising Attorney Unsworn Affidavit. The Supervising Attorney must expressly agree through unsworn affidavit in accordance with 10 *Del. C.* § 3927 to:

- (i) assume all professional responsibility for the direct supervision for the professional work of the applicant, including the

applicant's compliance with the Delaware Rules of Professional Conduct;

- (ii) provide any necessary assistance to the applicant to ensure the protection of the clients for whom the applicant provides services, either directly or through the services of another Delaware attorney associated with the supervising attorney's firm or organization (the "Designated Attorney");
- (iii) review, sign and file any pleadings, briefs, and other legal documents that the applicant has prepared;
- (iv) directly or through the Designated Attorney, be present for court appearances as required by this Order or by order of any court or tribunal;
- (v) limit supervision to no more than two Certified Limited Practice Licensees; and
- (vi) notify the Board within three business days if the Supervising Attorney has terminated supervision of the applicant or if the Supervising Attorney becomes aware that the applicant no longer meets the requirements of a Certified Limited Practice Licensee.

5. Permitted Activities and Requirements of a Certified Limited Practice Licensee; Presence of Supervising Attorney or Designated Attorney.

- (A) Court and Administrative Tribunal Appearances. A Certified Limited Practice Licensee may appear in any State court or before any State administrative tribunal on behalf of any person who has consented in writing to that appearance if the Supervising Attorney has also provided written approval of that appearance. In each such case, the written consent and approval must be filed on the docket and be brought to the attention of the presiding judge or officer. In addition, the Certified Limited Practice Licensee must advise the judge that he or she is a Certified Limited Practice Licensee at his or her first appearance before that judge in a particular case.
- (B) Presence of Supervising Attorney or Designated Attorney. The Supervising Attorney or a Designated Attorney must be present for any hearing, trial, or other appearance by a Certified Limited Practice

Licensee before a State court or State tribunal except in the following circumstances:

- (i) in a civil case in the Justice of the Peace Court, the Court of Common Pleas, or the Family Court on behalf of a client other than the State or one of its political subdivisions, if the person on whose behalf the appearance is being made consents in writing to the absence of the Supervising Attorney or Designated Attorney;
 - (ii) on behalf of the accused in a criminal case involving no felony charges, if the person on whose behalf the appearance is being made consents in writing to the absence of the Supervising Attorney or Designated Attorney; provided, however, the Supervising Attorney or Designated Attorney must be present during trial; or
 - (iii) on behalf of the State or one of its political subdivisions in any case in the Justice of the Peace Court, the Court of Common Pleas, or the Family Court.
- (C) Notwithstanding anything in this paragraph, a State court or State tribunal may at any time and in any proceeding require the Supervising Attorney or Designated Attorney to be present during any appearance by the Certified Limited Practice Licensee.
- (D) Other Client Representation Activities. Under the supervision, and with the consent, of the Supervising Attorney or Designated Attorney, but outside his or her presence, a Certified Limited Practice Licensee may:
- (i) prepare pleadings and other documents to be filed in any matter in which the Certified Limited Practice Licensee is eligible to appear, but such pleadings or documents must be signed by the Supervising Attorney or Designated Attorney;
 - (ii) negotiate in the settlement of claims and charges;
 - (iii) represent clients in mediation or other non-binding alternative dispute resolution processes; and
 - (iv) give legal advice and perform other appropriate legal services.

- (E) The Certified Limited Practice Licensee is required to attend the Fundamentals of Lawyer Client Relations course when it is scheduled by the Delaware State Bar Association in 2021. If the applicant passes the 2021 Delaware Bar Examination, his or her attendance shall count towards the applicant's continuing legal education requirements.

6. Identification of Certified Limited Practice Licensee on Documents and Communications. Any communication by a Certified Limited Practice Licensee in the context of performing the permitted activities above, other than internal communications, must include the designation "Certified Limited Practice Licensee."

7. Privileged and Protected Communications. A Certified Limited Practice Licensee shall be considered a lawyer for the purposes of Delaware Rule of Evidence 502, Superior Court Civil Rule 26(a)(3) and the corresponding rules of the other trial courts, the work-product doctrine, or any analogous rules of law, procedure, or evidence.

8. Compensation. A Certified Limited Practice Licensee rendering services authorized by this Order shall not request or accept any compensation from the person or entity for whom the services are rendered. The Certified Limited Practice Licensee may be compensated as an employee of a firm or other organization, however, and such firm or organization may request compensation for those services consistent with other law.

9. Duty of Candor. For so long as a person is a Certified Limited Practice Licensee, he or she shall comply with Board of Bar Examiners Rules 5(e) and 7. In addition, the Certified Limited Practice Licensee must within three business days advise the Executive Director of the Board in writing of any change in circumstances that renders the person ineligible to be a Certified Limited Practice Licensee.

10. Termination of Certification. The privilege to engage in supervised practice as a Certified Limited Practice Licensee under this Order may be terminated by the Board or the Supreme Court at any time without notice or hearing and without any showing of cause, and also expires without action by the Board or the Supreme Court upon any of the following circumstances:

- (A) the Certified Limited Practice Licensee withdraws his or her designation as a Certified Limited Practice Licensee in writing to the Executive Director of the Board;

- (B) the Certified Limited Practice Licensee ceases to meet the eligibility requirements of this Order;
- (C) the Certified Limited Practice Licensee fails to abide by the requirements of this Order;
- (D) the Supervising Attorney withdraws as the Certified Limited Practice Licensee's Supervising Attorney, unless a substitute Supervising Attorney meeting the requirements of this Order submits an unsworn affidavit under paragraph 4;
- (E) the Certified Limited Practice Licensee withdraws his or her 2020 application to sit for the Delaware Bar Examination or otherwise notifies the Board that he or she does not intend to sit for the Delaware Bar Examination in 2021;
- (F) the Certified Limited Practice Licensee does not sit for all sessions of the 2021 Delaware Bar Examination;
- (G) the Board notifies the Certified Limited Practice Licensee that he or she did not achieve a passing score on the 2021 Delaware Bar Examination;
or
- (H) the Certified Limited Practice Licensee is admitted to the Delaware Bar or is granted limited permission to practice under Supreme Court Rule 55, 55.1, 55.2, 55.3 or 55.4.

Upon any of these instances of termination, the Executive Director of the Board shall issue a written Notice of Termination of Certification to the applicant, with a copy sent to the Clerk of the Supreme Court and the Supervising Attorney.

11. Disciplinary Concerns. The procedures otherwise provided by law or court rule governing the discipline of lawyers shall not be applicable to the termination of the certification of a Certified Limited Practice Licensee pursuant to this Order. Determinations regarding certification and the termination of certification shall be made by the Board or by the Supreme Court.

12. Limited Practice Certification is not admission to the Bar. Applicants who are granted limited permission to practice under this Order shall not be deemed to have been admitted to the Delaware Bar. Certification under this Order confers no rights or presumptions bearing on the applicant's pending application for admission as a licensed attorney, and in no way restricts the Board's or the Supreme

Court's authority to determine an applicant's admission to the practice of law in Delaware.

13. Use of the title "Certified Limited Practice Licensee." A Certified Limited Practice Licensee may use the title "Certified Limited Practice Licensee" only in connection with services performed pursuant to this Order. A Certified Limited Practice Licensee shall not hold himself or herself out to anyone as a Delaware licensed attorney. Nothing in this Order prohibits a Certified Limited Practice Licensee from describing his or her participation in this program on a resume, biographical summary, or application seeking employment, as long as the description is not false, deceptive, or misleading.

BY THE COURT:

/s/ Collins J. Seitz, Jr.
Chief Justice