

SUPREME JUDICIAL COURT
Boston, Massachusetts 02108

NOTICE OF APPROVAL

Notice is hereby given that the Supreme Judicial Court has approved and promulgated rules as further indicated below.

RALPH D. GANTS
Chief Justice

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1. Court Submitting Rules for Approval:
Board of Bar Examiners
 2. Date Rules Submitted for Approval:
October 5, 2017
 3. Date Approved & Promulgated by the Supreme Judicial Court:
November 7, 2017
 4. Rule or Rules, or Amendments Thereto, Approved and Promulgated:
Replacement of the current Rules of the Board of Bar Examiners with the new Rules of the Board of Bar Examiners, as attached hereto
 5. Effective Date:
March 1, 2018
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(The original of this notice is to be filed in the office of the Clerk of the Supreme Judicial Court for the Commonwealth, and a copy to be sent by the Clerk to the court which requested approval of the rules.)

RULES OF THE BOARD OF BAR EXAMINERS

(as authorized by Rules of the Supreme Judicial Court 3:01, §7)

Rule I. Petitions and Certificates

Every petitioner for admission to the bar who desires to take a written law examination in Massachusetts or a concurrent written exam in another Uniform Bar Examination jurisdiction shall file a petition with the Clerk for the Supreme Judicial Court of the County of Suffolk at least 75 days before the law examination which he/she intends to take, together with such certificates as the Board of Bar Examiners shall prescribe, giving information as to age, residence, character, and general and legal education and proof of passing the Multistate Professional Responsibility Examination. For good cause shown, the Board of Bar Examiners may recommend that the Court allow petitions or certificates to be filed after the time fixed.

Rule II. Time and Place of Law Examinations

Law examinations shall be held at least twice a year in Boston or in surrounding city or town within 50 miles of Boston, and in such other place or places, if any as the Board of Bar Examiners shall designate. The exact times and places shall be fixed by the Board of Bar Examiners and due notice thereof shall be given.

Rule III. Subjects under Rule 3:01, §3.

Petitioners will be expected to be familiar with the law in the fields as determined by the National Conference of Bar Examiners, as published from time to time at www.ncbex.org.

The examinations will be conducted in part by written questions to be answered in writing and in part by printed questions to be answered by selections from answers supplied.

Rule IV. Petitioners under Rule 3:01, §6

Every petitioner for admission as an attorney under Rule 3:01, § 6 of the Rules of the Supreme Judicial Court shall obtain at his/her own expense and furnish to the Board of Bar Examiners a report by the National Conference of Bar Examiners of an investigation made by it of the moral character and professional experience and standing of such petitioner. The Board of Bar Examiners may waive this requirement in any case in which it deems such a report to be unnecessary.

Rule V. Character and Fitness Standards for Admission

V.1 Report On Character & Fitness: Pursuant to Supreme Judicial Court Rule 3:01, the Board of Bar Examiners shall report to the Court as to the character, acquirements and

qualifications of each candidate for admission who has passed the written bar examination in Massachusetts, or a concurrent written exam in another Uniform Bar Examination jurisdiction, or has transferred a qualifying Uniform Bar Examination score earned previously in another jurisdiction, or who has filed a petition for admission by motion.

The Board of Bar Examiners considers good character to embody that degree of honesty, integrity and discretion that the public and members of the bench and the bar have the right to demand of a lawyer. The Board of Bar Examiners considers sufficient acquirements and qualifications to be those that are necessary to demonstrate a lawyer's fitness to practice law. In evaluating character and fitness, the Board of Bar Examiners takes into consideration all available pertinent information as to past conduct of the candidate. A record manifesting a significant deficiency in the honesty, trustworthiness, diligence or reliability of a candidate may constitute a basis for denial of a recommendation for admission. Engaging in any conduct which would have subjected the candidate to discipline if he/she had already been a member of the bar will weigh strongly against a determination of good character and fitness. There shall be a rebuttable presumption that nondisclosure of a material fact on the candidate's application(s) to the bar, law school or undergraduate school is prima facie evidence of the lack of good character.

The Board of Bar Examiners considers the following attributes to be essential for all petitioners seeking admission to the Massachusetts bar:

- The ability to reason, recall complex factual information and integrate that information with complex legal theories;
- The ability to communicate with clients, attorneys, courts, and others with a high degree of organization and clarity;
- The ability to use good judgment on behalf of clients and in conducting one's professional business;
- The ability to conduct oneself with respect for and in accordance with the law;
- The ability to avoid acts which exhibit disregard for the rights or welfare of others;
- The ability to comply with the requirements of the Rules of Professional Conduct, applicable state, local, and federal laws, regulations, statutes and any applicable order of a court or tribunal;
- The ability to act diligently and reliably in fulfilling one's obligations to clients, attorneys, courts, and others;
- The ability to use honesty and good judgment in financial dealings on behalf of oneself, clients, and others; and
- The ability to comply with deadlines and time constraints.

V.1.1 Relevant Conduct: The standards listed below should be used as guidance for candidates rather than a finite list of subjects considered by the Board of Bar Examiners. The revelation or discovery of information on any of the following will be treated as cause for further inquiry before the Board of Bar Examiners in deciding whether the candidate possesses the character and fitness to practice law:

- Unlawful conduct
- Academic misconduct
- Making of false statements, including omissions
- Misconduct in employment
- Acts involving dishonesty, fraud, deceit or misrepresentation
- Abuse of legal process
- Neglect of financial responsibilities
- Neglect of professional obligations
- Violation of a court order
- Evidence of mental or emotional instability
- Evidence of drug or alcohol dependency
- Denial of admission to the bar in another jurisdiction on character and fitness grounds
- Disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction

The Board of Bar Examiners shall determine whether the current character and fitness of a candidate qualifies the candidate for admission. In considering the factors listed above, the Board of Bar Examiners will consider the following:

- The candidate's age at the time of the conduct
- The amount of time since the conduct
- The reliability of the information concerning the conduct
- The seriousness of the conduct
- The cumulative effect of conduct or information
- The evidence of rehabilitation
- The candidate's positive social contributions since the conduct
- The candidate's candor in the admissions process
- The materiality of any omissions or misrepresentations

V.1.2 Other Relevant Information: Until the attorney oath has been administered, candidates have a continuing duty to disclose promptly any changes that occur with respect to information given in response to questions in the petition.

A candidate's failure or refusal to supply information deemed relevant by the Board of Bar Examiners or otherwise to cooperate with the Board of Bar Examiners may be grounds for denial of a recommendation for admission. Failure to respond in a timely manner, without good cause, to inquiries by the Board of Bar Examiners, or to make a timely request for an extension of time to respond, may be grounds for the Board of Bar Examiners to seek dismissal of the petition.

V.1.3 Informal Oral Interview: When a candidate's record contains information that may cast doubt on his/her good character, he/she will be asked via written notice

to appear before a member or members of the Board of Bar Examiners for an informal oral interview. The candidate will be given the opportunity to respond to the information and to demonstrate current good character and fitness. Following the interview, the Board of Bar Examiners will render a decision to either a) recommend the candidate for admission, or b) request additional information/action from the candidate, or c) request that the candidate appear for a formal hearing before the Board of Bar Examiners.

If the Board of Bar Examiners' decision is to recommend the candidate to the Court for admission, the Board of Bar Examiners will issue a report of qualification to the Court and notify the candidate. No further action will be taken on the petitions of those whom the Board of Bar Examiners requests to supply additional information or take corrective action until after the Board of Bar Examiners' requests have been fulfilled. If the Board of Bar Examiners is unable to recommend the candidate to the Court for admission, the Board of Bar Examiners will provide the candidate with an opportunity for a formal hearing before the Board of Bar Examiners; establish the date, time, and place of the hearing; and so notify the candidate.

V.2 Formal BBE Hearing Procedures: Formal hearings shall take place before members of the Board of Bar Examiners and be recorded by a stenographer. The candidate has the burden to convince the Board of Bar Examiners that it should recommend him or her to the Supreme Judicial Court for admission to the bar.

V.2.1 Notice of Hearing: A written notice shall be sent to the candidate requesting his or her appearance at a hearing before the Board of Bar Examiners. The notice shall contain the date, time, and place of the hearing as well as the reason for the hearing. All hearings will take place at the offices of the Board of Bar Examiners unless otherwise designated.

V.2.2 Burden of Proof: The candidate shall have the burden to establish by clear and convincing evidence his or her current good character and fitness to be admitted to the practice of law in the Commonwealth.

Factors such as incarceration, probation, restrictions of parole still in effect, current unsatisfied judgments or unfulfilled sentences, while not determinative, generally are considered to indicate that the rehabilitation process has not been completed.

V.2.3 Investigation: Prior to a hearing, the Board of Bar Examiners may conduct a detailed investigation of facts and circumstances bearing on a candidate's character and fitness to practice law. A copy of any investigative report prepared for the Board of Bar Examiners shall be given to the candidate and his/her counsel.

V.2.4 Witnesses: The Board of Bar Examiners may authorize witness summonses

either for counsel, for the Board of Bar Examiners or for the candidate.

V.2.5 Evidence: The candidate and counsel for the Board of Bar Examiners shall be provided the opportunity to present testimonial and documentary evidence at the hearing. Conformity to the legal rules of evidence shall not be necessary. The Board of Bar Examiners shall determine the admissibility, relevance and materiality of the evidence offered. Counsel for the Board of Bar Examiners and the candidate (or his/her counsel) have the right to call witnesses, request the issuance of witness summonses in accordance with V.2.4 and cross-examine witnesses. The Board of Bar Examiners shall have the discretion to question witnesses directly. The Board of Bar Examiners has the discretion to vary this procedure; provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.

V.2.6 Testimony: All testimony shall be given under oath.

V.2.7 Report and Recommendation: Following the conclusion of the formal hearing, the Board of Bar Examiners shall make its findings of fact and recommendation for or against the admission of the candidate. If the Board of Bar Examiners determines that it will recommend a candidate for admission, it shall file a report of qualification with the Clerk of the Supreme Judicial Court for Suffolk County and so notify the candidate. If the Board of Bar Examiners determines that it will not recommend a candidate for admission, it shall file a report of non-qualification with the Clerk of the Supreme Judicial Court for the County of Suffolk and notify the candidate.

V.2.8 Non-Qualified Candidates: Any candidate who is dissatisfied with the Board of Bar Examiners' recommendation concerning his or her character and fitness may, within 60 days after the Board of Bar Examiners' recommendation, request that the Chief Justice of the Supreme Judicial Court order a hearing on the matter. See S.J.C. Rule 3:01, Sec. 5.3.

V.3 Qualification:

The attorney oath will not be administered to any candidate prior to the Board of Bar Examiners' report of qualification to the court. In addition, qualification of a candidate may be revoked by the Board of Bar Examiners at any time prior to the administration of the oath on the receipt of information warranting further review.

The following are noteworthy Supreme Judicial Court decisions relevant to character and fitness:

Matter of Hiss, 368 Mass. 447 (1975)

Matter of Prager, 422 Mass. 86 (1996)

In Re Admission to Bar of Commonwealth, 431 Mass. 678 (2000)

In Re Admission to Bar of Commonwealth, 444 Mass. 393 (2005)

Rule VI. Foreign Law School Graduates

VI.1 Foreign law School Graduates - Requirements for Examination and Admission by Motion:

Graduates of law schools in foreign countries may be permitted to petition for admission by sitting for the written bar examination in Massachusetts or a concurrent written exam in another Uniform Bar Examination jurisdiction, petition for admission by transfer of a previously earned Uniform Bar Examination score, or petition for admission by motion upon obtaining a prior determination of their education sufficiency from the Board of Bar Examiners. (See VI.7 below for a special rule on Canadian law schools)

VI.2 Request for Advanced Determination on Education:

Except for those qualified by VI.7, at least four months prior to making petition all foreign educated attorneys who wish to obtain a determination of their eligibility to petition for admission either by written examination in Massachusetts or a concurrent written exam in another Uniform Bar Examination jurisdiction, petition for admission by transfer of a previously earned Uniform Bar Examination score, or petition for admission by motion must submit a cover letter that describes the action sought from the Board of Bar Examiners, the reason for the request, and the following documentation:

Documentation Required:

In order for the Board of Bar Examiners to determine sufficiency, each foreign educated attorney shall supply the Board of Bar Examiners with the following documents written in or translated into English:

1. Official Transcripts: An official transcript from every college, university and law school (foreign or American) attended; this must include the courses taken, the grade for each course, the degree and date awarded, and the dates of attendance;
2. Diploma: Copies of all diplomas or degree certificates;
3. Course Descriptions: Descriptions of all courses, if not included in the transcripts, along with the method of study, i.e. classroom or long distance learning, etc.;
4. Certificate(s) of Admission: An official Certificate of Admission and Certificate of Good Standing from each jurisdiction to which the attorney is admitted; and
5. résumé: A résumé detailing work history.

This documentation will not be returned to the petitioner.

VI.3 Determination of Educational Sufficiency:

VI.3.1 In General. In making a determination of educational sufficiency, the Board of Bar Examiners takes into consideration the following:

- The jurisprudence in the country of the foreign law school
- The course of study that was completed at the foreign law school as compared to that offered in a law school approved by the American Bar Association (ABA)
- The attorney's pre-legal education as compared to that offered in a US college or university
- The attorney's license to practice law in either a foreign or American jurisdiction
- The length and nature of prior legal practice or teaching, if any
- The petitioner's familiarity with the American constitutional, common-law and statutory legal systems
- The petitioner's successful completion of additional legal studies.

VI.3.2 Safe Harbor. A graduate of a foreign law school who meets the standards set forth below will be deemed to have satisfied the educational sufficiency requirement of Rule VI.1 above, and will not be required to take further legal studies. For purposes of this section VI.3.2, "foreign law school" does not include an institution whose program of study consists primarily of distance study, correspondence study or an on-line program.

i). Standards for graduates of law schools in countries with common-law tradition:

1. The petitioner is admitted to the practice of law in a foreign country;
2. The petitioner is in good standing at the bar in all jurisdictions where he or she is admitted; and
3. The petitioner has successfully completed fifteen credit hours of courses in the categories listed below in Section VI.3.2.iii at a law school that is ABA accredited or authorized by a Massachusetts statute to grant the degree of bachelor of laws or juris doctor. The required credit hours must include a course in basic constitutional law and a course in professional responsibility. Distance study, correspondence study and on-line programs are not acceptable.

ii). Standards for graduates of law schools in countries with civil-law tradition:

1. The petitioner is admitted to the practice of law in a foreign country;
2. The petitioner is in good standing at the bar in all jurisdictions where he or she is admitted; and
3. The petitioner has successfully completed an LLM program of at least twenty four credit hours at a law school that is ABA accredited or

authorized by a Massachusetts statute to grant the degree of LL.M., which program includes a course in basic constitutional law, a course in professional responsibility, and a minimum of one course from at least three of the **other** categories listed below in Section VI.3.2.iii. Distance study, correspondence study and on-line programs are not acceptable.

iii). List of categories for additional courses :

The categories listed below represent a consolidation of the subjects tested on the bar examination. They encompass a range of courses falling within the category.

1. Business Organization: including, for example, Agency, Business Organizations
2. Commercial Law: including, for example, Contracts and Uniform Commercial Code (articles 1-9)
3. Constitutional Law
4. Criminal Justice: including, for example, Criminal Law
5. Property and Estate Planning: including, for example, Estates, Real Property, Trusts and Wills
6. Domestic Relations
7. Procedural Law: including, for example, Federal Rules of Evidence, Federal Jurisdiction, Federal Rules of Civil Procedure
8. Professional Responsibility
9. Torts

VI.4 Method of Evaluation:

Each file is reviewed individually on its own merits. Upon completion of its review, the Board of Bar Examiners issues a determination that the foreign educated attorney a) must take further legal studies as the Board of Bar Examiners may designate at a law school accredited by the ABA or authorized by a Massachusetts statute to grant the degree of bachelor of laws or juris doctor; or b) is eligible to petition to sit for the bar examination; or c) is eligible to petition for admission by motion provided all other requirements are met.

VI.5 Burden of Proof:

The petitioner has the burden to demonstrate that he or she has obtained an education similar in nature and quality to that of a graduate of a law school accredited by the American Bar Association.

VI.6 Appeals:

petitioners who are dissatisfied with the Board of Bar Examiners' determination concerning their petition may write a letter to the Board of Bar Examiners requesting a reconsideration of its decision.

Information regarding the process of appeal to the Supreme Judicial Court may be obtained by contacting an assistant clerk in the Clerk's Office of the Supreme Judicial Court for Suffolk County.

VI.7 Canadian Law Schools:

Graduates of common law studies at Canadian law schools that are members of the Law School Admissions Council shall be permitted to petition for admission by sitting for the written bar examination in Massachusetts, or a concurrent written exam in another Uniform Bar Examination jurisdiction, petition for admission by transfer of a previously earned Uniform Bar Examination score, or petition for admission by motion on the same basis as graduates of law schools approved by the American Bar Association. A list of such law schools appears below:

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| Dalhousie University | University of Ottawa |
| McGill University | University of Saskatchewan |
| Queen's University | University of Toronto |
| University of Alberta | University of Victoria |
| University of British Columbia | University of Western Ontario |
| University of Calgary | University of Windsor Faculty of Law |
| University of Manitoba | York University- Osgoode Hall Law School |
| University of New Brunswick | |

The following are Supreme Judicial Court decisions concerning foreign education equivalency:

- Wei Jia v. Board of Bar Examiners, 427 Mass. 777 (1998)
- Osakwe v. Board of Bar Examiners, 448 Mass. 85 (2006)
- Yakah v. Board of Bar Examiners, 448 Mass. 740 (2006)