

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

THIS MATTER comes before the Court pursuant to the 19 written comments filed in response to this Court’s March 14, 2017 order, which proposed amendments to Supreme Court Rule 204 to adopt the Uniform Bar Examination and admission on motion in the Virgin Islands. This Court has reviewed each submission, and thanks all those who took the time to file written comments on the proposed amendments.

This Court acknowledges that many comments were filed in opposition to the proposed amendments. Several attorneys oppose the amendments because the amendments would purportedly permit individuals to become members of the Virgin Islands Bar without being tested on local law. However, this is based on a misunderstanding of the Supreme Court Rules. On October 14, 2015, this Court issued Promulgation Order No. 2015-0003, which replaced the previous essay component of the Virgin Islands Bar Examination with the Multistate Essay Examination (MEE) and the Multistate Performance Test (MPT). In response to a comment from the Virgin Islands Bar Association, this Court issued Promulgation Order No. 2016-0001 on April 12, 2016, which retained the MEE and MPT, but authorized the Committee of Bar Examiners to develop an additional mandatory local law component:

The Committee of Bar Examiners, subject to the approval of the Supreme Court, may require applicants who have passed the bar examination to complete a Virgin Islands Law Course (VILC) on important and unique aspects of Virgin Islands law that are not tested on the Virgin Islands Bar Examination. The VILC, if required, shall be developed by the Committee of Bar Examiners, which may

invoke the assistance of the Virgin Islands Bar Association and its Continuing Legal Education Committee, and which may be assessed by a multiple-choice or other examination.

V.I.S.Ct.R. 204(i)(1). The amendments proposed by the March 14, 2017 order did not repeal Rule 204(i)(1), or otherwise eliminate the VILC or the examination based on the VILC. Importantly, at the time of the March 14, 2017 order, the Committee of Bar Examiners had studied the matter and determined that the VILC was necessary, but had not yet determined the contents of the VILC or how it should be assessed. Nevertheless, in consideration of the numerous comments filed in support of a mandatory local law component, as well as this Court's own review of the issue, this Court shall amend Rule 204 to make successful completion of the VILC, and passage of the examination based on the VILC, mandatory as a condition to admission to the Virgin Islands Bar, both for applicants by examination and by motion.

Other comments oppose both the Uniform Bar Examination and admission on motion on grounds that the rules would make it easier for non-resident attorneys to practice law in the Virgin Islands, which may result in economic harm to resident attorneys. Because the Supreme Court of the United States has held that it is unconstitutional for a court to unduly use bar admissions rules to discriminate against non-residents without justification, *see Barnard v. Thorstenn*, 489 U.S. 546 (1989), we decline to consider protectionism in our analysis. Likewise, the Supreme Court of the United States has also held that a court should not craft a bar admissions rule based on the assumption that nonresident lawyers will be more likely to engage in ethical misconduct¹ or less

¹ Several comments were filed with this Court expressing concern that nonresident attorneys will employ associates and paralegals who are not admitted to the Virgin Islands Bar to perform tasks that require the services of an attorney licensed in the Virgin Islands. We emphasize that the adoption of the UBE and the rule providing for admission on motion does not, in any way, alter this Court's precedents pertaining to what constitutes the unauthorized practice of law. *See, e.g., Mitchell v. Mullgrav*, S. Ct. Civ. No. 2015-0038, 2015 V.I. Supreme LEXIS 38 (V.I. Nov. 4, 2015) (unpublished); *In re Nevins*, 60 V.I. 800 (V.I. 2014); *In re De Luna*, 60 V.I. 683 (V.I. 2014); *In re*

likely to perform pro bono. *New Hampshire v. Piper*, 470 U.S. 274, 285 (1985).

However, some of the comments submitted correctly note that the *pro hac vice* rule codified as Supreme Court Rule 201 is amongst the most restrictive in the country, and stands in stark contrast to the proposed amendments to Rule 204. Having reviewed the issue, we agree that the same concerns identified in our March 14, 2017 order also justify removing the cap on the maximum number of *pro hac vice* admissions. By eliminating the cap, we are confident that attorneys licensed in other jurisdictions will not use the admission on motion process as a substitute for *pro hac vice* admission, but only seek admission on motion if they intend to practice in the Virgin Islands on a permanent and systematic basis so as to render repeated *pro hac vice* admission impractical.

Additionally, this Court has received internal comments submitted by the Office of Bar Admissions and the Office of Disciplinary Counsel, which request that this Court clarify certain aspects of the rules, such as specifying the time for new members of the Bar to register in accordance with Rule 203(e) in cases where the applicant has been admitted prior to the registration deadline. This Court agrees that clarification in these areas is necessary, and has therefore implemented the suggested changes. Accordingly, it is hereby

ORDERED that the amendments proposed in the March 14, 2017 promulgation order **SHALL BE SUPERCEDED** by those set forth in the instant order. It is further

ORDERED that Supreme Court Rule 201(a) **SHALL BE AMENDED** to strike and insert language as indicated:

- (a) An attorney not regularly or specially admitted to practice law in the Virgin Islands, and
 - (1) who is currently in good standing as an active member of the bar of any

state or territory of the United States or of any foreign country;
(2) who has not suffered any disbarment or suspension of his or her license to practice in any jurisdiction;
(3) who has been retained or requested to represent any party in any legal matter in the Virgin Islands; and
(4) who has paid and continues to pay all appropriate membership dues and licensing fees to Supreme Court of the Virgin Islands and the Virgin Islands Bar Association, and registers in accordance with Supreme Court Rule 203(e), may, in the discretion of the ~~judge before whom a particular litigation has been assigned or is pending~~ Supreme Court and on motion of a regularly admitted attorney of record in such litigation, be admitted *pro hac vice* to participate in that legal matter only. An attorney admitted *pro hac vice* shall be bound by the ~~grievance procedures established for the Virgin Islands Bar~~ Virgin Islands Rules of Professional Conduct and shall be subject to the disciplinary and contempt jurisdiction of this Court in the course of his practice during his *pro hac vice* admission whether such disciplinary action is taken before or after termination or revocation of his admission *pro hac vice*. ~~No attorney or law firm may appear pro hac vice in more than a total of three causes.~~ The regularly admitted attorney of record shall be accountable to the Supreme Court for the timely prosecution of such causes and compliance with all applicable rules. ~~Extended practice on a pro hac vice basis is hereby expressly prohibited and any attorney desirous of undertaking more than three (3) total appearances shall seek regular admission to the Bar in order to share the burdens of local practice.~~

It is further

ORDERED that Supreme Court Rule 203(e) **SHALL BE AMENDED** in the following instances:

1. After the conclusion of the list enumerated as Rule 203(e)(1)-(4) but before the start of the second paragraph, insert the following new language:

If any of the information enumerated above changes after an attorney has filed an Annual Registration Statement, but before the start of the next registration period, the attorney shall file an Amended Annual Registration Statement with the Office of Disciplinary Counsel within fourteen (14) days of the change, but need not pay a second annual assessment fee. An attorney who fails to file an Amended Annual Registration Statement within a timely manner may, upon motion by the Office of Disciplinary Counsel or by the Supreme Court *sua sponte*, be sanctioned by the Supreme Court.

All home addresses, home telephone numbers, and personal e-mail addresses submitted under this Rule shall be held confidential, and only utilized by the

Supreme Court or the Office of Disciplinary Counsel in conjunction with their official duties.

2. Insert the following new paragraph at the conclusion of all existing language:

Notwithstanding the deadlines set forth in this Rule 204(e),

- (1) An applicant for admission to the practice of law in the Virgin Islands shall file an Annual Registration Statement for the current year and pay the \$50.00 annual assessment no earlier than fourteen (14) days and no later than one (1) day before taking the oath of office. These registration deadlines shall also apply to an applicant seeking provisional authority to practice pending admission pursuant to Rules 202(b)(2), 202.1(c), or other such Rule, except that an applicant who has filed the Annual Registration Statement and paid the \$50.00 annual assessment prior to taking the oath for provisional admission need not file a second Annual Registration Statement or pay a second annual assessment if the oath for non-provisional admission is taken during the same calendar year.
- (2) Any attorney reinstated to the active practice of law from suspension or disbarment, or after transfer from inactive status, shall file an Annual Registration Statement for the current year and pay the \$50.00 annual assessment within fourteen (14) days of the date of the order granting reinstatement or transfer, failing which the reinstatement or transfer shall be rescinded.

It is further

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')—The examination on the unique aspects of Virgin Islands law that is administered after completion of the Virgin Islands Law Course;
- (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 therefore. 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.

Notwithstanding this amendment to Rule 204(e) and Rule 204(i)(1), *infra*, individuals who sat for, and successfully passed, the February 2017 or earlier administrations of the Virgin Islands Bar Examination need not complete the Virgin Islands Law Course or the examination on the unique aspects of Virgin Islands law, provided that the applicant satisfies all other requirements for admission and takes the oath of office within the time prescribed by these Rules. 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) *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 relies upon a passing MBE score obtained in a prior administration may sit for the MEE and MPT in the Virgin Islands, but shall not earn a portable UBE score. In such a case, the applicant must achieve a scaled score of 133 in the written portion of the examination.

(3) *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. 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 achieving a scaled score of 133 on the MBE or a combined total score of 266 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), MBE scores of 133 or higher that were achieved 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(i)(1) **SHALL BE AMENDED** to strike and insert language as indicated:

The Committee of Bar Examiners, ~~subject to the approval of the Supreme Court,~~ may~~shall~~ require applicants who have passed the bar examination and applicants who have been admitted on motion or admitted pursuant to a transferred UBE score to complete a Virgin Islands Law Course (VILC) on important and unique aspects

of Virgin Islands law that are not tested on the Virgin Islands Bar Examination. The VILC, ~~if required~~, shall be developed by the Committee of Bar Examiners, which may invoke the assistance of the Virgin Islands Bar Association and its Continuing Legal Education Committee, and which may be assessed by a multiple-choice or other such method of examination.

It is further

ORDERED that Supreme Court Rule 204(i)(2) **SHALL BE AMENDED** to strike the phrase “When an applicant has satisfactorily passed the bar examination” and insert in its place the phrase “When an applicant has satisfied all of the criteria for admission to the Virgin Islands Bar”. 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;
- (iii) is admitted 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;
- (iv) is currently in good standing in all jurisdictions where licensed to practice law;
- (v) is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any jurisdiction;
- (vi) 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;
- (vii) 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; and
- (viii) completes the VILC passes the required examination on its contents.

(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. The applicant shall enclose with the application a copy of the court rule, statute, or other authority that establishes that the requirements of Rule 204(j)(1)(iii) are satisfied.

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,

including passage of the VILC examination mandated by Rule 204(i)(1), 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)(2). 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 the amendments set forth in this rule **SHALL TAKE EFFECT IMMEDIATELY**. It is further

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

SO ORDERED this 26th day of April, 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

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ATTEST:

VERONICA J. HANDY, ESQ.

Clerk of the Court