

STATE OF MAINE
SUPREME JUDICIAL COURT
AMENDMENTS TO
THE MAINE BAR ADMISSION RULES

2012 Me. Rules 07

Effective: January 1, 2012

All of the Justices concurring therein, the following amendments to the Maine Bar Admission Rules are hereby adopted to be effective on the date indicated above. The specific rules amendments are stated below. To aid in understanding of the amendments, an Advisory Committee Note appears after the text of some of the amendments. The Advisory Committee Note states the reason for recommending the amendment, but it is not part of the amendment adopted by the Court.

1. Rule 5, subdivisions (b) and (c)(2) and (6), of the Maine Bar Admission Rules are amended to read as follows:

(b) Application. The application, on a form to be provided by the Board in accordance with subdivision (d) of this rule, shall set forth the name, date and place of birth, social security number, permanent residence, and current address of the applicant; all secondary schools, undergraduate colleges, and law schools and other graduate or professional schools attended, together with the dates of attendance and degree received, or reason for leaving; the names and addresses of any employers within the preceding 5 years; the names and addresses of 3 persons to provide the references to the applicant's ~~moral~~-character and fitness to practice law required by subdivision (c)(4); any criminal convictions (other than minor traffic violations) in any jurisdiction and the circumstances thereof; whether the applicant has been admitted, or denied admission, to the bar of any jurisdiction, together with a statement of the circumstances of any denial of admission and a statement whether the applicant is in good standing in each jurisdiction where admitted and, if not, an explanation of the circumstances; and a statement of any special circumstances, such as a physical handicap, for which the applicant requests the establishment of special rules for taking the examination in accordance with Rule 10(f).

(c) Additional Materials. The applicant shall cause to be filed with the Board with his or her application, the following items on forms to be provided by the Board in accordance with subdivision (d) of this rule.

(2) The certificate of the dean of each law school attended as to the dates of attendance, the reason for leaving if other than the award of a degree, any degree awarded and the date of the degree, and any circumstances recorded in the applicant's file that reflect adversely on the applicant's ~~moral-character~~ and fitness to practice law.

(6) Any other material requested by the Board pertaining to the applicant's ~~moral-character~~ and fitness to practice law or to special circumstances for which the applicant has requested the establishment of special rules for taking the examination in accordance with Rule 10(f).

2. Rule 8 of the Maine Bar Admission Rules is amended to read as follows:

RULE 8. CERTIFICATE OF QUALIFICATION

The Board shall issue a certificate of qualification stating that the applicant is a person of good ~~moral-character~~, is fit to practice law, and possesses sufficient learning in the law to practice as an attorney in this State to each applicant who:

- (1) produces satisfactory evidence of good ~~moral-character~~ and fitness to practice law as provided in Rule 9;
- (2) attains a passing grade on the Multistate Professional Responsibility Examination as provided in Rule 11; and
- (3) (a) attains a passing grade on the bar examination as provided in Rule 10; or

(b) completes the requirements for reciprocal admission as provided in Rule 11A.

3. Rule 9 of the Maine Bar Admission Rules is amended to read as follows:

RULE 9. GOOD MORAL CHARACTER AND FITNESS TO PRACTICE LAW

(a) General Requirement. Each applicant shall produce to the Board satisfactory evidence of good ~~moral~~ character and fitness to practice law. This burden is initially met by establishing in the completed application and additional materials required by Rule 5 the absence of any information adverse to the applicant's ~~moral~~ character and fitness to practice law. If any such adverse information is provided in the application and additional materials, or otherwise received by the Board, the applicant has the burden of producing further evidence to explain or rebut such information sufficiently to satisfy the Board that the applicant is of good ~~moral~~ character and is fit to practice law. The attributes of character and fitness to practice law that are relevant to this determination are those pertinent to the trust placed in lawyers by the public and clients as well as to the requirement that lawyers in this state comply with the Maine Bar Rules and the Maine Rules of Professional Conduct.

(b) Board Review of Character and Fitness. The Board may verify all information that it receives by any appropriate means, including the use of a three-member review panel designated by the Chair pursuant to Rule 4(b). The Board shall publish the list of applicants as soon as possible after May 20 and December 20 of each year with a request that anyone having adverse information bearing on the ~~moral~~ character and fitness to practice law of any applicant communicate it to the Board.

(c) Review and Additional Investigation.

- (1) *Determination of Need for Three-Member Panel.* Notwithstanding the provisions of (2) herein, if the Chair, based upon the application, certificates, references, unsolicited communications, or other information received, determines that a hearing pursuant to Rule 9(d)(5) is necessary to resolve doubt regarding the applicant's good ~~moral~~ character and fitness to practice law, then the Chair may forego

the designation of a three-member review panel, and direct the matter be set for hearing.

- (2) *Additional Investigation and Recommendations.* If the application, certificates, references, unsolicited communications, or other information received by the Board cause the Board to doubt the good ~~moral~~ character and fitness to practice law of an applicant, the Chair, if it has not already done so, shall designate a three-member review panel pursuant to Rule 4(b) to conduct an investigation on behalf of the Board. The review panel may request that Counsel for the Board assist in conducting the investigation. The review panel or, at its request, Counsel for the Board shall notify the applicant of the nature of the investigation and that the investigation is going forward and shall request that the applicant furnish explanations and further information concerning the matter or matters in question. For each investigation, a separate investigative file shall be maintained and shall be available to the review panel and Counsel for the Board. The investigative file shall contain all records and other information pertinent to the investigation, including all information received by the review panel or Counsel for the Board. If the investigation has been conducted by Counsel for the Board, at the conclusion of the investigation Counsel for the Board shall make a recommendation to the review panel, either that the Board find the applicant to be a person of good ~~moral~~ character and is fit to practice law, or that the Board conduct a hearing to resolve any doubt that remains concerning the applicant's good ~~moral~~ character and fitness to practice law. Counsel for the Board shall summarize with the recommendation the evidence upon which it is based.

(d) Hearing on Applicant's ~~Moral~~ Character and Fitness.

- (1) *Determination of Need.* If the review panel, on the basis of all material produced by the applicant or otherwise acquired by the review panel or Counsel for the Board pursuant to subdivisions (a), (b), and (c) of this rule and in light of any recommendation of Counsel for the Board, determines that doubt remains concerning the applicant's good ~~moral~~ character and fitness to practice law, the Board shall conduct a hearing to determine whether the applicant is a person of good ~~moral~~ character and is fit to practice law.

- (2) *Hearing Panel.* The matter shall be heard by a panel consisting of all members of the Board except the members of the review panel. The hearing panel shall exercise all powers of the full Board in the conduct of the hearing, and the determination of the panel after hearing shall be the determination of the full Board. Four members of the hearing panel, including one public member, shall constitute a quorum for all actions and decisions.
- (3) *Representation by Counsel for the Board.* Counsel for the Board shall prepare and present the case against the applicant at the hearing under paragraph (5) of this subdivision and shall represent the Board before a single justice of the Supreme Judicial Court or the Law Court on petition under paragraph (6) of this subdivision.
- (4) *Time of Notification and Hearing.* The Board shall notify the applicant and Counsel for the Board of the time, place, and purpose of the hearing immediately after the review panel has decided that a hearing is required. Unless that decision is made after the bar examination, such notification shall be given to the applicant prior to the bar examination. The applicant shall be permitted to sit for the examination if the hearing cannot be held before that time or if the Board has not reached its decision.
- (5) *Conduct of Hearing.*

A. At least 15 days before the time set for hearing, Counsel for the Board shall mail to the applicant and file with the Board a written statement summarizing the evidence that reflects adversely on the applicant's ~~moral~~ character and fitness to practice law, and stating that all material in the investigative file, other than Counsel for the Board's work product, will be available to the applicant at Counsel for the Board's office during usual office hours for inspection and copying at the applicant's expense. At least 15 days before the time set for the hearing, Counsel for the Board and the applicant or Counsel for the applicant, as the case may be, shall exchange witness and exhibit lists, and each shall provide the Board seven (7) copies of each exhibit intended to be introduced at the hearing by such party.

B. The hearing shall be open to the public, except that to protect the interests of an applicant, witness, or third party, the Board may, upon application and for good cause shown or on its own motion, issue a protective order prohibiting the disclosure of specific information otherwise privileged or confidential and direct that the proceedings be conducted so as to implement that order. The deliberations of the Board following any hearing under this subdivision shall not be open to the public. The decision of the Board following any hearing under this subdivision shall be made available to the public.

C. Evidence shall be admitted at the hearing if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The Board may exclude irrelevant or unduly repetitious evidence and shall observe the rules of privilege recognized by law.

D. The applicant may be represented by counsel and may present evidence. The applicant and Counsel for the Board may call, examine, and cross-examine witnesses.

E. The Chair of the Board, or the member of the Board presiding at the hearing in the absence of the Chair, shall have the power to administer oaths.

F. The Board shall cause all hearings to be stenographically or electronically recorded in a form that will readily permit transcription.

G. Subpoena. A witness or the applicant may be summoned by subpoena to give evidence or appear before the Board at the hearing. Any member of the Board, a notary public, or any clerk of the Superior or District Court may issue such subpoenas as well as subpoenas duces tecum to compel the production of books, papers, and photographs or other documents or tangible things at or before the hearing. At or before the time specified in the subpoena for compliance therewith, the Board may quash or modify any subpoena issued under this rule if it is determined that the subpoena is unreasonable or oppressive. Witness fees in all proceedings before the Board shall be the same as for witnesses in a civil action in the Superior Court. When a witness who has been subpoenaed fails to

appear without reasonable excuse, the Supreme Judicial Court or any justice thereof, or the Superior Court or any justice thereof, or the District Court or any judge thereof, may, on application of the Board, invoke the provisions of Rule ~~45(e)~~ 45(f) of the Maine Rules of Civil Procedure for such failure.

H. The Board shall render a written decision within 30 days after the conclusion of the hearing, determining either that the applicant is a person of good ~~moral~~ character and is fit to practice law or that the applicant has not satisfied the Board that the applicant is a person of good ~~moral~~ character and is fit to practice law. At the applicant's request, or in the discretion of the Board, a decision adverse to the applicant shall include specific findings sufficient to support the Board's determination. A copy of the Board's written decision and findings, if any, shall be promptly mailed to the applicant or the applicant's counsel and to Counsel for the Board.

(6) *Proceedings Following Board Determination.*

A. Within 30 days after receipt of the Board's written adverse decision, an applicant may file with the Executive Clerk of the Supreme Judicial Court a petition for admission to the bar seeking a determination that the applicant is a person of good ~~moral~~ character and is fit to practice law. At the time of filing, the applicant shall serve a copy of the petition upon Counsel for the Board and the Board by ordinary mail.

B. Within 15 days after receipt by the Board of the petition, Counsel for the Board shall file a response on behalf of the Board.

C. Proceedings upon the petition shall be a hearing de novo before a single justice of the Supreme Judicial Court assigned by the Chief Justice to hear the matter. In this paragraph (6), the word "court" shall mean the single justice of the Supreme Judicial Court assigned to hear the proceeding. The following procedures shall apply:

- (i) The applicant shall be treated as plaintiff and the Board as defendant, and the proceeding shall be captioned: [name of applicant] v. Board of Bar Examiners.

- (ii) Counsel for the Board shall furnish to the applicant, within a reasonable time after the filing of the Board's response, at the applicant's expense, copies of all information in the applicant's Board file and Counsel for the Board's investigative file not previously disclosed, other than Counsel for the Board's work product, and copies of any exhibits presented at the Board's hearing not previously furnished. The stenographic or electronic record of the hearing made in accordance with Rule 9(d)(5)F and any other matter within the possession or control of Counsel for the Board or the Board that is discoverable under Rule 26 of the Maine Rules of Civil Procedure shall be made available to the applicant at Counsel for the Board's office during usual office hours for inspection and copying at the applicant's expense.
- (iii) The court may order further production of documents, or may limit production, on motion and a showing of good cause.
- (iv) The court may in its discretion hold a prehearing conference with Counsel for the Board and the applicant, or the applicant's attorney, to consider such matters as may aid in the disposition of the proceeding. The court may by written order limit the issues to be heard.
- (v) At the hearing, evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The court may exclude irrelevant or unduly repetitious evidence and shall observe the rules of privilege recognized by law.

D. At all times, the applicant retains the burden of producing to the court satisfactory evidence of good ~~moral~~ character and fitness to practice law and of persuading the court that the applicant is a person of good ~~moral~~ character and is fit to practice law.

E. If the court is not satisfied that the applicant is a person of good ~~moral~~ character, or if the court is not satisfied that the applicant is fit to practice law, the court shall enter judgment accordingly. If the court finds that the applicant is a person of good ~~moral~~

character and is fit to practice law, it shall enter judgment accordingly and shall remand the proceeding to the Board with instructions to issue a certificate of qualification to the applicant, provided that the requirements of Rule 8(2) and Rule 8(3) are met.

F. The applicant or the Board may appeal to the Law Court as in a civil action within 10 days from the entry of the judgment of the single justice.

G. When the court enters a judgment against the applicant, if it determines that the grounds of the petition were frivolous, it may require the applicant to pay the reasonable expenses incurred by the Board and Counsel for the Board in the investigation of the matter or in the conduct of hearings before the Board or before the single justice or the Law Court. The court may make such orders as are just concerning the payment of such expenses.

4. Rule 9A, subdivisions (a) and (b) of the Maine Bar Admission Rules are amended to read as follows:

(a) Conditional Admission. Following a determination that an applicant has not produced satisfactory evidence of good ~~moral~~-character and fitness to practice law; pursuant to Rule 9 and upon findings that:

- (1) the conditions that led to the determination that the applicant has not produced satisfactory evidence of good ~~moral~~-character and fitness to practice law are in the past and are not likely to recur;
- (2) the applicant has made and is making a good faith effort to cure or avoid the conditions that led to the determination; and
- (3) the applicant has in place a support system, including an identified responsible individual, to monitor and assist the applicant in maintaining good and ethical conduct and to regularly report on the applicant's progress and any problems to the Board of Overseers of the Bar;:-

The Board, with the written consent of the applicant, may recommend to the Court that the applicant be admitted on a conditional basis. Provided, however, that a lawyer who has been disbarred or suspended from the practice of law or has resigned from the practice of law in another jurisdiction, and has not been reinstated to the practice of law in that other jurisdiction shall be ineligible for conditional admission pursuant to these Rules.

(b) Circumstances Warranting Conditional Admission. The Board, having made the findings stated in subdivision (a), may allow an applicant whose record shows (1) a history of acts or omissions constituting a lack of good ~~moral~~ character and fitness to practice law, and (2) evidence of rehabilitation from the conditions that caused the acts or omissions to current good and trustworthy conduct, to be conditionally admitted to the practice of law, subject to certain terms and conditions set forth in a written conditional admission consent agreement. Only an applicant whose record of conduct at the time of the Rule 9 determination evidences a commitment to continued rehabilitation and an ability to meet the essential eligibility requirements for admission to the practice of law under these Rules may be considered for a Board recommendation of conditional admission.

Advisory Committee Note to Amendments to Rules 5, 8, 9 and 9A – November 2011

The Maine Bar Admission Rules presently require an applicant to produce satisfactory evidence of “good moral character” as a prerequisite to admission to the bar. These proposed amendments change various rules provisions to replace “good moral character” with “good character and fitness to practice law.”

While “good moral character” is a term found in the statute, *see* 4 M.R.S. § 805-A(2)(A), the Board of Bar Examiners has long been aware that a number of other jurisdictions use different words or phrases to express either this general concept or something similar to it. Moving from “good moral character” to “good character and fitness to practice law” is appropriate because, in the Board’s experience, (1) the word “moral” does not serve to usefully further illuminate the various attributes of “good character” that are a prerequisite to admission to the bar, and (2) an applicant may be of good character but, for some other reason, is still unfit to practice law. An example of the latter instance is an applicant who

may have a severe, untreated disorder or substance abuse problem that renders the applicant, in his or her current state, unfit to practice law.

The Board intends that these proposed amendments apply to all applications pending on the date the amendments take effect, as well as to all applications filed thereafter.

The Board also takes this opportunity to make the following housekeeping amendments:

- References in Rule 9(a) and Rule 11A(d) to the Maine Bar Rules are supplemented with references to the Maine Rules of Professional Conduct.
- The cross-reference in Rule 9(d)(5)(G) to M.R.Civ.P. 45(e) is replaced with a cross-reference to M.R.Civ.P. 45(f).
- The cross-reference in Rule 9(d)(6)(E) to Rule 8(2) is replaced with a cross-reference to Rule 8(2) and Rule 8(3).

5. Rule 11A of the Maine Bar Admission Rules is amended to read as follows:

RULE 11A. RECIPROCAL ADMISSION ON MOTION

(a) An applicant who is an attorney admitted to practice law in a state or territory of the United States or the District of Columbia ~~domiciled in the United States~~ and meets the following requirements may, upon motion, be admitted to the practice of law without taking and passing the bar examination required by Rule 10, provided that the state or territory of the United States in which the applicant is admitted to practice law ~~State of New Hampshire or the State of Vermont, as appropriate~~ allows admission without examination of persons admitted and in good standing to practice law in the State of Maine under circumstances comparable to those set forth in this rule. The applicant shall present evidence that the applicant:

1. ~~(A) Is licensed to practice law in the State of New Hampshire and is an active member of the New Hampshire bar; or~~

~~(B) Is licensed to practice law in the State of Vermont and is an active member of the Vermont bar;~~

1. Is admitted to practice law in another state or territory of the United States or the District of Columbia and is an active member of the bar in good standing;

2. (A) Has been primarily engaged in the active practice of law in the State of New Hampshire for no less than three years immediately preceding the date upon which the motion is filed;

(B) Has been primarily engaged in the active practice of law in the State of Vermont for no less than three years immediately preceding the date upon which the motion is filed; or

(C) Has been primarily engaged in the active practice of law for at least 5 of the 7 years immediately preceding the date upon which the motion is filed in one or more other jurisdictions, one of which allows admission without examination of persons admitted and in good standing to practice law in the State of Maine.

For the purposes of this Rule, the “active practice of law” shall include the following activities, either separately or in the aggregate, if performed on a full time basis in a jurisdiction or jurisdictions in which the applicant is admitted and authorized to practice:

- (i) Representation of one or more clients in the private practice of law;
- (ii) Service as a lawyer with a local, state, territorial or federal agency including military service;
- (iii) Teaching law at a law school approved by the American Bar Association;
- (iv) Service as a judge in a federal, state, or local court of record;
- (v) Service as a judicial law clerk; or
- (vi) Service as ~~corporate~~ in house counsel providing legal services to the lawyer’s employer.

The “active practice of law” shall 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. Has graduated with a J.D. or LL.B degree from a law school approved by the American Bar Association (i) having a three (3) school year course of study and requiring students to devote substantially all their working time to study, called a full-time law school; or (ii) having a course of study of not less than four (4) school years, equivalent in the number of credit hours to a three (3) school year course of study in a full-time law school and in which students devote only part of their working time to their studies, called a part-time law school; or (iii) has graduated from a law school in an English-speaking, common law country having pursued a course of study substantially equivalent to that of a law school approved by the American Bar Association. A combination of study in full-time and part-time law schools will be accepted only if such law schools meet the above requirements, and the applicant shall have graduated from one or the other. Study in any law school which conducts its courses by correspondence or does not require attendance of its students at its lectures or classes shall not constitute compliance with the rule;

4. Has satisfactorily completed the Multistate Professional Responsibility Examination in accordance with Rule 11, prior to the date on which the motion is filed;

~~5. Is currently a member in good standing in all jurisdictions where admitted;~~

6. Is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any jurisdiction;

7. Possesses ~~the good moral~~ character and is fit to practice law in the State of Maine; ~~and~~

8. Has completed at least fifteen hours of continuing legal education in Maine practice and procedure in courses approved by the Maine Board of Overseers of the Bar within one year immediately preceding the date upon which the motion is filed and is certified by the Maine Board of Overseers of the Bar as satisfying this requirement; and

9. If domiciled in or maintaining a principal office in another jurisdiction, will, upon admission to the bar of the State of Maine, designate the Board of Overseers of the Bar as the agent to receive service of process if the attorney

cannot, with due diligence, be served with process in any action arising out of or related to the practice of law.

(b) An applicant who has failed the Maine bar examination within five years of the date of filing a motion for admission without examination shall not be eligible for admission on motion. An applicant who has resigned from the practice of law in the State of Maine, or who has been disbarred, ~~or suspended~~ is currently under suspension from the practice of law in any jurisdiction shall not be eligible for admission under this Rule.

(c) Any applicant for admission by motion shall comply with the application and good ~~moral~~ character and fitness requirements of Rules 5, 6 and 9 of the Maine Bar Admission Rules.

(d) Any applicant admitted to practice in accordance with this Rule shall register as required by Rule 6(a)(1) of the Maine Bar Rules and pay the annual fees required by Rule 10 of the Maine Bar Rules, and shall otherwise comply with the requirements of the Maine Bar Rules and the Maine Rules of Professional Conduct in the same manner as any other attorney admitted to active practice in the State of Maine.

Advisory Committee Note-November 2011

These amendments to Rule 11A expand the reciprocal admission process to permit admission by motion, without taking a bar exam, to any attorney admitted to practice and in good standing in any state or territory of the United States or the District of Columbia, if the jurisdiction where the attorney is admitted to practice has a reciprocity rule that allows Maine attorneys to be admitted to practice on motion and without a bar exam under terms similar to those in Rule 11A. The criteria are similar to those applied in the current reciprocal admission rule with New Hampshire and Vermont, except (1) the time that one is required to have been in active practice since admission to the bar is extended from the immediate three years in the present rule to five out of the last seven years in the amended rule, and (2) the Board or Overseers of the Bar must be designated as a default agent for service of process on attorneys not domiciled or having a principal office in the State of Maine. By maintaining the present “active practice for three years immediately preceding the date upon which the motion is filed” prerequisite for reciprocal admission of New Hampshire and Vermont attorneys, the amendment continues, and does not change, the present reciprocal admission arrangement with

New Hampshire and Vermont. A New Hampshire or Vermont attorney who would qualify for admission under the “five years out of seven years” prerequisite for admission would qualify for admission even if that attorney did not meet the “three years immediately preceding” criteria of the present rule.

An attorney who has resigned from the practice of law in the State of Maine, or who has been or currently is disbarred in any jurisdiction is not eligible for admission pursuant to this rule. Any attorney who is currently suspended in any jurisdiction must resolve any suspension and have been reinstated to practice in good standing before applying for admission pursuant to this rule.

6. These amendments shall take effect on January 1, 2012.

Dated: December 13, 2011

FOR THE COURT¹

 /S/

LEIGH I. SAUFLEY
Chief Justice

DONALD G. ALEXANDER
JON D. LEVY
WARREN M. SILVER
ANDREW M. MEAD
ELLEN A. GORMAN
JOSEPH M. JABAR
Associate Justices

¹ This Rules Amendment Order is approved after conference of the Court, all Justices concurring therein.