

MEMORANDUM

TO: ALL PRECEPTORS

FROM: The Board of Bar Examiners

DATE: January 3, 2012

RE: PRECEPTOR DUTIES AND CLERKSHIP REQUIREMENTS

As a Preceptor, you have a unique opportunity to be a guiding force and mentor to an applicant. Your frequent meetings with your applicant provide a wonderful opportunity to impart principles of appropriate lawyer conduct as a member of the Delaware Bar. By your own example, you can demonstrate the professionalism that is a hallmark of the Delaware Bar - professionalism that embodies a dedication to the principles of ethics, civility, skill, business-like practice and a focus on service to the public, the Court and the Bar (see Supreme Court Rule 71). 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 you 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.

The rules relating to Preceptors and clerkships are designed to accomplish two 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. As a Preceptor, you have an affirmative duty to investigate the character and fitness of the applicant and to examine carefully the truthfulness and completeness of the application so as to provide needed assistance to the Board in conducting its investigation. Although you serve as a mentor to an applicant, you are not an advocate for the applicant. BR 10(e)(1) explicitly recognizes that the Court and the Board rely on the Preceptor's certification.

2. Practical training of the applicant. The clerkship requirements are intended to make the clerkship a meaningful teaching mechanism to help insure that an applicant's

preparation for admission includes a bona fide exposure to the practical aspects of law practice and the 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(a)(8) requires **"direct and constant"** supervision of the applicant by a member of the Delaware Bar who meets the requirements set forth in Supreme Court Rule 52(a)(8), to which the Preceptor must certify. 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. Delaware's five-month clerkship requirement has been highly praised by the Boards of several larger 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 this Bar's high standards of professionalism and civility. Indeed, BR-10(d) provides that the Preceptor "shall confer on a frequent and regular basis with the applicant in order to review the applicant's clerkship and to advise the applicant of the expected conduct and obligations of a member of the Bar."

A. Preceptor's Responsibility - Character and Fitness.

Under BR-10 a Preceptor has an affirmative duty to base all certifications upon specific personal knowledge and investigation. In making those certifications, a Preceptor represents to the Court and the Board that the duties imposed by the Rules have been satisfied, including (by way of example only):

- Reasonable investigation of the character and fitness of the applicant.
- Factual accuracy and completeness of the candidate's application for admission.
- Full compliance with the clerkship requirements set forth in Supreme Court Rule 52(a)(8).

Under BR-10(e)(1) a Preceptor may be held accountable to the Court for failure to perform adequately the duties and obligations of a Preceptor. The Delaware Supreme Court imposed a private reprimand in July 2009 for a Preceptor's failure to investigate an applicant's background and oversee the applicant's clerkship.

B. Preceptor's Responsibility - Training of the Applicant.

Supreme Court Rule 52(a)(8) requires that each applicant must have "served a clerkship in the State of Delaware aggregating substantially full-time service for at least 5

months' duration." The 5 month period need not be continuous, but must have been served after the applicant began law school. Supreme Court Rule 52(a)(8).

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

The Board cannot issue guidelines which 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** "under the direct and constant supervision" of a qualified member of the Bar will count.
- Five months is approximately 21 five-day work weeks. It may be aggregated over a period of time by reasonably combining full working days (8 hours) with partial working days (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.
- There is no rigid opinion held by the Board that a full day must be at least 8 hours or that a half day must be at least 4 hours or that partial days 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.
- The Law Clerk Checklist of Legal Activities must also be completed as a separate and independent requirement under Supreme Court Rule 52(a)(8)(v). Please review with the applicant the checklist carefully. Given the number of inquiries to the

Board regarding what constitutes attendance at a proceeding, the Law Clerk Checklist of Legal Activities has been revised to make clear that "Attend" means in person appearance at the proceeding until completion of the proceeding, or one-half day, whichever is shorter.

- Although under Supreme Court Rule 52(a)(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.

#### Law Clerk Checklist of Legal Activities

Each assignment must be completed in Delaware under the direct and constant supervision of the Preceptor or other qualified Delaware lawyer. The Preceptor or other qualified lawyer must sign the Law Clerk Checklist where indicated verifying that the assignment has been completed by the Applicant.

The Law Clerk Checklist was revised by the Supreme Court in late 2010. Certain assignments were deleted or modified, and certain assignments were added as part of the revision. All applicants must complete the Law Clerk Checklist as revised and attached hereto except for those applicants who have passed the 2010 Bar Examination and have completed or are completing the prior version of the Law Clerk Checklist.