

Supreme Court of Florida

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Florida Supreme Court issues pandemic order establishing supervised practice program for Bar applicants

TALLAHASSEE – The Florida Supreme Court has issued an order establishing a supervised practice program that will let some applicants for the August 2020 Bar exam work in the law during the pandemic under supervision of licensed attorneys.

The program will last until 30 days after the results of the February 2021 Bar exams are released. It creates a way for applicants to work despite delays caused by pandemic conditions and online testing failures.

Under the order, the Florida Board of Bar Examiners will establish the supervised practice program by the end of August. The court order outlines the application procedure and provides that each applicant's supervising attorney assumes professional responsibility for all services provided.

The Florida Supreme Court ordered the creation of this temporary program after an online testing system developed due to COVID-19 pandemic conditions failed, causing the current delay. The Florida Board of Bar Examiners currently is working on details of a rescheduled exam to be administered in October.

The order establishing the supervised practice program is attached.

Supreme Court of Florida

No. AOSC20-80

IN RE: COVID-19 EMERGENCY MEASURES RELATING TO THE 2020
BAR APPLICANTS—CREATION OF THE TEMPORARY
SUPERVISED PRACTICE PROGRAM

ADMINISTRATIVE ORDER

WHEREAS because of the Coronavirus Disease 2019 (COVID-19) pandemic, the Governor of Florida has declared a state of emergency for the entire state, and the State Surgeon General and State Health Officer have declared a public health emergency exists in Florida; and

WHEREAS COVID-19 is a severe acute respiratory illness that can spread among people through respiratory transmission; and

WHEREAS the health, safety, and well-being of applicants to The Florida Bar, members of the Florida Board of Bar Examiners (“board”), and the board’s administrative staff are a high priority for this Court; and

WHEREAS Rules 4-11, 4-12, and 4-13 of the Rules Regulating Admissions to the Bar require all applicants to pass the General Bar Examination before they may obtain the privilege to practice law in Florida; and

WHEREAS Rule 4-14 of the Rules Regulating Admission to the Bar requires the board to administer the General Bar Examination in February and July

every year; and

WHEREAS health and safety considerations, government restrictions on large gatherings, travel limitations, and operational challenges in complying with social distancing guidelines required the postponement of the July 2020 General Bar Examination to a remote administration in August 2020, which was then cancelled because of technical difficulties with the software platform chosen for the remote administration of the examination; and

WHEREAS the Court recognizes the severe hardship these delays have caused Bar applicants who have been preparing for the bar exam for months; and

WHEREAS the Court is committed to taking steps to mitigate the impact of the delays through institution of a supervised practice program the Court has approved.

NOW THEREFORE, pursuant to the authority conferred upon this Court by article V, section 15 of the Florida Constitution, and the authority conferred upon me by Rule Regulating the Florida Bar 1-12.1(j),

IT IS ORDERED that a Temporary Supervised Practice Program is established, under which applicants to The Florida Bar who were registered to take the July 2020 General Bar Examination may practice law under supervision on a temporary basis under the following procedures:

I. Definitions.

A. A “2020 Bar Applicant” is a person who has submitted an application to become a member of The Florida Bar to the Florida Board of Bar Examiners and was issued a ticket of admission to the July 2020 General Bar Examination.

B. A “Supervised Practice Participant” is a 2020 Bar Applicant who has been certified by the board as meeting the requirements, as set forth in paragraph III below, for being allowed to practice law under supervision as provided in this Administrative Order.

C. A “Supervising Attorney” is a member of The Florida Bar in good standing who is eligible to practice law in Florida, who has maintained that status for at least 5 years, and who does not have any pending discipline posted in the member’s profile on The Florida Bar’s website. A Supervising Attorney must directly employ the Supervised Practice Participant or must be employed by the same law firm, state attorney, public defender, legal aid organization, or state officer or governmental entity in which the practice participant is engaged in the temporary supervised practice.

II. Certification Requirements. In order to be qualified to participate in the Temporary Supervised Practice Program, a 2020 Bar Applicant must meet the following requirements:

- A. Has graduated from an ABA-accredited law school.
- B. Has not taken a bar examination in Florida or in another jurisdiction before February 1, 2020, or is licensed to practice law and is in good standing in a United States jurisdiction other than Florida.
- C. Has received a letter of clearance as to character and fitness from the Florida Board of Bar Examiners.
- D. Has obtained a passing score on the Multistate Professional Responsibility Examination at the time the person submits an Application for Temporary Supervised Practice as described below in Section II, or is licensed to practice law and in good standing in a United States jurisdiction other than Florida.
- E. If licensed and in good standing in another United States jurisdiction, not be the subject of disciplinary proceedings and agrees to submit to the jurisdiction of the Supreme Court for disciplinary purposes.
- F. If not licensed to practice law and in good standing in another United States jurisdiction, has been certified by the dean of the applicant's law school as being of good character and competent legal ability and such certification has not been withdrawn by the dean.
- G. Has certified in writing that he or she has read and is familiar with the Rules of Professional Conduct and will abide by the provisions thereof.

III. Application for Temporary Supervised Practice and Certification.

A. A 2020 Bar Applicant seeking to participate in the Temporary Supervised Practice Program shall submit to the Florida Board of Bar Examiners an Application for Temporary Supervised Practice (“ATSP”). The board shall prepare and make available an application form by August 31, 2020, to be used by a 2020 Bar Applicant who wishes to participate in the program.

B. The board shall review the ATSP and if the applicant meets the qualification requirements in paragraph II of this Administrative Order, approve the ATSP, and file a certification stating such with the Clerk of the Supreme Court.

C. A 2020 Bar Applicant may engage in supervised practice under the terms of this Administrative Order upon receiving notice that the board has approved the ATSP and the required certification has been filed with the clerk of the Court.

IV. Supervision.

A. A Supervised Practice Participant may perform services under the supervision of a Supervising Attorney as set forth in paragraph V below.

B. The Supervising Attorney shall assume professional responsibility for all services provided by the Supervised Practice Participant, and for the quality of the practice participant’s work, and shall assist in the practice participant’s

preparation to the extent the Supervising Attorney considers it necessary.

C. The Supervising Attorney shall enter an appearance in any matter in which a Supervised Practice Participant enters an appearance.

D. The Supervising Attorney shall be present at all critical stages of the proceeding in any case in which the Supervised Practice Participant represents a person who has a right to appointed counsel.

E. A Supervising Attorney may utilize audio-video communication technology to remotely supervise the Supervised Practice Participant in satisfaction of any requirement that the supervising attorney be present. The supervising attorney and the practice participant must maintain a separate, confidential communication channel during the proceedings.

V. Services.

A. Appearances in Court, Administrative Proceedings, or any Form of Alternative Dispute Resolution.

1. *Appearance on Behalf of a Person other than a Government Officer.* A Supervised Practice Participant may appear in any court or before any administrative tribunal or any alternative dispute resolution forum in this state on behalf of a person if the person on whose behalf the practice participant is appearing has indicated in writing consent to the appearance and the Supervising Attorney also has indicated in writing approval of that appearance. In all cases, the

Supervising Attorney shall be present when required by the court or administrative tribunal. The court or administrative tribunal shall determine the extent of the practice participant's participation in the proceeding.

2. *Appearance for the State in Criminal Proceedings.* A

Supervised Practice Participant may appear in any criminal matter on behalf of the state with the written approval of the state attorney or the attorney general and of the Supervising Attorney. In such cases, the Supervising Attorney shall be present when required by the court. The court or administrative tribunal shall determine the extent of the practice participant's participation in the proceeding.

3. *Appearance on Behalf of Governmental Officers or Entities.* A

Supervised Practice Participant may appear in court or before any administrative tribunal in any civil matter on behalf of the state, state officers, or state agencies or on behalf of a municipality or county, provided that the municipality or county has a full-time legal staff, with the written approval of the attorney representing the state, state officer, state agency, municipality, or county. The approving attorney must supervise the practice participant and must be present when required by the court or administrative tribunal. The court or administrative tribunal shall determine the extent of the practice participant's participation in the proceeding.

4. *Filing of Consent and Approval.* In each case or administrative

proceeding in which the Supervised Practice Participant makes an appearance as provided in subparagraphs 1 through 3 above, the relevant and required written consent and approval shall be filed in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal.

B. Preparation of Documents. A Supervised Practice Participant may engage in the following activities, under the general supervision of a Supervising Attorney, but outside of the Supervising Attorney's presence:

1. Preparation of pleadings and other documents to be filed in any matter in which the Supervised Practice Participant is eligible to appear, but such pleadings or documents must be signed by the Supervising Attorney.

2. Preparation of briefs, abstracts, and other documents to be filed in appellate courts of this state, but such documents must be signed by the Supervising Attorney.

3. Preparation of contracts, wills, and other transactional documents.

4. Assistance to indigent inmates of correctional institutions or other persons who request such assistance in preparing applications for and supporting documents for postconviction relief, except when the assignment of

counsel in the matter is required by any constitutional provision, statute, or rule of this Court. If there is an attorney of record, all such assistance must be supervised by the attorney of record, and all documents submitted to the court on behalf of such a client must be signed by the attorney of record.

C. Oral Argument. A Supervised Practice Participant may participate in oral argument in appellate courts, but only in the presence of the Supervising Attorney. The appellate court shall determine the extent of the practice participant's participation in the proceeding.

D. A Supervised Practice Participant otherwise authorized to provide services under this Administrative Order is not authorized to open her or his own practice.

V. Compensation.

A Supervised Practice Participant may not ask for or receive any compensation or remuneration of any kind directly from the client on whose behalf the practice participant's Supervising Attorney renders services. A practice participant also may not negotiate a fee agreement or be a party to a fee agreement.

This paragraph shall not prevent a Supervising Attorney, law firm, state attorney, public defender, legal aid organization, or state officer or governmental entity from paying compensation to the practice participant (nor shall it prevent any of the

foregoing from making such charge for services).

VI. Expiration and Termination of Supervised Practice.

A. A Supervised Practice Participant's privilege to engage in supervised practice under this Administrative Order expires within 30 days after the board releases results for the February 2021 General Bar Examination.

B. A Supervised Practice Participant's privilege to engage in supervised practice under this Administrative Order will remain in effect if the practice participant opts not to take or is unsuccessful on the bar examination offered by the board in October 2020.

C. A Supervised Practice Participant has a continuing obligation to keep his or her responses to the Florida Bar Application current, complete, and correct by filing timely amendments to the application. *See Fla. Bar Admiss. R. 3-14.4.* If the board determines that a Supervised Practice Participant has engaged in conduct that requires further investigation under Rule 3-11 of the Rules Regulating Admissions to the Bar, the board may investigate the conduct and notify the clerk of the Court that it is reconsidering its clearance as to character and fitness. If based on that investigation or upon learning that the practice participant no longer meets all of the qualification requirements, the board shall give the practice participant and the clerk of the Court written notification of the withdrawal of the

board's certification.

D. A law school dean who has certified the good character and competent legal ability of a Supervised Practice Participant may withdraw that certification; and, if the dean does so, the dean must promptly notify the clerk of the Court and the board in writing.

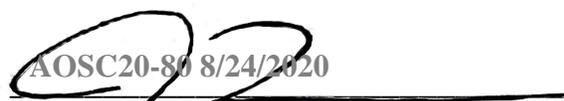
E. The Court may terminate a Supervised Practice Participant's privilege to practice under this Administrative Order at any time without notice or hearing and without any showing of cause. Notice of the termination shall be filed with the clerk of the Court and provided to the board and the practice participant.

DONE AND ORDERED at Tallahassee, Florida, on August 24, 2020.



Chief Justice Charles T. Canady
AOSC20-80 8/24/2020

ATTEST:



John A. Tomasino, Clerk of Court
AOSC20-80 8/24/2020

