

**New Hampshire Supreme Court  
Office of Bar Admissions**

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N.H. Board of Bar Examiners  
Mary Elizabeth Tenn, Esquire, Chair

Committee on Character & Fitness  
Hon. Ryan Guptill, Chair

To: Clerk Timothy Gudas, NH Supreme Court  
From: Sherry Hieber  
Re: Proposed change to NH Supreme Court Rule 42 (V)(b)  
Date: June 22, 2023

Introduction.

At its meeting on June 20, 2023, the New Hampshire Board of Bar Examiners considered the limitation on distance education set forth in New Hampshire Supreme Court Rule 42(V)(b). After discussion, the board voted to recommend that the final sentence of the rule (highlighted below) be removed from the text.

NH Supreme Court Rule 42 (V)(b).

Law School Education. Except as provided in Rule 42(XI)(b), every applicant must have graduated from a law school approved by the American Bar Association having a three year course and requiring students to devote substantially all their working time to study, called a full-time law school, or from a law school approved by the American Bar Association having a course of not less than four school years equivalent in the number of working hours to a three year course 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. 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 has graduated from one of the law schools. Study in any law school which does not require attendance of its students at its lectures or classes or which conducts its courses by distance education (i.e. by technological transmission, including the internet; open broadcast; closed circuit, cable, microwave, or satellite transmission; audio or computer conferencing; video cassettes or discs; or correspondence) shall not constitute compliance with the rule, except that distance education in an ABA-approved law school, in compliance with Standard 306 of the ABA Standards and Rules of Procedure for Approval of Law Schools, shall constitute compliance.

Discussion.

The last sentence of Rule 42(V)(b) limits distance education by requiring compliance with ABA Standard 306. At the time the rule was enacted, Standard 306 allowed ABA-approved law schools to offer up to 12 credit hours of distance education. The ABA has revised its rules on distance education and the reference to Standard 306 is now outdated. In 2020, Standard 306 was eliminated because of COVID. In August 2022, the ABA enacted new standards related to distance education. Standard 306 now incorporates Standard 311(e), which allows ABA-approved law schools to grant students

up to 1/3 of the credit hours required for the J.D. degree by distance education. Up to 10 of those credit hours may be in the first year. In May 2023, the ABA Council on Legal Education approved proposed revisions that would allow law students to take up to half of their classes online. In addition, the 10-hour limitation for first year students would be eliminated. The proposal will go to the ABA House of Delegates in August.

The ABA also has granted variances from the remote coursework limitation to allow law schools to develop hybrid J.D. programs. In 2018, this court waived the distance education requirement of Rule 42(V)(b) for a graduate of a hybrid program that had obtained a variance from the ABA. In the Matter of Ariane Ice, no. ADM-2018-0010 (N.H. Sept. 17, 2018)(attached). Since that decision, N.H. has accepted degrees from graduates of hybrid J.D. programs that have obtained variances from the ABA, most notably UNH School of Law.

The elimination of the final sentence of Rule 42(V)(b) would clarify that a degree from an ABA-approved law school is sufficient to qualify applicants to be admitted in New Hampshire. Law schools are moving toward more remote learning. There are currently 14 ABA-approved law schools with hybrid-J.D. programs. St. Mary's Law School in Texas started an entirely online J.D. program that has been approved by the ABA. It had 791 applications for its first class of 27 students. I am not aware of any other jurisdiction that references the ABA Standards on Distance Education in their admission rules, although New York limits its applicants to 15 hours of distance education. Applicants in New York must obtain a certificate from their law schools that they have not exceeded the limit on remote classes.

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## THE STATE OF NEW HAMPSHIRE

## SUPREME COURT

**In Case No. ADM-2018-0010, In the Matter of Ariane Ice,  
the court on September 17, 2018, issued the following order:**

Motion of Mitchell Hamline School of Law for leave to submit an *amicus curiae* brief is granted. The *amicus curiae* brief was filed on August 23, 2018.

The petitioner, Ariane Ice, is a graduate of Mitchell Hamline School of Law's "Hybrid Program." She has applied for admission to the New Hampshire bar. After reviewing the petitioner's application for admission, the Board of Bar Examiners concluded that the petitioner's law school education did not satisfy the requirements of Supreme Court Rule 42, V(b). The petitioner then filed a petition with this court for interpretation or waiver of New Hampshire Distance Educational Requirement of Rule 42, V(b).

The petition and the documentation submitted with the petition establish that the ABA Council of the Section of Legal Education (Council) granted Mitchell Hamline School of Law a variance from Standard 306 of the ABA Standards and Rules of Procedure for Approval of Law Schools for the "Hybrid Program." The grant of the variance included certain requirements on the part of Mitchell Hamline School of Law for reporting and evaluation of the "Hybrid Program." In 2016, the Council reviewed the "Hybrid Program" and found that the requirements of the program variance had been met. Because the petitioner graduated from the "Hybrid Program," which had been approved by the Council, the court concludes that a waiver of the distance education requirements of Rule 42, V(b) is warranted in this case. Accordingly, the court grants the petition for waiver of the requirements of Rule 42, V(b) to allow the petitioner to seek admission to the New Hampshire bar.

Lynn, C.J., and Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

**Eileen Fox,  
Clerk**

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