

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

CASE NO.:

RE: PETITION TO AMEND THE
RULES REGULATING THE
FLORIDA BAR - CREATION
OF BASIC SKILLS COURSE
REQUIREMENT

71,466

BRIEF OF THE FLORIDA BAR, PETITIONER

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SUMMARY OF ARGUMENT

The Florida Bar petitions this Court for the creation of a requirement that new admittees to the Bar attend a basic skills course conducted by The Young Lawyers Division of The Florida Bar. This constitutes an amendment to the Rules Regulating The Florida Bar.

It is of primary importance to the public, to the members of The Florida Bar and to newly admitted attorneys that attorneys begin their legal careers with a thorough and practical understanding of the law. The gap between the theory learned in law school and the actual practice of law can be bridged, in part, through the adoption of a requirement that attorneys attend a basic skills course which emphasizes the practical approach to the practice of law.

The concept of a required basic skills course has been studied intensively by the Bar since 1982. The proposed rule is based upon these years of study and the history of the Bar's Bridge-The-Gap course which has been offered since 1953. The final proposal creates a meaningful requirement which can be easily met and contains ample safeguards to ensure due process requirements in the review and sanction provisions.

The legal profession will be upgraded and the public better served by the adoption of this proposed basic skills course requirement.

STATEMENT OF THE CASE AND FACTS

The Florida Bar, through the sponsorship of the Young Lawyers Division, has offered a voluntary Bridge-The-Gap (hereinafter "BTG") seminar since 1953. The seminar has evolved to an intensive three day program designed to bridge the gap between the theory learned in law school and the actual practice of law. The proposed basic skills course is patterned after the BTG program.

The BTG course covers 13 separate substantive areas, including ethics, and is taught by experienced attorneys and judges. The course is designed to give the recent law graduate the "know-how" which is otherwise learned through trial and error. Attendees receive practical information to help them interview clients, discuss and set fees, arrange for service of process, conduct a civil trial, collect judgments, examine abstracts, handle real estate closings, form business organizations and countless other matters essential to the practice of law. As a supplement to the lectures, each registrant receives "The Attorney's Handbook" which consists of over 850 pages containing a comprehensive reference manual of outlines, checklists and forms.

Although the course has been a voluntary seminar, over 700 attorneys attended the BTG courses which were offered in the last bar year. The course is presented live, with local lecturers, simultaneously in Miami, Tampa, Orlando, West Palm Beach and Jacksonville (alternates with Tallahassee) in March and in

October each year. The fee for the seminar, including materials, is now \$125.00.

The Bar's study of the requirement of a basic skills course began with a conceptual study conducted in 1982 by the Integration of Law Graduates into the Practice of Law Committee of the Young Lawyers Division. In 1985, President Gerald Richman, in accordance with the recommendation of the Long-Range Planning Committee of the Florida Bar, appointed a special committee to study the proposal to establish a mandatory basic skills course. This committee's recommendation that such a requirement be adopted was favorably considered by the Board of Governors of The Florida Bar in the fall of 1985. The Board requested that the Young Lawyers Division prepare a proposed rule and policies to be studied and considered by the Board.

In May, 1986, the first draft of the proposed rule and policies was prepared. Since that date, the proposed rule and implementing policies have been the subject of revisions, review and approval by the Young Lawyers Division Board of Governors, The Florida Bar Budget Committee, The Florida Bar Continuing Legal Education Oversight Committee, The Florida Bar Bylaws Committee and the Florida Bar Board of Governors.

Both the philosophy underlying the proposal and the specific proposed rule and policies have been considered at great length. To implement the requirement, the Florida Bar requests that the Court establish Rules 6-12.1 through 6-12.8 of the Rules Regulating The Florida Bar.

POINT I

SUMMARY OF PROPOSED RULE AND COURSE

A. Proposed Rule 6.12-1 Basic Skills Course Requirement

The proposed rule requires that each member of The Florida Bar complete the Basic Skills Course either eight months prior to or twelve months following their admission to the Bar or the expiration of exempt status. The rule contains exemptions (technically deferrals) for attorneys who are (1) in active military service or full-time government employment, (2) non-residents whose primary office is outside of the State, or (3) under undue hardship which prevents compliance. A copy of the proposed rule is attached as Appendix I.

The Board of Certification, Designation and Education (commonly referred to as "BCDE") of The Florida Bar is responsible for adopting policies to implement the rule and for administering the basic skills course. The Young Lawyers Division is charged with responsibility for the organization and presentation of the course. A copy of the proposed implementing policies is attached as Appendix II.

The review and sanction provisions of the rule are patterned after the procedure required in Rule 6-10.1 which sets forth the review provisions for the continuing legal education requirement.

B. Proposed Basic Skills Course

The implementing policies of BCDE required that the Basic Skills Course consist of no less than twenty-three hours of instruction which cover a minimum of eleven separate subjects

which have been approved by the Board of Governors of the Young Lawyers Division. The policies require that at least one (1) hour of instruction be presented on the subject of discipline, ethics and professional responsibility.

The policies contemplate that the Basic Skills Course would be presented in the format of the Bridge-The-Gap course which has historically been offered by the Young Lawyers Division. An outline of the program for the current Bridge-The-Gap seminar is attached as Appendix III.

The course will be presented "live" simultaneously in five locations: Miami, Tampa, Orlando, West Palm Beach and Tallahassee (or Jacksonville). The course is presented during the months of October and March. The Jacksonville and Tallahassee locations rotate so that the course is offered in each city each year. The Young Lawyers Division is now studying a proposal to add a sixth location so that the course is given twice a year in Tallahassee and once a year in Pensacola and Jacksonville.

The subjects are taught by experienced practitioners and judges who are recognized as experts in their subject areas. The speakers strive to emphasize the practical problems that regularly confront the new attorney. The goal of the course is to pass along knowledge that has traditionally only been obtained by experience and error.

As a supplement to the lectures, each registrant receives "The Attorney's Handbook". A copy is submitted as Appendix IV.

The handbook is a comprehensive reference manual containing more than 850 pages of outlines, checklists and forms. The speakers review and update the handbook each year in order to insure that the information remains current and accurate.

POINT II

ADOPTION OF THE BASIC SKILLS COURSE REQUIREMENT WOULD SERVE THE PUBLIC AND THE LEGAL PROFESSION

The purpose of the requirement of attendance at a basic skills course is to insure that new lawyers obtain practical knowledge to assist them in making the transition from the formal intellectual study of the law to the practical application of the law on behalf of clients. It is generally recognized that law schools provide little practical training and cannot do significantly more in the time available to them without sacrificing some other essential aspects of the educational task of training legal minds. ALI-ABA Report on the Survey of Bridge-The-Gap Programs, Nov. 1984, p. 23 (hereinafter "ALI-ABA Study").

The legal education process today strives to train students in the intellectual methodology of the practice of law and in providing a fundamental understanding of the substantive aspects of the major bodies of jurisprudence. As society has grown more complex, the demands upon law school to provide education in new substantive areas has increased. Today's average law student emerges from law school after studying not only contracts, torts, criminal, real property, and constitutional law, but also administrative, antitrust, tax, environmental and zoning law. Little time is left for teaching the practicalities involved in applying the substantive law which is taught in law school.

Both the public and the legal profession will benefit from the adoption of the required basic skill course. The practical lessons learned in the course should save not only great client

expense through economics of time, but also assist the new lawyer in avoiding costly and irreversible errors. The legal profession itself will benefit by fostering new lawyers who are better able to serve the public.

The ALI-ABA Study conducted in 1984 surveyed 1,617 individuals who attended 45 basic skills programs offered by 31 separate Continuing Legal Education organizations. The authors of the study concluded that "[t]he value of bridge-the-gap programs is beyond question. (e.a.)" Id. at 24. The study found that the programs were an essential element of the system through which the profession helps to assure the public that those who are licensed to practice law have adequate background and training so that they can become at least minimally competent practitioners.

According to the ALI-ABA Study, the participants in the Bridge-The-Gap courses were the strongest supporters of the programs. Specifically, the study found:

1. Over 96% of the respondents furnished positive evaluations with more than 82.5% rating their courses at the upper ends (1 and 2) of a five point evaluation scale.
2. Ninety-four percent (94%) responded that they would recommend the courses to other new lawyers.
3. Over 90% of those who responded to questions while still at the course felt that the exposure would help them in making the transition from law school to practice.
4. Several months after the course had been concluded, 94% replied that the course had, in fact, made their work easier.

In 1984 the Board of Governors of the American Bar Association, at the recommendation of Chief Justice Warren E. Burger, appointed a Commission on Professionalism to study the question of professionalism. In 1986 the Commission on Professionalism published its report which was titled "...In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism". The Commission specifically noted that the initial years of a lawyer's practice are critical to the lawyer's successful transition from student to independent professional. The Commission urged the practicing bar and bar associations to work together to develop programs to assist new lawyers in their initial years of practice. The Commission also strongly recommended that compulsory continuing legal education be adopted.

Although the Commission on Professionalism did not specifically address the issue of mandatory Bridge-The-Gap programs, it is clear that the proposed basic skills course requirement is the type of program which the Commission was urging to be developed. The proposed basic skills course requirement would foster the spirit of professionalism and provide valuable training to new lawyers based upon the traditions of our profession.

POINT III

THE NEED FOR BASIC SKILLS COURSES HAS BEEN RECOGNIZED BY OTHER JURISDICTIONS

At the present time, nine states have mandatory basic skills courses and two other states require completion of a mandatory clerkship program. In 1973, New Jersey became the first state to require that new attorneys attend a basic skills course. The New Jersey course presently consists of 30 hours of instruction which must be taken within approximately six months of admission. In 1979 New Hampshire began requiring attendance at a one-day "Practical Skills" course within two years of admission to the bar and Colorado began requiring that lawyers take a basic legal skills curriculum as part of their first 45 hours of mandatory CLE.

Georgia adopted a mandatory Bridge-The-Gap course on January 1, 1983 which consists of a two-day course which must be taken during either the year of admission to the bar or the following year. South Carolina's mandatory basic skills course was adopted three years ago and consists of a five day program containing 30 hours of instruction. As of January 1, 1985, Montana required that newly admitted lawyers take a basic legal skills course as part of their mandatory CLE program. Texas requires that lawyers admitted after June 1, 1986 take 30 hours of practice skills courses before or during their first two years of practice. Maine adopted a required Bridge-The-Gap course effective July 1, 1987 which is a two-day course. The Arkansas Supreme Court

recently passed a rule requiring attendance at a Basic Practice Skills Course by attorneys admitted after January 1, 1988.

Although Michigan does not yet have a mandatory requirement, such a proposal is pending in the Michigan Supreme Court and, if approved, is expected to take effect in June, 1988. Rhode Island and Virginia do not have required basic skills courses, per se. However, both states have mandatory clerkship programs.

The need for initial practical training for new lawyers is also recognized in Canada. In most provinces of Canada, each lawyer must "article" in a law firm for varying periods of time before being licensed. The provinces and territories with this requirement, and the length of time a new lawyer must article, are: Alberta (one year), British Columbia (10 months), Manitoba (11-1/2 months), New Brunswick (44 weeks), Prince Edward Island (one year), Saskatchewan (one year), Northwest Territories (one year), Upper Canada (one year), and the Yukon (one year).

POINT IV

THE REVIEW AND SANCTION PROVISIONS OF THE PROPOSED RULE SATISFY DUE PROCESS REQUIREMENTS AND ENFORCEMENT OF THE REQUIREMENT WILL NOT BE BURDENSOME

Compliance with the requirement of the proposed Rule can easily be accomplished since the basic skills course will be offered throughout the State every six months. If, however, it is determined that a member is not in compliance, adequate guarantees of procedural due process exist in the provisions of Section 6-12.5 of the proposed Rule dealing with noncompliance.

A member who fails to complete the Basic Skills Course within the time required by the Rule is permitted to submit a plan for completing the requirement within one hundred eighty (180) days of the end of the reporting period or establish eligibility for an exemption. The BCDE must notify the member within thirty (30) days if the plan for compliance is not acceptable. Within fifteen (15) days following expiration of the time called for by the plan, the member must notify the BCDE of compliance or the sanctions will apply.

If a member has failed to comply with the rules in any respect, the BCDE will notify him or her of the alleged violation. The member has a right to a hearing on the issue of noncompliance. If the evidence at the hearing establishes compliance, the matter ends. If noncompliance exists and there is reasonable cause for the noncompliance, the member may file a plan showing a method of compliance within one hundred eighty (180) days. If no reasonable cause for noncompliance exists, a

record of the matter will be sent to the Supreme Court of Florida for appropriate action which may include suspension. The Rules also provide for appeals of adverse decisions of the BCDE to the Board of Governors of The Florida Bar and appeal of that decision to the Supreme Court of Florida. These steps are sufficient to allow review of any alleged failure to meet the requirements.

The constitutionality of a continuing legal education requirement was recently upheld by a United States Court of Appeals. In that case, the Court said:

As the trial court noted, the basic issue presented is a novel one: whether a state supreme court may constitutionally require attorneys to meet continuing legal education requirements. Ample precedent exists supporting the authority to prescribe minimum levels of legal competency, measured by a bar examination, as a prerequisite to admission to a state bar. E.G., Schware v. Board of Bar Examiners, 353 U.S. 232, 239, 77 S.Ct. 752, 756, 1 L.Ed. 2d 796 (1957); Poats v. Givan, 651 F.2d 495, 497 (7th Cir. 1981); Tyler v. Vickery, 517 F.2d 1089, 1101-02 (5th Cir. 1975), cert. denied, 456 U.S. 940, 96 S.Ct. 2660, 49 L.Ed. 2d 393 (1976); Chaney v. State Bar, 386 F.2d 962, 964 (9th Cir. 1967), cert. denied, 390 U.S. 1001, 88 S.Ct. 1262, 20 L.Ed. 2d 162 (1968). A fortiori, a state can require an attorney to take reasonable steps to maintain a suitable level of competency, so long as such requirements have a "rational connection with the [attorney's] fitness or capacity to practice law." Schware, 353 U.S. at 239, quoted in Younger, 625 F.2d at 377. We cannot say that the CLE requirements in Colorado have no rational connection to a lawyer's suitability to practice law.

Verner v. State of Colorado, 716 F.2d 1352, 1353 (10th Cir. 1983).

The lower court in that case dealt extensively with the question of procedural due process and concluded:

The plaintiff has in several sections of his complaint alleged that rule 260 violates procedural due process. A reading of the rule demonstrates that this claim is without merit. Rule 260 explicitly provides for notice and a full hearing before disciplinary action can be taken. Cf. Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed. 2d 287 (1970). Those accused of noncompliance have the right to counsel, to call witnesses, to make objections and to have a complete record made of the proceedings. The hearings are conducted in accordance with the Colorado Rules of Civil Procedure. See Rule 260.6(5)-(9). The plaintiff also claims that rule 260 does not specify the sanctions to be imposed for violations, allowing the court to decide arbitrarily that suspension is a proper penalty. However, rule 260 states that "... the Supreme Court shall enter such order as it shall deem appropriate, which may include an order of summary suspension from the practice of law..."

Verner v. State of Colorado, 716 F.2d 1352, 1353 (10th Cir. 1983).

The procedures upheld in Verner are virtually identical to the proposed Rule and Policies. Although Verner dealt with continuing legal education rather than a required basic skills course, the same principles of due process would apply.

CONCLUSION

In the interests of better serving the public and the legal profession, The Florida Bar Board of Governors respectfully requests that the Court adopt the proposed Basic Skills Course Requirement.

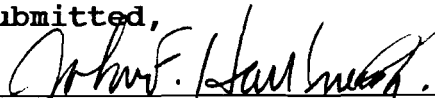
Appendix I sets forth the Basic Skills Course Requirement for Rules 6-12.1 through 6-12.8 which constitutes an amendment to the Rules Regulating The Florida Bar. Appendix II consists of the initial Policies adopted by the Board of Governors of The Florida Bar for implementation of the continuing Legal Education Requirement. These Policies may be revised by the Board of Governors as circumstances require.

It is requested that the Basic Skills Course Requirement take effect on the first day of the third month following the month in which the Supreme Court adopts the Rule.

Respectfully submitted,



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