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FILED
SID J. WHITE

IN RE: Petition of Florida Board of)
Bar Examiners for Amendment)
of Rules of the Supreme)
Court of Florida Relating)
to Admissions to the Bar)

Case No. DEC 8 1988

CLERK, SUPREME COURT
By _____
Deputy Clerk

PETITION

The Florida Board of Bar Examiners, by and through its undersigned attorney, petitions the Court for approval of certain amendments to the Rules of the Supreme Court of Florida Relating to Admissions to the Bar and, in support thereof, states:

1. The Board has been engaged in an ongoing review of the Rules of the Supreme Court of Florida Relating to Admissions to the Bar.

2. By this Petition, the Board proposes that Article I, Sections 2 and 3 be amended for housekeeping changes consisting of the deletion of obsolete language and the use of a more fitting designation for the nonlawyer members of the Board.

3. The Board also proposes that Article 111, Section 1 be amended to conform the Rules to the Court's practice of not approving undergraduate programs at nonaccredited colleges and universities in Florida. The Board further proposes that this section be amended to include the modification made by the Court in Florida Board of Bar Examiners in re Hale, 433 So.2d 969 (Fla. 1983) pertaining to foreign law school graduates.

4. The Board also seeks to amend Article IV of the Rules to authorize applicants to petition the Board for reconsideration of an administrative ruling and to extend the prescribed time periods pertaining to a petition filed by an applicant with the Court for review of a Board action.

5. The Board also seeks to amend Article V, Section 18 of the Rules to provide a uniform fee for the photocopying of an applicant's bar application.

6. The Board also seeks to amend Article VI, Section 1 to allow applicants to submit to the Multistate Professional Responsibility Examination prior to graduation from law school

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philitz ① (26) ack.

but within 25 months of successful completion of the other parts of the Florida Bar Examination.

7. Attached hereto as composite Exhibit "A" is a compilation of those provisions of the Rules which are proposed to be added or modified. The attached composite exhibit reflects the present wording of each rule together with the proposed rule reflecting the amendments. Brief narrative explanations of the rationale for the proposed amendments are also provided.

8. While in formal session during its September 1988 meeting, the Board readdressed the request of the Deans of the Florida law schools to release bar examination results of individual law students to their respective law schools. Such information would be used confidentially by the law schools for the purpose of evaluating and strengthening their curriculums.

Following consideration of the deans' request, the Board reaffirmed its present policy of not disclosing the identities of the examinees when releasing statistical data on the results of the bar examination. A majority of the Board recommends, however, that additional statistics be released to the law schools consisting of a detailed breakdown of scores for each subject tested on Parts A and B of the General Bar Examination along with the mean score and range of scores attained by the entire examination population for each subject. A minority of the Board favors the release of detailed examination information as requested by the deans.

Because of the lack of consensus by the Board on this subject and because of the interests of the deans, the Board determined that the deans' request should be presented to the Court for consideration accompanied by majority and minority reports. The report expressing the position of the Board's majority is attached hereto as Exhibit "B." The report expressing the position of the Board's minority is attached hereto as Exhibit "C."

WHEREFORE, the Board prays for an entry of an order amending, confirming and adopting the amendments to the Rules which are reproduced and attached to this Petition as composite

Exhibit "A." The Board recommends that all of the proposed amendments become effective immediately upon order of the Court.

DATED this 7th day of December, 1988.

Respectfully submitted,

FLORIDA BOARD OF BAR EXAMINERS
LAWRENCE G. MATHEWS, JR., CHAIRMAN

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Executive Director

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Article I, Section 2 as it currently appears:

Section 2. There is hereby created a Florida Board of Bar Examiners consisting of twelve members of The Florida Bar and three lay members of the general public. The members now constituting said Board shall continue to hold office for the terms now appointed, and their successors shall continue to be selected and appointed in the manner prescribed in Article 1 of the Rules Relating to Admissions to The Florida Bar.

a. Attorney Members of the Board. As the terms of the attorney members expire, all appointments shall be for no more than five years, and any vacancy occurring during any term shall be filled by appointment. No attorney appointed by the Court as a result of a vacancy occurring during a term shall be appointed for more than five years, and the term of all such appointments shall be extended to October 31 of the last year of such term.

b. Lay Members of the Board. All appointments of lay members shall be for no more than three years, and any vacancy occurring during any term shall be filled by appointment. Initially, the first lay member shall be appointed effective November 1, 1981, the second lay member shall be appointed effective November 1, 1982, and the third lay member shall be appointed effective November 1, 1983. No lay member appointed by the Court as a result of a vacancy occurring during a term shall be appointed for more than three years, and the term of all such appointments shall be extended to October 31 of the last year of such term.

Article I, Section 2 as it would appear:

Section 2. There is hereby created a Florida Board of Bar Examiners consisting of twelve members of The Florida Bar and three lay nonlawyer members of the general public. The members new constituting said Beard shall continue to hold effiee for the terms new appointed; and their successors shall continue to be selected and appointed in the manner prescribed in Article I of the Rules Relating to Admissions to The Florida Bar.:

a. Attorney Members of the Board. As the terms of the attorney members expire, all appointments shall be for no more than five years, and any vacancy occurring during any term shall be filled by appointment. No attorney appointed by the Court as a result of a vacancy occurring during a term shall be appointed for more than five years, and the term of all such appointments shall be extended to October 31 of the last year of such term.

EXHIBIT "A"

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b. **lay** Public Members of the Board. All appointments of **lay** public members shall be for no more than three years, and any vacancy occurring during any term shall be filled by appointment. **Initially, the first lay member shall be appointed effective November 1, 1983; the second lay member shall be appointed effective November 1, 1982, and the third lay member shall be appointed effective November 1, 1983.** No **lay** public member appointed by the Court as a result of a vacancy occurring during a term shall be appointed for more than three years, and the term of all such appointments shall be extended to October 31 of the last year of such term.

RATIONALE :

Housekeeping changes consisting of the deletion of obsolete language and the use of the words "nonlawyer" and "public" to describe more appropriately the "lay" members of the Board.

Article I, Section 3 as it now appears:

Section 3. The Board of Governors of The Florida Bar shall submit to the Court not less than thirty days prior to the expiration of the term of any attorney member of the Board, and in case of a vacancy, within thirty days thereafter, its recommendations with respect to appointees. Such group of recommended appointees shall be thrice the number to be appointed.

A joint committee composed of three members of the Board and three members of the Board of Governors of The Florida Bar shall submit to the Court not less than thirty days prior to the expiration of the term of any lay member of the Board, and in the case of a vacancy, within thirty days thereafter, its recommendations with respect to appointees. Such group of recommended appointees shall be thrice the number to be appointed.

The following provisions will be pertinent in connection with the nominations to membership on the Board:

a. Qualifications. Attorney members shall be practicing attorneys with scholarly attainments and an affirmative interest in legal education and requirements for admission to the Bar. Lay members shall have an academic Bachelor's Degree. It is desirable that lay members possess educational or work-related experience of value to the Board such as educational testing, accounting, statistical analysis, medical or psychologically related sciences.

b. Tenure. A bar examiner should be appointed for a fixed term but should be eligible for reappointment if the examiner's work is of high quality. Members of the Board should be appointed for staggered terms to insure continuity of policy, but there should be sufficient rotation in the personnel of the Board to bring new views to the Board and to insure continuing interest in its work.

c. Devotion to Duty. A bar examiner should be willing and able to devote whatever time is necessary to perform the duties of examiner.

d. Essential Conduct. A bar examiner should be conscientious, studious, thorough and diligent in learning the methods, problems and progress of legal education, in preparing bar examinations, and in seeking to improve the examination, its administration and requirements for admission to the Bar. Each examiner should be just and impartial in recommending the admission of applicants and should exhibit courage, judgment and moral stamina in refusing to recommend applicants who lack adequate general and professional preparation or who lack good moral character.

e. Adverse Influences, Conflicting Duties and Inconsistent Obligations. Bar examiners should not have adverse interests, conflicting duties nor inconsistent obligations which will in any way interfere or appear to interfere with the proper administration of their functions. Appointment or election to the bench at any level of the court system, federal, state, county or municipal, shall constitute a disability to serve as a bar examiner so long as such individual shall continue to serve in such capacity. Bar examiners should not participate directly or indirectly in courses for the preparation of applicants for bar admission nor act as a trustee of a law school or of a university with which a law school is affiliated. Bar examiners should so conduct themselves that there may be no suspicion that their judgment may be swayed by improper considerations.

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Section 3. The Board of Governors of The Florida Bar shall submit to the Court not less than thirty days prior to the expiration of the term of any attorney member of the Board, and in case of a vacancy, within thirty days thereafter, its recommendations with respect to appointees. Such group of recommended appointees shall be thrice the number to be appointed.

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recommendations with respect to appointees. Such group of recommended appointees shall be thrice the number to be appointed.

The following provisions will be pertinent in connection with the nominations to membership on the Board:

a. Qualifications. Attorney members shall be practicing attorneys with scholarly attainments and an affirmative interest in legal education and requirements for admission to the Bar. Lay Public members shall be nonlawyers and shall have an academic Bachelor's Degree. It is desirable that lay public members possess educational or work-related experience of value to the Board such as educational testing, accounting, statistical analysis, medical or psychologically related sciences.

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RATIONALE :

Housekeeping changes consisting of the use of the words "public" and "nonlawyers" to describe more appropriately the "lay" members of the Board.

Article 111, Section 1.a. as it currently appears:

Section 1. No applicant shall be admitted to the Florida Bar Examination unless he or she furnishes to the Board:

a. Satisfactory evidence that (1) the applicant has received an academic Bachelor's Degree granted on a basis of a four-year period of study in a college or university on the approved list of any one of the following regional accrediting associations or any Florida college or university approved by the Supreme Court of Florida.

- (a) New England Association of Schools and Colleges;
- (b) Middle States Association of Colleges and Schools/Commission on Higher Education;
- (c) North Central Association of Colleges and Schools;
- (d) Southern Association of Colleges and Schools — Commission on Colleges;
- (e) Northwest Association of Schools and Colleges;
- (f) Western Association of Schools and Colleges — Accrediting Commission for Senior Colleges.

The academic Bachelor's Degree referred to above must have been conferred at a time when such college or university was accredited or within 12 months of such accreditation. Otherwise, such applicant shall obtain a determination at the cost of the applicant by a credentials evaluation service or other professionals approved by the Board that the applicant's education is the equivalent of a Bachelor's Degree awarded by an accredited institution.

This section shall be applicable only to those applicants applying for admission to the Bar who enrolled in an accredited law school subsequent to April 28, 1988. For applicants who enrolled in an accredited law school subsequent to December 31, 1975, but prior to April 28, 1988, said applicants may, in the alternative to satisfaction of the requirements set forth above, successfully complete an examination designated by the Board evidencing attained knowledge equivalent to 120 semester hours of college study to be administered under the Board's supervision. Applicants who enrolled in an accredited law school prior to December 31, 1975 shall be governed by previous requirements under Section 22(a) of Article IV. (Satisfactory evidence of at least two years' in-residence undergraduate work if entry into law school was prior to December 31, 1960, or at least 3 years in-residence undergraduate work if entry into law school was subsequent to December 31, 1960, but prior to December 31, 1975, or the successful completion of a college equivalency examination to be administered under the Board's supervision.)

Graduation from any one of the following institutions: the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, the United States Coast Guard Academy, or the United States Merchant Marine Academy, will fully satisfy the requirement of this section.

Article 111, Section 1.a. as it would appear:

Section 1. No applicant shall be admitted to the Florida General Bar Examination unless he or she furnishes to the Board:

a. Satisfactory evidence that (1) the applicant has received an academic Bachelor's Degree granted on a basis of a four-year period of study in a college or university on the approved list of any one of the following regional accrediting associations: ~~or any Florida college or university approved by the~~ **Supreme Court of Florida:**

(a)(1) New England Association of Schools and Colleges:

(b)(2) Middle States Association of Colleges and Schools/Commission on Higher Education;

(c)(3) North Central Association of Colleges and Schools:

(d)(4) Southern Association of Colleges and Schools -- Commission on Colleges;

(e)(5) Northwest Association of Schools and Colleges:

(f)(6) Western Association of Schools and Colleges -- Accrediting Commission for Senior Colleges.

The academic Bachelor's Degree referred to above must have been conferred at a time when such college or university was accredited or within 12 months of such accreditation. Otherwise, such applicant shall obtain a determination at the cost of the applicant by a credentials evaluation service or other professionals approved by the Board that the applicant's education is the equivalent of a Bachelor's Degree awarded by an accredited institution.

An applicant will fully satisfy the requirement of this section upon furnishing to the Board satisfactory evidence of (1) graduation from a law school outside the United States which educationally qualifies the applicant for licensing to practice law in the country in which the law school is located and (2) graduation from a full-time accredited law school within the United States as prescribed by Article III, Section 1b.

This section shall be applicable only to those applicants applying for admission to the Bar who enrolled in an accredited law school subsequent to April 28, 1988. For applicants who enrolled in an accredited law school subsequent to December 31, 1975, but prior to April 28, 1988, said applicants may, in the alternative to satisfaction of the requirements set forth above, successfully complete an examination designated by the Board evidencing attained knowledge equivalent to 120 semester hours of college study to be administered under the Board's supervision. Applicants who enrolled in an accredited law school prior to December 31, 1975 shall be governed by previous requirements under Section 22(a) of Article IV. (Satisfactory evidence of at least two years' in-residence undergraduate work if entry into law school was prior to December 31, 1960, or at least 3 years in-residence undergraduate work if entry into law school was subsequent to December 31, 1960, but prior to December 31, 1975, or the successful completion of a college equivalency examination to be administered under the Board's supervision.)

Graduation from any one of the following institutions: the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, the United States Coast Guard Academy, or the United States Merchant Marine Academy, will fully satisfy the requirement of this section.

RATIONALE :

The change from Florida Bar Examination to General Bar Examination is required to implement the proposed amendment under Article VI, Section 1.

The proposed deletion of the language referencing the Court's authority to approve a college or university is intended to conform to the Court's practice of not evaluating nonaccredited educational programs. See Florida Board of Bar Examiners in re Hale, 433 So. 2d 969 (Fla. 1983); La Bossiere v. Florida Board of Bar Examiners, 279 So. 2d 288 (Fla. 1973). In fact, the Board has no record of the Court ever approving a college or university pursuant to this rule provision since its addition to the Rules in 1960.

The new language pertaining to foreign law school graduates is intended to conform the Rules to the Court's decision in Hale, supra. In that case, the Court announced the following modification to the educational requirement of Article III, Section 1.a.:

Our modification of section 1(a) relates solely to foreign law school graduates. If a foreign law school graduate is admitted to and graduates from an ABA-accredited or AALS law school with a J.D. or LL.B degree, we will not look behind the applicant's undergraduate degree to see if it conforms to the requirements of section 1(a). We will automatically waive section 1(a) in this limited instance.

Id. at 973. The Board recommends that the modification announced by the Hale Court should be referenced in the Rules.

Article IV, Section 11 as it currently appears:

Section 11. If any applicant or student registrant shall be dissatisfied with an administrative ruling of the Board not covered by Article III, Section 4, such applicant or student registrant may, within ten (10) days after receipt of written notice of the Board's action, file an appropriate petition with the Clerk of the Supreme Court of Florida for review of the Board's action. A copy of any such petition shall be served upon the Executive Director of the Board. The Board shall have fifteen (15) days after the service of said copy on the Executive Director in which to file a response to the petition with the Clerk of the Supreme Court of Florida and shall serve a copy thereof upon the applicant or student registrant. Service of a petition or response may be in person, by certified mail, or by registered mail. Thereafter, the matter shall be disposed of as the Court directs and any final action of the Court shall be duly entered in the minutes thereof.

Article IV, Sections 11 & 12 as they would appear:

Section 11. Any applicant or student registrant who is dissatisfied with an administrative ruling of the Board not covered by Article III, Section 4, may, within thirty (30) days after receipt of written notice of the Board's action, file with the Board a petition for reconsideration with a fee of \$20.00 as specified under the provisions of Article V, Section 12. Only one such petition for reconsideration may be filed.

Section ~~11~~. 12. If any applicant or student registrant shall be dissatisfied with an administrative ruling of the Board not covered by Article 111, Section 4, such applicant or student registrant may, within ~~ten (10)~~ thirty (30) days after receipt of written notice of the Board's action, file an appropriate petition with the Clerk of the Supreme Court of Florida for review of the Board's action. A copy of any such petition shall be served upon the Executive Director of the Board. The Board shall have ~~fifteen (15)~~ twenty-five (25) days after the service of said copy on the Executive Director in which to file a response to the petition with the Clerk of the Supreme Court of Florida and shall serve a copy thereof upon the applicant or student

registrant. **Service of a petition or response may be in person; by certified mail; or by registered mail.** Thereafter, the matter shall be disposed of as the Court directs and any final action of the Court shall be duly entered in the minutes thereof.

RATIONALE:

The proposed amendment creates a new section which sets forth the procedure and time limits by which an applicant or student registrant may petition the Board for reconsideration of an administrative ruling of the Board. The proposed amendment also extends the time limits involved in a petition to the Court. The 30-day time provision for filing a petition was selected to conform to the Florida Rules of Appellate Procedure. The 25-day time provision for filing the Board's response was selected to conform to the Florida Rules of Appellate Procedure (20 days for an answer brief and 5 days for mailing) and to allow sufficient time to prepare and circulate a response to the Chairman and Vice Chairman of the Board prior to filing with the Court. The provision requiring personal service or service by certified or registered mail has been deleted to conform to the Florida Rules of Appellate Procedure which allows service by regular mail.

Article V, Section 18 as it currently appears:

Section IS. Each request for a copy of any document or portion thereof filed by an applicant in the course of such applicant's seeking admission to the General Bar Examination or The Florida Bar or for any certificate of the Board shall be accompanied by a fee of \$15.00 for the first page and \$.30 for each additional page.

Article V, Section 18 as it would appear:

Section 18. Each request for a copy of any document or portion thereof, except for Form No. 1, Application for Admission to The Florida Bar, filed by an applicant in the course of such applicant's seeking admission to the General Bar Examination or The Florida Bar or for any certificate of the Board shall be accompanied by a fee of \$15.00 for the first page and \$.30 for each additional page. Each request for a copy of the Form No. 1, Application for Admission to The Florida Bar, shall be accompanied by a fee of \$25.00.

RATIONALE:

Applicants routinely request copies of their bar applications on file with the Board. By charging a standard fee for copies of the applications, there will be eliminated the need for the applicant to correspond twice with the Board: once to request the cost of purchasing the document and again to submit the appropriate fee. With this change, the applicant will be able to make the request and pay the fee at the same time. This will enable the staff to provide the requested copy to the applicant in a more timely fashion. Staff's time in calculating the proper charge for the copy and communicating such charge to the applicant will also be eliminated.

Article VI, Section 1 as it currently appears:

Section 1. The Florida Bar Examination shall consist of a General Bar Examination and the Multistate Professional Responsibility Examination (MPRE). An applicant may not submit to any portion of the Florida Bar Examination unless the undergraduate and law school educational requirements have been met pursuant to Article III, Section 1.

Article VI, Section 1 as it would appear:

Section 1. The Florida Bar Examination shall consist of a General Bar Examination and the Multistate Professional Responsibility Examination (MPRE). An applicant may not submit to any portion of the **Florida** General Bar Examination unless the undergraduate and law school educational requirements have been met pursuant to Article III, Section 1. An applicant may submit to the MPRE any time after matriculation at an accredited law school. Applicants are cautioned that successful completion of the MPRE must be within the 25-month period as set forth in Article VI, Section 9.a.

RATIONALE:

Presently, the Multistate Professional Responsibility Examination (MPRE) may only be taken after graduation from law school. The proposed amendment eliminates this restriction and authorizes the taking of the MPRE any time after matriculation at an accredited law school.

Due to the use of additional graders and computerization of the grade release process, the Board will be able to release the results from the General Bar Examination (GBE) in five weeks from the date of administration. The MPRE results, however, are released approximately seven weeks after the General Bar

Examination. Thus, there will be an interval of two weeks between the availability of the GBE results and the availability of the MPRE results.

Because of the intricate steps required to assure accurate reporting of examination results to the Court and individual applicants, it is undesirable for the Board to report separately the results of the GBE and MPRE within a two-week period. Otherwise qualified applicants may, therefore, be delayed for several weeks while the Board awaits receipt of the MPRE scores. The proposed amendment will eliminate this delay in that it is anticipated that most applicants will have successfully taken the MPRE prior to sitting for the GBE. Thus, the Board will be able to release the results of the GBE as soon as they become available.

The purpose of the MPRE is to measure an examinee's knowledge of the established ethical standards governing the legal profession. The examination is not designed to test for technical competence nor to determine an applicant's personal ethical standards. The MPRE is properly viewed as an awareness test to assure that bar applicants are familiar with the provisions of the ABA Code of Professional Responsibility, the ABA Model Rules of Professional Conduct and the ABA Code of Judicial Conduct.

In proposing this amendment, the Board is aware that the deans of the Florida law schools have objected in the past to allowing law students to take the MPRE prior to graduation. The deans' objection apparently rests on a fear that preparation for the MPRE will interfere with the scholastic pursuits of their students. The MPRE, however, is two hours and five minutes in length and consists only of 50 multiple-choice test questions. The Board respectfully submits that such an examination, which covers the narrow subject of the ABA ethical standards for the legal profession, should have little or no adverse impact on the studies of a law student.

Because the MPRE is only an awareness examination and not a measurement of technical competence, passage was never intended to cause delays in the admission to the bar of an otherwise qualified applicant. A large majority of the examinees are recent law school graduates who currently are not eligible to take the MPRE for use in Florida until the month after the General Bar Examination. If adopted, the proposed amendment would provide an applicant with several opportunities for passage of the MPRE prior to graduation.

Furthermore, the MPRE is administered by the National Conference of Bar Examiners three times per year at test centers across the country. In **1988**, the MPRE was offered nationally at over **140** different test centers including **10** test sites in Florida.

Based on this large number of administrations of the MPRE each year, there can be no absolute assurance of a consistent and errorless administration of the examination for all examinees. Facilities and administrators obviously differ from one exam site to the next. Over the years, the Board has received a few complaints from examinees regarding the facility or accommodations at a particular MPRE test center. The significance of any problem at a particular MPRE administration is lessened if the applicant has several opportunities for passage of the exam prior to graduation from law school.

The Board would also advise the Court that the overwhelming majority of jurisdictions using the MPRE allow it to be taken in law school. In a survey of those jurisdictions conducted by the Board in September **1988**, **29** jurisdictions indicated that the MPRE may be taken prior to law school graduation while **3** jurisdictions indicated that the exam may be taken only after graduation.

The Board reaffirms its continuing opposition to allowing senior law students to submit to the General Bar Examination as permitted in other jurisdictions. The General Bar Examination in Florida consists of the Florida part and the Multistate

Bar Examination (MBE) and is designed to test technical competence by measuring "the applicant's ability to reason logically, to analyze accurately the problem presented, and to demonstrate a thorough knowledge of the fundamental principles of law and their application." Article VI, Section 1.a. of the Rules.

Unlike the MPRE, the Board submits that the General Bar Examination should be offered only after graduation from law school which will require the applicant to synthesize the three years of legal studies and to recognize the interrelation of the various divisions of the law. The submission of this rule amendment is not intended to stand as precedent for changes in the timing of the General Bar Examination.

Lastly, the rule amendment still requires that the MPRE must be successfully completed within the 25-month period as set forth in Article VI, Section 9.a. of the Rules. The Board submits that by maintaining the 25-month requirement, it is likely that the MPRE will be taken late during an applicant's law school education and most probably during the third year.

MAJORITY REPORT
RECOMMENDATION AGAINST RELEASE OF
EXAMINEES' NAMES TO INDIVIDUAL LAW SCHOOLS

The deans of the Florida law schools have asked that the Florida Board of Bar Examiners provide them, by name, the performances of their graduates on the bar examination. The stated purpose for the information sought by the Florida deans is to evaluate the effectiveness of their schools' curricula and instruction. Presumably, an effort would be made to correlate a former student's performance on a subject of the bar examination with that student's performance in the course for that subject in law school. At present, the Board provides the Florida schools the overall pass rate of each school's graduates on the examination. The pass rate of graduates from all non-Florida schools is published as a single statistic; individual schools are not identified.

Section 15 of Article V of the Constitution of the State of Florida vests the Court with exclusive jurisdiction to regulate the admission of persons to the Bar. The Supreme Court of Florida has charged the Board with the responsibility to ensure that persons admitted to practice law in Florida have in fact fulfilled the educational requirements and have met the standards of character and fitness. The Board's charter is carefully prescribed: to ensure the qualifications of admittees to the Bar. While the work of the Board and the activities of the law schools share some common ground, the Board's ultimate responsibility is limited to the scope of its charter from the Court.

Neither the Court nor the Board needs proof that the bar examination is a stressful ordeal for examinees. A certain stigma inevitably follows those examinees who are unsuccessful in passing the bar examination. Historically, the Board has to some extent ameliorated these pressures by assuring confidentiality to the applicants. Section 14 of Article I of the Rules of the Supreme Court of Florida Relating to Admissions to the Bar provides for the release of information about applicants in only carefully limited instances.

A majority of the members of the Board has expressed concern that the law schools may be unable to assure confidentiality of examinees' identities. One scenario which may arise is when a law school relies upon former students' bar examination performances to deny or revoke tenure of an ineffective instructor. Procedural due process may well entitle that instructor to that information.

The Court and the Board have made every effort over the years to ensure that the Board and its activities are conducted independently and impartially. To that end, the Board's ties and communications with the law schools must be at a certain distance. The disclosure of examinees' names in addition to their scores may diminish the perception of the Board's independence and impartiality.

The majority of the Board members feels that the examinees' identities should remain confidential and should not be disclosed to their law schools. The majority recommends, however, that the Board be authorized to share additional information with the law schools about the

performance of the schools' graduates on the bar examination. The Board presently has the computer capability to furnish each examinee's performance on each subpart of the Multistate Bar Examination; on each subject tested under Part A, the Florida segment of the general bar examination; and on the Multistate Professional Responsibility Examination. The majority recommends that this information, in addition to the overall pass rates of graduates of each Florida school and the pass rate of out-of-state students, be made available to all law schools, both within and outside of Florida, upon request. If experience over an appropriate length of time demonstrates that this additional information is insufficient to achieve the law schools' stated purposes of improving the quality of curricula and faculty, then the disclosure of examinees' names can be reconsidered, along with appropriate assurances from the law schools that those identities will remain confidential.

**MINORITY REPORT
RECOMMENDATION IN FAVOR OF RELEASE OF
EXAMINEES' NAMES TO INDIVIDUAL LAW SCHOOLS**

INTRODUCTION

The request of the Deans of the Florida law schools that information reflecting the performance of individual students on the bar examination be released to the respective law schools for confidential use has been addressed several times. The Board has previously come down on both sides of what is obviously a substantive policy issue. Currently, the schools receive the same information which the Court makes public: each school's passing percentage.

There is a spirit of cooperation between the schools and the Board which has historically not always existed. The current attitude of the legal educators appears to more comfortably embrace the notion that law schools have some responsibility for preparing a student for the practicalities and realities of law practice as well as training in the rigors of legal scholarship.

To the extent that various schools have now expressed interest, and sometimes concern, over the performance of their students on the bar exam, the ability to analyze the performance of their students can provide a helpful tool for appropriate modifications of emphasis and curriculum, as well as a possible tool for evaluating the performance of professors and instructors. The schools are otherwise unable to obtain this information, since it is now only released to

the student/applicant, who no longer has a relationship with the school.

The areas of concern which have been advanced for not providing this information are:

- (1) The release would violate the privacy of the student or the confidentiality of the Board's function.
- (2) The release could be misused by the law schools either through publication or use as a promotional or recruiting tool.
- (3) The release might create liability or exposure by the Board and Court from parties unhappy with the use of the information by law school administrators, e.g., a disgruntled professor denied tenure by a school based on consistently poor performance on bar exams by students trained in areas taught by the professor.
- (4) The release may result in criticism of the examination itself as an inadequate or faulty method of determining minimal competency, i.e., that this is a means for law school deans to assail the quality of the heretofore inviolable bar examination.

DISCUSSION

The benefits to legal education of advising the law schools about the performance of their former students seem evident. Only with meaningful input, determined by performance, can a valid evaluation of curriculum and teaching methods be made. The arguments against releasing the

requested information are more defensive or negative in nature, and will be addressed in the order set forth in the introduction:

(1) Confidentiality. The thrust of this argument is that the permission of each applicant would have to be received to release examination information. Article I, Section 14 provides that "examination material" and all other materials are confidential except as authorized by the Court. Applicants who are successful become a matter of public record, so that those unsuccessful applicants are determinable. The private rights of an individual as it relates to a particular score, rather than to those passing or not passing, does not appear to be material. The Court clearly has the right and the power to make public an individual's performance on the bar exam. It is certainly able to authorize **the** confidential release of **the** details of the same information to the applicant's law school.

(2) Misuse of information to "rate" law schools. First, of course, the information is being released confidentially. Additionally, the Court currently advises the public of the passing percentages of each of the state-based law schools and collectively of all out-of-state schools. The currently voiced concern of the law school deans is that this information may be misunderstood and misconstrued by the press and public as a reflection of the quality of a law school. In fact, attached is a modification of a disclaimer prepared by the law school deans to defuse any notions of ranking law schools based solely on passing percentages. There is no

realistic means of assuming that a more comprehensive release of exam information may not be misused, although the general feeling is one of constructive support from the law schools, not of efforts to attack or embarrass the admissions process. In any event, given the disclaimers which law schools currently make about passing percentages as a reflection of the quality of the law school, it seems highly unlikely that any misuse would be made of more specific grade information.

(3) Liability for grade release. One concern voiced about the release of grades is that a person affected by that release, e.g., a professor denied tenure, could initiate action against the Board or Court, presumably for wrongfully interfering with his relationship with the school. Obviously any element of a cause of action requiring some intent to harm an individual is lacking in a simple release of exam performance. One can reflect on the realistic likelihood of this scenario arising, vis a vis other possible life events, such as a lightning strike, or a sinkhole, or cancer, as a serious consideration in making decisions on a course of action. The underlying concern of some members of the Board is that revelation of individual performances could lead to a questioning of the efficacy of the test itself, which will be discussed more fully in the next section.

(4) Criticism of exam. With all, due respect to those opposing the release of detailed exam information to the law schools, the impression is unavoidable that the greatest underlying concern is that the validity of the bar exam itself

could be challenged, if its results proved out of line with law school performance.

Experience lends this fear little support. Half of the general bar exam, the Multistate Bar Examination (the "MBE"), is an objectively graded multiple-choice exam formulated by the National Conference of Bar Examiners. In over fifteen years of administration, it has proven to be a valid testing instrument and the correlation between satisfactory performance on the MBE and in law school is high. It must be borne in mind (and adds to the defusing of any attack on the bar exam) that performance on the bar exam is only intended, by both its formulators and test-takers, to achieve a threshold -- a level of minimal competency -- rather than a discrete ranking of relative performance. Applicants approach the bar exam from widely differing perspectives. Some prepare compulsively for the exam, declining employment until it is behind them. Others take it in stride, relying largely on their academic preparation in law school. Obviously these varying factors will undercut the utility which law school deans may make of the results, but the Court is not being asked to decide how valuable a detailed grade release may be, it is merely being asked to broaden the information currently provided, as raw data, so others can attempt to use it constructively.

As the Court knows, the Board expends great effort to insure a fair, yet appropriately discriminating bar exam. The correlation between performance on the MBE and the portion of the exam devised by the Board is remarkably high. For

example, from each applicant pool, the Board invites and the Court appoints several lawyers each year as "readers," to assist in grading of the exam as well as assisting in the formulation of questions and attendant research. There is a very high correlation in these applicants among their LSAT's, law school performance and their scores on both portions of the bar exam, as there is among applicants who fare less well on the exam.

CONCLUSION

Although a slim majority (by the latest vote) has declined to recommend a more comprehensive grade release, there is no sentiment on the Board that our existing testing mechanism is either inadequate or vulnerable. Rather, there may be a sense that the Board and Court have better things to do than defend new assaults on the testing procedures occasioned by a more extensive grade release.

Whatever credit these practical notions may be due, a substantial percentage of the Board believes that granting the requests of the law school deans should not only be of benefit to legal education, but should further foster emerging good relations between the Board and the law schools, and allay, rather than increase, any concerns about the validity of the Bar Examination process as a test of minimal competency to practice law. With any luck, the improvement of legal education will improve the quality of lawyers admitted to practice in Florida.

MODIFICATION OF DISCLAIMER

The enclosed results reflect the performance of individuals on the (insert date) bar examination administered by the Florida Board of Bar Examiners. These statistical data do not represent an evaluation of the listed law schools. *

*To be attached to statistics of passing percentages.