IN THE SUPREME COURT OF FLORIDA

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. 73,412

RESPONSE TO PETITION OF FLORIDA BOARD OF BAR EXAMINERS

The undersigned Deans of the Florida law schools (the "Deans") respond to the above styled Petition as follows:

1. Release of Examinees' Names on A Confidential Basis

(a) In its Petition for Amendment of Rules of the Supreme Court of Florida Relating to Admissions to the Bar (the "Petition"), the Florida Board of Bar Examiners recommends that the Rules be amended to permit the release to the law schools of additional statistics concerning their graduates' performance on the General Bar Examinations. These additional statistics would consist 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 all examinees as a group for each subject. As stated in the Petition, a majority of the Board rejected the request of the Deans that individual scores and the names of the individual examinees also be released to the Deans for confidential use by each law school. Because of the lack of consensus among Board members, however, the Board has submitted the Deans' request to the Court, accompanied by the majority and minority reports on this issue which are attached to the Petition as Exhibits "B" and "C."

(b) The majority report submitted by the Board, while rejecting the Deans' request for release of individual examinees' names and scores, indicates the willingness to reconsider the matter of disclosure of examinees! names should experience with the additional statistics now recommended for release demonstrate the insufficiency of this additional information for achievement of the law schools' stated purposes. The Deans submit that experience already has proven that the statistics now being recommended for release are insufficient and that only the confidential release of individual examinees' names with their scores on each subject will suffice for the purpose of evaluation of the schools' curricula, instruction, admission standards, and other policies relevant to performance on the bar examination.

The additional statistics which the Board now proposes to release can be used by the schools to determine whether, on a particular examination, their graduates as a group have a lower pass rate on some sections of Part A or Part B of the General Bar Examination than on others. Because they describe the graduates! collective performance only, however, these statistics cannot assist the schools in identifying the reason(s) for sub-par performance on particular sections. Without individual examinees' names and scores, it is impossible to determine, for

example, whether those scoring poorly on a given section (e.g., Florida Constitutional Law) have taken the relevant course while in law school and whether there was a difference in the pass rates of those who took the course and those who did not. If, on the other hand, a school's graduates as a group have performed relatively poorly on all or most sections of the Examination, it is impossible to identify whether the problem should be attributed to the school's admission standards, to the combination of courses taken (e.g., over-participation in clinical offerings as opposed to substantive law courses), or to some other identifiable cause, unless individual names and scores are available for correlation with factors such as entering credentials, courses taken, and law school performance.

Statistics related to performance on the various sections of the bar examination are virtually useless to the law schools unless it is possible to identify those students who performed poorly and those who performed well. Only release of individual examinees' names with their scores is sufficient for this purpose and the in-depth evaluation this identification makes possible.

(c) A majority of the Board has expressed concern about the ability and/or willingness of the law schools to protect the confidentiality of examinees if their names are released. The Deans appreciate the need for confidentiality and reiterate their long-standing and good faith intention to assure that confidentiality is maintained. The Florida law schools currently are required by law to protect the confidentiality of student-related data in other contexts; there is no indication that their procedures have been ineffective in this regard.

In order to meet the specific concerns of the majority of the Board in this case, the Deans are prepared to draft certain guidelines to be followed by the Florida law schools with respect to the data they are requesting the Board to release. These guidelines could cover matters such as the use to which the data may be put; the maximum number and level of personnel who will be permitted access to the confidential data; the conditions under which such data will be maintained by the schools (e.g., segregation from graduates' permanent student records); and the point at which such data would be destroyed by the schools (e.g., three months after their release to the school). Until these guidelines are on file with the Board of Bar Examiners, the law schools would not expect the confidential data to be released.

The Deans respectfully submit that confidentiality can and should be maintained through the adoption of such a set of protective guidelines rather than through prohibiting the release of information which could significantly enhance the law schools' ability to evaluate their curricula, instruction, and policies, in light of the minimum standards for admission to the bar applied by this state.

(d) The fear expressed in the majority report that release of the requested information might jeopardize the perception of the Board's independence and impartiality is puzzling. The mere supplying of information need not -- indeed, does not -- imply interaction as to the substance of the bar examination or the Board's procedures or recommendations regarding admission to the Bar. In contrast to the majority's emphasis on maintaining a certain "distance" between the law schools and the Board, the Deans strongly believe that an even closer degree of cooperation is essential on the part of the schools and the Board, both of which bear a heavy responsibility for assuring the ethical as well as technical competency of those entering the practice of law. Enabling the schools to perform their jobs better can only benefit the examinees and the public.

(e) Finally, if a concern exists that the law schools will use the information requested to bring into question the validity

of the bar examination itself, that concern surely is unwarranted. The Deans have no such intention. The Board's own studies and statistics indicate that law school performance is the best predictor of performance on the General Bar Examination. As they have repeatedly stated, the Deans request the release of the data only in order to ensure proper evaluation of their own programs and the improvement of their graduates' performance on the General Bar Examination.

2. Administration of the Multistate Professional Responsibility Examination

(a) In its Petition, the Board requests that Article VI, Section 1 of the Rules of the Supreme Court relating to Admissions to the Bar be amended to allow applicants to take the Multistate Professional Responsibility Examination ("MPRE") before graduating from law school. The Deans urge that the request of the Board not be granted.

(b) The Deans object to the Board's request because it would allow students to prepare for and to take the exam while enrolled in law school courses. The time devoted to the preparation for this exam and to the taking of the exam would detract from the law school educational experience. The MPRE is given three times each year -- mid-March, mid-August, and mid-November. The March and November dates and times conflict with law classes at virtually every school in the country, and the August date conflicts with classes at some schools. This means that many of the students who would take the MPRE before law school graduation would have to "cut" classes to do so. Also, of course, study and preparation for the exam would interfere with regular law school course work. Students would be absent from class before and during the MPRE and would devote less time than usual to their law school course work throughout the weeks prior to the exam and through the examination itself. The Board asserts in its Petition that the MPRE is "properly viewed as an awareness test," rather than a test "for technical competence." Apparently, this assertion is intended to support the claim that students are not required to spend substantial time in preparation for the MPRE. But the experience of the Deans is to the contrary. There is good reason to believe that law students would spend a disproportionate amount of time preparing for the MPRE, since they view the test as the first real hurdle to be overcome in their progress toward admission to the Bar.

(c) Law Schools are very serious about class attendance. Class attendance requirements in many schools would be violated as a result of the Board's proposed change in Article VI, Section 1. The American Bar Association also considers class attendance a very serious matter. Its law school accreditation standards require regular attendance by law students, and these rules are very specific about the exact number of class hours which each law student must attend in order to graduate. An indication of its concern is the ABA's recently proposed a modification in the accreditation standards to require law schools to minimize travel by students during class days for the purpose of job interviews. The accreditation inspections of law schools by the ABA and the Association of American Law Schools invariably inquire whether the schools are insisting upon regular class attendance by students. In effect, the proposed change would officially sanction the cutting of classes by students, and would amount to an intrusion into the efforts of the law schools to require regular attendance by their students.

WHEREFORE, the Deans request entry of an order (1) amending the Rules to permit the release of the bar examinees' names and their individual scores to the law schools on a confidential basis; and (2) maintaining the present Rule requiring that an applicant may not submit to any portion of the Florida Bar

Examination (including the MPRE) unless law school educational requirements have been met.

DATED this 26th day of January, 1989.

Respectfully submitted,

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