IN THE SUPREME COURT OF FLORIDA

FILED
SID J. WHITE
OCT 30 1997
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

FLORIDA BOARD OF BAR EXAMINERS RE AMENDMENT OF RULES OF THE SUPREME COURT RELATING TO ADMISSIONS TO THE BAR

Case No. 91,713

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 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 Relating to Admissions to the Bar (hereinafter referred to as the Rules).

2. By this Petition, the Board seeks to amend Rule **2-13.1** and to create Rule **3-22.7** to require a public hearing for bar applicants who were previously disbarred or who resigned with pending disciplinary proceedings. A related proposed change to Rule **3-23.7** would require the readmission of disbarred and resigned attorneys by public order of the Supreme Court of Florida.

The Board also seeks to amend Rule **4-13** to allow law students to sit for the Multistate Professional Responsibility Examination (MPRE). Another proposed amendment under Rule **4-33.2** would increase the passing score for the MPRE from **70** to **75** effective January **1, 1999** and from **75** to 80 after December **31, 1999.**

The Board also seeks to amend Rule **3-14.6** to reduce the number of days for a registrant to respond to an inquiry from the Board from **120** days to **90** days. Such change will result in the same deadline for both applicants and registrants.

The Board also seeks to amend Rule **3-23.2** by adding provisions regarding an applicant's procedural due process rights at a formal hearing and the level of proof at a formal hearing arising from determinations and judgments of guilt for criminal offenses.

The Board also seeks to add two new sections to Rule **1-63** regarding the Board's current practices as to the information that may be divulged to third parties during the Board's background investigation (Rule **1-63.8)** and the public nature of the names of bar applicants who have been approved for admission by the Court (Rule **1-63.9)**.

The Board also seeks to amend Rule **2-26.3** to correct an anomaly regarding the amount of fee to be paid by registrants who have failed to convert their application within five years.

The Board also seeks to reduce the defective filing fee under Rule **3-14.3** from the current **$250** to **$100**.

The Board also seeks to implement several housekeeping changes.

3. Attached hereto as the Appendix is a compilation of those provisions of the Rules that are proposed to be amended. The attached Appendix contains the proposed rule amendments reflecting the additions and the deletions. A brief narrative

explanation of the rationale for each proposed rule amendment is also provided.

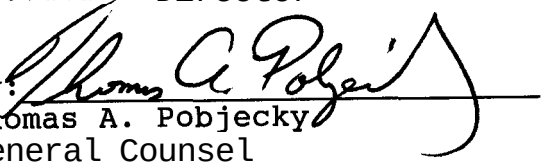
WHEREFORE, the Board requests an order amending, confirming and adopting the amendments to the Rules that are reproduced and attached to this Petition as the Appendix. The Board recommends that the new rules become effective upon entry of the order of the Court except for the revised provisions of Rules 2-13.1, 3-22.7 and 3-23.7 which shall only apply to those bar applications filed after the date of the Court order.

DATED this 30th day of October, 1997.

Respectfully submitted,

FLORIDA BOARD OF BAR EXAMINERS
LEIGHTON D. YATES, JR., CHAIR

Kathryn E. Ressel
Executive Director

By: 
Thomas A. Pobjecky
General Counsel
Florida Board of Bar Examiners
1891 Eider Court
Tallahassee, FL 32399-1750
(904) 487-1292
Florida Bar #211941

Copy furnished to:
John F. Harkness, Jr., Executive Director, The Florida Bar
Deans of the Florida Law Schools
Edwin A. Scales, Chair, Student Education and Admissions to the Bar Committee

APPENDIX

[Additions are underlined; deletions are ~~struck through.~~]

Rule 1-63.8 as it will appear if enacted:

1-63.8 Third Parties. The Board may divulge the following information to all sources contacted during the background investigation:

name
former names
date of birth
current address
Social Security number.

RATIONALE:

The Board's practice has been to include certain identifying data on inquiry forms sent to sources during the background investigation. The current name has always been included and other data is sometimes included, including former names, date of birth, current address, and Social Security number. These items are used to ensure proper identification. This proposed rule change codifies the Board's practice regarding the information that may be divulged to sources contacted during the background investigation.

Rule 1-63.9 as it will appear if enacted:

> **1-63.9 List of Candidates.** Following the Board's recommendation under Rule 5-10 and the Court's approval for an applicant's admission to The Florida Bar, such applicant's name and mailing address shall be public information.

RATIONALE:

The Board's practice has been to make the list of names of bar applicants available to the public following approval by the Court for admission to The Florida Bar. This proposed rule change codifies the Board's practice. The Board's practice is consistent with The Florida Bar's practice of publishing the names and addresses of its members.

Rules **2-11.1**, **2-11.2** and **2-11.3** as they will appear if amended:

2-11.1 Educational Qualification. To be admitted into the Florida Bar Examination and ultimately recommended for admission to The Florida Bar, an applicant must have received the degree of Bachelor of Laws or Doctor of Jurisprudence from an accredited law school (as defined in **4-13.2)** at a time when the law school was accredited or within **12** months of accreditation or be found educationally qualified by the Board under the alternative method of educational qualification. Except as provided in Rule **2-11.2**, none of the following shall be substituted for the required degree from an accredited law school:

(a) private study, correspondence school or law office training;

(b) age or experience;

(c) waived or lowered standards of legal training for particular persons or groups.

2-11.2 Alternative Method of Educational Qualification. For applicants not meeting the educational qualification above, the following requirements shall be met: **(1)** evidence as the Board may require that the applicant was engaged in the practice of law in the District of Columbia or in other states of the United States of America, or in practice in federal courts of the United States or its territories, possessions or protectorates for at least **10** years, and was in good standing at the bar of said jurisdictions in which the applicant practiced; and **(2)** a representative compilation of the work product in the field of law showing the scope and character of the applicant's previous experience and practice at the bar, including samples of the quality of the applicant's work, such as pleadings, briefs, legal memoranda, contracts or other working papers which the applicant considers illustrative of the applicant's expertise and academic and legal training. The representative compilation of the work product shall be confined to the applicant's most recent **10** years of practice and shall be complete and include all supplemental documents requested. In evaluating academic and legal scholarship the Board is clothed with broad discretion.

(a) Deadline for Filing Work Product. To be considered timely filed, the work product shall be complete with all supplemental documentation as required and filed by the filing deadline of the General Bar Examination as set out in Rule

4. Work Products initially filed incomplete and perfected after the deadline shall not be considered as timely filed. Late or incomplete work products will be given consideration for admission into the next administration of the bar examination for which the deadline has not passed.

(b) Acceptance of Work Product. If a thorough review of the representative compilation of the work product and other materials submitted by the applicant shows that the applicant is a lawyer of high ability and whose reputation for professional competence is above reproach, the Board may admit such applicant to the General Bar Examination and accept score reports from the National Conference of Bar Examiners or its designee.

~~**2-11.3 Unacceptable Educational** Substitutes. None of khe following **shall** Be substituted for law school training:~~
~~---(a) **private study,** correspondence school or~~ law ~~office **training;**~~
~~---(b)~~ age ~~**or** experience;~~
~~---(c)~~ waived ~~or lowered standards of legal **training** for **particular** persons or **groups.**~~

RATIONALE:

As a result of the June **1997** reconfiguration of the rules, the provisions of Rules **2-11.1** and **2-11.3** were separated. This housekeeping change will eliminate potential confusion by rejoining such provisions.

Rule 2-13.1 as it will appear if amended:

> **2-13.1 Disbarred or Resigned Pending Disciplinary Proceedings** A person who has been disbarred from the practice of law or has resigned pending disciplinary proceedings shall not be eligible to apply for a period of 5 years from the date of disbarment or 3 years from the date of resignation or such longer period as set for readmission by the jurisdictional authority.
> Once eligibility has been established and following completion of the Board's background investigation, such person shall be required to appear for a formal hearing that is open to the public as provided by Rule 3-22.7.

RATIONALE:

Confidentiality is an important aspect of the bar admissions process in Florida. *See* Rule 1-60 of the Rules of the Supreme Court Relating to Admissions to The Florida Bar; and Rule 2.051(c)(8) of the Rules of Judicial Administration. As the Court observed in the case of *Florida Board* of *Bar Examiners re Applicant,* 443 So.2d 71, 75-76 (Fla. 1983):

> It is imperative for the protection of the public that applicants to the Bar be thoroughly screened by the Board. Necessarily, the Board must ask questions in this screening process which are of a personal nature and which would not otherwise be asked of persons not applying for a position of public trust and responsibility. * * * The fact that the information obtained in response to the Board's inquiry is held in confidence by the Board and by this Court minimizes the intrusion on an applicant's privacy.

The issue of confidentiality has been considered by the Supreme Court and the Board on several occasions over the years. Most recently, the Court considered a proposal by two attorneys who represent applicants before the Board to open all records in the possession of the Board for public inspection. *Florida Board* of *Bar Examiners* ***re*** *Amendment to Rules,* 676 So.2d 372 (Fla. 1996).

In rejecting such proposal, the Court reasoned:

While article I, section 24 of the Florida Constitution affords access to public records of the judicial branch, it also provides that "[r]ules of court that are in effect on the date of adoption of this section that limit access to records shall remain in effect until they are repealed." Art. I, § 24(d), Fla. Const. Before this constitutional provision received voter approval in the November 1992 election, this Court adopted Florida Rule of Judicial Administration 2.051, concerning public access to judicial records. ***Amendments to Fla. R. Jud. Admin.-- Public Access to Judicial Records,*** 608 So.2d 472 (Fla. 1992) [hereinafter ***Public Access].*** The rule specifically provides that "all court records presently deemed to be confidential by court rule, including the Rules for Admission to the Bar" shall be confidential and therefore exempt from public access under the constitutional provision. Fla. R. Jud. Admin. 2.051(a)(8).

At the time that the Court adopted rule 2.051, we denied the requests of several individuals and groups that we open even more judicial records to public access. ***Public Access,*** 608 So.2d at 473. We explained that while the constitutional provision prohibits the Court from enacting a new rule that would close any records, we still have "flexibility to open such additional records in the future as may be in the best interest of the public and the judicial system." ***Id.*** The Court refused to open other judicial records where we were "unsure whether or not the opening of these additional records could have the effect of damaging or disrupting the judicial system." ***Id.***

We exercise the same restraint in the instant case. We have previously expressed our concern that "unless the [B]oard's investigative files are held in confidence, many of those from whom the [B]oard seeks information concerning applicants would be unwilling to candidly respond." ***Florida Bd. of Bar Examiners re Rules of the Supreme Court Relating to Admission to the Bar,*** 581 So.2d 895, 897 (Fla 1991). Here, the Board has only proposed that documents filed on an applicant's behalf and which would be independently available to the applicant be accessible to the applicant without consent of the party submitting them. Documents not otherwise available to an applicant will still only be released with the written consent of the submitting party. Other documents in the possession of the Board shall remain confidential under the amended rule, and shall only be available to an applicant if tendered to the Board at an investigative or formal hearing. This is consistent with our prior interpretation of article I, section 14, ***id.,*** and our previous determination that "[l]ittle, if anything, would be gained from such a rule [making public the record of an applicant], and much could be lost." ***Florida Bd.*** of ***Bar Examiners re Amendment to Rules Relating to Admission to the Bar,*** 451 So.2d 1384, 1384 (Fla. 1984).

Rules, supra, 676 So.2d at 374.

The proposed rule amendment provides a limited exemption to bar admissions confidentiality and requires a public formal hearing for all bar applicants who were previously disbarred or who resigned with pending disciplinary proceedings. In recommending this proposal, the Board notes the following factors supporting the conclusion that bar applicants seeking readmission following disbarment or resignation do not share the same expectation of privacy as other applicants.

First, disbarred and resigned attorneys are the recipients of a previous order or judgment issued by the Court confirming their disbarment or resignation. Rule 3-7.7(a)(2) and (c)(6) of the Rules Regulating The Florida Bar. For the disbarred attorney, the record produced at the trial before the referee is also public information. Rule 3-7.1(a) of the Rules Regulating The Florida Bar. For the resigned attorney, the creation of such a public record was knowingly waived. Thus, if the process by which an individual was disbarred or resigned from the practice of law is public information, then it is reasonable for the process by which such individual seeks readmission to also be a matter of public record.

Furthermore, pursuant to the Rules Regulating The Florida Bar, the hearing for a suspended attorney petitioning for reinstatement is open to the public at which any "interested persons, or any local bar association may appear before the referee in support of or in opposition to the petition...." Rule 3-7.10(h)(2). It is incongruous for the less serious case of a suspended attorney seeking reinstatement to be open to the public while the more serious case of a disbarred attorney seeking readmission is closed to the public. The proposed rule amendment will correct this incongruity.

The views of the Court on the openness of bar disciplinary proceedings provide further justification for the amendment being

proposed by the Board. In **1990,** the Court was confronted with differing proposals from the Board of Governors and the Disciplinary Review Commission regarding the degree of confidentiality of the grievance process. In rejecting the Bar's more restrictive proposal in favor of the Commission's more open proposal, the Court reasoned: "[P]ublic respect and confidence in the primarily self-operated lawyer disciplinary system can best be gained by allowing the public to determine for itself that the grievance system works efficiently, fairly and accurately." ***The*** *Florida Bar re Amendments,* **558** So.2d **1008, 1009** (Fla. **1990).** Such reasoning applies equally to the process by which a previously disbarred or resigned attorney seeks readmission to the practice of law.

Lastly, the proposed rule amendment complements the Court's current efforts to increase access to the courts as recommended by the Judicial Management Council. Specifically, Chief Justice Kogan's Access Initiative involves a comprehensive set of reforms designed to open the courthouse doors to Florida's citizens.

The proposed rule amendment would be applicable to bar applicants who were disbarred or who resigned from the practice of law in either Florida or a foreign jurisdiction. The Board will be sensitive to the confidentiality of other bar applicants by scheduling formal hearings for disbarred attorneys at either a different day or a different place from when or where other applicants will be present for their hearings before the Board. It is further recommended that this confidentiality exemption be applied only to disbarred and resigned attorneys whose applications are received by the Board after the effective date of the amendment.

Rule **2-26.3** as it will appear if amended:

2-26.3 Registrant Converter Fee. Applicants who did register as a law student with the Board and who have not been admitted to the bar in any jurisdiction for a period in excess of 12 months (time spent in military service of the United States not to be included as part of said **12** months) shall file with the initial application (Form 1-A or Form **2)** the €ee ~~of~~ ~~$375.00~~ applicable fee.

(a) Less than **5** years. If filed within **5** years of the filinq date of the oriqinal application filed under reqistrant status, a fee of **$375** is applicable.

(b) More than **5** years. If filed more than **5** years since the filinq of the oriqinal application filed under reqistrant status, reqistrant status is void and the full application fee of **$875** (less reqistrant fee previously paid) is applicable as set forth in Rule **2-26.2.**

RATIONALE:

Under current policy, a person who registers with the Board and completes the student registration process may convert that registration into an application for admission by filing Form 2 and paying the **$375** converter fee. When a student registration is filed, a limited background investigation is done. The complete investigation is done when the student registration is converted to an application. In the majority of cases, conversion takes place within **2-4** years coinciding with the completion of law school. The converter fee of **$375** generally compensates the Board for the further processing of these converted applicants. Where conversion occurs beyond the usual **2-4** years, typically the registrant has been admitted and is practicing in another jurisdiction. In those cases, the then current practicing attorney fee applies (less the registration fee previously paid). The

escalating fees for practicing attorneys compensate the Board for the extended period of time elapsed since registrant processing occurred.

Another variation occurs, however, when registrants seek to convert after the usual 2-4 years, but have not been admitted in any other jurisdiction. Such situations place the registrant in the converter category owing the $375 fee, which does not adequately cover processing costs incurred for time spans greater than 2-4 years. For example, an individual recently reapplied who previously registered with the Board in 1974 paying the $25 fee in effect at that time.

This registrant, who has not been admitted in another jurisdiction, submitted a Form 2 and the $375 converter fee in 1997. Under the current rules, this application must now be processed for a fee that will be grossly inadequate to cover the expenses that will be incurred investigating a 23-year time span. The proposed rule amendment will correct this anomaly.

The stale file fee authorized by Rule 2-29 is unavailable to address the situation described above. Such fee does not apply to registrants in that, pursuant to Rule 2-21.3, the Form 1 is not considered an application for admission into the Bar until it has been converted from a student registration.

Registrant fees and discounts are established to provide an incentive for applicants to file early, enabling the Board to conduct a limited investigation prior to the applicant's conversion. This is cost effective and timely within a span of 2-4 years. However, when the time span exceeds 5 years, much of the investigative process must be repeated and a significant amount of time lapse must be addressed. Additionally, processing costs increase, and it becomes equivalent to processing an application submitted for the first time. Inasmuch as the Board loses the benefit of early processing, it is appropriate to

nullify an individual's status as a registrant when the conversion exceeds 5 years from the filing of the original application under registrant status.

Rules 2-29 it will appear if amended:

> **2-29 Stale File Fee.** Applicants whose Bar Application has been on file for more than ~~3~~ years shall be required to file a new Bar Application answering each item for the period of time from the filing date of the last application filed to the date of the filing of the new application including submitting current references, a fingerprint card, and the applicable fee.
>
> **(a) If within 5 Years.** If filed within 5 years of the filing date of the last application filed, a fee of $425.00 is applicable.
>
> (b) **If more than 5 Years.** If filed more than 5 years after the filing date of the last application filed, the full application fee under 2-26.3 ~~2~~ or 2-26.5 ~~4~~ above is applicable.

RATIONALE:

As a result of the June 1997 reconfiguration of the rules, Rule 2-29(b) referenced incorrectly two other rules. This housekeeping change corrects such error.

Rule **3-14.3** as it will appear if amended:

> **3-14.3 Defective Applications.** A bar application initially filed in a defective condition, e.g., without notarization, or supporting documents, or having blank or incomplete items on the application may delay the initiation or the processing of the background investigation. Bar applications (Form **1** or Form **2)** filed in a defective condition shall be accepted but a fee of ~~**$250.00**~~ **$100.00** shall be assessed.

RATIONALE:

The defective filing fee is a long-standing provision of the Rules. Such fee serves the following purposes: providing an incentive for applicants to provide complete applications; and defraying added costs incurred when processing steps have to be delayed or repeated due to incomplete or missing information on the bar application.

The defective filing fee was increased in **1996** from $75.00 to the current $250.00. Since such increase, concerns have been expressed by some bar applicants regarding the size of the fee. Based upon such concerns and the Board's experience since **1996** under the increased fee, it is recommended that the defective filing fee be reduced to **$100.00.**

Rule 3-14.6 as it will appear if amended:

3-14.6 Noncompliance.

(a) An applicant's failure to respond to inquiry from the Board within 90 days may result in termination of the applicant's bar application and require reapplication and payment of all fees as if the applicant were applying for the first time.

(b) A registrant's failure to respond to inquiry from the Board ~~with 120~~ within 90 days may result in cancellation of the registrant's application and require full payment of the student registration fee.

RATIONALE:

As part of the June 1997 reconfiguration of the Rules, references were made throughout the Rules to ensure that they apply to both applicants and registrants. This proposed change corrects a rule provision that was overlooked. Pursuant to Rule 3-14.6(a), applicants are required to respond to a Board inquiry within 90 days. This same requirement should apply equally to registrants. Furthermore, registrants and applicants are allowed to receive extensions of their deadlines and are advised in all correspondence containing Board requests that extensions may be requested in writing.

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Rule **3-21.1** as it will appear if amended:

> **3-21.1 ~~Refusal of Subpoena~~ Noncompliance with Subpoena Issued by the Board.** Whenever any person subpoenaed to appear and give testimony or to produce books, papers or documents, refuses to appear to testify before the Board or to answer any questions, or to produce such books, papers or documents, such person may be in contempt of the Board. The Board shall report the fact that a person under subpoena is in contempt of the Board for such proceedings against such person as the Court may deem advisable.

RATIONALE:

This housekeeping change revises the title of Rule **3-21.1** to describe more accurately the contents of the rule.

Rule **3-22.7** as it will appear if enacted:

> **3-22.7 Public Hearing for Disbarred/Resigned Attorneys.** All applicants who have been disbarred from the practice of law or have resigned pending disciplinary proceedings shall appear before a quorum of the Board for a formal hearing. Such formal hearing shall be open to the public and the record produced at such hearing and the Board's Findings of Fact and Conclusions of Law shall be public information and exempt from the confidentiality provision of Rule **1-61.**

RATIONALE:

This proposed rule amendment is a companion provision to Rule **2-13.1.** Please see that rule for a statement of the rationale.

Rule **3-23.2** as it will appear if amended:

3-23.2 Formal Hearing. Any applicant or registrant who is the recipient of Specifications is entitled to a formal hearing before the Board, representation by counsel at his or her own expense, disclosure by the Office of General Counsel of its witness and exhibit lists, cross-examination of witnesses, presentation of witnesses and exhibits on his or her own behalf, and access to the Board's subpoena power.

Upon receipt of the answer to Specifications, notice of the dates and locations available for the scheduling of the formal hearing on the Specifications shall be provided. Formal hearings shall be conducted before a quorum of the Board which shall consist of not less than 5 members. The formal hearing panel shall consist of members of the Board other than those who participated in the investigative hearing. This provision may be waived with the consent of the applicant or registrant.

The weight to be given all testimony and exhibits received in evidence at a formal hearing shall be considered and determined by the Board. The Board is not bound by technical rules of evidence at a formal hearing. A judgment of guilt to either a felony or misdemeanor shall constitute conclusive proof of the criminal offense(s) charged. An order withholding adjudication of guilt of a charged felony shall constitute conclusive proof of the criminal **offense(s)** charged. **An order withholding** adjudication of guilt of a charged misdemeanor shall be admissible evidence of the criminal offense(s) charged. The admissibility of results of a polygraph examination shall be in accordance with Florida law.

RATIONALE:

Information regarding formal hearing procedures was previously provided to only those applicants who received Specifications. Pursuant to the Court's request, the Board recommends that information be also added into the Rules as additional notice of the procedural due process rights granted to applicants appearing for a formal hearing. ***See Amendments to the Rules of the Supreme Court Relating***

to Admissions to the Bar, No. 89,187 (Fla. June 5, 1997) ("[W]e ask the Board to review the matter at its next policy session to determine whether some reference to its formal hearing procedures should be incorporated in the rules.").

The Board also recommends adoption of provisions pertaining to proof of criminal offenses. The proposed provisions regarding judgments and determinations of guilt for misdemeanor and felony offenses are similar to those found in the Rules Regulating The Florida Bar. Rule 3-7.2 of the Rules Regulating The Florida Bar reads in part as follows:

RULE 3-7.2 PROCEDURES UPON CRIMINAL OR PROFESSIONAL MISCONDUCT: DISCIPLINE UPON DETERMINATION OR JUDGMENT OF GUILT OF CRIMINAL MISCONDUCT

> **(a) Definitions.**
> (1) Judgment of Guilt. For the purposes of these rules, "judgment of guilt" shall include only those cases in which the trial court in the criminal proceeding enters an order adjudicating the respondent guilty of the offense(s) charged.
> (2) Determination of Guilt. For the purposes of these rules, "determination of guilt" shall include only those cases in which the trial court in the criminal proceeding enters an order withholding adjudication of the respondent's guilt of the offense(s) charged.
>
> * * *
>
> **(i) Separate Disciplinary Action.**
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> * * *
>
> (3) Determination or Judgment of Guilt as Evidence. A determination or judgment of guilt, whether for charges that are felony or misdemeanor in nature, shall be admissible in disciplinary proceedings under these rules, and in those cases where the underlying criminal charges constitute felony charges, determinations or judgments of guilt shall, for purposes of these rules, constitute conclusive proof of the criminal offense(s) charged. The failure of a trial court to adjudicate the convicted attorney guilty of the offense(s) charged shall be considered as a matter of mitigation only.

The Court has ruled consistently with the provisions of this rule. For example, in ***The Florida Bar v. Heller,*** 473 So.2d 1250

(Fla. 1985) the respondent was convicted of three counts of income tax evasion and three counts of falsely subscribing to an income tax return. The respondent petitioned to have the Court withhold his suspension from the Bar, claiming that his federal trial did not conform to basic minimum standards of fairness required under the Florida Constitution. The Court held:

> Thus the legal correctness of the judgment of conviction, as it is likely to be perceived by the court with jurisdiction of the appeal, is ordinarily beyond the scope of this Court's consideration of a petition such as that before us in this case. In general, the judgment of conviction of a felony is conclusive proof of the commission of the felony and, on the basis of the wrongdoing thus shown, immediate suspension is considered appropriate.

Id. at 1251. ***See also The*** *Florida Bar* v. Onett, 504 So.2d 388 (Fla. 1987) ("The uncontroverted presence of a felony conviction is conclusive proof of guilt of the offense charged for disciplinary purposes. . . . A referee is not empowered to go behind a criminal conviction.").

By adopting a rule similar to the one contained in the Rules Regulating The Florida Bar, the parties to a formal hearing are provided with clear notice as to the level of proof arising from particular criminal sentences. Such provisions will assist the parties in the preparation and presentation of their respective cases.

Rule **3-23.6** as it will appear if amended:

3-23.6 Board Action Following Formal Hearing Following the conclusion of a formal hearing, the applicant or registrant shall be notified promptly by the Board of its decision which shall include one of the following recommendations:

(a) that the applicant or registrant has established his or her qualifications as to character and fitness;

(b) that the applicant be conditionally admitted to The Florida Bar in exceptional cases involving drug, alcohol or psychological problems upon such terms and conditions as specified by the Board;

(c) that the applicant's admission to The Florida Bar be withheld for a specified period of time not to exceed **2** years. At the end of the specified period of time, the Board shall recommend the applicant's admission providing the applicant has complied with all special conditions outlined in the Findings of Fact and Conclusions of Law;

(d) that the applicant or registrant has not established his or her qualifications as to character and fitness. In cases involving material omissions or misrepresentations in the application process, the Board may within its discretion further recommend that the applicant or registrant be disqualified from filing ~~with the Court a petition~~ for rehabilitation for a period greater than 2 years up to ***5*** years.

RATIONALE:

The last Rules change approved in June 1997 deleted the requirement that persons who have been denied must file a petition with the Court. This housekeeping change deletes language in this Rule that should have been struck at that time.

Rule **3-23.7** as it will appear if amended:

> **3-23.7 Findings of Fact and Conclusions of Law.** In cases involving a recommendation other than (a) above, the Board shall expeditiously issue its written Findings of Fact and Conclusions of Law. The Board's finding, conclusions and recommendation shall be subject to review by the Court as specified under Rule **3-40.**
>
> The Board's findings, conclusions and recommendation shall be final if not appealed except in cases involving a favorable recommendation for applicants seeking readmission to the practice of law after having been disbarred or having resigned pending disciplinary proceedings. In those cases, the Board shall file a report containing its recommendation with the Court for final action by the Court. Admission to The Florida Bar for such applicants shall only occur by public order of the Court. All reports, pleadings, correspondence, and papers received by the Court in such cases shall be public information and exempt from the confidentiality provision of Rule 1-61.

RATIONALE:

The proposed amendment is a companion provision to the amendments sought under Rule **3-22.7** and Rule **2-13.1** by which the readmission process for disbarred and resigned attorneys will be open to the public. In that disbarment or resignation pending disciplinary proceedings of a person is accomplished only by public order of the Court, then it is recommended that such person be readmitted only by public order of the Court notwithstanding a favorable recommendation by the Board. The proposed rule amendment would apply equally to bar applicants who were disbarred or who resigned from the practice of law in either Florida or a foreign jurisdiction.

Rule **4-13** as it will appear if amended:

> **4-13 Educational Qualifications.** In order to submit to any ~~portion~~ Part A or Part B of the General Bar Examination, ~~of the Florida Bar Examination~~ an applicant must be able to provide evidence at the time of submission to the General Bar Examination of receipt of, or completion of, the requirements for the degree of Bachelor of Laws or Doctor of Jurisprudence from an accredited law school or be found educationally qualified under the alternative method of educational qualification as provided in Rule **2-11.2.** The law degree must have been received from an accredited law school or within **12** months of accreditation. An applicant may sit for the MPRE prior to graduation from law school; however, the requirements of Rule **4-18.1** are applicable.

RATIONALE:

In ***Florida Board*** of ***Bar Examiners re mendment to Rules,*** **548** So.2d **235** (Fla. 1989), the Board petitioned the Court for a rule change that would authorize bar applicants to submit to the Multistate Professional Responsibility Examination (MPRE) prior to the graduation of law school but within twenty-five months of successful completion **of** the other parts of the Florida Bar Examination.

The Board reasoned that the MPRE measured examinees' knowledge of established ethical standards governing the legal profession rather than testing their technical competence. Because the MPRE is an awareness test that covers the narrow subject of American Bar Association ethical standards, the Board believed that taking the examination during law school would have little or no adverse impact upon students' studies.

The Court recounted arguments advanced by the deans of Florida law schools in opposition to the Board's proposal that their law students

would devote less time than usual to their law school course work throughout the weeks preceding the MPRE and that because of scheduling of the MPRE, the students would most certainly miss some law school classes in order to take the examination. The Court rejected the proposal concluding that the benefits to be obtained by permitting the MPRE to be taken while the student is still in law school did not outweigh the possibility that the students' law studies may be adversely affected.

In September **1996**, the Board held a workshop to examine the existing components of the Florida Bar Examination and to consider possible components of the bar examination of the future. **A** Task Force, comprised of members of the Board, was formed to follow-up on suggestions considered during the workshop.

In preparation for the workshop, a survey was administered to the applicants sitting for the July **1996** General Bar Examination. The survey included items about the length of the examination, the subject matter included on the examination, alternate testing formats including open book examinations and performance test examinations and requested any comments applicants may have with regard to the administration of the examination. The survey results revealed that the most frequently noted comment was that applicants should be permitted to take the MPRE while in law school.

The Task Force on the Bar Examination recommended to the full Board a proposed rule amendment that would permit law students to take the MPRE before completion of the requirements for graduation if the Florida law school deans agreed they would not oppose this petition as they previously did in **1989**. In January **1997**, the Board wrote to the Florida law school deans requesting their input on such proposal.

Dean Donald J. Weidner of the Florida State University College of Law, by letter dated January 29, 1997, stated that he would not oppose a change permitting law students to take the MPRE, but stated that the Professional Responsibility faculty would prefer that the students take the MPRE during the summer rather than during the regular academic year.

Associate Dean Gail E. Sasnett of the University of Florida College of Law, by letter dated February 11, 1997, stated that the administration supports allowing students to take the MPRE while they are still in school.

Dean Lizabeth A. Moody of Stetson University, by letter dated February 25, 1997, advised that the faculty members who teach Professional Ethics were polled and their opinion was unanimous that they would continue to oppose having their students take the MPRE prior to graduation. She stated the faculty members felt if the students were permitted to take the examination while in law school, it would constitute a major disruption in their studies and might also deflect their attention from Professional Responsibility questions that are raised in the students' other courses once they had completed the MPRE.

Dean Joseph D. Harbaugh of Nova Southeastern University, by letter dated March 6, 1997, confirmed his support for allowing law students to sit for the MPRE.

Associate Dean Jay Silver of St. Thomas University School of Law, by letter dated June 27, 1997, expressed his "appreciation for the thoughtful intent behind the proposal." Dean Silver recommended that students be allowed to take the MPRE following completion of their law school course on professional responsibility in either their second or third year of law school.

Dean Samuel C. Thompson, Jr. of the University of Miami School of Law verbally reported that he had no objection to the Board's proposal.

At the February 12, **1997** Select Committee meeting, Dean Joseph Harbaugh of Nova Southeastern University stated that he supported the Board's proposal to accept MPRE results from students while they are still in law school. Former Dean Jeffrey E. Lewis of the University of Florida spoke against the proposal to permit MPRE prior to graduation listing the following reasons: symbolism of splitting the ethics portion from the rest of the exam is not a good one; it is disruptive to the academic classes; it affects when the students take the Ethics course; why do it if the only reason to do it is that everyone else is doing it. Dean Lewis' position prevailed with the Select Committee and the Committee's draft of its report to the Supreme Court includes a recommendation that graduation be required before taking any part of the General Bar Examination.

The Board's proposal was also considered by the Student Education and Admissions to the Bar Committee (a standing committee of The Florida Bar) at its June **27, 1997** meeting. By a vote of **16** to **1,** the Committee endorsed the change to allow law students to take the MPRE.

The proposed rule amendment would be in line with most other jurisdictions that administer the MPRE. During **1993-94, 37** jurisdictions responded to a Committee of Bar Admission Administrators' survey and indicated that their applicants could take the MPRE while in law school.

The proposed rule amendment would also allow applicants who pass the general bar exam to be admitted earlier as there is sometimes a two week delay from the time the general bar examination grade results could be released and the time the MPRE results are available. Furthermore, allowing applicants to take the MPRE while in law school would permit them more flexibility in selecting a convenient place and time for the examination. If unsuccessful on the MPRE, applicants

would have more opportunity for reexamination without delay in admission. Lastly, some applicants must successfully complete the MPRE more than once because Florida will not accept their MPRE scores taken before all requirements for graduation have been met.

Rule **4-23.1** as it will appear if enacted:

> **4-23.1 Transfer of Score.** A score achieved by an applicant on the Multistate Bar Examination administered in **a** jurisdiction other than the State of Florida shall not be transferred to or recognized by the Board.

RATIONALE:

The proposed change is housekeeping only. This provision was unintentionally deleted with the June **1997** reconfiguration of the Rules.

Rule **4-33.2** as it will appear if amended:

> **4-33.2 Pass/Fail line.** On the MPRE, each applicant must attain a scaled score of **70** or 75 if the MPRE is taken during calendar year **1999** or a scaled score of **80** if the MPRE is taken after December **31, 1999** or such scaled score as may be fixed by the Supreme Court of Florida.

RATIONALE:

In October **1996,** the Board's Task Force on the Bar Examination recommended to the full Board that the pass/fail line on the Multistate Professional Responsibility Examination (MPRE) be raised from **70** to **75** and then from **75** to **80** a year later.

Florida currently requires a scaled score of **70** to pass the MPRE. According to the ***Comprehensive Guide*** to ***Bar Admission Requirements*** **1997-98,** no other jurisdiction that requires the MPRE has a lower minimum passing score. The following chart displays the pass/fail score and the number of jurisdictions that require that particular score:

Minimum passing score	**Number of jurisdictions requiring that score**
70	**3**
72	**1**
75	**18**
76	**1**
77	**1**
79	**2**
80	**12**
85	**11**

Florida, Mississippi and the Virgin Islands currently have the lowest passing score (a scaled score of **70).** The Board proposes to raise the minimum passing score in two increments--to **75** effective January **1, 1999** and then to **80** a year later on January **1, 2000.** A minimum passing score of **80** would place Florida in the upper half of jurisdictions requiring the MPRE. Currently, the national average score

required to pass the MPRE is **78.32.** The national median score is **79.** Of the **49** jurisdictions that currently require the MPRE, **23 (47%)** require a score of **80** or higher.

As to the position of the Florida law schools on the proposed increase, two of the schools expressed their unqualified support. Another school was not opposed to the increase but questioned what impact, if any, such increase would have on minority students. Another school was in favor of increasing the pass/line to **75** but expressed a concern that an increase to **80** "would fall disproportionately on groups that historically have been at a disadvantage on standardized exams...." The Student Education and Admissions to the Bar Committee (a standing committee of The Florida Bar) endorsed the increase by a vote of **16** to **1** at its June **27, 1997** meeting.

Stephen P. Klein, Ph.D, has advised the Board in the past on matters relating to the bar examination in Florida. Dr. Klein is a Senior Research Scientist at the RAND Corporation and is a nationally recognized expert on the psychometric characteristics of bar examinations. In **1994,** Dr. Klein was asked by the Board to study Florida's pass/fail line of **131** for the bar examination and to address specifically what would happen to minority and non-minority passing rates if Florida raised its passing score of **131** on the bar examination.

Dr. Klein advised that "[r]aising the score required for passing will lower the passing rate to about the same degree for minority and non-minority candidates alike." Thus, according to Dr. Klein's results as to the impact of raising the pass/fail line for the bar examination, it would appear that an increase to the MPRE would not disproportionately impact minority applicants.