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July 14, 2003

Supreme Court of Florida
500 South Duval Street
Tallahassee, Florida 32399-1927

Re: Petition to Amend Rules 2-11.1 and 4-13.2 of the Rules of the Supreme Court Relating to Admissions to the Bar
Petitioners: The Orange County Bar Association & Thomas B. Drage, Jr., Esq.,
Case No.: SC02-2354

Your Honors:

I am writing this letter in support of the Orange County Bar Association and Thomas B. Drage, Jr., Esquire, Petition to Amend the Rules of the Supreme Court Relating to Admissions to the Bar. I am one of the 109 graduates of Barry University School of Law forced to earn my second Juris Doctorate degree due to the accreditation problems we experienced as a fledgling law school. Thus, by definition, I am certainly an interested party and feel eminently qualified to comment on the petition to change the so-called "12-month rule".

I have spent the better part of a decade in law school. To be more precise, I have been either attending law school or awaiting relief from this nightmare for eight of the last ten years. By any measure, that is too much time in pursuit of a degree that should take three years to earn.

As this Honorable Court can well imagine, I have an opinion about the 12-month rule, the ABA

accreditation process, and the Florida Board of Bar Examiner's role in this calamity. I won't waste this Court's valuable time rehashing the sequence of events as they unfolded at Barry as I feel certain those details have been provided by others writing in support of the Petition. Instead, I would like to dispense with the notion that we assumed the risk that something catastrophic would happen when we enrolled in an unaccredited law school.

Assumption of the risk has been offered by the Board of Bar Examiners, and even this Honorable Court, as a basis for laying the blame for this imbroglio on the students, instead of the school, the ABA, the Florida Board of Bar Examiners or any other myriad of players who contributed to this shameful debacle.[1] This Court has never subscribed to the proposition that a plaintiff assumes all risks when knowingly consenting to certain conduct.[2] Even in the contact sport arena, where a plaintiff certainly consents to exposing himself to *certain* risks, it can't be said that he assumes the risk for *any* misfortune that befalls him, regardless of how attenuated the foreseeability of the injury is to the activity undertaken.[3] To assign responsibility for this fiasco to the students caught in the middle of it defies logic, precedent and is offensive to those of us who had the intestinal fortitude to make it through law school trying to balance the demands of a rigorous curriculum against the stress and uncertainty of the ABA accreditation process.

I suspect even Nostradamus, the 16th century prognosticator, would have had a hard time foreseeing the possibility that the ABA would (1) change its rules midstream, (2) completely disregard its rules (i.e., the Council's February 2001 denial failed to give deference to the Committee's January 2001 favorable recommendation, as required under the rules) and (3) deny accreditation by citing issues not even

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[1] Florida Board of Bar Examiner Re: Barry University School of Law, 821 So. 2d 1050 (Fla. 2002).
[2] Kuehner v. Green, 436 So. 2d 78 (Fla. 1983).
[3] Id. at 80.

within the purview of the ABA standards (i.e., citing the quality of senior papers as a basis for denial of accreditation, where said papers are not required under the standards). Not exactly the assiduous attention to detail we expected from such a revered accrediting agency.

In its denial of Barry's petition to release the bar scores impounded while the school sought accreditation, this Court referenced its earlier opinion in Florida Board of Bar Examiners In Re Hale, 433 So 2d 969, 971 (Fla. 1983) and asked rhetorically if it had abdicated its responsibility in appointing the ABA as the accrediting body for our state's law schools.

[2] While this writer does not question the wisdom of allowing another entity to take the reins for this Court in accrediting Florida's law schools, one must question the wisdom of having rules and regulations promulgated by the Court which are not in lockstep with the rules and regulations of the accrediting agency.

It is unremarkable that this Court should assign responsibility to an entity such as the ABA to conduct the business of accrediting this state's law schools. It is unremarkable that Barry encountered the troubles that it encountered while undergoing the accreditation process; apparently few schools, if any, get it right the first time. It is quite remarkable, however, that there is no mechanism in place to prevent the sequence of events that unfolded when the ABA changed its procedures while Barry's law school was being reviewed. How difficult would it have been for the proper authority to spring to life when the ABA's

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[2] An interesting point about this Court and the Bar Examiners giving us permission to sit for the bar exam with the caveat that the scores would not be released unless the school gained provisional accreditation within 12 months of our graduation-at the time I (and dozens of my classmates) took the February 2001 bar exam, it was a physical impossibility for the school to become accredited within 12 months of our graduation because the ABA would not meet again until August 2001-which would be 14 months after our June 2000 graduation. This minor detail did not stop the Bar Examiners from accepting a hefty late fee for the privilege of taking an exam whose results would never see the light of day. This is a glaring illustration of the lack of oversight and coordination between the accrediting entities-but the students were charged with foreseeing this?

procedures were changed, to ensure that this Court's rules remain in harmony with the ABA's rules? My guess is it would have been much simpler to ensure that such a safety net were in place, than to try and undo the mayhem and financial ruin that has landed squarely on the 109 Barry graduates who are shouldering this staggering burden.

Meanwhile, The Florida Board of Bar Examiner's general counsel, Thomas Pobjecky, has doggedly and persistently foiled all attempts by Barry's law school and the 109 students embroiled in this situation from finding some mutually agreeable avenue of relief. Mr. Pobjecky even went so far as to advise this Court, presumably with a straight face, that since Barry had offered to re-enroll the students, and since certain states other than Florida were willing to allow us to practice law, we are not bereft of options. With all due respect, Mr. Pobjecky needs to reexamine these so-called options. As if to suggest that earning a second J.D. degree was a reasonable solution to this mess. As if tearing asunder family and business relationships to move to another state (many of which, ironically, welcomed us with open arms) to practice law was an attractive or viable option. What a stinging rebuke to the 109 tax paying, law abiding Barry graduates to hear, that despite the fact that our law school is now provisionally accredited, our Board of Bar Examiners are far more comfortable handing us off to a foreign state than forging an acceptable and reasonable solution. That was one of many bitter pills we swallowed while this drama unfolded.

The Board of Bar Examiner's position is interesting for another reason-it has no basis in reality. After all, what happened to Barry is for real. If the Bar Examiners aren't certain about the existence of a problem in theory, let's look at how the process worked in practice. It didn't. What took place was an abysmal and cataclysmic failure to protect the students, coupled with a correspondingly flip and cavalier dismissal of our misfortune. We are not expendable. We will not be dismissed. We are living, breathing

proof that something went dramatically wrong during the process. All we ask is that our voices finally be heard.

What happened during Barry's journey towards provisional accreditation was unfortunate. That the 109 students bear the entire burden for the failures of the system is shameful and wrong. Period. This Honorable Court has the authority, with a stroke of its pen, to right the wrong that has hung like a noose around our necks since January 2000, when the first pioneering Barry law students walked down the aisle, with their hard earned J.D. degrees in hand, never dreaming that the toughest test still loomed ahead.

Based on the foregoing, and in the interest of justice, equity and everything that is good about our judicial system, this Court should, post haste, (1) change the rule in a manner that suits this Court while affording the relief we are seeking, and (2) order the immediate release of our impounded bar scores to end this saga. I would further implore the Court to consider the fact that we are already faced with the reality of the start of the fall semester in August. I have faith that this Court will correct this injustice, but justice delayed is justice denied. Relief from this Court after we have completed our second course of study amounts to no relief at all.

Respectfully submitted,

SUSANNE MCCABE

Certificate of Service

I hereby certify that a true and correct copy of the foregoing has been furnished by U.S. Mail to attorney for petitioners, Mathew D. Staver, Esquire, 210 Palmetto Avenue, Longwood, Florida 32750 on this 14th day of July, 2003.

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SUSANNE MCCABE