IN THE SUPREME COURT OF FLORIDA

Case No. SC02-740

PETITION OF

BARRY UNIVERSITY SCHOOL OF LAW

On Behalf of Its
January, June, and July 2000 and January 2001 Graduates

And

LEONARD S. MANICINI (January 2000),
SCOTT BLAUE, CHARLES S. WARD and ERIC DUBOIS (June 2000),
KIMBERLY ESTRADA (July 2000),
and MELISSA MURRAY and CARY BLAKE (January 2001)

AMICUS CURIAE BRIEF OF THE ORANGE COUNTY BAR ASSOCIATION AND MARY MERRELL BAILEY, ESQ. (JUNE 2001) IN SUPPORT OF BARRY UNIVERSITY SCHOOL OF LAW

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INTEREST OF AMICI

The mission of the Orange County Bar Association (hereinafter "OCBA") is to promote honor, dignity, truth, and professionalism within the legal community, to promote improvement in the law and aid in the administration of justice, to enhance the delivery of and access to quality legal services. To accomplish its mission, OCBA provides Citizen Dispute, Family Mediation and Attorney Referral Services, along with a Speakers Bureau and a Legal Aid Society.

OCBA consists of approximately 2,700 attorney members who are licensed in the State of Florida, and more than 100 affiliate members, some of whom are included in the list of 111 students affected the Petition before this Court. OCBA strongly supports the delivery of pro bono services by its members. OCBA is proud of its Legal Aid Society. Orange County, Florida, is unique because only attorneys are permitted to act as a Guardian ad Litem (hereinafter "GAL"). Every OCBA member is required to provide either some form of pro bono service or pay a fee in lieu of service to support the programs of the Legal Aid Society. Orange County GALs are provided through OCBA's Legal Aid Society. OCBA has been repeatedly recognized for its outstanding pro bono service program by the American Bar Association (hereinafter "ABA"). OCBA established a law student affiliate status for law students of Barry University School of Law (hereinafter "Barry"). These students needed very

little encouragement and soon became active participants in OCBA's pro bono programs.

OCBA currently employs Robin Drage, a Barry graduate, who works as a GAL Case Coordinator for the OCBA Legal Aid Society. Ms. Drage enrolled at Barry in September 1995, having already obtained an M.A. She served as the Notes and Comments Editor for the law review, and was a member of the Moot Court Board. She graduated number four in her class in January 2001, barely over one year before the ABA's final decision to accredit Barry. She is preparing to take the Florida Bar Exam in July 2002, pending this Court's decision.

OCBA also employs Elizabeth Swanson, who entered Barry's part-time program in January 1997, graduated number one in her class in January 2001, and was the valedictorian. She was also a member of Barry's law review. Ms. Swanson took the bar exam in February 2001. Her scores have been impounded pending this Court's ruling. Ms. Swanson has a 30-year background in Special Education, having obtained an M.A. and an Ed.D. Ms. Swanson works as a Special Education Advocate in OCBA's GAL program.

OCBA files this Amicus Brief because of its interest in OCBA's current and future bar members. Granting Barry's Petition will affect 111 graduates, many of whom will become members of OCBA and will be able to provide pro bono services

to the local community if they are able to become licensed. OCBA supports Barry's Petition for the legal reasons outlined herein. OCBA also believes in fundamental fairness, and contends that an unjust result will occur unless this Court grants the pending Petition.

Mary Merrell Bailey was a C.P.A. when she enrolled at Barry in September 1995. She was President of the Student Bar Association, a member of the moot court team and served as a Lead Article Editor on the law review. Ms. Bailey walked with the June 2000 graduating class, but her degree was not conferred at that time because she lacked a final requirement. She walked again and actually graduated in June 2001 as class valedictorian and took the Florida Bar Exam in July 2001. After Barry was accredited by the ABA, Ms. Bailey's bar exam scores were released and she became licensed to practice law in Florida on February 28, 2002. Ms. Bailey, who also has and M.S. in Taxation and an M.B.A., offers a unique perspective on her classmates and fellow graduates, and is concerned that there be no discrimination among similarly situated graduates.

STATEMENT OF CASE AND FACTS

Amici adopt the Introduction and Statement of the Case and Facts as presented in the Petition filed by Barry. However, Amici add the following additional facts.

As noted in Barry's Petition, the issue before this Court involves 111 graduates, of which 69 have taken the Bar exam by permission of this Court. The results of their exams are currently impounded. There are 13 individuals who graduated in January 2000, 60 in June 2000, 4 in July 2000, and 34 in January 2001. The January 2001 class graduated twelve months and *two* weeks prior to the ABA's final decision granting provisional accreditation to Barry on February 4, 2002.

In this Amicus Brief, the graduating classes of January 2000, June 2000, July 2000, and January 2001 will be referred to as the "Early Graduates", and the graduates of June 2001, February 2002, and June 2002 will be referred to as the "Later Graduates." Many of the Early Graduates began their law school careers at the same time as the Later Graduates. In fact, a number of the Early Graduates began their law school careers *after* many of the Later Graduates. Amici will reference these graduates by their initials in order to preserve their identities. *See* Appendix A.

As Appendix B illustrates, the *time* the students graduated depends less on when they started their legal education at Barry than the pace at which they moved through the process. *See* Appendix B attached herewith. The differences in pace are

in part related to the fact that some students attended the full-time division and some the part-time. Others changed from full- to part-time. Still others graduated later because of various circumstances which caused them to delay or extend their graduation. Whatever the reason for the disparity in the start dates compared to the graduation dates, those who graduated between January 2000 and January 2001, should not be penalized.

One final fact is critical. The ABA never made a *final* decision on Barry's 2000 application until February 4, 2002. A decision by the ABA Council does not become final until such decision is affirmed by the ABA House of Delegates (hereinafter "House"). A negative decision by the Council may be appealed to the House, which may either affirm the decision or remand the matter to the Council. If the House affirms the Council, or the Council renders a negative decision after two remands from the House, then, and only then, does the ABA decision become final. After the Council's initial consideration in February 2001, Barry appealed to the House. Barry's appeal was withdrawn as part of the reconsideration, which took place at the ABA's February 2002 meeting. The Council recommended accreditation on February 2, and on February 4, 2002, the ABA House affirmed. The decision on the 2000 application then became final.

SUMMARY OF ARGUMENT

Barry's Petition regarding those who graduated in January 2000, June 2000, July 2000 and January 2001 should be granted, because the Petition falls squarely within Rules 2-11.1 and 4-13 of the Rules of the Supreme Court Relating to Admissions to the Bar (hereinafter "Rules" or "Rule") and this Court's decision interpreting the twelve-month Rule. *See Florida Bd. of Bar Examiners re Eisenson*, 272 So. 2d 486 (Fla. 1973). The ABA has consistently taken the position that the 2000 application was the *only* application under consideration when it rendered its final decision regarding Barry on February 4, 2002. Repeatedly, the ABA has stated that it never rendered a *final* decision on Barry's 2000 application *until* February 2002. Any actions taken by the ABA on the 2000 application prior to February 2002 were merely preliminary – not final. The ABA has rendered one, and only one, final decision on Barry's 2000 application, and that occurred just a few months ago.

Since the first graduating class at issue in Barry's Petition graduated in January 2000, this class and every subsequent class clearly fall within the Rule which requires law school accreditation within 12 months of graduation. The fact that the ABA's *decision* occurred outside of 12 months is irrelevant, because Barry's application and the October/November 2000 site visit occurred within 12 months of the January 2000 through January 2001 graduation dates. Waiver of the Rule is unnecessary, because

Barry's application is consistent with the Rule and with *Eisenson*.

Denying the Early Graduates admission to the Bar, while allowing admission to those who extended graduation, would unreasonably discriminate between similarly situated graduates. Some graduates began their careers at Barry in September 1995, but did not graduate until June 2001 or later. These graduates will be able to receive a license upon successfully completing the Bar without this Court's intervention. Similarly situated graduates started at the same time but finished earlier. Other similarly situated graduates started later – in September 1996, 1997, and even as late as March 1998 – but they too graduated after June 2001. As such, these graduates require a favorable ruling from this Court on Barry's Petition. Despite the fact that many, if not most, of the Early and Later Graduates attended the same classes and received the same instruction, the Later Graduates, who extended graduation until June 2001 or later, will be able to receive a license upon passing the Bar. The Early Graduates, who graduated timely, will not be able to practice law unless this Court grants Barry's Petition. Absent a favorable ruling on Barry's Petition, the unjust result will cause unreasonable discrimination among similarly situated graduates. Fair justice, and a correct application of the Rule and of *Eisenson*, cry out for this Court to grant Barry's Petition.

ARGUMENT

I.

BARRY'S PETITION SHOULD BE GRANTED BECAUSE THE ABA'S DECISION TO GRANT BARRY PROVISIONAL ACCREDITATION IN FEBRUARY 2002 RELATES BACK TO THE 2000 APPLICATION, AND THUS FALLS WITHIN THE TWELVE-MONTH RULE.

Barry's Petition regarding the Early Graduates (January 2000, June 2000, July 2000 and January 2001) should be granted because the ABA's conferral of provisional accreditation on February 4, 2002, was based on the 2000 application, which began with a site visit in October/November 2000. The 2000 application covers all four graduating classes, even though the ABA's *decision* on that application did not occur until more than 12 months after graduation.

As will be noted below, the ABA has consistently taken the position that its decision on February 4, 2002, granting provisional approval to Barry, was based on the 2000 application, and that prior to February 2002, the ABA had never made a final decision regarding Barry's 2000 application.[1]

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[1] If the ABA renders a final decision on a law school's application for provisional accreditation in which the ABA denies the application, the law school must wait ten months before filing a new application. Once a final negative decision has been rendered, the time period covered by the old application cannot be included in the new application. Thus, if the ABA had rendered a final decision to deny Barry's 2000 application on February 4, 2002, the Early Graduates would have no recourse, because a new application would not cover their graduation dates.

Rules 2-11.1 and 4-13 provide that an applicant to the Florida Bar must graduate from a law school which has received accreditation within 12 months of graduation. In the case of *Florida Board of Bar Examiners re Eisenson* , 272 So. 2d 486 (Fla. 1973), this Court considered essentially the same Rule, which required graduation from an accredited law school "at a time when, or in the same calendar year in which such school was so accredited, ..." *Id*. at 487. Barry Eisenson graduated from Baltimore School of Law in June 1971. On the date of graduation, the school was neither approved nor provisionally approved by the ABA. The ABA conducted a site visit in November 1971, some five months after graduation. However, the ABA's *final decision* on the November 1971 application and site visit did not occur until August 1972, some 14 months after Mr. Eisenson graduated. This Court noted the following:

> To deny to petitioner the opportunity to seek admission to The Florida Bar merely because the ABA chose to vote on accreditation in August, 1972, rather than in May or June of the same year, would in our view violate the spirit, if not the letter, of the Rules Relating to the Admission to the Bar. Thus we conclude that where, as here, the requirements for provisional accreditation are met during the calendar year following the applicant's graduation, but the American Bar Association fails to act on its findings within the 12 month period provided by the Rules, a waiver of the Rule is permissible.

Id.

The essential facts in *Eisenson* are similar to the facts presented in Barry's

Petition. The first classes graduated in January, June, and July 2000. Barry's application for accreditation was made in the year 2000. The site visit occurred in October/November 2000. The next graduation occurred in January 2001. A *final decision* on the October/November 2000 site visit *was not made until February 2002*. The ABA's decision in February 2002 was merely a "continuation" of the site visit in the fall of 2000. *See* Appendix attached to Barry's Petition, Tab L and M at 2.

Following the ABA's *preliminary* decision in February 2001 to deny provisional approval, some students, graduates and local attorneys filed a federal lawsuit against the ABA. *See Staver v. American Bar Ass'n*, 169 F. Supp. 2d 1372 (M.D. Fla. 2001). The District Court outlined the ABA's arguments against the requested relief as follows:

> The ABA contends that the Plaintiffs should not receive preliminary injunctive relief because their claims are not ripe. Specifically, the ABA argues that the Plaintiffs' claims are not ripe, *because Barry's application is still pending before the Council*. After the Council denied provisional accreditation in February 2001, Barry appealed the decision to the House. Barry then agreed with the ABA to withdraw its appeal and *continue its application until the Council acts on it during its February 2002 meeting*.

Id. at 1376 (emphasis added). The District Court agreed with the ABA, noting the following: "The Council will act again on Barry's application next February. **Because the ABA has not reached a *final decision* on Barry's application, the**

Plaintiffs claims are not ripe." *Id*. at 1377 (emphasis added).[2]

Following the District Court's decision denying plaintiffs' request for a preliminary injunction, the attorney-plaintiffs appealed the decision to the Eleventh Circuit Court of Appeals. While the case was on appeal, and prior to filing their brief, on November 16, 2001, the ABA in the District Court filed a motion to stay and a supporting memorandum of law. In its motion, the ABA argued that the District Court should "stay discovery until the ABA has made a *final decision* on Barry's current application for provisional approval." *See* Def. American Bar Association's Mot. to Stay and Supporting Mem. of Law at 2, *Staver*, 169 F. Supp.2d at 1372 (No.

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[2] The notion of a decision not being final when a party requests rehearing of the order has been firmly established in trial and appellate practice. Rule 9.340(b) of the Florida Rules of Appellate Procedure indicates that if a timely motion for rehearing has been filed, the time for issuance of the mandate or other process shall be extended until fifteen days after rendition of the order denying the motion, or if granted, until fifteen days after the cause has been fully determined. *See* Fla. R. App. P. 9.340(b). Rule 1.530 of the Florida Rules of Civil Procedure provides that a motion for rehearing may be served not later than ten days after the return of a verdict in a jury action or the date of filing of the judgment in a non-jury action. *See* Fla. R. Civ. P. 1.530(b). Rule 1.530(a) provides that in matters heard without a jury, including summary judgments, the court may reopen the judgment if one has been entered, take additional testimony, and enter a new judgment. The court may also grant a rehearing on its own initiative not later than ten days after the entry of judgment or within the time of ruling on a timely motion for rehearing or new trial. *See* Fla. R. Civ. P. 1.530(d). Rule 4.115 of the Florida Rules of Workers' Compensation Procedure similarly provide that a workers' compensation judge may, pursuant to a motion for rehearing, vacate or amend an order not yet final. *See* Fla. R. Work. Comp. P. 4.115(b)(1).

6:01-CV-873) (Dk. #108) (emphasis added). "Staying these proceedings until a *final decision* is reached also will crystalize the issues to be litigated and may moot or alter the factual basis of plaintiffs' claims." *Id*. at 3 (emphasis added). In its memorandum of law, the ABA argued that the District Court should "stay discovery until the ABA makes a *final decision* on Barry's current application for provisional approval. As the Court has already found, *the ABA is in the midst of evaluating Barry's continuing application for provisional approval*, and Barry is expected to appear before the Council in February 2002." *Id.* at 8-9 (emphasis added). The ABA also noted that "staying discovery until the ABA renders a *final decision on Barry's current application* will crystalize the issues to be litigated and may alter or moot plaintiffs' claims, ..." *Id*. at 9-10 (emphasis added).

On December 17, 2001, the ABA filed a reply memorandum in support of its motion to stay the proceedings. *See* ABA's Reply Mem. in Supp. of Mot. to Stay, *Staver*, 169 F. Supp.2d at 1372 (No. 6:01-CV-873) (Dk. #114). The ABA argued that the plaintiffs' "Second Amended Complaint suffers from the identical defect of challenging the ABA's action before it has reached a *final decision,...*" *Id*. at 6 (emphasis added). The ABA again reiterated its argument that the District Court should "at a minimum stay discovery until the ABA has made a *final decision* on Barry's application for provisional approval." *Id.* The ABA then noted the following:

> Plaintiffs also maintain that they will not inquire into recent events involving Barry's application, but they should be permitted to conduct non-confidential discovery regarding "past issues." Pl. Opp. at 13. However, Barry's current application for provisional approval is the only application Plaintiffs have challenged. That application was submitted by Barry in September 2000, *initially considered* by the Council in February 2001, supplemented by a second site visit in September 2001, and *will be considered by the Council again in February 2002*.

Id. at 6-7 (emphasis added). The District Court agreed with the ABA's contention, and entered a stay of discovery pending the ABA's final decision scheduled for February 2002. In the meantime, the attorney-plaintiffs appealed the denial of the preliminary injunction to the Eleventh Circuit Court of Appeals. In their Answer Brief, which was served on January 14, 2002, the ABA again argued that plaintiffs' claim was not ripe because the ABA had not reached a final decision on Barry's application. The ABA first cited to the District Court's order stating this proposition, and further reiterated that "*the Council has not decided Barry's pending application* and the House has yet to review it." *See* Br. for Appellee, *Staver v. American Bar Ass'n*, (No. 01-16278-HH) (11th Cir., filed January 15, 2002) (emphasis added).[3]

The ABA has consistently taken the position that the February 2001 decision was merely an *initial* or *preliminary* decision, but it certainly was not a *final* decision.

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[3] Note that the ABA's statement in their Appellee Brief occurred on January 14, 2002, just two weeks prior to its February 4, 2002, final decision. Following the ABA's decision on February 4, 2002, granting Barry provisional accreditation, the plaintiffs and the ABA entered into a joint motion to dismiss the pending appeal.

The final decision on Barry's 2000 application did not occur until February 2002. The February 2002 decision therefore relates back to 2000, and clearly falls within the Rule and within this Court's decision in *Eisenson*.

In the Florida Board of Bar Examiners' (hereinafter "Board") Response to Petition (hereinafter "Response"), the Board takes the position that the ABA "acted unfavorably" during its February 2001 meeting. However, the February 2001 meeting was an "initial" or a "preliminary" decision, rather than a *final decision*. The Board notes that, in between the November 2000 site visit and the February 2002 final decision, the ABA House of Delegates met in February 2001 and in August 2001.[4] The Board then states that at neither of these meetings was favorable action taken on Barry's application. *See* Board Res. to Pet., No. SC01-740 (Fla., filed April 19, 2002) at 4. However, Barry's application was not considered at either the February or August 2001 meetings. As the ABA itself stated on January 14, 2001, "the Council has not decided Barry's pending application and the House has yet to review it." Br. for Appellee, *Staver*, (No. 01-16278-HH) (11th Cir.) at 21. Since the February 2002 final decision was based upon the 2000 application, this Court should grant Barry's Petition. A waiver of the Rule is unnecessary. This Court's decision in *Eisenson* need

[4] These meetings were the regularly scheduled annual and semi-annual meetings of the ABA.

not be reevaluated. Barry's application falls squarely within the Rule and is consistent with *Eisenson*.

II.

DENYING THE EARLY GRADUATES ADMISSION TO THE BAR WHILE ALLOWING ADMISSION TO THOSE WHO EXTENDED GRADUATION WOULD UNREASONABLY DISCRIMINATE BETWEEN SIMILARLY SITUATED GRADUATES.

If this Court does not grant Barry's Petition, then the consequence will be discriminatory treatment between those graduates who started early and graduated late, and those who started late and graduated early. The only difference between the two groups is their graduation dates. The education that the Early and Later Graduates received is essentially the same.

When considering the Rule in 1973 that required graduation from an accredited school at the time of or in the same "calendar year" as graduation, this Court interpreted the term "calendar year" to include the twelve-month period following graduation. *See Florida Bd. of Bar Examiners re Eisenson*, 272 So. 2d 46 (Fla. 1973). The language which this Court used in rendering such an interpretation is applicable to Barry's application. This Court noted the following:

> To read this term [calendar year] otherwise would in view of the wide disparity of graduation dates in Florida and elsewhere, result in unreasonable discrimination between similarly situated graduates.

Id. at 487 n.1.

As shown in the Chart attached herewith as Appendix B, some graduates of Barry entered the law school when it first opened in September 1995, but did not graduate until June 2001 or later. Those who started early but graduated late will therefore be able to practice law in Florida, despite the fact that the education they received is essentially the same as their peers who started when they did, but graduated timely, or those who started later and graduated timely.

For example, consider C.B., D.H., M.B. and O.M. who entered Barry in September 1995. C.B. and D.H. graduated in June of 2000. Absent a favorable ruling by this Court, C.B. and D.H. will not be able to practice law in Florida.[5] M.B. and

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[5] This Court has previously pointed out that the Rule allows for an alternative method of practicing law in Florida. This alternative method is to practice out of state for ten years and then to petition this Court for admission. *See Florida Bd. of Bar Examiners re Massachusetts Sch. of Law*, 705 So. 2d 898, 899, 900 (Fla. 1998). The chances of the 111 graduates covered by Barry's Petition practicing law elsewhere for ten years and then applying to Florida are slim, and in some cases, nonexistent. Absent this Court's favorable ruling on Barry's Petition, in order to practice in another state and then reapply to Florida, the graduates have only a few limited options. First, these graduates can transfer their three years of credit back to Barry, and if accepted, take approximately two more years of education at Barry in order to receive a second law degree. Second, the graduates could apply for admission to the L.L.M. program at St. Thomas, complete the required courses, and then become eligible to apply for admission to North and South Carolina, Michigan or Louisiana. St. Thomas is one of the few schools that admits applicants to the L.L.M. program who have J.D. degrees from unaccredited law schools. Third, the graduates could petition the Nevada Supreme Court and present evidence that Barry's education is equivalent to an ABA-accredited school. Finally, the applicants could take 26 more credit hours at Barry or

O.M. graduated in June 2001 and February 2002 respectively. M.B. has now become licensed in Florida. O.M. will become licensed after successfully taking the bar exam.

Consider S.D., P.B., S.P., A.S., and J.J.G., who enrolled in September 1996. P.B. graduated in February 2002, S.D. in June 2001, and J.J.G. will graduate in June 2002.[6] Due to their extended graduation dates, these three graduates will be able to become licensed without this Court's intervention. However, S.P. graduated in January 2000 and A.S. in June 2000. These two graduates will not be able to become licensed absent this Court's favorable ruling. Yet, all of these individuals attended most of the same classes with each other, sat through most of the same instruction, and were consistently at the same pace until the very end of their legal education.

Similarly, C.W., entered Barry in January 1997 and graduated in June 2000. C.W. will therefore be penalized for graduating with the Early Graduates. On the other hand, T.D. enrolled in September 1996 and T.C. in January 1997. T.D. and T.C. graduated in June 2001 and June 2002 respectively. T.D. recently received a

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some other ABA-accredited school, and then apply for admission to the District of Columbia Bar. *See* D.C. Ct. App. R. 46(b)(4). In the latter three instances, the graduates would have to move out of state for ten years, and then seek admission to Florida.

[6] P.B. extended the graduation date by submitting a final paper in January 2002.

Florida license. T.C. will soon take the bar exam, and will have the opportunity of becoming licensed to practice law. However, C.W. will not have the same opportunity, absent the granting of Barry's Petition.

One final example is noteworthy regarding those who graduated in January 2001. V.B. and others began in September 1995, C.B. in January 1997, S.A. in August 1997, and M.M. in March 1998. All these students graduated in January 2001. Fortuitously, the graduation date was set twelve months and *two* weeks prior to the ABA's final decision on February 4, 2002. Following the rationale of the Board in its Response, these graduates are two weeks shy of falling within the *Eisenson* opinion. Yet, there was nothing magical or academic about the setting of a graduation date. This is obvious by the fact that the Barry's graduation date this year was February, rather than January. Had Barry set the graduation date in 2001 for February as opposed to January, these graduates would not need this Court's favorable intervention. Such an unjust result follows neither the letter nor the spirit of the Rule or of *Eisenson*.

In its Response, the Board argues that Barry's application is more like *Massachusetts School of Law*[7] than *Eisenson*. *See* Board Res. to Pet., No. SC01-740

[7] *Florida Bd. of Bar Examiners re Massachusetts Sch. of Law*, 705 So. 2d 898 (Fla. 1998).

(Fla., filed April 19, 2002) at 7. However, Barry's application is totally different than the one filed by Massachusetts School of Law (hereinafter "MSL"). As this Court noted, MSL had "not yet received such full or provisional approval. Nevertheless, MSL argues that its educational program is substantially equivalent to ABA-accredited law schools and requests that this Court grant a limited waiver permitting MSL graduates who have passed the Massachusetts Bar exam to be eligible to take the Florida Bar Examination." *Florida Bd. of Bar Examiners re Massachusetts Sch. of Law*, 705 So. 2d at 899.

While MSL had not received provisional approval at the time it filed its application, Barry has received such approval. Moreover, MSL filed a federal lawsuit against the ABA, in which the court noted that "MSL made it clear that it would not comply with ABA Standards to obtain certification." *Massachusetts Sch. of Law at Andover, Inc. v. American Bar Ass'n*, 107 F.3d 1026, 1039 (3d Cir. 1997). While MSL shunned ABA approval and argued that it need not comply with the ABA Standards for accreditation, Barry applied for ABA approval and was found to be in substantial compliance with those Standards when the ABA rendered its final decision in February 2002.

Contrary to the Board's Response, Barry is not requesting this Court to return to its pre-*Hale* days, where the Court granted and denied waivers on a case-by-case

basis. *See* Board Res. to Pet. at 7. In *Florida Board Of Bar Examiners re Hale*, 433 So. 2d 969 (Fla. 1983), this Court noted that it would no longer favorably consider petitions for a waiver of the twelve-month Rule. As Barry's Petition clearly states, it is not asking this Court to waive the twelve-month Rule or the accreditation requirements of Rules 2-11.1 and 4-13. *See* Pet. of Barry University School of Law, (No. SC01-740) (Fla., filed April 3, 2002) at 23. Neither are Amici asking for this Court to waive the Rule. Rather, Amici respectfully submit that Barry's application for the Early Graduates complies with the Rules and with *Eisenson.*

Granting Barry's application will not open the door to a case-by-case *ad hoc* review process. The circumstances presented in Barry's Petition warrant this Court's favorable intervention. Moreover, Amici contend that the only fair and just resolution of the situation involving the Early Graduates is to grant Barry's Petition. Any other decision to the contrary will "result in unreasonable discrimination between similarly situated graduates." *In re Eisenson*, 272 So. 2d at 487 n.1.

CONCLUSION

For the foregoing reasons, Amici respectfully request this Honorable Court to grant Barry's Petition.

Respectfully submitted,

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APPENDIX

APPENDIX A

AFFIDAVIT OF MATHEW D. STAVER CERTIFYING THE AUTHENTICITY OF THE DATA BEHIND THE INITIALS

APPENDIX B

CHART OF GRADUATES' START AND GRADUATION DATES

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Amicus Brief with attached Appendix was sent this 24th day of April, 2002, to the following:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing Amicus Brief with attached Appendix was prepared using Times New Roman font, size 14 and that the Brief and Appendix meet the requirements of Fla. R. App. P. 9.210.

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