

IN THE SUPREME COURT
OF FLORIDA

FILED
THOMAS D. HALL
APR 24 2002
CLERK, SUPREME COURT
BY _____

In Re PETITION OF BARRY UNIVERSITY)
SCHOOL OF LAW, on behalf of its)
January, June and July 2000 and)
January 2001 Graduates; and)
LEONARD S. MANCINI, January 2000) CASE NO. SC02-740
SCOTT BLAUE, CHARLES S. WARD,)
ERIC DUBOIS, (June 2000), KIMBERLY)
ESTRADA, (July 2000), MELISSA MURRAY)
and CARY BLAKE (January 2001).)

BRIEF OF ATTORNEY GENERAL ROBERT A. BUTTERWORTH,
AMICUS CURIAE IN SUPPORT OF PETITIONERS

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STATEMENT OF THE FACTS

Amicus Curiae adopts the Statement of the Facts set forth in the Petition of Barry University School of Law.

SUMMARY OF ARGUMENT

This Court has previously granted a waiver from the requirement of Rule 2-11.1, Rules of the Supreme Court Relating to Admissions to The Bar, when a site visit held within 12 months of an applicant's graduation determined that the requirements for provisional accreditation were met even though formal accreditation occurred more than 12 months after the applicant's graduation. Petitioners, therefore, should be allowed to proceed as applicants for admission to The Florida Bar based on this Court's earlier interpretation since the determination to grant provisional accreditation to Barry University School of Law was based on the American Bar Association's site visit to the school in the fall of 2000, even though formal accreditation was not granted until February 2002.

ARGUMENT

Under the Rules of the Supreme Court Relating to Admissions to the Bar, applicants to the Florida Bar must have graduated

from a law school that was fully or provisionally accredited during their attendance or within 12 months of graduation. Rule 2-11.1 of the Supreme Court Relating to Admissions to The Bar, regarding educational qualifications, provides:

To be admitted into the General Bar Examination and ultimately to be 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 alternate 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 lower standards of legal training for particular persons or groups. (e.s.)

In the case of *Florida Board of Bar Examiners In re Eisenson*, 272 So. 2d 486 (Fla. 1973), the Court considered whether a waiver of Rule 2-11.1 was permissible for a student who had graduated more than a year before the law school received formal accreditation. At the time of Eisenson's graduation, the law school he had attended had not been approved by the American Bar Association (ABA). Five months after his graduation, the ABA conducted a site investigation of the school; the school received

provisional accreditation fourteen months after the student's graduation. This Court held that since the provisional accreditation was based on the evaluation conducted five months after Eisenson's graduation, the student should be given a waiver of the 12 month rule. The Court stated:

While waivers of the Rule relating to accreditation are not to be given without good and sufficient reason, we are persuaded, in light of the circumstances described by petitioner, that a waiver is justified in this instance. . . . 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 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.* (e.s.)

272 So. 2d at 487.

Thus, this Court has recognized that the spirit of the Rule is met where the factual findings upon which accreditation is ultimately granted are made within 12 months of graduation even though the formal decision regarding accreditation is made outside that time limit. Such is the case here.

The ABA site team that visited Barry University School of Law in the fall of 2000 evaluated the school in a number of areas

including its program of legal education, faculty, students, administration, information resources, finances, and physical plant. After reviewing the site team's findings, the ABA's Accreditation Committee found the school to be in substantial compliance with the ABA accreditation standards. The ABA Council, however, rejected the committee's positive recommendation. While there was a subsequent site visit to the school in the fall of 2001, this visit showed that the school was providing the same level of education as indicated by the 2000 site visit. This subsequent visit, which can be characterized as a "continued review process" site visit, was conducted as a part of the original application for accreditation.

Thus, the February 2002 ABA grant of provisional accreditation was based on the quality of education being provided to students at the time of the fall 2000 site visit. The subsequent site visit in the fall of 2001 revealed no change in the quality of education being provided by the school. Thus, the grant of provisional accreditation was based on the school's compliance with ABA accreditation standards in 2000.

The underlying rationale in *Eisenson* is that an applicant should not be penalized for the time it takes the ABA to finalize a school's accreditation. Rather if the ABA's accreditation

decision is based on a site visit made within 12 months of graduation, the spirit of the rule is satisfied and a graduate should be allowed to proceed as if provisional accreditation had taken place. Barry University School of Law was operating in compliance with ABA standards within 12 months of these students' graduation. As in *Eisenson*, the requirements for provisional accreditation were met within 12 months of the petitioners' graduation.

While this Court has announced that it would "no longer favorably consider petitions for waiver of [the accreditation requirement]," see, *Florida Board of Bar Examiners In re Hale*, 433 So. 2d 969, 972 (Fla. 1983); *Florida Bd. of Bar Examiners, Re Massachusetts School of Law*, 705 So. 2d 898 (Fla. 1998), this is not a situation where the Court is being asked, as in *Hale* and *Massachusetts School of Law*, to evaluate whether a non-accredited law school provides a legal education that is substantially equivalent to that from an ABA-accredited law school. There is no need for the Court to engage in an investigation of the program offered by a specific school which as the Court acknowledged in *Hale* would be "extremely difficult and would require an inordinate amount of money as well as our judicial

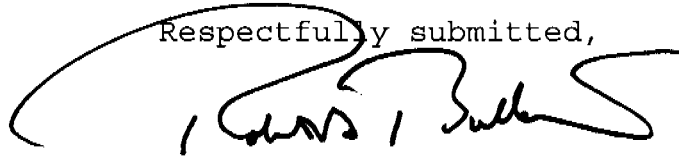
time." 433 So. 2d at 971-972. The ABA has already conducted such a review and determined that the Barry University School of Law is in compliance with its accreditation standards, granting the school provisional accreditation. As noted above, this accreditation was based on facts ascertained during the 2000 site visit and the 2001 site visit which found the school to be operating at the same level as determined from the 2000 visit. It would be a gross injustice to those applicants who graduated within 12 months of the fall 2000 site visit which formed the basis of the 2002 accreditation approval if it excluded these Barry graduates from taking the Bar examination while allowing those students who graduated within 12 months of the formal grant of accreditation to sit for the examination.

CONCLUSION

Based upon this Honorable Court's decision in *Eisenson*, petitioners who graduated from Barry University School of Law should be permitted to proceed as if the ABA had granted

provisional accreditation to the School of Law within 12 months
of the petitioners' graduation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert A. Butterworth". The signature is written in a cursive style with a large, sweeping initial "R" that loops back over the word "Respectfully".

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CERTIFICATE OF SERVICE

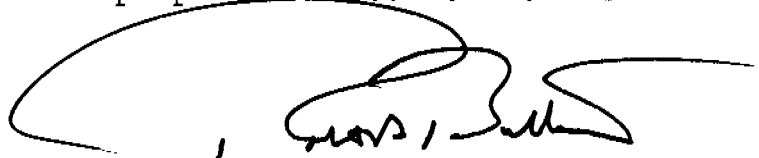
I certify that copies of the foregoing MOTION TO FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE IN SUPPORT OF PETITIONERS have been sent by U.S. mail to Stephen H. Grimes and Lucinda A. Hoffmann, Holland & Knight, 701 Brickell Avenue, Suite 3000, Miami, Florida 33131; and Kathryn E. Ressel, Executive Director, and Thomas A. Pobjecky, General Counsel, Florida Board of Bar Examiners, 1891 Eider Court, Tallahassee, Florida 32399-1750.



ROBERT A. BUTTERWORTH

CERTIFICATION OF COMPLIANCE

I hereby certify that this motion complies with the font requirements set forth in Rule 9.100(1), Florida Rules of Appellate Procedure as it has been prepared in Courier New 12-point font.



ROBERT A. BUTTERWORTH