

IN THE SUPREME COURT OF FLORIDA

FLORIDA BOARD OF BAR EXAMINERS)
RE AMENDMENTS TO RULES OF THE)
SUPREME COURT RELATING TO)
ADMISSIONS TO THE BAR) **Case No. SC06-___**
_____)

Petition

The Florida Board of Bar Examiners petitions the Court for approval of certain amendments to the Rules of the Supreme Court Relating to Admissions to the Bar.

Jurisdiction

The Court has jurisdiction of this matter pursuant to Article V, Section 15 of the Florida Constitution and Rule 1-13 of the Rules of the Supreme Court Relating to Admissions to the Bar.

Summary and Discussion of Proposed Rule Amendments

The Board has been engaged in an ongoing review of the Rules of the Supreme Court Relating to Admissions to the Bar during the last several years. The proposed rule amendments have been approved by the board and no individual board member will be filing a written dissent or objection to any of the proposals.

The adoption by the Court of the proposed rule amendments will standardize and clarify the language of the current rules. Several of the proposed rule

amendments, if adopted, will make the bar admission process more efficient for both the board and bar applicants. The following paragraphs summarize and discuss the rule amendments as proposed by the board.

RULE 1 GENERAL

The board recommends housekeeping changes to the following rules under rule 1: 1, 1-12, 1-13, 1-14, 1-14.1, 1-14.2, 1-15, 1-15.2, 1-16, 1-20, 1-21, 1-22, 1-22.2, 1-22.3, 1-23, 1-23.1, 1-23.2, 1-23.3, 1-24, 1-24.1, 1-24.2, 1-25, 1-25.1, 1-25.2, 1-26, 1-26.1, 1-26.2, 1-26.3, 1-27, 1-31, 1-33, 1-34, 1-35, 1-40, 1-41, 1-42, 1-43, 1-50, 1-51, 1-51.1, 1-51.2, 1-52, 1-53, 1-60, 1-62, 1-63, 1-63.1, 1-63.2, 1-63.3, 1-63.4, 1-63.5, 1-63.6, 1-63.7, 1-63.8, 1-63.9, 1-64, and 1-65. These housekeeping changes will conform the above-referenced rules to the Rules of Procedure Style Guide adopted by the Supreme Court of Florida by Administrative Order dated December 14, 1999 (hereinafter referred to as the style guide for rules of procedure). The housekeeping changes will also alter the order of rules 1-12 and 1-13, and will simplify and clarify the language of the rules.

RULE 2 APPLICATION REQUIREMENTS

The board recommends housekeeping changes to the following rules under rule 2: 2, 2-10, 2-12, 2-13, 2-13.2, 2-13.25, 2-13.3, 2-13.4, 2-14, 2-20, 2-30, and 2-30.1. These housekeeping changes will conform the above-referenced rules to the style guide for rules of procedure.

The board recommends the housekeeping change by which the last sentence of rule 2-13.1 is relocated to newly created rule 2-13.15. Rules 2-13.1 and 2-13.15 are further revised to conform them to the style guide for rules of procedure.

The board recommends that rule 2-13.5 be amended to add a sentence that would clarify the change that was adopted by the Court in *Amendments to the Rules of the Supreme Court Relating to Admissions to the Bar*, 695 So. 2d 312 (Fla. 1997). In that decision, the Court approved the board's recommended rule change that eliminated the "prohibition against person previously found unqualified for admission by the Board to make application for general bar examination [as consistent] with policy of sequential admission by which decisions related to character and fitness are separated from submission to examination..." *Id.* at 314. This rule is further revised to conform it to the style guide for rules of procedure.

The board recommends change to rules 2-21 and 2-21.1 by which the separate bar and examination applications that are currently required will be consolidated into a single application. Two separate applications are unnecessary and the use of a single application will simplify the admissions process for applicants. By eliminating the processing of two separate applications for each bar applicant, the proposed rule amendment will reduce the board's administrative costs.

Additionally, an individual may currently sit for Florida's bar examination by simply filing a two-page bar examination application with the board. The detailed bar application that initiates the character and fitness background investigation only has to be filed within 90 days of passing all parts of the bar examination to maintain the validity of the passing scores. The proposed requirement of filing a single, comprehensive bar application will hopefully deter individuals who only take Florida's bar examination for the improper reason of sharing the contents of secured multiple choice questions that are reused on future examinations. Lastly, by this proposal, Florida will also join 42 other jurisdictions that use a single application.

The board recommends that rule 2-21 be further amended to require the use of the board's on-line applications. On-line interactive applications for the admission process in Florida have been used since 2003. These on-line applications provide valuable interactive assistance to applicants. They also increase the board's efficiency in processing these applications. In light of the advantages of the board's on-line applications and the ready availability of computers and internet access, the proposed rule amendment mandates use of the on-line applications for all bar applicants. This rule is further revised to conform it to the style guide for rules of procedure.

The board recommends that rule 2-21.3 be deleted and that the language in that rule pertaining to the registration of law students be relocated to rule 2-21.2. Rule 2-21.2 is revised to conform it to the style guide for rules of procedure. The proposed rule amendment also deletes the current reference that a character and fitness investigation may take 6-8 months. That language is deleted because it is confusing in that the average length of character and fitness investigations have been decreasing over the years and is currently much less than the current reference of 6-8 months. The decrease in time has resulted from an increase in efficiency especially from the implementation of online interactive bar applications and computer-generated assistance in the processing of bar applications. The language is also unnecessary in that rule 3-40.2 provides a remedy for applicants and registrants should their background investigation exceed 9 months.

The board recommends the deletion of certain language in rule 2-22 that will be obsolete should the proposed creation of a single bar application be adopted. Rule 2-22 will also contain language as to the commencement of the board's character and fitness investigations.

The board recommends that the existing language of rule 2-23 be deleted as obsolete in that hardcopies of applications forms will no longer be used if the proposed rule amendment to rule 2-21 is adopted. Provisions of rules 2-25 and 2-26 have been updated and relocated to the proposed rule 2-23.

The board recommends that the fee structure for registration with the board by law students be relocated from rule 2-26.1 to newly created rule 2-23.1. The new rule also changes the existing deadlines.

Under the current rule, the calculations for the various deadlines for registration by law students begin from the date of "commencement of the study of law as certified by the law school." Many of the law schools (including those in Florida) commence classes on different dates resulting in multiple deadlines for students attending the various law schools. The newly created rule 2-23.1 simplifies the three existing deadlines of 180 days, 195 days, and 250 days by consolidating them into two deadlines. The proposed new rule further simplifies the deadlines by relying on fixed deadline dates applicable to all law students who commence their legal education during a particular time of year (fall, winter, or spring). For example, under the newly created rule 2-23.1, all students beginning law school in August or September will have a deadline of January 15 of the following year to receive the discounted fee of only \$75.00.

The board recommends that rule 2-24 be deleted as obsolete in that hardcopies of applications forms will no longer be used if the proposed rule amendment to rule 2-21 is adopted.

The board recommends the housekeeping change by which rules 2-25 and 2-26 are deleted and their provisions are updated and relocated to rule 2-23.

The board recommends the housekeeping change by which rule 2-26.2 is deleted and its provisions are updated and relocated to rule 2.23.2.

The board recommends the housekeeping change by which rule 2-26.3 is deleted and its provisions are updated and relocated to rule 2-23.3.

The board recommends the housekeeping change by which rule 2-26.4 is deleted and its provisions are updated and relocated to rule 2-23.4.

The board recommends the housekeeping change by which rule 2-26.5 is deleted and its provisions are updated and relocated to rule 2-23.5.

The board recommends the housekeeping change by which rule 2-27 is deleted and its provisions are updated and relocated to rule 2-23.6.

The board recommends that rule 2-28 be amended to clarify the rule by specifying that it applies to applicants who were previously denied admission and by adding that denial can occur by a Consent Judgment authorized by rule 3-23.9. The proposed amendment also conforms the rule to the style guide for rules of procedure.

The board recommends that rule 2-29 pertaining to the stale file fee be amended. When a stale application has been on file with the Board for over 5 years, the Board will need to conduct a considerable investigation to update its original investigation for that application. In that case, this rule appropriately requires repayment of the initial fee. The proposed amendment clarifies the rule

by specifying that it also applies to disbarred attorneys under rule 2-23.6. The proposed amendment also conforms the rule to the style guide for rules of procedure.

The board recommends that rule 2-30.2 be amended. This rule pertains to petitions filed by bar applicants with the court seeking review of administrative decisions of the board. The proposed amendment addresses past confusion by clarifying the type of pleadings that are to be filed with the court and served on the parties. The amendment also sets forth consistent deadlines for serving the different pleadings. The proposed amendment also conforms the rule to the style guide for rules of procedure.

RULE 3 BACKGROUND INVESTIGATION

The board recommends housekeeping changes to the following rules under rule 3: 3, 3-10, 3-10.1, 3-11, 3-12, 3-13, 3-14, 3-14.5, 3-14.6, 3-15, 3-16, 3-17, 3-17.1, 3-17.2, 3-20, 3-21, 3-21.1, 3-22, 3-22.1, 3-22.6, 3-22.7, 3-23, 3-23.2, 3-23.3, 3-23.4, 3-23.5, 3-23.7, 3-23.8, 3-23.9, 3-30, and 3-40. These housekeeping changes will conform the above-referenced rules to the style guide for rules of procedure.

The board recommends the deletion of language in rule 3-14.1 requiring applicants to provide transcripts from all post-secondary institutions ever attended. Based on the board's experience, these transcripts are typically unnecessary when

conducting a character and fitness investigation and can be requested on a case-by-case basis, if needed. The rule as revised will require an applicant to provide transcripts from the following: the educational institution that awarded an undergraduate degree, all law schools attended, and any post-secondary institution attended subsequent to the receipt of the law degree. The amendment also implements a change as to the availability of application-related forms. The Board will no longer supply these forms because they are readily available on the board's Website. The remaining changes conform the rule to the style guide for rules of procedure.

The board recommends the deletion of language in rule 3-14.2 requiring applicants to provide transcripts from all post-secondary institutions ever attended. Based on the board's experience, these transcripts are typically unnecessary when conducting a character and fitness investigation and can be requested on a case-by-case basis, if needed. The rule as revised will require a registrant to provide the transcripts from the institution that awarded the undergraduate degree. The amendment also implements a change as to the availability of application-related forms. The Board will no longer supply these forms because they are readily available on the board's Website. The remaining changes conform the rule to the style guide for rules of procedure.

The board recommends that rule 3-14.3 be amended to conform the rule to the style guide for rules of procedure and to update the language pertaining to the names of the applications.

The board recommends that rule 3-14.4 be amended to implement a change as to the availability of application-related forms. The Board will no longer supply these forms because they are readily available on the board's Website.

The board recommends that rule 3-22.2 be amended to conform the rule to the style guide for rules of procedure and to simplify the rule.

The board recommends that rule 3-22.3 be amended to conform the rule to the style guide for rules of procedure and to clarify the rule.

The board recommends that rule 3-22.4 be amended to reference the Board's practice of forgoing an investigative hearing in cases involving undisputed facts where the board has determined that a conditional admission is the appropriate recommendation. The remaining changes conform the rule to the style guide for rules of procedure.

The board recommends that rule 3-22.5 be amended to conform the rule to the style guide for rules of procedure and to clarify the rule.

The board recommends that rule 3-23.1 be amended to add a 20-day deadline for the filing of an answer to Specifications. That deadline is currently contained in the board's formal hearing procedures that are attached to the

Specifications. The board recommends that the deadline for filing an answer also be included in the rules. A similar provision is contained in the rules of civil procedure. *See Fla. R. Civ. P. 1.140(a)(1)*. The proposed rule amendment also conforms the rule to the style guide for rules of procedure.

The board recommends that rule 3-23.6 be amended to conform the rule to the style guide for rules of procedure and to clarify the rule.

The board recommends that rule 3-40.1 be amended. This rule pertains to petitions filed by bar applicants with the court seeking review of character and fitness recommendations of the board. The proposed amendment addresses past confusion by clarifying the type of pleadings that are to be filed with the court and served on the parties. The amendment also sets forth consistent deadlines for serving the different pleadings. The proposed amendment also conforms the rule to the style guide for rules of procedure.

The board recommends that rule 3-40.2 be amended. This rule pertains to petitions filed by bar applicants seeking an order from the court to direct the board to conclude its background investigation. The proposed amendment addresses past confusion by clarifying the type of pleadings that are to be filed with the court and served on the parties. The amendment also sets forth consistent deadlines for serving the different pleadings. The proposed amendment also conforms the rule to the style guide for rules of procedure.

RULE 4 BAR EXAMINATION

The board recommends housekeeping changes to the following rules under rule 4: 4, 4-10, 4-11, 4-12, 4-13, 4-13.2, 4-13.4, 4-14, 4-15, 4-16.2, 4-17, 4-18, 4-18.1, 4-18.2, 4-20, 4-21, 4-22, 4-23, 4-23.1, 4-24, 4-24.1, 4-24.2, 4-26, 4-30, 4-32, 4-33, 4-33.1, 4-40, 4-42, 4-42.1, 4-42.2, 4-42.3, 4-43, 4-44, 4-47, 4-47.1, 4-47.2, 4-50, 4-51, 4-51.2, 4-51.3, 4-51.4, 4-52, 4-60, 4-61, 4-62, 4-62.1, 4-62.3, 4-63, 4-64, and 4-65. These housekeeping changes will conform the above-referenced rules to the style guide for rules of procedure.

The board recommends that rule 4-13.1 be amended to incorporate the holding in *Amendments to the Rules of the Supreme Court Relating to Admissions to the Bar*, 762 So. 2d 435 (Fla. 2000). That decision authorized law students to take the Multistate Professional Responsibility Examination (MPRE) prior to graduation subject to the requirements of rule 4-18.1. The proposed amendment also conforms the rule to the style guide for rules of procedure.

The board recommends that rule 4-16 be amended to implement a change as to the availability of an informational booklet regarding the Multistate Bar Examination (MBE). That booklet is available free on the Website of the National Conference of Bar Examiners (NCBE) that produces the MBE. Information about the MBE and a link to the NCBE's Website are located on the board's Website.

The proposed amendment also conforms the rule to the style guide for rules of procedure.

The board recommends that rule 4-16.1 be amended to implement a change as to the availability of the board's bar examination study guide. The Board will no longer supply the study guide for a \$25 fee because the guide is readily available for free on the board's Website. The proposed amendment also conforms the rule to the style guide for rules of procedure.

The board recommends that rule 4-17.1 be amended to state that the Board provides test accommodations at no additional cost to applicants in accordance with the Americans with Disabilities Act. The proposed amendment also conforms the rule to the style guide for rules of procedure.

The board recommends that rule 4-17.2 be amended to state that forms pertaining to test accommodations are available on the board's Website. The proposed amendment also adds references to the specific rules pertaining to deadlines and late filing fees. The proposed amendment also conforms the rule to the style guide for rules of procedure.

The board recommends the housekeeping changes by which rules 4-25.1 and 4-25.2 are deleted and their provisions are relocated to rule 4-25. Rule 4-25 is also amended to conform the rule to the style guide for rules of procedure.

The board recommends the housekeeping changes by which rule 4-25.3 is renumbered to 4-25.1. The proposed amendment also conforms the rule to the style guide for rules of procedure.

The board recommends that rule 4-26.1 be amended to conform the rule to the style guide for rules of procedure and to simplify the rule.

The board recommends that rule 4-26.2 be amended to delete obsolete language pertaining to the pass/fail line in 2003-2004 for the General Bar Examination. The proposed amendment also conforms the rule to the style guide for rules of procedure.

The board recommends that rule 4-33.2 be amended to delete obsolete language pertaining to previous pass/fail lines for the MPRE. The proposed amendment also conforms the rule to the style guide for rules of procedure.

The board recommends that rule 4-41 be amended to conform the rule to the style guide for rules of procedure and to clarify the rule.

The board recommends that rule 4-42.4 be amended to establish new deadlines for requesting test accommodations. As to the February bar examination, the deadline will move from February 1 to January 15. As to the July bar examination, the deadline will move from July 1 to June 15.

The processing of an applicant's request for test accommodations is time-consuming and often includes review by one of the board's consultants. By

backing up the deadlines by about two weeks, the proposed deadlines will alleviate the administrative burden such processing places on the board's resources at the time when the board is preparing for a particular administration of the bar examination. The proposed deadlines will assist the board in ensuring that requests for accommodations for an impending administration of the bar examination will be reviewed and decided by the board in a timely manner. The amendment also conforms the rule to the style guide for rules of procedure.

The board recommends that rules 4-43.1 and 43.2 be amended and that rules 4-43.3 and 4-43.4 be deleted to revise the deadlines and fees for late filing for admission to the bar examination. The current rules contain four different deadlines and corresponding late filing fees for applicants who file untimely applications for admission to a particular administration of the bar examination. The proposed amendments to rules 4-43.1 and 4-43.2 and the deletion of rules 4-43.3, and 4-43.4 simplify these deadlines and late fees by reducing the deadlines from four to two and by eliminating the late filing fees of \$100.00 and \$1,000.00.

The proposed deadlines are consistent with the new deadlines being recommended under rule 4-42.4 for requesting test accommodations. Prior to September 1982, the deadlines for applying for the bar examination was the first Tuesday in January for the February examination and the first Tuesday in June for the July examination. The proposed amendment would establish fixed deadlines of

January 15 for the February examination and June 15 for the July examination.

These proposed final deadlines are similar to or less restrictive than final deadlines used by other large jurisdictions.

The proposed final deadlines would eliminate the processing of new applications or keeping track of previously filed incomplete applications during the critical time when the board's staff is preparing for the upcoming administration of the bar examination. The proposed final deadlines would also provide the board's staff with an accurate count of the number of applicants who are registered to take a particular examination in advance of the examination.

Currently, applicants can register for the examination up to the actual day of the examination by paying a \$1,000 late fee. This late filing option would be eliminated by the proposed amendment. During the July 2005 examination, only 3 first-time applicants paid the \$1,000 late fee. During the February 2006 examination, only 5 first-time applicants paid the \$1,000 late fee. The proposed amendments to rules 4-43.1 and 4-43.2 also conform those rules to the style guide for rules of procedure.

The board recommends that rule 4-45 be amended to delete the obsolete language pertaining to the past practice of allowing the use of typewriters during the bar examination. The proposed amendment adds language pertaining to the

current practice of allowing the use of laptop computers. The proposed amendment also conforms the rule to the style guide for rules of procedure.

The board recommends that rules 4-46 and 4-48 be amended to address the treatment of applicants who untimely request postponement of the taking of the bar examination or who fail to appear for the bar examination for which they were issued a ticket of admission. If these applicants wish to take another bar examination, the board recommends that they be required to reapply under rule 4-48 and pay the reapplication fee. The proposed amendment also conforms the rule to the style guide for rules of procedure.

The board recommends that rule 4-51.1 be amended to add additional items that are prohibited in the examination room during the administration of the bar examination. The proposed amendment also conforms the rule to the style guide for rules of procedure.

RULE 5 RECOMMENDATIONS AND JURISDICTION

The board recommends housekeeping changes to the following rules under rule 5: 5, 5-10, 5-11, 5-12, 5-13, 5-13.1, 5-13.2, 5-14, and 5-15. These housekeeping changes will conform the above-referenced rules to the style guide for rules of procedure.

Effective Dates of Proposed Rule Amendments

Should the Court adopt the proposed rule amendments, then the board requests that they be made effective six months from the date of the court's order. The board will use the interim period to develop, test, and implement the necessary programming to the board's on-line applications to effectuate the switch from the current dual applications to the single application. The six month period will also allow for adequate notice to bar applicants as to those rule amendments that will adjust deadlines. *See, e.g.*, proposed amendments to the following: rule 2-23.1 (changing the deadlines for filing by a student registrant), rule 4-42.4 (shortening the deadline for requesting a test accommodation to January 15 for the February bar examination and to June 15 for the July bar examination), and 4-43 (deleting late filing after January 15 for admission to the February bar examination and after June 15 for admission to the July bar examination).

Dated this 6th day of June, 2006.

FLORIDA BOARD OF BAR EXAMINERS
R. TERRY RIGSBY, CHAIR

Eleanor Mitchell Hunter
Executive Director

By: _____
Thomas Arthur Pobjecky
General Counsel
Florida Board of Bar Examiners
1891 Eider Court
Tallahassee, FL 32399-1750
(850) 487-1292
Florida Bar #211941

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Petition has been served by U.S. Mail this 6th day of June 2006 to the following: John F. Harkness, Jr., The Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399-2300; Dean J. Richard Hurt, Barry University School of Law, 6441 East Colonial Drive, Orlando, FL 32807-3650; Dean James M. Douglas, Florida A & M University College of Law, Post Office Box 3113, Orlando, FL 32802-3113; Dean C. Peter Goplerud, III, Florida Coastal Law School, 7555 Beach Boulevard, Jacksonville, FL 32216; Dean Leonard P. Strickman, Florida International University, College of Law, University Park, GL 495, Miami, FL 33199; Dean Donald J. Weidner, Florida State University College of Law, 425 West Jefferson Street, Tallahassee, FL 32306-1601; Dean Joseph Harbaugh, Nova Southeastern University, Shepard Broad Law Center, 3305 College Avenue, Ft. Lauderdale, FL 33315; Dean Robert Butterworth, St. Thomas University School of Law, 16400 N.W. 32nd Avenue, Miami, FL 33054; Dean Darby Dickerson, Stetson University College of Law, 1401 61st Street, South, St. Petersburg, FL 33707; Dean Robert Jerry, University of Florida, Fredric G. Levin Law Center, Post Office Box 117620, Gainesville, FL 32611; Dean Dennis Lynch, University of Miami School of Law, 1311 Miller Drive, Room 380B, Coral Gables, FL 33146.

Thomas Arthur Pobjecky

Certificate of Type Size and Style

I hereby certify that the size and style of type used in this Petition are 14 Times New Roman.

Thomas Arthur Pobjecky