
MEMORANDUM

TO: ATTORNEY REGULATION ADVISORY COMMITTEE

FROM: WHITNEY CUNNINGHAM, DAVID LUNN & PAMELA TREADWELL-RUBIN

SUBJECT: PROPOSED CHANGE TO ARIZONA SUPREME COURT RULE 35(b)(5)

DATE: FEBRUARY 26, 2018

The Attorney Regulation Advisory Committee (“ARC”) formed a subcommittee consisting of Whitney Cunningham, David Lunn and Pamela Treadwell-Rubin (the “Subcommittee”) to review the sufficiency of the current processes for handling testing accommodation requests for Arizona uniform bar examination applicants. As set forth more fully below, the Subcommittee does not believe any changes to the current process need to be implemented at this time.

A. Current Accommodation Process

Under Supreme Court Rule 35(b)(5), requests for testing accommodations are handled by the Committee on Examinations. On the Arizona Court’s website, there are certain materials provided for candidates who seek testing accommodations (<https://www.azcourts.gov/cld/Attorney-Admissions/Admission-by-UBE-testing-in-Arizona/Testing-Accommodations>). Included in those materials is the Test Accommodation Guidelines for Arizona Bar Examination (“Guidelines”). *See* Exhibit 1 hereto. The Guidelines set forth the Committee on Examination’s policy for determining whether to grant accommodations. The website above also contains a Request for Testing Accommodation and related form.

After the Certification and Licensing Division (“CLD”) receives an applicant’s Request for Testing Accommodation application and accompanying documents, the CLD reviews those materials for completeness. If the materials appear to be incomplete, the CLD will reach out to the applicant to request the required additional information.

After the accommodation applications are complete, those applications are sent to qualified medical experts for review. Those experts submit an analysis of their review to the Committee on Examinations. After those steps are completed, the Committee on Examinations holds one or more meetings to discuss and vote on the accommodations requested in each applicant's application. The experts who reviewed and analyzed each accommodation request are available during those meetings in the event any member of the Committee on Examinations has any additional questions.

In the event an applicant disagrees with the decision of the Committee on Examinations, pursuant to Supreme Court Rule 35(d), that applicant may file a verified petition for review with the Arizona Supreme Court.

B. Other UBE Jurisdictions Accommodation Processes

It appears, for the most part, that almost every other UBE jurisdiction follows a process similar to Arizona when considering accommodation requests. The applicants in the other jurisdictions make a request to their respective jurisdiction's board or committee that administers the UBE. There does, however, appear to be one exception in the handling of accommodations in UBE jurisdictions, and that is Idaho.

Idaho, under the Idaho Bar Commission Rules, created a separate Reasonable Accommodations Committee (the "RA Committee"). The RA committee was formed pursuant to Idaho Bar Commission Rule 213. A copy of that rule is attached hereto as Exhibit B.

Under Rule 213, the Board of Commissioners or the duly elected governing body of the Bar (the "Board"), appoints a three-member RA Committee. Two members of that committee are to be lawyers in good standing and the third is to be a non-lawyer.

The RA Committee receives and reviews relevant information to the accommodation request and then submits its findings of fact, conclusions of law, and recommendation to deny or modify a request to the Board. Under Rule 15, the Board may either approve the application or request, issue an order modifying or denying the request, issue a recommendation of conditional admission, or request further investigation. An applicant aggrieved by a decision of the Board may request a show cause hearing before the Board. The decision of the Board may then be reviewed through a petition to the Idaho Supreme Court.

C. Recommendation

The Subcommittee currently finds no justification to modify the accommodation request processes. While the Idaho process has some appeal, the Subcommittee believes that, due to the time constraints in processing accommodation requests, an applicant should be able to seek review from the Supreme Court without having to participate in other hearings. The current process provides ample time for an applicant to challenge a decision by the Examination Committee and to receive a ruling from the Supreme Court prior to the bar examination.

A.R.S. Sup.Ct.Rules, Rule 35
Rule 35. Examination Requirements

(a) Examination Dates and Places. The Arizona uniform bar examinations will be administered two times each year, once in February and once in July, and at such locations as the Committee on Examinations, in its discretion, deems appropriate. An applicant who has been granted permission to take the examination will be advised of the date and place at least two weeks before the examination.

(b) Examination Subjects; Grading.

1. The examination shall be the uniform bar examination prepared by the National Conference of Bar Examiners, which consists of six Multistate Essay Examination questions, two Multistate Performance Test tasks, and the Multistate Bar Examination. The Multistate Essay examination shall be weighted 30%, the Multistate Performance Test shall be weighted 20%, and the Multistate Bar Examination shall be weighted 50% in calculating uniform bar examination scores. Applicants may be tested on any subject matter listed by the National Conference of Bar Examiners as areas of law to be tested on the uniform bar examination. Questions will be not be labeled and may include more than one subject matter.
2. The Committee on Examinations may use such grading or scoring system for the Multistate Essay Examination and Multistate Performance Test as the Committee on Examinations, in its discretion, deems appropriate. Answers to the Multistate Essay Examination shall be graded according to generally applicable principles of law. Raw scores on the Multistate Essay Examination and the Multistate Performance Test shall be scaled to the Multistate Bar Examination scores according to the method approved by the National Conference of Bar Examiners for jurisdictions that administer the uniform bar examination.
3. An applicant who takes the uniform bar examination in Arizona or seeks to transfer a uniform bar examination score from another uniform bar examination jurisdiction will be deemed to have satisfied the requirements of the Arizona uniform bar examination if the applicant achieves a scaled score equal to or greater than the minimum acceptable score established by the Committee for the test administration, under conditions consistent with the practices and procedures of the Committee on Examinations and the National Conference of Bar Examiners. The passing score for each test administration shall be posted on the Supreme Court Website. Results of the bar examination will be published and mailed or e-mailed at such dates and times as the Committee deems appropriate. Arizona bar examination attempts prior to adoption of the uniform bar exam, successful or unsuccessful, shall be considered equivalent to the Arizona uniform bar examination for purposes of these rules.
4. Examination grades of an applicant will not be disclosed to the public. The Committee is authorized to

- A. release statistical results of the examination;
 - B. disclose to the law school from which the applicant graduated the applicant's status as pass/fail/withdrew;
 - C. certify, upon an applicant's request, an applicant's Multistate Bar Examination score to other jurisdictions in which the applicant seeks admission; and
 - D. disclose an applicant's scores on the uniform bar examination to the National Conference of Bar Examiners.
5. Testing accommodations will be provided for an Arizona uniform bar examination applicant demonstrating a disability to the extent such accommodations are reasonable, consistent with the nature and purpose of the examination, and necessitated by the applicant's disability. An applicant seeking an accommodation shall file a request for testing accommodation in such form as prescribed by the Committee. A fully completed request for accommodation, including supporting documentation, shall be submitted with the application for the examination in accordance with filing deadlines as set by the Court.
6. Before being recommended by the Committee on Character and Fitness for admission to the practice of law in Arizona, an applicant must pass a professional responsibility examination, which shall be the Multistate Professional Responsibility Examination prepared and administered by the National Conference of Bar Examiners. An applicant seeking to take the Multistate Professional Responsibility Examination shall file an application directly with, and pay the fees specified by, the National Conference of Bar Examiners.
7. The Committee on Examinations will file with the Court thirty (30) days before each administration of the Multistate Professional Responsibility Examination that score which will be the minimum acceptable score for that administration of the examination.
8. An applicant by Arizona uniform bar examination or transfer of uniform bar examination score from another jurisdiction must submit proof satisfactory to the Committee on Examinations that the applicant has taken the Multistate Professional Responsibility Examination and received a minimum acceptable score within two (2) years before the successful bar examination or within the time frame for taking the oath of admission after the successful bar examination in order to have the applicant's score accepted by the Committee on Examinations.
9. All applicants who receive a passing grade on the examinations and who are found to be otherwise qualified under these rules shall be recommended for admission to the practice of law.
10. The Committee on Examinations may take action, by majority vote, to enforce the Committee's own conditions, practices, and procedures, as well as those of the National Conference of Bar Examiners, including expulsion from the examination, temporary withholding of a score, or nullification of a score.

(c) Subsequent Examinations; Role of Committee on Character and Fitness.

1. An applicant failing to pass ~~one~~ uniform bar examination in any jurisdiction may apply for ~~two~~ subsequent uniform bar examinations in Arizona if the applicant meets all requirements listed in Rule 34(b). The application, in the form specified by Rule 34(c), shall be accompanied by the application and examination fees established by the Court, all supporting documents specified in Rule 34(d) or as the Committee on Character and Fitness may request and, if required by the Committee, such additional investigation fee as the Committee may determine is reasonably required to properly investigate the qualifications of such applicant. Arizona bar examination attempts prior to adoption of the uniform bar exam, successful or unsuccessful, shall be considered equivalent to the Arizona uniform bar examination for purposes of these rules.
2. An applicant who files an application to sit for the Arizona uniform bar examination and who withdraws such application or fails to appear for or complete such examination and who desires to sit for a subsequent examination, shall make the same filings as if such applicant had written and failed the examination. Any applicant who fails the Arizona uniform bar examination, withdraws from the examination, fails to complete the examination, or does not appear for and write the examination, and who does not apply for and write the next succeeding examination, shall, if applying for any subsequent examination, file a new application with fees required for an original filing as if such applicant had never presented an application to the Committee on Character and Fitness.
3. ~~An applicant taking the uniform bar examination three times in any jurisdiction and failing to earn the minimum acceptable score established by the Committee on Examinations will not be permitted to take a further examination, unless all requirements listed in Rule 34(b) are met, and the Committee on Examinations grants permission for the applicant to write another examination in Arizona. The applicant shall submit a written request to the Committee on Examinations stating the additional study and preparation that the applicant has made to qualify for further examination. If the Committee finds reasonable cause to believe the applicant may successfully pass a further examination, it shall grant permission to sit for the additional Arizona uniform bar examination. Arizona bar examination attempts prior to adoption of the uniform bar exam, successful or unsuccessful, shall be considered equivalent to the Arizona uniform bar examination for purposes of these rules.~~

(d) Review by the Court.

1. *Petition for Review.* An applicant aggrieved by any decision of the Committee on Examinations may, within twenty (20) days after such decision, file a verified petition for review with this Court; however, the Committee on Examination's decision regarding any applicant's grade score is final and will not be reviewed by the Court absent extraordinary circumstances. The petition must succinctly state the facts that form the basis for the petition and the applicant's reasons for believing this Court should review the Committee's decision. A copy of the petition must be promptly served upon the Committee. The Committee will have thirty (30) days after service to file a response and

transmit the applicant's file to this Court. Thereupon the Court will consider the matter and render a decision.

2. *Sealing the Record.* Any document filed under Rule 35(d) will be considered open to the public except that, upon request by any party or the Committee, the clerk of Court will seal medical or psychological reports and records. A party or the Committee may request that the Court seal a portion of any other materials submitted.

Credits

Amended Feb. 19, 1985, effective Feb. 1, 1985. Amended and effective March 17, 1987. Amended Jan. 8, 1990, effective Jan. 15, 1990; Jan. 14, 1991, prospectively applicable and in effect beginning with February, 1991 bar examination session. Amended and effective Jan. 25, 1991. Amended July 21, 1991, effective July 1, 1993; (temporary basis) Jan. 21, 1993, emergency effective Feb. 1, 1993, adopted in final form June 24, 1993. Amended and effective April 14, 1999; April 21, 1999. Amended Oct. 15, 2001, effective Dec. 1, 2001; July 21, 2004, effective Aug. 1, 2004; June 9, 2005, effective Dec. 1, 2005; Sept. 2, 2010, effective Jan. 1, 2011; Sept. 1, 2011, effective Jan. 1, 2012; Dec. 22, 2011, effective Jan. 1, 2012; Aug. 30, 2012, effective Jan. 1, 2013; Oct. 14, 2014, effective Jan. 1, 2015; Sept. 2, 2016, effective Jan. 1, 2017.

Editors' Notes

HISTORICAL NOTES

Source:

Former Rule 28(c)(VI to IX, XII).

Former Rule 36(g).

The text of Rule 28(c)(VII)(C), Rules of the Supreme Court (see Source, ante), as amended October 15, 1983, was inadvertently omitted from the text of the rules promulgated on September 7, 1984, to be effective February 1, 1985, and the omitted rule was reinstated, effective February 1, 1985, as pars. (b)5, 6 and 7 of this rule.

17A Pt. 2 A. R. S. Sup. Ct. Rules, Rule 35, AZ ST S CT Rule 35

Current with amendments received through 11/1/17