

Rules Governing Admission to the Bar

ARTICLE 1 Applications

15-101. Definitions; title.

A. **Definitions.** For purposes of these rules:

(1) "notice" means notice sent to the person affected by such action which shall be effective upon placing the document or letter in the United States mail;

(2) "MBE" means the Multi-State Bar Examination;

(3) "MPRE" means the Multi-State Professional Responsibility Examination;

(4) "practice of law" means being actively and continuously engaged in full-time, gainful employment in the performance of legal services;

(5) "lawyer" means a person, admitted to a bar, who by education and training may legally perform legal services for others;

(6) "legal service" means advising, advocating or counseling to or for others as to a matter involving law which may not be lawfully performed by a nonlawyer;

(7) "grader" means one who is scholastically, professionally and psychologically qualified to review and grade the essay portions of the bar examination and who is appointed by the Board of Bar Examiners;

(8) "in good standing" means admitted to the bar of another state and:

(a) has not been disbarred;

(b) is not under disciplinary suspension;

(c) has not resigned from the bar of such other state while under disciplinary suspension or while under disciplinary proceedings;

(d) has not been the subject of current or pending disciplinary proceedings; or

(e) if the applicant has been disbarred or suspended, has been duly and fully reinstated;

(9) "serious crime" means:

(a) any felony; or

(b) any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime, involves:

- (i) conduct as an attorney;
- (ii) interference with the administration of justice;
- (iii) false swearing;
- (iv) misrepresentation;
- (v) fraud;
- (vi) willful failure to file tax returns;
- (vii) deceit;
- (viii) bribery;
- (ix) extortion;
- (x) misappropriation;
- (xi) theft; or

(xii) an attempt to commit, a conspiracy to commit or a solicitation of another to commit a "serious crime"; and

(10) "state" means any of the fifty states, territories or protectorates of the United States and the District of Columbia.

B. Title. These rules shall be known as the Rules Governing Admission to the Bar.

[As amended, effective November 1, 1994; May 19, 2004.]

ANNOTATIONS

The 1994 amendment, effective November 1, 1994, substituted "Board of Bar Examiners" for "New Mexico Supreme Court" at the end of Paragraph A(7).

The 2004 amendment, effective May 19, 2004, added Subparagraph (10) in Paragraph A.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Attorneys: revocation of state court pro hac vice admission, 64 A.L.R.4th 1217.

15-102. Admission requirements.

The Supreme Court shall determine and prescribe by rules the qualifications and requirements for admission to the practice of law, including the amount of fee to be charged applicants for admission. The rules governing requirements for admission to the bar will be furnished by the Board of Bar Examiners upon request of any applicant.

[As amended, effective November 1, 1994.]

ANNOTATIONS

Cross references. — For Parental Responsibility Act, see Chapter 40, Article 5A NMSA 1978.

For authority of Supreme Court pursuant to Parental Responsibility Act, see 40-5A-10 NMSA 1978.

The 1994 amendment, effective November 1, 1994, in the first sentence, substituted "The Supreme Court" for "This court" and, in the second sentence, substituted "the Board of Bar Examiners" for "the clerk of the supreme court" near the end of the rule.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law §§ 12 to 24.

Procedural due process requirements in proceedings involving applications for admission to bar, 2 A.L.R.3d 1266.

Criminal record as affecting applicant's moral character for purposes of admission to bar, 88 A.L.R.3d 192.

Violation of draft laws as affecting character for purposes of admission to the bar, 88 A.L.R.3d 1055.

Failure to pay creditors as affecting applicant's moral character for purposes of admission to the bar, 4 A.L.R.4th 436, 108 A.L.R.5th 289.

Layman's assistance to party in divorce proceeding as unauthorized practice of law, 12 A.L.R.4th 656.

Sexual conduct or orientation as ground for denial of admission to bar, 21 A.L.R.4th 1109, 105 A.L.R.5th 217.

Falsehoods, misrepresentations, impersonations, and other irresponsible conduct as bearing on requisite good moral character for admission to bar — conduct related to admission to the bar, 30 A.L.R.4th 1020, 107 A.L.R.5th 167.

7 C.J.S. Attorney and Client §§ 10 to 28.

15-103. Qualifications.

A. **Requirements mandatory.** Licenses to practice law shall be granted only to applicants who fulfill all of the requirements of these rules.

B. **Qualifications.** Every person seeking admission to practice law in New Mexico shall file a formal application as prescribed by these rules and as required by the board. Submission of the application shall constitute submission by the applicant to the jurisdiction of the New Mexico Board of Bar Examiners until a final determination upon admission of the applicant may be completed. Every applicant shall have the burden of establishing to the satisfaction of the board that the applicant possesses all of the following qualifications:

- (1) is at least eighteen (18) years of age;
- (2) is a graduate with a juris doctor or bachelor of laws and letters degree (at the time of the bar examination for which application is made) of a law school formally accredited by the American Bar Association or is a graduate of any law school who has been engaged in the practice of law in another state or states for at least four (4) of the six (6) years immediately preceding the person's application for admission to practice in New Mexico;
- (3) is a person of good moral character, physically and mentally fit to practice law;
- (4) is, if ever admitted to practice in any other state or states, in good standing in such state or states;
- (5) is professionally qualified for admission to the bar of New Mexico;
- (6) is in compliance with all child support and spousal support obligations imposed under a "judgment and order for support" as defined in the Parental Responsibility Act, Sections 40-5A-1 through 40-5A-13 NMSA 1978, or imposed under a child support or spousal support order entered by any other court of competent jurisdiction. If an applicant is not in compliance with a child support or spousal support obligation, the applicant will not be recommended for admission to the bar until the applicant provides the board with evidence that the applicant is in compliance with the judgment or order. If the applicant has appeared on the Human Services Department's certified list of obligors, the applicant shall submit a certified statement from the Human Services Department that the applicant is in compliance with the judgment and order for

support. In all other cases, the applicant shall provide evidence acceptable to the board of compliance with all applicable child and spousal support orders; and

(7) is a citizen or national of the United States, an immigrant alien lawfully admitted for permanent residence in the United States, or an alien otherwise authorized to work lawfully in the United States.

C. Character and fitness standards and investigation.

(1) The purpose of character and fitness investigation before admission to the bar is to assure the protection of the public and to safeguard the justice system.

(2) The applicant bears the burden of proving good character in support of the application.

(3) The revelation or discovery of any of the following may be treated as cause for further inquiry before the board determines whether the applicant possesses the character and fitness to practice law:

- (a) unlawful conduct;
- (b) academic misconduct;
- (c) misconduct in employment;
- (d) acts involving dishonesty, fraud, deceit or misrepresentation;
- (e) acts which demonstrate disregard for the rights or welfare of others;
- (f) abuse of legal process, including the filing of vexatious or frivolous lawsuits;
- (g) neglect of financial responsibilities or professional obligations;
- (h) violation of an order of a court, including child support orders;
- (i) conduct that evidences current mental or emotional instability that may impair the ability to practice law;
- (j) conduct that evidences current drug or alcohol dependence or abuse that may impair the ability to practice law;
- (k) denial of admission to the bar in another jurisdiction on character and fitness grounds;

(l) disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction;

(m) making of false statements, including omissions, on bar applications in this state or any other jurisdiction; or

(n) as otherwise determined by the board for just and good cause.

(4) The board shall determine whether the present character and fitness of an applicant qualifies the applicant for admission. In making this determination, the following factors should be considered in assigning weight and significance to prior conduct:

(a) the applicant's age at the time of the conduct;

(b) the recency of the conduct;

(c) the reliability of the information concerning the conduct;

(d) the seriousness of the conduct;

(e) the factors underlying the conduct;

(f) the cumulative effect of the conduct or information;

(g) the evidence of rehabilitation;

(h) the applicant's positive social contributions since the conduct;

(i) the applicant's candor in the admissions process; and

(j) the materiality of any omissions or misrepresentations.

(5) The applicant has a continuing obligation to update the application with respect to all matters inquired of on the application. This obligation continues during the pendency of the application, including the period when the matter is on appeal to the board or the Court.

D. Conviction; rehabilitation. A person who has been convicted of a serious crime as defined under these rules shall prove good moral character by demonstrating by clear and convincing evidence that the applicant is rehabilitated and satisfies all other requirements for good moral character.

E. Examination. All applicants shall be required to take and pass the written examination except as otherwise provided with respect to law faculty at the University of New Mexico.

[As amended, effective November 14, 1988; July 24, 1996; as amended by Supreme Court Order 05-8300-10, effective September 1, 2005; by Supreme Court Order No. 08-8300-28, "effective for the February 2009 bar examination".]

Committee commentary. — The requirements of this rule are intended to assist the Board in assessing whether an applicant has demonstrated

- (a) the ability to reason, recall complex factual information and integrate that information with complex legal theories;
- (b) the ability to communicate with clients, attorneys, courts, and others with a high degree of organization and clarity;
- (c) the ability to use good judgment on behalf of clients and in conducting one's professional business;
- (d) the ability to conduct oneself with respect for and in accordance with the law;
- (e) the ability to avoid acts that exhibit disregard for the rights, health, safety and welfare of others;
- (f) the ability to comply with the requirements of the Rules of Professional Conduct, applicable state, local, and federal laws, regulations, statutes and any applicable order of a court or tribunal;
- (g) the ability to act diligently and reliably in fulfilling one's obligations to clients, attorneys, courts and others; and
- (h) the ability to comply with deadlines and time constraints.

[Adopted by Supreme Court Order No. 10-8300-018, effective July 4, 2010.]

ANNOTATIONS

The 1988 amendment, effective November 14, 1988, added the second sentence in Paragraph B.

The 1996 amendment, effective to apply to the February 1997 bar examination, added Subparagraph B(6) and made a related stylistic change.

The 2005 amendment, approved by Supreme Court Order 05-8300-10, effective September 1, 2005, amended Subparagraph (1) of Paragraph B to reduce the age requirement from twenty-one to eighteen years of age, added a new Paragraph C providing for character and fitness standards and relettered Paragraphs C and D as Paragraphs D and E.

The 2008 amendment, approved by Supreme Court Order No. 08-8300-28, effective for the February 2009 bar examination, added Subparagraph (7) of Paragraph B.

The standard of good moral character is not unconstitutionally vague and does not violate equal protection requirements. In re: Application of Oppenheim, 2007-NMSC-022, 141 N.M. 596, 159 P.3d 245.

Rational connection between qualification and fitness required. — A state cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the due process or equal protection clause of the fourteenth amendment. A state can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice law. *Schwartz v. Board of Bar Exmrs.*, 353 U.S. 232, 77 S. Ct. 752, 1 L. Ed. 2d 796 (1957).

Affidavit requirement valid. — Applicant to take the New Mexico bar examination must be shown to be a person of good moral character before he is eligible to take the bar examination, and requirement of submission of an affidavit of an attorney of this state to that effect does not deny due process or equal protection. *Henington v. State Bd. of Bar Exmrs.*, 60 N.M. 393, 291 P.2d 1108 (1956).

Good moral character prerequisite to taking examination. — The right to take an examination to practice law is a qualified right, and one who seeks permission to take such examination must be prepared to satisfy reasonable requirements as to good moral character and training. *Henington v. State Bd. of Bar Exmrs.*, 60 N.M. 393, 291 P.2d 1108 (1956).

Court final arbiter of standards for bar admission. — The legislature may enact valid laws in fixing minimum requirements for admission to the bar, but in no event maximum; and it may not require the courts to admit on standards other than as accepted or established by the courts, and any legislation which attempts to do so is an invasion of the judicial power and violative of the constitutional provisions establishing the separate branches of government and prohibiting the legislature from invading the judiciary. In re *Sedillo*, 66 N.M. 267, 347 P.2d 162 (1959).

Powers of supreme court over admission to practice. — The supreme court has the ultimate responsibility to grant or withhold an admission to practice law. That court must independently examine and weigh the evidence and then pass upon its sufficiency. A particular case must be judged on its own merits, and an ad hoc determination in each instance must be made by the court. *Nall v. Board of Bar Exmrs.*, 98 N.M. 172, 646 P.2d 1236 (1982).

Character indication of fitness. — Membership in the bar is a privilege burdened with conditions. A fair private and professional character is one of them. Compliance with that condition is essential at the moment of admission; but it is equally essential

afterwards. Whenever the condition is broken the privilege is lost. To refuse admission to an unworthy applicant is not to punish him for past offenses. The examination into character, like the examination into learning, is merely a test of fitness. *Schwartz v. Board of Bar Exmrs.*, 60 N.M. 304, 291 P.2d 607 (1955), rev'd on other grounds, 353 U.S. 232, 77 S. Ct. 752, 1 L. Ed. 2d 796 (1957).

Conduct and opinion of peers relevant to character. — Proof of his good moral character entails a consideration of two kinds of indirect evidence: first, the pattern of conduct an individual follows; and, second, a consideration of the regard his fellows and associates have for him. *Schwartz v. Board of Bar Exmrs.*, 60 N.M. 304, 291 P.2d 607 (1955), rev'd on other grounds, 353 U.S. 232, 77 S. Ct. 752, 1 L. Ed. 2d 796 (1957).

Arrest, aliases, communist affiliation deemed not moral unfitness. — Arrests with convictions, use of aliases many years ago and communist party membership during the 1930's do not raise substantial doubts about applicant's good moral character. Therefore, denial of application is denial of due process because these circumstances do not rationally justify a finding of moral unfitness. *Schwartz v. Board of Bar Exmrs.*, 353 U.S. 232, 77 S. Ct. 752, 1 L. Ed. 2d 796 (1957).

Burden of proof as to moral character. — The burden is on the applicant to prove good moral character. The board then has the opportunity to rebut, showing evidence of bad moral character. *Nall v. Board of Bar Exmrs.*, 98 N.M. 172, 646 P.2d 1236 (1982).

Burden of proof in challenging board's findings or decision. — The applicant has the burden of showing that the board's findings are not supported by the evidence or that the decision was erroneous or unlawful. Reasonable doubts are resolved in favor of the applicant. *Nall v. Board of Bar Exmrs.*, 98 N.M. 172, 646 P.2d 1236 (1982).

ABA educational requirements may not be waived. — Subsection (b)(2) (now Subparagraph (2) of Paragraph B) does not permit a case-by-case waiver of the American Bar Association educational requirements. *In re Adams*, 102 N.M. 731, 700 P.2d 194 (1985).

Full-time practice notwithstanding nonlegal work. — Court holds applicant to the bar has been engaged in the full-time practice of law where for the previous seven years he has advised the government on questions of law involving contracts, mortgages, patents and leaseholds, inter alia, although much of the time has been spent doing work nonlawyers could do. *Harty v. Board of Bar Exmrs.*, 81 N.M. 116, 464 P.2d 406 (1970)(decided under former rule).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law § 12.

Criminal record as affecting applicant's moral character for purposes of admission to the bar, 88 A.L.R.3d 192.

Violation of draft laws as affecting character for purposes of admission to the bar, 88 A.L.R.3d 1055.

Failure to pay creditors as affecting applicant's moral character for purposes of admission to the bar, 4 A.L.R.4th 436.

Validity, construction and effect of reciprocity provisions for admission to bar of attorney admitted to practice in another jurisdiction, 14 A.L.R.4th 7.

Sexual conduct or orientation as ground for denial of admission to bar, 21 A.L.R.4th 1109.

Falsehoods, misrepresentations, impersonations, and other irresponsible conduct as bearing on requisite good moral character for admission to bar, 30 A.L.R.4th 1020.

Validity, construction, and application of enactment, implementation or repeal of formal educational requirement for admission to the bar, 44 A.L.R.4th 910.

7 C.J.S. Attorney and Client §§ 13 to 16.

15-104. Application.

A. Form of application. All applications shall be under oath on forms provided by the board, shall contain such information relating to the applicant's qualifications and eligibility as may be required by the board, and shall include applicant's age, residence, addresses for at least the five (5) years immediately preceding date of application, citizenship, occupations, general and legal background and information as to the applicant's background and moral character. The Court may revoke the license of any attorney at any time upon satisfactory showing that the same was obtained by false representations, fraud or deceit.

B. Filing requirements. Applications for admission to the bar of New Mexico shall be submitted in duplicate on forms prescribed by the Board of Bar Examiners from time to time. Applications shall be filed with the board at its executive offices as follows:

(1) The filing deadline for the February examination is on September 10th immediately preceding the examination and the filing deadline for the July bar examination is on January 10th immediately preceding the examination.

(2) Applicants seeking a re-examination must file by January 10th for the February bar examination and June 10th for the July bar examination.

(3) No application will be accepted after the applicable filing date set forth in this rule except upon payment of such additional late fees as required by these rules.

C. Documents needed. The following documents shall be furnished with the application:

(1) a copy of the Federal Bureau of Investigation identification record of the applicant and a copy of the New Mexico Department of Public Safety identification record of the applicant;

(2) a properly authenticated transcript (sent from the law school) evidencing graduation with a juris doctor or bachelor of laws and letters degree from a law school formally accredited by the American Bar Association along with a completed law school certification on a form prescribed by the board; except that if the applicant is not a graduate of an accredited law school, the applicant shall transmit with the application:

(a) a certificate of admission in another state;

(b) three certificates vouching for the applicant's good moral character by members of the bar of such other state;

(c) one or more certificates by a judge or judges of the highest court of original jurisdiction in such other state, or the clerk thereof, to the effect that the applicant has been actively engaged in the actual practice of law in that state for at least four (4) years prior to the date of the certificate, and further that applicant is in good standing in the bar of such state and has not been disbarred, been placed under disciplinary suspension or resigned from such bar while under disciplinary investigation, is not the subject of any pending disciplinary proceedings in such state, or if the applicant has been suspended or disbarred, that the applicant has been duly reinstated.

Certificates of admission from other states may be sent directly to the Board of Bar Examiners under separate cover. All such papers will be returned to the applicant in due course. Other documents submitted will be returned to the applicant, if requested, upon approval by the chair or vice chair of the Board of Bar Examiners; and

(3) character and fitness statements from three licensed attorneys in good standing in any jurisdiction in the United States, who are familiar with the applicant's qualifications certifying that the applicant is a person of good moral character and physically and mentally qualified for admission to the bar of New Mexico.

[As amended, effective November 14, 1988; effective November 1, 1994; November 17, 1999 for bar examinations after January 1, 2001; April 9, 2002; as amended by Supreme Court Order No. 08-8300-028, "effective for the February 2009 bar examination".]

ANNOTATIONS

Cross references. — For criminal history information for bar applicants, see 34-2-9 NMSA 1978.

The 1999 amendment, effective November 17, 1999, and applicable for bar examinations after January 1, 2001, rewrote the rule.

The 2002 amendment, effective April 9, 2002, substituted "directly to the Board of Bar Examiners" for "to the secretary of the board at Santa Fe" in the undesignated paragraph following Paragraph C(2)(c).

The 2008 amendment, approved by Supreme Court Order No. 08-8300-28, effective for the February 2009 bar examination, added the requirement in Subparagraph (2) of Paragraph C that a completed law school certification on a form prescribed by the board be furnished with the application.

Rational connection between qualifications and fitness required. — A state cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the due process or equal protection clause of the fourteenth amendment. A state can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice law. *Schwabe v. Board of Bar Exmrs.*, 353 U.S. 232, 77 S. Ct. 752, 1 L. Ed. 2d 796 (1957).

Good moral character prerequisite to taking examination. — Applicant to take the New Mexico bar examination must be shown to be a person of good moral character before he is eligible to take the bar examination and requirement of submission of an affidavit of an attorney of this state to that effect does not deny due process or equal protection. *Henington v. State Bd. of Bar Exmrs.*, 60 N.M. 393, 291 P.2d 1108 (1956).

Character indication of fitness. — Membership in the bar is a privilege burdened with conditions. A fair private and professional character is one of them. Compliance with that condition is essential at the moment of admission; but it is equally essential afterwards. Whenever the condition is broken the privilege is lost. To refuse admission to an unworthy applicant is not to punish him for past offenses. The examination into character, like the examination into learning, is merely a test of fitness. *Schwabe v. Board of Bar Exmrs.*, 60 N.M. 304, 291 P.2d 607 (1955), rev'd on other grounds, 353 U.S. 232, 77 S. Ct. 752, 1 L. Ed. 2d 796 (1957).

Conduct and opinion of peers relevant to character. — Proof of his good moral character entails a consideration of two kinds of indirect evidence: first, the pattern of conduct an individual follows; and, second, a consideration of the regard his fellows and associates have for him. *Schwabe v. Board of Bar Exmrs.*, 60 N.M. 304, 291 P.2d 607 (1955), rev'd on other grounds, 353 U.S. 232, 77 S. Ct. 752, 1 L. Ed. 2d 796 (1957).

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do not rationally justify a finding of moral unfitness. *Schwartz v. Board of Bar Exmrs.*, 353 U.S. 232, 77 S. Ct. 752, 1 L. Ed. 2d 796 (1957).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law §§ 12, 22 to 24, 38.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

Procedural due process requirements in proceedings involving applications for admission to bar, 2 A.L.R.3d 1266.

Pardon as restoring public office or license or eligibility therefor, 58 A.L.R.3d 1191.

7 C.J.S. Attorney and Client §§ 13 to 16, 17.

15-105. Application fees.

A. **Fees.** Every applicant shall pay the fees as prescribed by the board from time to time. The following fees are fixed, until changed by the board:

(1) four hundred and fifty dollars (\$450.00) for applicants whose graduation from law school is less than one (1) year prior to filing the application;

(2) a reduced fee of one hundred dollars (\$100.00) for applicants who apply to repeat the examination; provided, however, that if the investigation report is dated more than fifteen (15) months prior to the date of application, an additional fee will be required to update the investigation report as provided in Rule 15-106 NMRA of these rules;

(3) reasonable additional costs to be determined by the Board of Bar Examiners, in connection with any investigations or hearings. Such costs shall include, but not be limited to, board attorney fees, court reporter fees, medical evaluations and any other fees for services to complete the investigation and hearing. Payment of such fees shall be a prerequisite for admission or for consideration of subsequent reapplications. In all cases, the applicant shall bear the applicant's own costs associated with the application, investigation and hearing;

(4) eight hundred dollars (\$800.00) for all other applicants;

(5) later filing fees shall be assessed as follows:

(a) fifty dollars (\$50.00) if an application is filed within thirty (30) days of the filing deadline;

(b) one hundred dollars (\$100.00) if an application is filed within sixty (60) days of the filing deadline;

(c) one hundred and fifty dollars (\$150.00) if an application is filed within ninety (90) days of the filing deadline;

(d) two hundred dollars (\$200.00) for applications filed ninety (90) days or more after the filing deadline; provided, however, that no new applications will be accepted after January 5th for the February exam or June 5th for the July exam.

B. Remittance of fees. All remittances for fees shall be made payable to: the New Mexico Board of Bar Examiners, and shall be deposited to an account designated as New Mexico Board of Bar Examiners general fund and shall be disbursed by order of the Board of Bar Examiners in carrying out the functions, duties and powers vested in said board. Application fees and costs are not refundable and will be applied toward the expenses of the board, including appropriate investigation by the National Conference of Bar Examiners.

C. Budget. The Board of Bar Examiners shall submit on or before January 1 of each year a proposed budget to the Supreme Court.

D. Audit. It shall likewise, on or before March 1 of each year, submit to the Supreme Court an accounting and audit of all funds received and disbursed during the prior calendar year. Such audit shall be performed by an auditor to be selected by the Supreme Court.

E. Compensation. Members of the Board of Bar Examiners shall receive mileage and per diem at the same rate as provided for public officials and employees of the state and any other compensation for service to the board as approved by the Court.

[As amended, effective August 21, 1987; November 14, 1988; December 15, 1993; November 1, 1994; April 23, 2001; August 23, 2002; December 12, 2003; as amended, by Supreme Court Order 05-8300-10, effective September 1, 2005; by Supreme Court Order 07-8300-09, effective April 17, 2007.]

ANNOTATIONS

Cross references. — For Per Diem and Mileage Act, see 10-8-1 to 10-8-8 NMSA 1978.

The 1988 amendment, effective November 14, 1988, added Paragraph A(5) and deleted "nor any examiner appointed by the court" following "Board of Bar Examiners" near the beginning of Paragraph E.

The 1993 amendment, effective for the July 1994 bar examination, substituted "six hundred dollars (\$600.00)" for "three hundred twenty-five dollars (\$325.00)" in Subparagraph A(1), "four hundred dollars (\$400.00)" for "one hundred seventy-five dollars (\$175.00)" in Subparagraph A(2), and "eight hundred dollars (\$800.00)" for "five hundred dollars (\$500.00)" in Subparagraph A(4).

The 1994 amendment, effective November 1, 1994, substituted "the application" for "the current application" in Paragraph A(1); substituted the language beginning "provided, however" for "provided, that the said reduced fee shall apply only for two successive repeat examinations" in Paragraph A(2); rewrote Paragraph A(3), which read: "an additional fee not to exceed three hundred fifty dollars (\$350.00) to defray investigation costs for applicants for whom the board determines an additional investigation is desirable"; deleted "except for applicants who apply to repeat" following "applicants" in Paragraph A(4); and substituted "secretary" for "secretary treasurer" in the first sentence and "Application fees and costs" for "Remittances for fees" in the last sentence in Paragraph B.

The 2001 amendment, effective April 23, 2001, substituted "two hundred dollars (\$200.00)" for "four hundred dollars (\$400.00)" and deleted "not less than forty (40) days prior to the next scheduled examination" in Paragraph A(2).

The 2002 amendment, effective August 23, 2002, rewrote Paragraph A(5) which formerly read "one hundred fifty dollars (\$150.00) payable upon filing of an application after the deadline set by these rules and upon approval of the chief justice for filing of said application".

The 2003 amendment, effective December 12, 2003, substituted "four hundred and fifty dollars (\$450.00)" for "five hundred and fifty dollars (\$550.00)" in subparagraph (1) and "one hundred dollars (\$100.00)" for "two hundred dollars (\$200.00)" in subparagraph (2) of Paragraph A.

The 2005 amendment, approved by Supreme Court Order 05-8300-10, effective September 1, 2005, amended Paragraph E to provide for payment of compensation to members of the Board of Bar Examiners at a rate approved by the Supreme Court.

The 2007 amendment, approved by Supreme Court Order 07-8300-09, effective April 17, 2007, amended Paragraph A to delete the provision in Subsection (1) that limited the \$450.00 application fee to applicants who had not practiced law in another state and to amend Subparagraph (3) to add the third, fourth and fifth sentences defining "costs" and providing for the payment of costs.

The board may not assess the attorney fees that the board incurred to investigate and hear an application for admission to the bar. In re: Application of Oppenheim, 2007-NMSC-022, 141 N.M. 596, 159 P.3d 245.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law §§ 12, 22 to 24.

Procedural due process requirements in proceedings involving applications for admission to bar, 2 A.L.R.3d 1266.

7 C.J.S. Attorney and Client § 17.

15-106. Repeat applications.

There shall be no limit on the number of repeat examinations an applicant may take. However, a completely new application shall be filed for each examination, accompanied by the appropriate application fee prescribed by Rule 15-105 NMRA. The secretary shall cause an appropriate reinvestigation of fitness to be made if directed by the board, or, if the applicant's last investigative report was dated more than fifteen (15) months prior to the date of the latest application, and charge a fee under Rule 15-105 NMRA. Applicants seeking reexamination must file their application for repeat examination in accordance with the deadlines set forth in Rule 15-104 NMRA.

[As amended, effective November 1, 1994; July 8, 2003.]

ANNOTATIONS

The 1994 amendment, effective November 1, 1994, substituted "appropriate application fee prescribed by Rule 15-105" for "appropriate fee. See Rule 15-105" in the first sentence, and substituted "made if directed by the board, or, if the applicant's last investigative report was dated more than fifteen (15) months prior to the date of the latest application, and charge a fee under Rule 15-105" for "made when directed by the board, or, for applicants whose last investigative report was dated more than fifteen (15) months earlier and charge a fee under Paragraph C of Rule 15-105" in the second sentence.

The 2003 amendment, effective July 8, 2003, substituted "in accordance with the deadlines set forth in Rule 15-104 NMRA" for "not less than forty (40) days prior to the next scheduled examination" at the end of the last sentence.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law §§ 12, 22 to 24.

Procedural due process requirements in proceedings involving applications for admission to bar, 2 A.L.R.3d 1266.

7 C.J.S. Attorney and Client § 17.

ARTICLE 2

Examinations

15-201. Written examination.

A. **Necessity.** All applicants for admission to the bar of New Mexico shall be required to take and pass a written examination prescribed by the Board of Bar Examiners in accordance with these rules.

B. **Purpose.** The bar examination shall be designed to test the applicant's minimum competence to practice law in this state.

[As amended, effective November 1, 1994.]

ANNOTATIONS

The 1994 amendment, effective November 1, 1994, rewrote Paragraph B, which read: "The bar examination shall be designed to test the applicant's ability to reason logically, to analyze accurately the problems presented to him and to communicate an adequate knowledge of the fundamental principles of law and professional ethics and their application. The examination shall not be designed primarily for the purpose of testing memory or experience."

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law § 22.

Validity, under federal constitution, of state bar examination procedures, 30 A.L.R. Fed. 934.

7 C.J.S. Attorney and Client § 18.

15-202. Place and times of examinations.

The Board of Bar Examiners shall hold examinations for admission of applicants to the bar of this state at such times and places as the board may direct, commencing on the Monday before the last Wednesday in February and the Monday before the last Wednesday in July, unless otherwise announced. Applicants who desire to do so may type the examination but will be required to furnish their own typewriters. All other supplies will be provided. The MPRE may be taken anywhere in the United States, at the times and places designated by the National Conference of Bar Examiners, and may be taken by those in their last year of law school, as well as those who have already graduated.

15-203. Subjects for examination.

A. **Selection of subjects.** In the selection of subjects for bar examination questions, the emphasis shall be upon the basic and fundamental subjects which are ordinarily taught in law schools accredited by the American Bar Association.

B. **Testable subjects.** The subjects which may be tested include:

- (1) The six (6) multistate subjects; constitutional law, contracts and sales, criminal law and procedure, evidence, real property and torts;
- (2) administrative law;

- (3) agency;
- (4) business entities, including corporations and partnerships;
- (5) equitable remedies;
- (6) family law, including New Mexico community property;
- (7) federal jurisdiction and procedure;
- (8) Indian law, including subjects such as federal Indian law, criminal and civil jurisdiction in Indian country and Indian child welfare act under state and federal law;
- (9) secured transactions; and
- (10) wills, estates and trusts.

C. Performance test questions. Performance test questions may be given which are designed to test applicants on the following skills: problem solving, legal analysis and reasoning, factual analysis, communication, organization and management of a legal task and recognition and resolution of ethical dilemmas. Performance test questions may contain subject areas other than those specified in Paragraph B of this rule, however, the applicants shall be provided with the substantive information necessary to answer the question.

[As amended, effective November 14, 1988; July 24, 1996; February 28, 2002; as amended by Supreme Court Order 07-8300-04, effective March 1, 2007.]

ANNOTATIONS

The 1988 amendment, effective November 14, 1988, inserted "estates and trusts" in Paragraph B(4).

The 1996 amendment, effective July 24, 1996, added Paragraph C.

The 2002 amendment, effective February 28, 2002, inserted "and federal personal income tax; and" in Paragraph B(4) and added Paragraph B(5).

The 2007 amendment, approved by Supreme Court Order 07-8300-10, effective March 1, 2007, delete Paragraph B and insert a new Paragraph B. For provisions of the pre-2007 version of Rule 15-203 NMRA, see the 2005 NMSA 1978 on New Mexico One Source of Law.

15-204. Questions.

The bar examination shall include hypothetical questions requiring essay answers, the MBE and the MPRE. The Supreme Court will establish a minimum passing scaled score for the MPRE. Beginning in July 1997, the bar examination may also include multi-state performance test questions. Questions shall not be generally designed to test knowledge uniquely based upon local case or statutory law; however, subjects of substantial local interest may be included. Questions will not be labeled as to subject matter. Sufficient time will be allowed for answering the questions to permit the applicant to make an analysis of the facts and to prepare answers.

[As amended, effective July 24, 1996.]

ANNOTATIONS

The 1996 amendment, effective July 24, 1996, added the second sentence.

15-205. Administration and grading.

A. **Policies and graders.** Subject to the approval of the Supreme Court, the board may adopt such grading policies as it deems appropriate for the examinations. Graders shall be appointed by the Board of Bar Examiners for the grading of examinations.

B. **Nonidentity grading.** Every applicant shall be assigned an examination number at random. Grading shall be strictly anonymous, and the information matching the names and code numbers of the applicants shall be kept in the custody of the secretary of the board, or such other person as is designated by the board until all papers have been finally graded, all numerical or percentage grades for each applicant have been compiled and each applicant has been determined by examination number to have either passed or failed the written examination.

C. **Essay and performance test portion of bar exam.** The grades for the essay and performance test portion of the examination shall reflect the relative quality of each answer (ranging from non-responsive to well above average) and shall be calculated using the standard deviation method, which ensures that each essay question receives the same weight, and each performance test question is weighted 1.5 times that of each essay. Each applicant's essay and performance test grades shall then be scaled to the MBE portion of the examination using the standard deviation method. Scaled scores shall be used to assure that the standard used to measure competence is not affected by the difficulty of the particular test or the ability of the applicants sitting for a particular examination.

A combined average scaled score of 130 on the MBE and essay parts of the examination shall be the minimum passing score.

D. **Uniformity of grading.** In order to assure maximum fairness and uniformity in grading, the Board of Bar Examiners shall prescribe standards for grading to be used by

all graders. To the extent possible, all the answers to a particular question should be graded by the same grader.

E. Ethics exam. The Board of Bar Examiners shall test applicants on professional responsibility and legal ethics by separate examination. Regardless of test results on the other examination parts, applicants must receive a minimum scaled score of 80 on the MPRE to be eligible for admission. The ethics examination part of the bar examination must be passed by the applicant within one (1) year after the date of notification that the applicant has passed the essay and MBE parts of the examination. For purposes of this paragraph, the date of notification shall be the date notification is mailed to the applicant by the secretary of the board.

[As amended, effective November 14, 1988; November 1, 1994; July 17, 1995; July 24, 1996; July 6, 1998; February 28, 2002; as amended by Supreme Court Order No. 11-8300-032, effective September 1, 2011.]

ANNOTATIONS

Cross references. — For qualifications of bar examiners, see Rule 15-402 NMRA.

The 1988 amendment, effective November 14, 1988, substituted "Board of Bar Examiners for completion of grading of such examinations" for "supreme court" at the end of Paragraph A.

The 1994 amendment, effective November 1, 1994, rewrote the last paragraph in Paragraph C, which read: "All applicants must receive an average scaled score of 133 on the MBE and essay. All applicants must also pass the MPRE"; rewrote Paragraph D, which read: "The Board of Bar Examiners shall be empowered to test applicants on professional responsibility and legal ethics by separate written examination and the supreme court shall set separate minimum standards for successful completion of such examination, regardless of test results on the other subjects"; and made minor stylistic changes throughout the rule.

The 1995 amendment, effective to apply to the July 1995 bar exam, substituted "score of 130 on the MBE" for "score of 133 on the MBE" in the last undesignated paragraph in Paragraph C.

The 1996 amendment, effective July 24, 1996, inserted "and performance test" in the paragraph heading in Paragraph C, and rewrote the final undesignated paragraph in Paragraph C.

The 1998 amendment, effective for bar examinations beginning with the February 1999 bar exam, rewrote Paragraph C and inserted "average" following "A combined" in the undesignated paragraph following Paragraph C.

The 2002 amendment, effective February 28, 2002, substituted "1.5 times" for "2.5 times" near the end of the first sentence in Paragraph C.

The 2011 amendment, approved by Supreme Court Order No. 11-8300-032, effective September 1, 2011, required applicants to receive a minimum score of 80 on the MPRE to be admitted.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 C.J.S. Attorney and Client § 18.

15-206. Examination results.

A. **Notification.** Upon completion of grading, the secretary of the board shall notify each applicant of the results of the applicant's examination, and such other information as the board may deem to be appropriate.

B. **Publication.** Bar examination statistics and other information determined by the board or Supreme Court to be nonconfidential may be made available to prospective students, applicants, members of the legal profession and to members of the public who are interested in standards for admission to the bar.

[As amended, effective November 1, 1994.]

ANNOTATIONS

The 1994 amendment, effective November 1, 1994, substituted "the applicant's examination" for "his examination" in Paragraph A and made a minor stylistic change in Paragraph B.

15-207. Unsuccessful applicants; right of inspection.

A. Test scores; inspection. Beginning thirty (30) days after notice to the applicant involved and ending on the sixtieth (60th) day thereafter, any unsuccessful applicant shall be entitled to the applicant's MBE, MPRE and essay scores and shall be entitled under conditions specified by the board to a reasonable inspection of the following:

- (1) the essay questions of the examination;
- (2) the applicant's answers to such essay questions; and
- (3) sample answers for each question.

B. **Inspection not allowed.** No inspection of the multi-state bar examination, multi-state performance test or the multi-state professional responsibility examination questions or answers shall be allowed unless authorized by the National Conference of Bar Examiners.

C. Bar examination grading. Any applicant who has failed the bar examination but is otherwise qualified for admission may, within thirty (30) days of notice to the applicant of examination results, upon written request, cause the board (or member or secretary thereof) to review the applicant's grading to determine the mathematical accuracy of the scoring of the applicant's examination. There shall be no right to hearing or appeal with regard to the grade that an applicant received for answers to exam questions; provided, however, that before the publication of the results of the exam, a committee of the board shall review and regrade as necessary the written answers for any applicant whose overall exam score is within three points below the passing score. The score after the regrade shall be the final score for that applicant.

[As amended, effective November 1, 1994; July 24, 1996; as amended by Supreme Court Order No. 11-8300-032, effective September 1, 2011.]

ANNOTATIONS

The 1994 amendment, effective November 1, 1994, deleted former Paragraph C, which read: "**Copies; integrity of examinations.** No applicant may procure copies of or remove the questions, the applicant's answers or the sample passing answers or engage in any conduct which will substantially endanger the fairness, confidentiality and integrity of examinations", redesignated former Paragraph D as Paragraph C, and made a gender neutral change in Paragraph C.

The 1996 amendment, effective July 24, 1996, in Paragraph B, inserted "multi-state performance test" near the beginning, and added "unless authorized by the National Conference of Bar Examiners" at the end.

The 2011 amendment, approved by Supreme Court Order No. 11-8300-032, effective September 1, 2011, required a committee of the board to review and, if necessary, regrade the written answers of an applicant whose overall exam score is within three points below the passing score and provided that the score after regrade is the final score of the applicant.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Court review of bar examiners' decision on applicant's examination, 39 A.L.R.3d 719.

Failed applicant's right of access to bar examination questions and answers, 57 A.L.R.4th 1212.

15-208. Periodic studies.

A thorough study should be made of the bar examination results periodically to determine its effectiveness and to discover defects and suggest improvements in the bar examination system.

ARTICLE 3

Admission

15-301. Investigation, interviews and appeals.

A. **Investigations.** The board shall conduct an investigation and otherwise inquire into and determine the character, fitness and general qualifications of every applicant for admission. In every such investigation and inquiry the board may obtain such information relating to the character, fitness and general qualifications of the applicant; and may take and hear testimony, administer oaths and affirmations and compel, by subpoena, the attendance of witnesses and the production of books, papers and documents. Any member of the board may administer such oaths and affirmations. Investigations and inquiries shall be informal, but shall be thorough, with the object of ascertaining the truth. Technical rules of evidence need not be observed. Any hearing for such purpose may be held by a division of the board consisting of not less than three members of the board, and either the board chairman, the board vice-chairman or a member of the board appointed by the board chairman to preside shall serve as the division's presiding officer, which presiding officer shall have power to issue subpoenas. A complete record shall be made of all hearings held pursuant hereto, and each applicant shall be advised of the nature of any allegations or charges made which may lead to denial of licensure, and may cross-examine adverse witnesses, be represented by counsel and present relevant evidence. Subpoenas shall be freely issued on the written request of any such applicant. Failure to respond to subpoenas issued hereunder will be an act of contempt of the Supreme Court and shall forthwith be reported by the board to the Supreme Court.

B. **Interviews.** The board, any member of the board or a committee of the board, shall investigate and may hold interviews as to an applicant's qualification. An interview is not a "hearing", as described in these rules; however, information gathered at an interview of the applicant shall be admissible at hearings and an applicant's truthfulness shall be considered relevant to the applicant's qualifications.

C. **Hearings.** The board may hold a hearing on the qualifications of any applicant. The hearing may be held by a committee of the board consisting of not less than three members of the board. The chair of the board or any member of the board appointed by the chair shall chair the committee. The applicant shall be advised of the nature of the subject and purpose of the hearing and may cross-examine witnesses, be represented by counsel and present evidence in the applicant's behalf. A record shall be made of all committee hearings. The committee chair shall have the power to issue subpoenas on behalf of the committee. Subpoenas shall be freely issued on the written request of the applicant. Failure to respond to a committee subpoena will be an act of contempt of the Supreme Court and shall be reported by the board to the Supreme Court.

D. **Appeals.** If after a hearing the board refuses to recommend the admission of an applicant, the board shall make written findings of fact and conclusions. The findings

and conclusions of the board shall be filed with the secretary of the board and a copy sent by certified or registered mail to the applicant. Any applicant aggrieved by a decision or action of the board may within sixty (60) days after the date of mailing of the findings and conclusions to the applicant, appeal to the Supreme Court by filing a petition and brief-in-chief with the clerk of the Court specifying wherein the board has erred, and by serving copies upon the secretary of the board. A docketing statement and docket fee will not be required. The record on appeal to the Supreme Court shall consist of the application and file of the board, the record of the hearing, whether by tape recording or transcript, and the findings and conclusions of the board. Within forty-five (45) days after the board has received the petition on appeal it will file a response. Oral arguments shall be made in accordance with the Rules of Appellate Procedure. The petitioner shall be responsible for making satisfactory arrangements with the secretary of the board for the record on appeal, whether by tape recording or transcript. The Supreme Court may tax the costs of appeal against the petitioner or the board, or partially against both, as it may deem equitable.

[As amended, effective November 1, 1994.]

ANNOTATIONS

The 1994 amendment, effective November 1, 1994, deleted former Paragraph A relating to interviews; redesignated former Paragraph B as Paragraph A, deleted "and hearings" from the paragraph heading, and substituted "cross-examine adverse witnesses, be represented by counsel and present relevant evidence" for "cross-examine witnesses against him, be represented by counsel and present evidence in his own behalf" in that paragraph; added Paragraphs B and C; redesignated Paragraph C as Paragraph D and rewrote that paragraph; and made minor stylistic changes throughout the rule.

Powers of supreme court over admission to practice. — The supreme court has the ultimate responsibility to grant or withhold an admission to practice law. That court must independently examine and weigh the evidence and then pass upon its sufficiency. A particular case must be judged on its own merits, and an ad hoc determination in each instance must be made by the court. *Nall v. Board of Bar Exmrs.*, 98 N.M. 172, 646 P.2d 1236 (1982).

Burden of proof as to moral character. — The burden is on the applicant to prove good moral character. The board then has the opportunity to rebut, showing evidence of bad moral character. *Nall v. Board of Bar Exmrs.*, 98 N.M. 172, 646 P.2d 1236 (1982).

Burden of proof in challenge to board's findings or decision. — The applicant has the burden of showing that the board's findings are not supported by the evidence or that the decision was erroneous or unlawful. Reasonable doubts are resolved in favor of the applicant. *Nall v. Board of Bar Exmrs.*, 98 N.M. 172, 646 P.2d 1236 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Criminal record as affecting applicant's moral character for purposes of admission to the bar, 88 A.L.R.3d 192.

Violation of draft laws as affecting character for purposes of admission to the bar, 88 A.L.R.3d 1055.

15-301.1. Public employee limited license.

A. **Definitions.** As used in this rule:

(1) "public employee" means any officer, employee or servant of a governmental entity, excluding independent contractors;

(2) "governmental entity" means the state or any local public body as defined in Subparagraphs (3) and (4) of this paragraph;

(3) "local public body" means all political subdivisions of this state and their agencies, instrumentalities and institutions;

(4) "state agency" means any of the branches, agencies, departments, boards, instrumentalities or institutions of the state of New Mexico.

B. **Eligibility.** Upon application, the clerk of the Supreme Court may issue a limited non-renewable one (1) year license to an attorney who:

(1) is admitted to practice law in another state, territory or protectorate of the United States or the District of Columbia;

(2) is in good standing to practice law in each state in which the attorney is licensed; and

(3) satisfies the limited license requirements set forth in this rule.

C. **Application procedure.** An applicant for a limited license to represent public defender clients or any governmental entity in this state shall file with the clerk of the Supreme Court an application for limited license which shall be accompanied by:

(1) a certificate of admission to practice and good standing from each state in which the applicant is licensed to practice law and proof of compliance with Subparagraphs (1) and (2) of Paragraph B of Rule 15-103 NMRA;

(2) a letter from the head of the governmental entity which has employed the applicant certifying employment with that governmental entity;

(3) a certificate signed by the applicant that the applicant has read and is familiar with the New Mexico Rules of Professional Conduct and rules of the Supreme

Court of New Mexico and the New Mexico statutes relating to the conduct of attorneys;
and

(4) a docket fee in the amount of one hundred twenty-five dollars (\$125.00) payable to the New Mexico Supreme Court and disciplinary fee in the amount of one hundred fifty dollars (\$150.00) payable to the Disciplinary Board.

All fees and costs associated with an application for limited license are not refundable.

D. License; issuance and revocation.

(1) If an applicant for a limited license to represent public defender clients or a governmental entity complies with the provisions of this rule, the clerk of the Supreme Court may issue a limited, one (1) year license to represent public defender clients or practice law as an employee of a governmental entity. This license shall not be renewed.

(2) A limited license issued pursuant to this rule only permits the licensee to practice law in New Mexico as a public employee representing public defender clients or a governmental entity.

(3) The clerk shall revoke the limited license of any person found in violation of these rules, any rule approved by the Supreme Court or any state or federal law. Upon revocation of a limited license, the applicant shall not appear in any court in this State as an attorney;

E. Expiration. An attorney who is issued a limited license to represent public defender clients or practice law as an employee of a governmental entity shall take the next New Mexico bar examination for which the applicant is eligible. A limited license issued pursuant to this rule shall expire upon occurrence of the earliest of the following events:

(1) the expiration of one (1) year from the date of issuance by the New Mexico Supreme Court;

(2) notification that the applicant has failed the New Mexico bar exam;

(3) termination of employment with the governmental entity;

(4) failure of the limited licensee to take the next bar examination for which the limited licensee is eligible;

(5) admission to the New Mexico Bar upon passing the bar examination; or

(6) once a limited license expires or is revoked, an attorney who resides or maintains a legal residence in this State shall not be admitted to the practice of law for a particular case under the *pro hac vice* rules approved by this Court.

F. Limited licensee status. An attorney granted a limited license pursuant to this rule shall not be a member of the state bar but shall be subject to the Rules of Professional Conduct and the Rules Governing Discipline. Licensees shall pay the annual disciplinary fee as part of the application process.

[Approved, effective June 13, 2000; as amended effective February 28, 2002; October 24, 2003; March 29, 2004; as amended by Supreme Court Order 05-8300-10, effective September 1, 2005.]

ANNOTATIONS

The 2002 amendment, effective February 28, 2002, substituted "employee" for "defender" in the rule heading; inserted Paragraph A and redesignated former Paragraphs A through E as Paragraphs B through F and deleted former Paragraph F pertaining to "Expiration of rule"; in Paragraph B, deleted "New Mexico" preceding "Supreme Court"; in Paragraph C, inserted "or any governmental entity in this state" following "clients", in Paragraph C(2), substituted "head of the governmental entity which has employed the applicant certifying employment with that governmental entity" for "Chief Public Defender certifying full-time employment with the New Mexico Public Defenders Department"; in Paragraph D(1), inserted "or a governmental entity" near the beginning, and inserted "or practice law as an employee of a governmental entity" near the end of the first sentence; added Paragraph D(2) and redesignated former Paragraph D(2) as present Paragraph D(3); in Paragraph E, inserted "or practice law as an employee of a governmental entity" near the middle of the first sentence, and inserted "issued pursuant to this rule" near the beginning of the second sentence; and in Paragraph E(3), substituted "governmental entity" for "New Mexico Public Defenders Department".

The 2004 amendment, effective March 29, 2004 increased the disciplinary fee in Paragraph C from \$100.00 to \$130.00 a year.

The 2005 amendment, approved by Supreme Court Order 05-8300-10, effective September 1, 2005, amended Subparagraph C(1) to require proof of compliance with Subparagraphs (1) and (2) of Paragraph B, amended Subparagraph (3) of Paragraph D to prohibit an attorney with a revoked limited license from appearing in any court in this State and added Subparagraph (6) of Paragraph E to prohibit appearances under *pro hac vice* rules approved by the Supreme Court.

15-301.2. Legal services provider limited law license for emeritus and non-admitted attorneys.

A. **Definitions.** As used in this rule:

(1) "applicant" means an emeritus attorney or non-admitted attorney who meets the eligibility requirements set forth in Paragraphs B or C of this rule and who completes the application process in Paragraph D of this rule;

(2) "emeritus attorney" means any person who is a member in good standing of any state bar, who has been admitted to practice before the highest court of New Mexico or any other state, territory or protectorate of the United States of America or the District of Columbia for at least twenty (20) years, and who is an inactive member of the State Bar of New Mexico or is an inactive or active member of any other state bar;

(3) "non-admitted attorney" means any person who is not a member of the State Bar of New Mexico but who is admitted to practice before the highest court of any other state or territory of the United States or the District of Columbia and is in good standing in all states in which the person is admitted;

(4) "qualified legal services provider" means a not for profit legal services organization whose primary purpose is to provide legal services to low income clients or a legal department within a non-profit organization which employs at least one lawyer full-time to provide legal services to low income clients; and

(a) is an organization described in Section 501(c)(3) and exempt from federal income taxes under Section 501(a) of the Internal Revenue Code of 1986 or corresponding provisions of federal income tax laws from time to time in effect;

(b) is registered with the New Mexico Attorney General Registry of Charitable Organizations in compliance with the New Mexico Charitable Solicitations Act and;

(c) is recommended by the New Mexico Commission on Access to Justice.

B. Eligibility of emeritus attorneys. Upon application, the clerk of the Supreme Court may issue a legal services limited renewable three (3) year license, limited to one (1) renewal, to represent legal services clients through a qualified legal services provider to an emeritus attorney who:

(1) satisfies the legal services limited license requirements set forth in this rule; and

(2) supplies a sworn statement that the applicant has not been the subject of disciplinary action by the bar or courts of any jurisdiction in the five (5) years preceding the applicant's retirement from the practice of law.

C. Eligibility of non-admitted attorneys. Upon application, the clerk of the Supreme Court may issue a legal services limited non-renewable three (3) year license to represent legal services clients through a qualified legal services provider to a non-admitted attorney who:

(1) has been an active member of the bar in another state, territory, or protectorate of the United States of America or the District of Columbia for three (3) years immediately preceding submission of an application under this rule;

(2) is in good standing to practice law in each jurisdiction in which the attorney is licensed;

(3) satisfies the legal services limited license requirements set forth in this rule; and

(4) supplies a sworn statement that the applicant has not been the subject of disciplinary action by the bar or courts of any jurisdiction during the preceding five (5) years; provided, however, that complaints against the applicant shall not be considered disciplinary actions.

D. Application procedure. An applicant for a legal services limited license to represent legal services clients through a qualified legal services provider shall file with the clerk of the Supreme Court an application for a legal services limited license. The application shall be accompanied by:

(1) a certificate of admission to practice and good standing from each state in which the applicant is licensed to practice law or in the case of an emeritus attorney a certificate showing that attorney's inactive status;

(2) a letter from the director of the qualified legal services provider that employs the applicant certifying the applicant's employment;

(3) a certificate signed by the applicant stating that the applicant has read and is familiar with the New Mexico Rules of Professional Conduct, other New Mexico Supreme Court rules and New Mexico statutes relating to the conduct of attorneys and the Creed of Professionalism of the State Bar of New Mexico;

(4) a docket fee in the amount of one hundred twenty-five dollars (\$125.00) payable to the New Mexico Supreme Court; and

(5) a state bar membership fee of one hundred dollars (\$100.00) payable to the State Bar of New Mexico, consisting of a state bar services fee of fifty dollars (\$50.00) and a disciplinary fee of fifty dollars (\$50.00) in lieu of the fee required by Rule 17-203 NMRA.

All fees and costs associated with an application for a legal services limited license are not refundable

E. License; issuance and revocation.

(1) If an applicant for a legal services limited license to represent legal services clients through a qualified legal services provider complies with the provisions of this rule, the clerk of the Supreme Court may issue a legal services limited non-renewable three (3) year license, except the limited license issued to an emeritus attorney shall be renewable for one (1) term as provided in paragraphs B and F.

(2) A legal services limited license issued pursuant to this rule permits the applicant to practice law in New Mexico only as an attorney representing legal services clients through a qualified legal services provider.

(3) The clerk of the Supreme Court shall revoke the legal services limited license of any person found in violation of this rule or any other rules approved by the Supreme Court regulating the licensing and conduct of attorneys. Upon revocation of a legal services limited license, the applicant shall not represent any legal services client nor appear before any court of the State of New Mexico representing any legal services client.

F. Expiration. A legal services limited license shall expire upon the occurrence of any of the following events:

- (1) termination of employment with a qualified legal services provider;
- (2) admission to the New Mexico Bar upon passing the bar examination;
- (3) denial of admission to the New Mexico Bar;
- (4) failure to maintain membership in good standing in at least one state bar in which the applicant is a member; or
- (5) expiration of three (3) years from the date of issuance of the limited license by the Supreme Court, provided that the limited license issued to an emeritus attorney shall be renewable for one (1) term as provided in paragraphs B and E.

G. Legal services limited licensee status.

(1) An applicant granted a legal services limited license pursuant to this rule shall be a member of the state bar and shall be subject to the Rules of Professional Conduct and the Rules Governing Discipline.

(2) Licensees under this rule shall pay a reduced annual state bar membership fee of one hundred dollars (\$100.00), consisting of a state bar services fee of fifty dollars (\$50.00) and a disciplinary fee of fifty dollars (\$50.00) in lieu of the fee required by Rule 17-203 NMRA.

(3) Licensees under this rule shall comply with the Rules for Minimum Continuing Legal Education.

[Adopted by Supreme Court Order No. 08-8300-024, effective August 29, 2008; as amended by Supreme Court Order No. 09-8300-001, effective January 14, 2009.]

ANNOTATIONS

The 2009 amendment, as approved by Supreme Court Order No. 09-8300-001, effective January 14, 2009, in Subparagraph 5 of Paragraph D, replaced "disciplinary fee in the amount provided by Rule 17-203 NMRA payable to the Disciplinary Board" with "state bar membership fee of one hundred dollars (\$100.00) payable to the State Bar of New Mexico, consisting of a state bar services fee of fifty dollars (\$50.00) and a disciplinary fee of (\$50.00) in lieu of the fee required by Rule 17-203 NMRA".

15-302. Admission to practice.

A. **Time for admission.** Applicants who have qualified for admission and applicants who are being admitted with conditions set by the Supreme Court shall be granted a license to practice law in all the courts of this state. Applicants will be admitted at the regular session of the Supreme Court next following fulfillment by the applicant of all requirements of these rules. Successful applicants shall arrange with the court clerk to present themselves for admission within six (6) months after notification that they have passed the examination or follow the requirements for out-of-state swearing-in, as prescribed by the Board of Bar Examiners. Upon good cause presented in writing prior to expiration of such six (6) month period, the board may extend the period for admission. Applicants who fail to present themselves or apply for an extension within the period above fixed, or who fail to arrange for out-of-state swearing-in as prescribed by the Board of Bar Examiners, will be deemed to have abandoned their application for admission.

B. **Reinstatement.** A member of the bar who voluntarily withdraws from membership in the state bar, or goes on inactive status pursuant to the rules of the state bar, or who has been suspended for nonpayment of bar dues or fees, shall be required to file an application for reinstatement to active status with the Board of Bar Examiners for recommendation to the Supreme Court, and shall be required to pay to the Board of Bar Examiners a fee of three hundred fifty dollars (\$350.00), plus any reasonable additional expenses, attorneys fees and costs in connection with any investigations and hearings as the board deems necessary. Unless otherwise ordered by the Supreme Court, an applicant for reinstatement will not be required to take the bar examination.

C. **Reinstatement; additional condition.** The Supreme Court, as a condition of reinstatement, may impose a requirement that the applicant enroll in continuing legal education classes or a bar review course or any other requirement that the Supreme Court may deem necessary.

[As amended, effective November 1, 1994.]

ANNOTATIONS

The 1994 amendment, effective November 1, 1994, in Paragraph A, substituted "and applicants who are being admitted with conditions set by the Supreme Court" for "as provided in these rules" in the first sentence, substituted "Applicants" for "Qualified applicants" in the second sentence, added the language beginning "or follow" in the third sentence, and inserted "or who fail to arrange for out-of-state swearing-in as prescribed by the Board of Bar Examiners" in the last sentence; deleted former Paragraph B relating to reinstatement of residents; redesignated former Paragraph C as Paragraph B and, in that paragraph, deleted "non-residents" from the paragraph heading, inserted "voluntarily withdraws from membership in the state bar, or" near the beginning, deleted "and who moves from the state" following the first occurrence of "fees", substituted the language beginning "a fee of three hundred fifty dollars (\$350.00)" for "such fee not to exceed three hundred fifty dollars (\$350.00), as the board deems necessary to defray investigation and reinstatement costs" at the end of the first sentence, and added the last sentence; deleted former Paragraph D relating to a bar examination for reinstatement if not already passed; redesignated former Paragraph E as Paragraph C; and made gender neutral and minor stylistic changes throughout the rule.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law §§ 12 to 24.

7 C.J.S. Attorney and Client §§ 10 to 18.

15-303. Limited privilege to practice law.

A. Privilege afforded law professors. A law professor who is not a member of the state bar, or any lawyer or law professor who is an inactive member of the state bar, may practice as a lawyer in any state court or before any state administrative tribunal but only to the extent necessary to supervise clinical law students in a clinical law program which is approved by the law school dean.

B. Requirements and limitations for law school professors. In order to make an appearance as lawyer pursuant to this rule, the law professor must:

(1) be duly employed as a full-time permanent or visiting faculty member of the University of New Mexico School of Law, teaching in a classroom setting at the law school, and supervising students in a clinical law program;

(2) be admitted by examination to the bar of another state or the District of Columbia;

(3) neither ask for nor receive any compensation or remuneration of any kind for services rendered by the law professor under this rule, other than salary as a law professor; and

(4) certify in writing that the law professor has read and is familiar with the New Mexico Rules of Professional Conduct and the Rules of the Supreme Court of New Mexico and New Mexico statutes relating to the conduct of lawyers.

C. Certification.

(1) The law school dean shall certify the law professor or the supervisor in the clinical law program. This certification and the written certification as required by Subparagraph (4) of Paragraph B shall be filed with the clerk of this Court at the beginning of each academic year and shall remain in effect for that academic year.

(2) Any law professor certified pursuant to this rule shall not be a member of the state bar but shall be subject to all disciplinary procedures provided by law, Supreme Court rule governing the discipline of lawyers, or both, and shall be required to pay the annual disciplinary fee. Any person allowed to practice under this rule may be permanently barred from practicing law in New Mexico or receive any lesser sanction, if he is found in violation of the Rules of Professional Conduct.

[As amended, effective November 1, 1994.]

ANNOTATIONS

The 1994 amendment, effective November 1, 1994, substituted "for services rendered by the law professor" for "for his services" in Paragraph B(3), and substituted "the law professor" for "he" and made a minor stylistic change in Paragraph B(4).

Law reviews. — For article, "Requiring a Live Client, In-House Clinical Course: A Report on the University of New Mexico Law School Experience," see 19 N.M.L. Rev. 265 (1989).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law § 12.

15-304. Oath.

I, _____, do solemnly swear or affirm:

I will support the Constitution of the United States and the Constitution of the State of New Mexico;

I will maintain the respect due to courts of justice and judicial officers;

I will comply with the Rules of Professional Conduct adopted by the New Mexico Supreme Court;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my clients, and will accept no compensation in connection with their business except from them or with their knowledge and approval;

I will maintain civility at all times, abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which I am charged;

I will never reject from any consideration personal to myself the cause of the defenseless or oppressed, or delay any person's cause for lucre or malice.

[As amended, effective December 8, 1992; November 1, 1994; as amended by Supreme Court Order No. 10-8300-017, effective March 30, 2010.]

ANNOTATIONS

The 1994 amendment, effective November 1, 1994, deleted "Roll and" from the rule heading and made gender neutral changes throughout the rule.

The 2010 amendment, approved by Supreme Court Order No. 10-8300-017, effective March 30, 2010, in the eighth sentence, after "I will", added "maintain civility at all times".

ARTICLE 4

Bar Examiners

15-401. Board of Bar Examiners.

A. **Composition.** The Board of Bar Examiners shall be composed of twelve members of the state bar of New Mexico. The members of the board shall be appointed by the New Mexico Supreme Court. The Board of Bar Examiners shall be charged with the following duties:

(1) investigating the professional qualifications and good moral character of applicants for admission or reinstatement to the bar of New Mexico;

(2) preparing, arranging for and administering examinations for admission to the bar of New Mexico;

(3) making recommendations to the Supreme Court with respect to reinstatement or readmission to practice of lawyers who have for any reason withdrawn from the state bar of New Mexico;

(4) discussing with applicants for admission to the bar general problems of purposes, policies and procedures of the bar examination; and

(5) administering these rules and adopting its own practices not inconsistent with these rules.

B. Officers. There shall be a chairman and a vice-chairman to be selected by the members. There shall be a secretary-treasurer of the board, who need not be a member of the board.

C. Administrative assistance. The Board of Bar Examiners shall be provided with adequate administrative and clerical assistance.

D. Confidentiality. All records maintained by the board regarding applications for admission and reinstatement to the state bar and all proceedings by the board, including board meetings and meeting minutes, shall be confidential except as provided by these rules or by order of the Supreme Court; provided, however, the board may release a copy of an application to the applicant upon receipt of a written request from the applicant or to a third person or entity upon receipt of a properly executed authorization by the applicant. The board is authorized to release information with respect to any applicant, which would otherwise be confidential, to the licensing or disciplinary agencies of any jurisdiction and to the National Conference of Bar Examiners.

[As amended, effective April 1, 1989; November 1, 1994; January 1, 1999; December 1, 2000.]

ANNOTATIONS

The 1989 amendment, effective on and after April 1, 1989, in the first sentence in Paragraph A, substituted "eleven members" for "nine members".

The 1994 amendment, effective November 1, 1994, substituted "who need not be a member of the board" for "who need not be a member and who may be, but need not be, the clerk of the New Mexico Supreme Court" in Paragraph B and made a minor stylistic change in Paragraph A(3).

The 1999 amendment, effective January 1, 1999, in the first sentence of Paragraph A, substituted "twelve" for "eleven".

The 2000 amendment, effective December 1, 2000, added Paragraph D.

Educational prerequisites constitutional. — The educational qualifications required of applicants before they are permitted to practice law in this state do not violate the fourteenth amendment or N.M. Const., art. II, § 18, either in regard to the clause requiring due process of law or in providing for equal protection of the laws. *Henington v. State Bd. of Bar Exmrs.*, 60 N.M. 393, 291 P.2d 1108 (1956).

Board recommendations given great weight. — The supreme court has ultimate responsibility to grant or withhold admission to the practice of law, but, in determining whether or not an applicant should be admitted, the court will always give the most serious consideration to the recommendations of the Board of Bar Examiners and will overrule them only when unalterably convinced that they are not well founded. *Lucius v. State Bd. of Bar Exmrs.*, 84 N.M. 382, 503 P.2d 1160 (1972).

Court promulgates bar admission standards. — The legislature may enact valid laws in fixing minimum requirements for admission to the bar, but in no event maximum; and it may not require the courts to admit on standards other than as accepted or established by the courts, and any legislation which attempts to do so is an invasion of the judicial power and violative of the constitutional provisions establishing the separate branches of government and prohibiting the legislature from invading the judiciary. *In re Sedillo*, 66 N.M. 267, 347 P.2d 162 (1959)(decided under former law).

Board minutes deemed "public records". — The minutes of the Board of Bar Examiners meet the requirements of the definition of "public records" and, as such, are required under 14-2-1 NMSA 1978 to be subject to the inspection of the public. 1953-54 Op. Att'y Gen. No. 5933.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Attorneys at Law §§ 2, 19.

Court review of bar examiners' decision on applicant's examination, 39 A.L.R.3d 719.

7 C.J.S. Attorney and Client § 18.

15-402. Qualifications.

A. **Practicing attorneys.** Bar examiners shall be practicing attorneys or judges with an affirmative interest in legal education and requirements for admission to the bar.

B. **Devotion to duty and compensation.** A bar examiner shall devote whatever time is necessary to perform the duties required of this office. The sole compensation which a bar examiner receives shall be per diem and mileage for attending meetings or hearings of the board or of any panel or committee thereof at the same rate as provided in the Per Diem and Mileage Act for nonsalaried public officers attending meetings.

C. **Essential conduct.** A bar examiner shall be conscientious, studious, thorough and diligent in learning the methods, problems and progress of legal education, in preparing bar examinations and in seeking to improve the examination, its administration and requirements for admission to the bar. A bar examiner shall be just and impartial in recommending the admission of applicants.

D. **Adverse influence, conflicting duties and inconsistent obligations.** A bar examiner shall not have adverse interests, conflicting duties or inconsistent obligations which will in any way interfere with the proper administration of the bar examiner's duties as a bar examiner. A bar examiner shall not participate directly or indirectly in courses for the preparation of applicants for bar admission, serve as a law school faculty member or act as a trustee or regent of a law school or of a university of which a law school is a part, or with which a law school is affiliated. A bar examiner shall act in a manner that does not create any suspicion that the examiner may be swayed by improper considerations.

[As amended, effective November 1, 1994.]

ANNOTATIONS

The 1994 amendment, effective November 1, 1994, made gender neutral changes throughout the rule.

15-403. Tenure.

Each bar examiner shall serve for a term of up to five (5) years and shall be eligible for reappointment. The members of the Board of Bar Examiners shall be appointed for staggered terms to insure continuity of policy, but there shall be sufficient rotation in the personnel of the board to bring new views to it and to insure continuing interest in its work. Upon a vacancy occurring on the Board of Bar Examiners, a new member shall be appointed as provided by these rules to serve for the remainder of the unexpired term of the member being replaced.

15-404. Rulemaking powers.

The board shall have the authority to adopt rules of procedure, standards for grading, forms and other procedures necessary to the efficient and fair performance of its duties consistent with these rules.

15-405. Preparation of questions.

The board shall adopt a policy as to the number, preparation and makeup of the questions. The Board of Bar Examiners may utilize the services of exam writers to prepare bar examination questions, either by arranging for the drafting services of qualified persons, including law school professors, or by using the services of the National Conference of Bar Examiners or other appropriate state or national agencies.

The Board of Bar Examiners shall not use any questions prepared by any person who is affiliated with, teaches for or has any interest in a bar exam review course or who is in any way involved with assisting bar exam applicants with their exam preparation. The board, or a committee thereof, shall review and approve each question.

[As amended, effective November 1, 1994; as amended, by Supreme Court Order 06-8300-13, effective May 12, 2006.]

ANNOTATIONS

The 1994 amendment, effective November 1, 1994, substituted "expert exam writers" for "expert draftsmen" in the second sentence.

The 2006 amendment, approved by Supreme Court Order 06-8300-13 effective May 12, 2006, in Paragraph D deleted the requirement that exam writers be expert and revised the limitations on who may prepare exam questions by substituting for the prohibition against law school faculty members preparing questions with a limitation against those involved in bar examination course from participating in the writing of bar exam questions.

15-406. Regular and special meetings.

The Board of Bar Examiners may hold other examinations for the Multi-State Professional Responsibility Examination, or other examinations or meetings in the state for the purpose of passing upon the qualifications of applicants or for the disposition of the business before it as it may deem necessary. The board will meet on the second Saturday in December and the second Saturday in May of each year for the purpose of interviewing applicants and considering applications under Rules 15-104 and 15-301, unless the board designates another date. It may hold examinations or meetings at such places and times as in its judgment will be most convenient for all parties concerned; but whenever examinations are held as provided in this rule, all persons whose applications are on file awaiting examination must be notified of the time and place at least ten (10) days prior thereto.

Table Of Corresponding Rules

The first table below reflects the disposition of the former Rules Governing Bar Examiners, Bar Examinations and Admission to the Bar and the Rules Governing the New Mexico Bar (designated "N.M. Bar"). The left-hand column contains the former rule number, and the right-hand column contains the corresponding present Rule Governing Admission to the Bar.

The second table below reflects the antecedent provisions in the former Rules Governing Bar Examiners, Bar Examinations and Admission to the Bar and the Rules Governing the New Mexico Bar (designated "N.M. Bar") (right-hand column) of the present Rules Governing Admission to the Bar (left-hand column).

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