

RULES GOVERNING ADMISSION TO THE BAR

1986 Recompilation

Article

ARTICLE 1 APPLICATIONS

Rule

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 New Mexico Supreme Court;
- (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".

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

ANNOTATIONS

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.

This 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 clerk of the supreme court upon request of any applicant.

ANNOTATIONS

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.

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.

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

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 twenty-one (21) 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; and

(5) is professionally qualified for admission to the bar of New Mexico.

C. 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.

D. 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.]

ANNOTATIONS

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

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. *Schware 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. *Schware 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. *Schware 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. Application forms may be obtained from the secretary of the board. Applications shall be addressed to the "Chief Justice and Justices of the Supreme Court of New Mexico," and filed with the secretary of the board at P.O. Box 848, Santa Fe, New Mexico 87503, as follows:

(1) Applicants who have been out of law school for more than twelve (12) months prior to the filing of the application, or who have been admitted in another jurisdiction and have practiced in that jurisdiction and are going to take the bar examination, must file their applications ninety (90) days prior to the next scheduled bar examination;

(2) Graduates (or those who will graduate before the bar examination for which application is made) of law schools who have not engaged in practice must file not less than fifty (50) days prior to the next scheduled bar examination;

(3) Applicants seeking a re-examination must file not less than fifty (50) days prior to the next scheduled examination;

(4) No application will be accepted after the applicable filing date set forth in this rule except upon written approval of the chief justice of the supreme court upon good cause shown and payment of such additional late fees as the chief justice may fix.

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

(1) a certificate of a physician licensed to practice in New Mexico or another state of the United States that the applicant is physically and mentally able to engage in the practice of law;

(2) a copy of the Federal Bureau of Investigation identification record of the applicant. (See 28 Code of Federal Regulations Section 16.30 ff. for the procedure to be followed to obtain such identification record.);

(3) a diploma or properly authenticated certificate (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; except that if the applicant is not a graduate of an accredited law school he shall transmit with the application:

(a) a certificate of admission in another state;

(b) three certificates vouching for his good moral character by members of the bar of such foreign state;

(c) one or more certificates by a judge or judges of the highest court of original jurisdiction in such foreign state, or the clerk thereof, to the effect that applicant actually held himself out as an attorney and actively practiced law therein for at least three (3) 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 he has been suspended or disbarred, that he has been duly reinstated.

Diplomas and certificates of admission from other states may be sent to the secretary of the board at Santa Fe 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 chairman or vice chairman of the Board of Bar Examiners;

(4) a complete transcript of the applicant's law school record. Transcripts will be appropriately authenticated by the law school, mailed directly from the law school to the secretary of the board and shall not be returnable;

(5) the applicant's affidavit and the certificates of three members of the bar of any state 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.]

ANNOTATIONS

The 1988 amendment, effective November 14, 1988, deleted former Paragraph C(3)(c) which read "a similar certificate by a member of the bar of this state", redesignated former Paragraph C(3)(d) as present Paragraph C(3)(c), and deleted former Paragraph C(6) which read "a certificate from the dean of the applicant's law school attesting to the applicant's good character and moral fitness to practice law, on a form provided by the board."

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. *Schwartz 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. *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).

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) three hundred twenty-five dollars (\$325.00) for applicants whose graduation from law school is less than one (1) year prior to filing the current application and who have not engaged in the practice of law in any state;

(2) a reduced fee of one hundred seventy-five dollars (\$175.00) for applicants who apply, not less than forty (40) days prior to the next scheduled examination, to repeat the examination; provided that the said reduced fee shall apply only for two successive repeat examinations;

(3) 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;

(4) five hundred dollars (\$500.00) for all other applicants, except for applicants who apply to repeat;

(5) 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.

B. **Remittance of fees.** All remittances for fees shall be made payable to: secretary-treasurer, 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. Remittances for fees 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. **Per diem and mileage.** No member of the Board of Bar Examiners shall receive any compensation but shall receive mileage and per diem at the same rate as provided for public officials and employees of the state.

[As amended, effective August 21, 1987 and November 14, 1988.]

ANNOTATIONS

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.

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 fee. See Rule 15-105. The secretary shall cause an appropriate reinvestigation of fitness to be 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. Applicants seeking reexamination must file their application for repeat examination not less than forty (40) days prior to the next scheduled examination.

ANNOTATIONS

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

Rule

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 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.

ANNOTATIONS

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. Areas of concentration. The areas of concentration which may be covered include:

(1) litigation and adversary law which may include subjects such as torts, evidence, federal jurisdiction, civil procedure, equity and conflict of laws;

(2) business and commercial law which may include subjects such as agency, business entities (partnerships, corporations, etc.), the Uniform Commercial Code and contracts;

(3) legal ethics and public law including subjects such as constitutional law, criminal law and administrative law;

(4) personal and private law such as New Mexico community property law, domestic relations, wills, estates and trusts and real and personal property law.

[As amended, effective November 14, 1988.]

ANNOTATIONS

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

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. 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.

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 completion of grading of such 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 portion of bar exam. The essay portion of the examination shall be graded on a five-point scale. Each answer shall be graded on the following basis:

- (1) no credit shall be given to any unanswered question or to a nonresponsive answer;
- (2) a grade of 1 shall be given to an answer that is well below average;
- (3) a grade of 2 shall be given to an answer that is below average;
- (4) a grade of 3 shall be given to an answer that is average;
- (5) a grade of 4 shall be given to an answer that is above average;
- (6) a grade of 5 shall be given to an answer that is well above average.

After all essay questions are graded, the grades received shall be added together for each applicant and scaled to the MBE portion of the examination.

All applicants must receive an average scaled score of 133 on the MBE and essay. All applicants must also pass the MPRE.

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 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.

[As amended, effective, November 14, 1988.]

ANNOTATIONS

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

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.

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 his 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.

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 his MBE, MPRE and essay scores and shall be entitled under conditions specified by the board to a reasonable inspection of:

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

B. Inspection not allowed. No inspection of the multi-state bar examination or the multi-state professional responsibility examination questions or answers shall be allowed.

C. 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.

D. 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 applicant's grading to determine the mathematical accuracy of the scoring of his examination. There shall be no right to hearing or appeal with regard to the grade that an applicant received for answers to exam questions.

ANNOTATIONS

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

Rule

15-301. Investigation, interviews and appeals.

A. Interviews. The board, or committee thereof, shall investigate and hold interviews as to an applicant's qualification. An interview is not a "hearing," as defined in these rules; however, information gathered therefrom shall be admissible at hearings.

B. Investigations and hearings. 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 as bears upon 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. Such 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 witnesses against him, be represented by counsel and present evidence in his own behalf. 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.

C. Appeals. Each decision of the board refusing to recommend the admission of any applicant after hearing as provided herein shall be in writing and shall contain a brief statement of the board's findings of fact and conclusions and recommendations with respect thereto. Each such decision shall be promptly filed with the secretary of the board and a copy thereof delivered in person or sent by certified or registered mail to the applicant by the secretary. Any applicant aggrieved by a decision or action of the board may within sixty (60) days after delivery in person or mailing of written notice thereof, take an appeal to the Supreme Court of New Mexico by filing a petition with the clerk of the court specifying wherein the board has erred, and by serving copies of the petition upon the chairman and the secretary of the board. The record on appeal to the supreme court shall consist of the entire application and file of the board on the applicant, the complete record of the hearing before the board and the decision or action of the board. Written briefs and oral arguments shall be made in accordance with supreme court rules governing other appeals. The petitioner shall be responsible for obtaining the reproduction of the records. The supreme court may tax the costs of appeal against the petitioner or the board, or partially against both, as it may deem equitable.

ANNOTATIONS

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.

15-302. Admission to practice.

A. Time for admission. Applicants who have qualified for admission as provided in these rules shall be granted a license to practice law in all the courts of this state. Qualified 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. Upon good cause presented in writing prior to expiration of such six (6) month period, the board may extend the period for admission. An applicant who fails to present himself or apply for an extension within the period above fixed will be deemed to have abandoned his application for admission.

B. Reinstatement; residents. A member of the bar who goes on inactive status pursuant to the rules of the state bar, or who has been suspended for nonpayment of bar dues or fees, and who continues to reside in the state shall apply for reinstatement to active status with the supreme court. Such application shall be accompanied by a fee, payable to the board of bar examiners, of fifty dollars (\$50.00) to defray the cost of reinstatement.

C. Reinstatement; non-residents. A member of the bar who goes on inactive status pursuant to the rules of the state bar, or who has been suspended for nonpayment of bar dues or fees, and who moves from the state 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 such fee not to exceed three hundred fifty dollars (\$350) as the board deems necessary to defray investigation and reinstatement costs.

D. Reinstatement; bar examination. A member of the bar who is on inactive status and wishes to be reinstated to active practice, but who has not passed the New Mexico bar examination, must take and pass the New Mexico bar examination prior to becoming active.

E. 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.

ANNOTATIONS

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 his services under this rule, other than salary as a law professor; and
- (4) certify in writing that he 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.

ANNOTATIONS

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. Roll and 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 client, and will accept no compensation in connection with his business except from him or with his knowledge and approval;

I will 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 man's cause for lucre or malice.

[As amended December 8, 1992.]

ANNOTATIONS

The 1992 amendment added "or affirm" in the first paragraph.

Bar member officer of court. - As a member of the bar of this state, in any cause in which an attorney appears, he is an officer of the court. *Meeker v. Walraven*, 72 N.M. 107, 380 P.2d 845, cert. denied, 375 U.S. 829, 84 S. Ct. 73, 11 L. Ed. 2d 60, rehearing denied, 375 U.S. 917, 84 S. Ct. 191, 11 L. Ed. 2d 157 (1963).

Conduct of officer of court must be above reproach. He may not permit his personal feelings and interest to take precedence over his obligation of respect to the judicial process and judicial officers. *Meeker v. Walraven*, 72 N.M. 107, 380 P.2d 845, cert. denied, 375 U.S. 829, 84 S. Ct. 73, 11 L. Ed. 2d 60, rehearing denied, 375 U.S. 917, 84 S. Ct. 191, 11 L. Ed. 2d 157 (1963).

Oath is solemn and sacred obligation not to be lightly dealt with or disregarded; it must be respected by members of the bar if public confidence in the integrity and impartiality of the administration of justice is to be maintained. *In re Meeker*, 76 N.M. 354, 414 P.2d 862 (1966), appeal dismissed, 385 U.S. 449, 87 S. Ct. 613, 17 L. Ed. 2d 510 (1967).

Law reviews. - For note, "Professional Responsibility - Attorneys Are Not Liable to Their Clients' Adversaries: *Garcia v. Rodey, Dickason, Sloan, Akin & Robb, P.A.*," see 20 N.M.L. Rev. 737 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7 Am. Jur. 2d Attorneys at Law §§ 60 to 66.

7 C.J.S. Attorney and Client §§ 43 to 45.

ARTICLE 4 BAR EXAMINERS

Rule

15-401. Board of Bar Examiners.

A. **Composition.** The Board of Bar Examiners shall be composed of eleven 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 and who may be, but need not be, the clerk of the New Mexico Supreme Court.

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

[As amended, effective April 1, 1989.]

ANNOTATIONS

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

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 that 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 imposed upon him. 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 [10-8-1 to 10-8-8 NMSA 1978] 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. He 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 his functions. 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 so conduct himself that there may be no suspicion that his judgment may be swayed by improper considerations.

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 expert draftsmen to prepare bar examination questions, either by arranging for the drafting services of qualified persons, including, without limitation, out-of-state law teachers, 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 a member of the law faculty at any law school in New Mexico. The board, or a committee thereof, shall review and approve each question.

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.