

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE AMENDMENTS) RULE 14-10
OF THE APPENDIX TO SDCL Ch. 16-16)
RELATING TO THE BOARD OF BAR)
EXAMINER REGULATIONS)

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A hearing was held on February 19, 2014, at Pierre,
South Dakota, relating to the amendment of Board of Bar Examiner
Regulations and the Court having considered the proposed amendment
and being fully advised in the premises, now, therefore, it is

ORDERED that Board of Bar Examiner Regulations be and
they are hereby amended to read in their entirety as follows:

REGULATIONS OF THE BOARD OF BAR EXAMINERS
STATE OF SOUTH DAKOTA

(1) **Application for Admission to Practice Law.** Each
applicant for admission to practice law shall file with the
Secretary of the Board of Bar Examiners a written application,
together with five complete machine or photo copies thereof, in
the form prescribed by the Board of Bar Examiners. Such
application and copies thereof shall be postmarked on or before
November 1 for the February examination and on or before April 1
for the July examination and shall be accompanied by the fee
prescribed in the applicable rules of court and a recent
photograph of the applicant, and DCI and FBI fingerprint cards.

Each applicant for admission shall also file a request for
preparation of a character report and application with the
National Conference of Bar Examiners. Such request and
application shall be postmarked on or before November 1 for the
February examination and on or before April 1 for the July
examination and shall be accompanied by the fee prescribed by the
National Conference of Bar Examiners.

(1.1) **Application for admission without examination.** Each
applicant for admission to practice law without examination shall
file with the Secretary of the Board of Bar Examiners a written
application, together with five complete machine or photo copies
thereof, in the form prescribed by the Board of Bar Examiners.
Such application and copies thereof shall be accompanied by the
applicable fees, a recent photograph of the applicant, and DCI and
FBI fingerprint cards.

Each applicant for admission without examination shall also file a request for preparation of a character report and application with the National Conference of Bar Examiners. Such request and application shall be accompanied by the fee prescribed by the National Conference of Bar Examiners.

(2) **Application Forms and Payment of Fees.** All fees shall be paid by money order or certified check. The application form shall require each applicant to waive confidentiality and privacy rights in order to allow the Board of Bar Examiners to inquire into the applicant's moral character through examination of state, federal, police, court and security records.

(3) **Bar Examination Subjects.** All applicants, except those applying pursuant to SDCL 16-16-7.6, SDCL 16-16-12.1, or SDCL 16-16-12.3 are required to take the bar examination which consists of the Multistate Essay Examination (MEE), an essay question on Indian Law, the Multistate Performance Test (MPT), the Multistate Bar Examination (MBE), and the Multistate Professional Responsibility Examination (MPRE). Subject matter outlines for the MEE, MPT, MBE, and MPRE are available at the National Conference of Bar Examiners' website at <http://www.ncbex.org/>.

The MEE is a two and one half hour examination consisting of five essay questions. The MEE will test both general and South Dakota principles of law.

Indian Law includes basic principles of federal Indian law, including but not limited to civil and criminal jurisdiction, the Indian Civil Rights Act, the Indian Child Welfare Act, and the Indian Gaming Regulatory Act. It does not include tribal laws or customary laws. Indian Law is tested by one essay question after the MEE.

The MPT consists of two ninety-minute questions which test the fundamental skills of problem solving, legal analysis and reasoning, factual analysis, communication, organization and management of a legal task, and recognizing and resolving ethical dilemmas. Each question shall contain all of the resource material necessary to complete the performance examination. The MPT will test both general and South Dakota principles of law.

The MBE is an objective six-hour examination containing 200 multiple-choice test questions covering the subjects:

Constitutional Law	Contracts
Criminal Law and Procedure	Evidence
Real Property	Torts
Civil Procedure (effective February 2015 bar exam)	

The MPRE consists of 50 multiple-choice test questions and measures an applicant's knowledge of the ethical standards of the legal profession.

(4) Passing Score.

The bar examination is comprised of three portions:

- A) The combined MPT, MEE, and Indian law portion,
- B) The MBE, and
- C) The MPRE.

An applicant must pass each portion of the examination. A general average of 75% or higher on the combined MPT, MEE, and Indian law portion of the examination shall be deemed a passing score on that portion of the examination. A scaled score of 135 or higher shall be deemed a passing score on the MBE portion of the examination. A scaled score of 85 shall be deemed a passing score on the MPRE portion of the examination. The Board of Bar Examiners shall determine the passing score on each portion of the bar examination in advance of the examination. Written notice of any deviation from the scores enumerated in this regulation will be given to the dean of the University of South Dakota School of Law and all applicants for admission to practice law by examination.

An applicant who has failed only one portion of the exam must only reapply to sit for the failed portion; however, a passing score on one portion of the examination shall only be valid for a period of two years to exempt the applicant from retaking that portion of the examination. An applicant who fails either the MPT, MEE, and Indian law portion of the examination and/or the MBE portion of the examination three times must receive Supreme Court permission pursuant to SDCL 16-16-11 to take another examination.

(5) Acceptance of Multistate Bar Examination Results from Other States. In its discretion, the Board of Bar Examiners may accept an applicant's previous scores on the MBE administered in a jurisdiction other than South Dakota if taken within two years prior to the next scheduled examination, if the score on the MBE is a scaled score of 135 or above and if the applicant passed the entire bar examination in the other jurisdiction. The Board of Bar Examiners may accept an applicant's MPRE score if taken within twenty-eight months prior to the next scheduled examination and if the score is a scaled score of 85 or above.

(6) **Transfer of Multistate Bar Examination Results to other States.** An applicant seeking to transfer an MBE score to another jurisdiction shall apply to the National Conference of Bar Examiners for transfer and pay its fee for transfer.

Repeal of (7) Law Student Registration.

~~(7) **Law Student Registration.** First-year law students who intend to take the South Dakota bar examination following graduation may register with the Board of Bar Examiners on forms prescribed by the Board. The registration must be accompanied by the \$50 South Dakota registration fee as well as the fee required by the National Conference of Bar Examiners' law student registrant program for an initial character report. Registration under the rule is not deemed an application for permission to take the bar examination.~~

~~The Board of Bar Examiners shall review the registration and character report to identify character and fitness issues that may preclude or hinder later admission. The Board will report its findings to the law student. The Board's findings shall be deemed preliminary. They shall not be deemed a commitment or permission to take the bar examination or a waiver of facts or conduct later discovered or occurring after the Board's investigation.~~

(7) **Places and Dates of Examinations.** Unless different times and places are fixed by the Board of Bar Examiners, the examinations will be administered at the following times and places:

The MPT, MEE, Indian Law Question and MBE are given on the last Tuesday and Wednesday of February and the last Tuesday and Wednesday of July in Pierre, South Dakota. The MPT, MEE and Indian Law Question are given Tuesday; the MBE is given on Wednesday.

The MPRE is given in March, August and November.

Notice of the times and places shall be given to each applicant at the time of granting permission to take such examinations.

(8) **Appeal.** The Secretary of the Board of Bar Examiners shall make an initial determination regarding whether any act taken by an applicant pursuant to these rules satisfies the requirement of the rules. In addition, whenever the rules provide for a waiver of any deadline or other exercise of discretion by the Board including acceptance of results from other states the Secretary of the Board of Bar Examiners shall make an initial

determination which shall, within twenty days, become a final decision of the Board unless appealed as provided herein. Nothing in this rule shall prohibit the Board from sua sponte altering or reversing any initial decision of the Secretary of the Board of Bar Examiners or from directing the Secretary of the Board of Bar Examiners to transfer any case, issue or question directly to the Board without entering an initial decision without notice to the applicant; however, such action shall constitute final action by the Board for the purpose of review by the Supreme Court pursuant to §16-16-16. In addition, the Secretary of the Board of Bar Examiners or an applicant may submit an application or other issue directly to the Board of Bar Examiners for determination whenever an application, or acknowledgement by an applicant, discloses a facial violation of bar entry requirements. The procedures provided in Rule 9.1 will apply except that the Secretary of the Board of Bar Examiners shall make a recommendation to the Board of Bar Examiners regarding the issue submitted directly to the Board. Results of examinations administered by the Board are not determined by the Secretary and constitute final action by the Board.

(8.1) Procedure. Whenever an applicant is aggrieved by an initial decision of the Secretary of the Board of Bar Examiners the applicant shall request that the Secretary reduce the determination to writing if necessary and may, within twenty days of the date of mailing of Secretary's initial decision, appeal to the Board of Bar Examiners. Any applicant seeking review of the Secretary's initial decision shall transmit to the Board a copy of the initial decision sought to be reviewed together with such argument, authorities and evidence in the form of sworn affidavits as the applicant deems necessary. The submission may not exceed sixty pages in length and shall consist of an original and nine copies of the submission. Upon receipt of a request for review the Secretary shall respond setting forth the reasons for taking the action under review. A copy of the Secretary's response shall be served upon the applicant and Board.

The Board of Bar Examiners in its sole discretion may seek additional evidence or explanation, including testimony under oath, from the applicant or the Secretary. In addition, the Board may request oral argument from the applicant. When the Board of Bar Examiners has satisfied itself that it is fully informed in the premises, it may adopt, modify and adopt as modified, or reverse the Secretary's initial decision. In the event the Board reverses the Secretary's initial decision it shall render a final decision which shall be communicated to the applicant in writing. The foregoing shall constitute final action by the Board of Bar Examiners for the purposes of review by the Supreme Court pursuant to SDCL 16-16-16.

NOTE: Applications for admission to practice law may be obtained from the Secretary, State Board of Bar Examiners, State Capitol, 500 East Capitol Avenue, Pierre, South Dakota 57501.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2014.

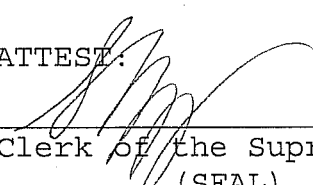
DATED at Pierre, South Dakota, this 18th day of March, 2014.

BY THE COURT:



David Gilbertson, Chief Justice

ATTEST:



Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

MAR 18 2014


Clerk