

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT)
OF APPENDIX SDCL 16-16)
)

RULE 03-9

A hearing having been held on February 10, 2003, at Pierre, South Dakota, relating to the amendment of Appendix SDCL 16-16, and the Court having considered the proposed amendment, the correspondence and oral presentations relating thereto, if any, and being fully advised in the premises, now, therefore, it is

ORDERED that Appendix SDCL 16-16 be and it is hereby amended to read in its entirety as follows:

Appendix SDCL 16-16

Regulations of Board of Bar Examiners of the State Board of South Dakota.

REGULATIONS

(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 by November 1 for the February examination and 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.

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 by November 1 for the February examination and April 1 for the July examination and 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 are required to take the bar examination which consists of the Multistate Essay Examination (MEE), the Multistate Performance Test (MPT), the Multistate Bar Examination (MBE), and the Multistate Professional Responsibility Examination (MPRE).

The MEE is a three-hour examination consisting of six 30-minute essay questions which will test six subject areas:

- Business Organizations
- Commercial Transactions
- Civil Procedure
- Conflicts of Law Family Law
- Wills, Trusts & Future Interests

The MEE will test both general and South Dakota principles of law.

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
- Criminal Law
- Real Property
- Contracts Evidence Torts

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 combined score of the MEE and MPT is to be given equal weight as the MBE score utilizing the standard deviation method to determine an applicant's final score on that portion of the bar examination. A separate passing score is set for the MPRE.

The passing grade on the combined MPT, MEE and MBE and on the MPRE shall be determined by the Board of Bar Examiners, which determinations shall be made in advance of the examination.

An applicant who fails to attain a passing score on the combined MPT, MEE and MBE and who applies for a subsequent bar

examination shall be required to take the MPT, MEE and MBE portions of the subsequent examinations.

(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 and the MPRE administered in a jurisdiction other than South Dakota if taken within twenty-five months prior to the next scheduled examination, if the score on the MBE is a scaled score of 130 or above and the score on the MPRE is a scaled score of 75 or above, and if the applicant passed the entire bar examination in the other jurisdiction.

Cases:

(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.

(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.

(8) 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:

(1) The MST, MEE 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 and the MEE are given on Tuesday; the MBE is given on Wednesday.

(2) The MPRE is given in March and November in Vermillion, South Dakota, and in August in Pierre, South Dakota.

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

(9) 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.

(9.1) 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.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2003.


DATED at Pierre, South Dakota, this 14th day of February, 2003.

BY THE COURT:



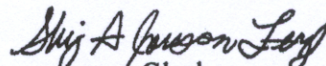
David Gilbertson, Chief Justice

ATTEST:


Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

FEB 14 2003


Clerk