

THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE PROPOSED)	NOTICE OF RULES HEARING
AMENDMENTS TO THE APPENDIX TO)	
CHAPTER 16-16 REGULATIONS OF THE)	NO. 155
BOARD OF BAR EXAMINERS 1; 1.1; 7.1; 5)	
AMENDMENT TO SDCL 16-18-2.3)	
AMENDMENT TO SDCL 16-21-6)	
ADOPTION NEW RULE RELATING TO A)	
STATEMENT SIGNED UNDER PENALTY OF)	
PERJURY)	

Petitions for the amendment of existing sections of the South Dakota Codified Laws and a proposal for the adoption of a new rule having been filed with the Court, and the Court having determined that the proposed amendments should be noticed for hearing, now therefore,

NOTICE IS HEREBY GIVEN THAT ON August 27, 2024, at 11:00 A.M., C.T., at the Courtroom of the Supreme Court in the Capitol Building, Pierre, South Dakota, the Court will consider the following:

1. Proposed Amendment to the Appendix to Chapter 16-16 Regulations of the Board of Bar Examiners.

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 an written application, ~~together with one complete machine or photo copy thereof,~~ in the form prescribed by the Board of Bar Examiners. Such application and ~~copies thereof~~ shall be electronically submitted or postmarked on or before November 1 for the February examination

and on or before May 1 for the July examination and shall be accompanied by the fee prescribed in the applicable rules of court and a recent (within 6 months of the date of application) photograph of the applicant, and DCI and FBI fingerprint cards.

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

2. Proposed Amendment to the Appendix to Chapter 16-16 Regulations of the Board 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 ~~an written application, together with one complete machine or photo copy thereof,~~ in the form prescribed by the Board of Bar Examiners. Such application ~~and copy thereof~~ shall be accompanied by the applicable fees, a recent (within 6 months of the date of application) 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.

3. Proposed Amendment to the Appendix to Chapter 16-16 Regulations of the Board of Bar Examiners.

7.1. Law Student Registration.

Applicants to law school and first-or second-year law students who intend to take the South Dakota ~~Bar~~ eExamination following graduation may register with the Board of Bar Examiners ~~on forms prescribed by the Board~~ through the Bar Portal. The registration must be accompanied by the \$100 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 hinder or preclude later admission.

The Board will report its findings to the registrant. The Board's findings are both preliminary and non-binding in nature. Additionally, the findings will not constitute permission to take the bar examination or a waiver of the consideration of facts or conduct that are either later discovered or occur after the Board's review under this rule.

Explanation for Proposals 1-3.

This rule revision is being submitted by the Board of Bar Examiners. Over the last several years, resources have been expended to create a Bar Portal - a website that allows for the submission of applications for the admission to the practice of law and communication between administrators and applicants. These proposed changes recognize the use of the Bar Portal and eliminate the requirement of submitting a paper application. The proposed changes also clarify that photographs submitted as part of the application must be current within six months of the submission of the application.

These proposals are being offered pursuant to SDCL 16-3-5.1 and are not based upon any other state or federal rule or statute.

4. Proposed Amendment to the Appendix to Chapter 16-16 Regulations of the Board of Bar Examiners.

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 the scaled score is 135 or higher and the score is obtained not more than twenty-four months from the date the applicant takes the South Dakota Bar Examination taken within two years prior to the next scheduled examination, if the score on the MBE is a scaled score of 135 or above. The Board of Bar Examiners may accept an applicant's MPRE score if the scaled

~~score is 85 or higher and is obtained not more than twenty-eight months from the date the applicant takes the South Dakota Bar Examination. taken within twenty-eight months prior to the next scheduled examination and if the score is a scaled score of 85 or above.~~

Explanation for Proposal 4.

This rule revision is proposed by the Board of Bar Examiners. Proposal 4 clarifies what constitutes a qualifying MBE score for transfer. The current version provides that an MBE score may qualify for transfer if taken within two years of the next examination. Determining how those two years are calculated has resulted in confusion for the applicants. The proposed change clarifies the calculation for both the MBE score and the MPRE score.

This proposal is being offered pursuant to SDCL 16-3-5.1 and is not based upon any other state or federal rule or statute.

5. Proposed Amendment to SDCL 16-18-2.3. Certification of legal intern or extern by law school dean--Filing--Effective period--Withdrawal by dean or termination by Supreme Court.

The certification pursuant to § 16-18-2.2 by the law school dean of a law student to become and perform as a legal intern or extern:

(1) Shall be filed with the clerk of the Supreme Court and the secretary of the Board of Bar Examiners and, unless it is sooner withdrawn, it shall remain in effect until the expiration of the term fixed by the certificate of the dean, or until the announcement by the Board of Bar Examiners of this state of the results of the first bar examination following the student's graduation, whichever is earlier. Provided, that as to any student who passes such examination, the certification shall continue in effect until the date he or she is admitted to practice law pursuant to § 16-16-17; but such continuation shall not exceed three months unless the Board of Bar Examiners finds good cause for further extension. However, any student who fails such examination on the first occasion may apply to the ~~dean of such law school~~ Board of Bar Examiners and obtain, upon a showing of good cause ~~in~~ and good faith, an extension certificate until the results of the next bar examination are announced. The Board of Bar Examiners may consult with, or seek advice from, anyone it deems appropriate when determining if an extension should be granted; ~~The Board of Bar Examiners announces the results of the bar examination by letter to the student informing him or her that s/he passed or failed the examination.~~

(2) May be withdrawn by the dean at any time by mailing a notice to that effect to the secretary of the Board of Bar Examiners and the clerk of the Supreme Court, which shall be filed by the clerk. Such withdrawal may be without notice or hearing and without any showing of cause-7

(3) May be terminated by the Supreme Court at any time without notice or hearing and without any showing of cause. Notice of termination shall be filed with the clerk of the court and the secretary of the Board of Bar Examiners-i

(4) May be terminated by the Board of Bar Examiners at any time without notice of hearing and without any showing of cause. Notice of termination shall be filed with the clerk of the Supreme Court.

Explanation for Proposal 5.

This proposal is submitted by the Board of Bar Examiners. Under the current rules, the dean of the law school determines whether a law student who has taken the bar examination may practice under the supervision of a licensed attorney pursuant to SDCL 16-18-2.1 to 16-18-2.10, inclusive. This proposed change seeks to remove the dean's responsibility to make that determination and place it with the Board of Bar Examiners who, by that stage, has a more thorough knowledge of the law student's character and fitness and ability to practice under supervision.

This proposal is being offered pursuant to SDCL 16-3-5.1 and is not based upon any other state or federal rule or statute.

6. Proposed Amendment to SDCL 16-21-6. Confidential information.

The confidentiality of an electronic record, or an electronic copy thereof, is the same for the equivalent paper record, with the exception of photographs or videos that

- a. Depict the death, killing, autopsy, rape, or sexual assault of a person; or
- b. Is of a sexual nature or contains depictions of the breasts of a female or the genitalia or anus of any person.

The depictions listed above will be accessible by way of the paper record only.

Access to confidential information, regardless of form, shall only be to the extent provided by law. The EDMS shall place a visible mark identifying confidential or sealed information and restrict access accordingly.

Explanation for Proposal 6.

Currently, on a case-by-case basis, a party can request the court to limit access to court records, or the court can limit access on its own motion. See SDCL 15-15A-13. This rule will seal certain sensitive electronic records. Unless otherwise ordered by the court, the hard copies will be available for viewing through the clerk's office.

7. Proposed Adoption of a New Rule as follows:

Section 1.

Unless specifically required by statute or court rule, a pleading, motion, affidavit, or other document filed with a court of this state, or presented to a judge or judicial officer in support of a request for a court order, warrant, or other relief, is not required to be notarized. Signing a document filed with the court or presented to a judge or judicial officer constitutes an "unsworn statement", as defined in section SDCL 18-7-2(6), without administration of an oath or notarized signature, provided that the signature, as defined by court rules, is affixed immediately below a declaration using substantially the following language: "I declare under penalty of perjury under the law of South Dakota that the foregoing is true and correct". In addition to the signature, the date of signing, the city or other location, and state where the document was signed shall be noted on the document. A person who signs knowing that the document is false in any material respect is guilty of perjury under SDCL 22-29-1, even if the date, county, and state of signing are omitted from the document.

Explanation for Proposal 7.

This proposal will allow a party to file a document under penalty of perjury without the requirement of an oath and notarized signature. This will make the electronic document filing more convenient, especially for pro se litigants.

The rule is based on, and is consistent with, SDCL 18-7-4.

Any person interested may appear at the hearing and be heard, provided that all objections or proposed amendments shall

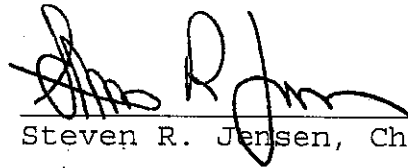
Notice of Rules Hearing No. 155 - August 27, 2024

be reduced to writing and filed with the Clerk of the Supreme Court no later than August 15, 2024. Subsequent to the hearing, the Court may reject or adopt the proposed amendments of any rule germane to the subject thereof.

Notice of this hearing shall be made to the members of the State Bar by electronic mail notification, by posting notice at the Unified Judicial System's website at <https://uj.s.sd.gov/Supreme Court/Hearings.aspx> or the State Bar of South Dakota's website <https://www.statebarofsouthdakota.com>.

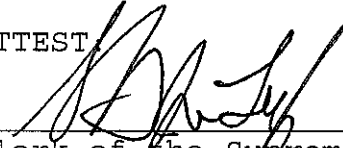
DATED at Pierre, South Dakota this 25th day of July, 2024.

BY THE COURT:



Steven R. Jensen, Chief Justice

ATTEST


Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

JUL 25 2024


Clerk