

FILE 2825 — December 5, 2025

**CONSTITUTIONAL REPRESENTATION RESTRICTIONS FOR STATE
LEGISLATORS**

**APPLICATION OF THE CONSTITUTIONAL IN-OFFICE REPRESENTATION BAN
TO STATE LEGISLATOR**

To: The Honorable Tom Fabricio, Florida House of Representatives (Miami Lakes)

SUMMARY:

Guidance is provided regarding Article II, Section 8(e), Florida Constitution, for a State Legislator who seeks to represent a Bar applicant in a hearing before the Florida Board of Bar Examiners. Referenced are CEOs 21-9 and 19-12.

QUESTION:

Does Article II, Section 8(e), Florida Constitution, prohibit a sitting member of the Florida Legislature from representing a Bar applicant for compensation in a formal or investigative hearing before the Florida Board of Bar Examiners?

This question is answered in the negative.

In your ethics inquiry, you indicate that you currently serve as an elected member of the Florida Legislature in the Florida House of Representatives. You also indicate you are a licensed attorney admitted to practice law in the state of Florida. You note you are considering representing

a Bar applicant for compensation in a hearing before the Florida Board of Bar Examiners (FBBE).¹ However, in light of the prohibition contained within Article II, Section 8(e), Florida Constitution, you ask whether your representation of the Bar applicant before the FBBE would be prohibited.

Turning to the language of the in-office representation ban, Article II, Section 8(e), Florida Constitution, states in relevant part:

No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals. Similar restrictions on other public officers and employees may be established by law.

As such, in order to make a determination regarding your inquiry, we must address whether the FBBE is a "state agency," and, if so, whether it fits within the exemption for "judicial tribunals."

In the past, the Commission has followed the general principle that penal statutes must be strictly construed. See CEOs 21-9 and 19-12. Strict construction allows those covered by a statute to have clear notice of what it proscribes, and it also ensures the Commission does not usurp the role of the Legislature by impermissibly broadening a law or enlarging the terms used in the law. While this is a principle of statutory construction, and the prohibition at issue in this matter is found in the Constitution, this principle appears equally applicable here given that violations of Article II, Section 8, Florida Constitution, are subject to penalties.

¹ The FBBE conducts both informal investigative hearings and formal hearings during its character and fitness determination process. See Rules 3-22 and 3-23.2, Rules of the Supreme Court Relating to Admissions to the Bar.

The term "agency" for purposes of the in-office representation ban is defined in Section 112.312(2), Florida Statutes. This provision states:

"Agency" means any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state therein; any public school, community college, or state university; or any special district as defined in s. 189.012.

Given this definition, and even acknowledging that we must strictly interpret its meaning, it appears the FBBE is a state agency for purposes of Article II, Section 8(e), Florida Constitution. Article V, Section 15, Florida Constitution, states that "the supreme court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted." To exercise this constitutional authority, the Florida Supreme Court created the FBBE to evaluate candidates for admission to the Bar. See *In re Florida Bd. Of Bar Examiners*, 353 So.2d 98, 100 (1977). According to Rule 1-13 of the Rules of the Supreme Court Relating to Admissions to the Bar, the FBBE is "an administrative agency of the Supreme Court of Florida created by the court to implement the rules relating to bar admission." Furthermore, in *In re Florida Bd. Of Bar Examiners*, 268 So.2d 371 (1972), the Florida Supreme Court held that the FBBE is a state agency under the judicial branch of the government, and its employees are state employees. As such, it appears that the FBBE is a government entity of the state of Florida housed within the judicial

branch, and thereby falls under the definition of "agency" for purposes of the constitutional prohibition.

Because the FBBE is a state agency for purposes of Article II, Section 8(e), the question then becomes whether the FBBE is a "judicial tribunal," as Article II, Section 8(e) only prohibits state legislators representing clients before state agencies *other than judicial tribunals*.

The definition of the term "judicial tribunal" is not found in the Constitution. In fact, the term "judicial tribunal" only appears in the Constitution once, and it is in Article II, Section 8(e). That phrase is also not defined in Part III of Chapter 112, Florida Statutes. However, in *Myers v. Hawkins*, 362 So.2d 926 (1978), the Florida Supreme Court analyzed whether the Florida Public Service Commission was a "judicial tribunal" for purposes of Article II, Section 8(e), Florida Constitution.

In making its determination in *Myers*, the Florida Supreme Court created a "predominant characteristics test" to determine whether the agency had characteristics that were judicial in nature. *Myers v. Hawkins*, 362 So.2d 926 (1978). In applying this test, the Court looked to four factors that the average voter would understand to encompass governmental bodies that are judicial tribunals: (1) the agency presides over proceedings that are adversary; (2) the agency is comprised of an impartial group of decisionmakers; (3) the agency has the power to issue final orders that it has the power to enforce; and (4) an identifiable standard of appellate review can be used to test the agency's decisional processes to ensure due process. *Id.* at 931.²

After analyzing an agency's responsibilities in the context of these four factors, the Court also emphasized a distinction must be made between agencies that possess the requisite judicial

² The Court looked to factors the average voter would understand to encompass judicial tribunals because Article II, Section 8(e), Florida Constitution, was ratified via a ballot initiative voted on by the public.

characteristics for only "some aspect of their activities," and those possessing those characteristics for "all or virtually all" of their activities. *Id.* (cleaned up). In holding that the Public Service Commission was not a judicial tribunal for purposes of Article II, Section 8(e), the *Myers* Court remarked that while some of the Public Service Commission's functions fit into the four factors, "the statutory range of the [Public Service] Commission's responsibilities is so vast that the agency in fact exercises judicial-like powers in performing only a fraction (albeit a highly visible and significant fraction) of its duties." *Id.* at 932. The Court then went on to say that "the exercise of judicial-like powers is not inherent in all (or virtually all) of its statutory activities, and we are satisfied that it would not have been perceived by the public as being a judicial tribunal." *Id.* In so stating, the Court clarified only those agencies where all or virtually all of their responsibilities fit the four factors should be considered judicial tribunals for purposes of Article II, Section 8(e).

In applying the "predominant characteristics" test from *Myers* to the FBBE, it does not appear that the FBBE is a "judicial tribunal" within the contemplation of Article II, Section 8(e), Florida Constitution. A review of the rules governing the operations of FBBE reveals that the two main missions of the FBBE are (1) making character and fitness determinations concerning applicants to the Florida Bar, and (2) administering its namesake, the Florida Bar Examination. These two missions are equally important in evaluating candidates who apply for admission to the Florida Bar. Thus, the four factors articulated in *Myers* should be analyzed in the context of FBBE's operations as it undertakes these missions.

A review of the Rules of the Supreme Court Relating to Admissions to the Bar indicate that some of FBBE's operations pursuant to its character and fitness determinations certainly involve activities that satisfy the four factors articulated in *Myers*, such as the hearings contemplated by Rules 3-22 and 3-23. For instance, regarding the first two factors, it appears these

hearings are adversary and occur before an impartial group of decisionmakers (board members of the FBBE). Additionally, regarding the third factor (the agency having the power to issue and enforce final orders), outside of one single subset of cases (cases involving a favorable recommendation for applicants who have previously been disbarred or resigned pending disciplinary proceedings), Rule 3-23.7 makes clear the FBBE's findings, conclusions, and recommendation following a formal hearing are final and enforceable if not appealed. Furthermore, pursuant to Rule 3-23.9, it appears that Counsel for the FBBE and an applicant may waive a formal hearing and enter into a proposed consent judgment. According to the rule, "if the consent judgment is approved by the full board, then the case will be resolved in accordance with the consent judgment without further proceedings." As such, it appears these consent judgments are also final and enforceable. Regarding the final factor, it appears that there is indeed an identifiable standard of appellate review that can be used to test FBBE's decisional processes to ensure due process. Rule 3-30 of the Rules of the Supreme Court Relating to Admissions to the Bar states that an applicant who is dissatisfied with the recommendation concerning his or her character and fitness may file a petition for the Board to reconsider the matter. Rule 3-40 also provides for Court review by the Florida Supreme Court. Given these rules, it appears when the FBBE acts pursuant to its function of making character and fitness determinations, the factor regarding appellate review is satisfied.

However, a review of the Rules also indicates the hearings conducted pursuant to FBBE's mission to make character and fitness determinations clearly do not constitute all, or virtually all, of the FBBE's operations. For instance, in applying the four factors to the FBBE's other main function, administering the Florida Bar Examination, the factors are not satisfied. The act of administering a licensing examination is certainly not an "adversarial proceeding" before an

"impartial group of decisionmakers." Scoring an exam also does not involve the issuance of enforceable final orders, and there is no identifiable standard within the Rules regarding an applicant seeking to appeal his or her examination score.

That, essentially, is a full analysis and application of the *Myers* "predominant characteristics" test. But, if we stopped our analysis there, we would be left with a proper, mechanical application of that test, and yet a counterintuitive and impractical result. The result is counterintuitive because, as the Supreme Court wrote, the purpose of this ban on legislators representing clients before agencies is "to prevent those who have plenary budgetary and statutory control over the affairs of public agencies from potentially influencing agency decisions (or giving the appearance of having an influence) when they appear before the agencies as compensated advocates for others." *Myers* at 930. Yet, there is no actual risk of that concern materializing here because the FBBE is entirely funded by fees assessed upon Bar applicants and registrants. See Rule 1-51.1 of the Rules of the Supreme Court Relating to Admissions to the Bar ("Income. Subject to the approval of the court, the Board may classify applicants and registrants, and fix the charges, fees, and expenses that will be paid by each."). The Legislature exercises no budgetary control over this particular state agency. See Rule 1-51 of the Rules of the Supreme Court Relating to Admissions to the Bar (stating that the Board annually prepares and submits a budget to the Florida Supreme Court for approval). Similarly, because FBBE is an agency of the Florida Supreme Court and a judicial branch agency, and due to the tenet of separation of powers, the Legislature has no material statutory control over the affairs of the FBBE. *The Florida Bar*, 398 So.2d 446, 447 (1981). The result is impractical because the mechanical application of the *Myers* "predominant characteristics" test here would operate to prevent you from accepting an

employment opportunity to represent your client before the FBBE, yet that interference would not actually advance the purpose for which the prohibition was created.

In instances similar to this, we have applied Section 112.316, Florida Statutes, to negate the mechanical application of an ethical standard when there is no actual risk of harm from a breach of the public trust.³ Although Section 112.316 is only operable, by its terms, to negate the application of Part III of Chapter 112, Florida Statutes, it is evident that Article II, Section 8(e), Florida Constitution, is only enforceable by the mechanisms of Part III of Chapter 112. See Section 112.317(1), Florida Statutes, and Section 112.324(1), Florida Statutes. Where the use of Part III of Chapter 112 to enforce Article II, Section 8(e), Florida Constitution, would not serve to advance the public trust in government and would only needlessly prevent an employment opportunity, we apply Section 112.316 to negate that operation of Part III of Chapter 112.⁴

For these reasons, we conclude that, under the specific circumstances presented, Article II, Section 8(e), Florida Constitution, will not prohibit you from representing your client before the FBBE.

Your question is answered accordingly.

³ Section 112.316, Florida Statutes, states:

Construction.—It is not the intent of this part, nor shall it be construed, to prevent any officer or employee of a state agency or county, city, or other political subdivision of the state or any legislator or legislative employee from accepting other employment or following any pursuit which does not interfere with the full and faithful discharge by such officer, employee, legislator, or legislative employee of his or her duties to the state or the county, city, or other political subdivision of the state involved.

⁴ Of note, the statutory prohibition found in Section 112.313(9)(a)3.a, Florida Statutes, is almost identical to the prohibition contained within Article II, Section 8(e), Florida Constitution. Section 112.313(9)(a)3.a., in relevant part, states "No member of the Legislature shall personally represent another person or entity for compensation during his or her term of office before any state agency other than judicial tribunals or in settlement negotiations after the filing of a lawsuit."

cc: Representative Tom Fabricio

JMP/aln/ks

From: Stillman, Kerrie
Sent: Monday, October 20, 2025 3:17 PM
To: Zuilkowski, Steven; Steverson, Kathryn
Subject: FW: Request for Formal Advisory Opinion – Representation of a Bar Applicant before the Florida Board of Bar Examiners

We received the following opinion request. Please acknowledge, log, and assign. Thank you.

From: Tom Fabricio <tom@fabriciolaw.com>
Sent: Monday, October 20, 2025 3:10 PM
To: Stillman, Kerrie <STILLMAN.KERRIE@leg.state.fl.us>
Subject: Re: Request for Formal Advisory Opinion – Representation of a Bar Applicant before the Florida Board of Bar Examiners

Dear Ms. Stillman:

I am a member of the Florida House of Representatives and a licensed attorney admitted to practice in this State. Pursuant to section 112.322(3), Florida Statutes, and Article II, section 8(e), Florida Constitution (the “Sunshine Amendment”), I respectfully request a formal advisory opinion from the Commission on Ethics regarding whether my prospective representation of a bar applicant in proceedings before the Florida Board of Bar Examiners is permissible.

The Florida Board of Bar Examiners is an administrative agency of the Florida Supreme Court. It conducts character and fitness investigations, holds investigative and formal hearings, and recommends applicants to the Court for admission, but it does not itself admit or deny applicants. I have been asked to represent an applicant during an investigative hearing before the Board.

I understand that Article II, section 8(e) provides that “[n]o member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals.” While the Board is an agency attached to the judicial branch rather than the executive branch, its hearings result in recommendations rather than final judicial orders. I also note that the Legislature exercises no authority whatsoever over the Board and has no role in bar admissions.

In light of the above, I request the Commission’s guidance on the following question:

Whether Article II, section 8(e) of the Florida Constitution and related provisions of the Code of Ethics permit a sitting member of the Florida Legislature to represent a bar applicant for compensation in a formal or investigative hearing before the Florida Board of Bar Examiners, or whether such representation is prohibited because the Board is a “state agency other than a judicial tribunal”?

I believe this inquiry constitutes a “real situation” as contemplated by section 112.322(3) and the Commission’s guidelines for advisory opinions. This letter sets forth all material facts known to me. Should the Commission require any additional information, please feel free to contact me.

Thank you for your attention to this matter. I appreciate the Commission’s assistance in clarifying my

responsibilities under the Sunshine Amendment and the Code of Ethics.

Respectfully submitted,

Tom Fabricio
State Representative / Attorney at Law

Thomas P. Fabricio, Esq.
The Fabricio Law Firm, P.A.
7900 Oak Lane, Ste 400-4160
Miami Lakes, FL 33016
Office: 305-328-9112
Fax: 305-676-9257
www.truefreedomtitle.com/attorneys

In some circumstances this firm may be deemed a "debt collector" as defined by the Fair Debt Collection Practices Act and other applicable law. In such a case, this is an attempt to collect a debt. Any communication obtained may be used for that purpose.

PRIVILEGE AND CONFIDENTIALITY NOTICE: This e-mail is covered by the Electronic Communications Privacy Act, 18 U.S.C. § 2510-2521 and is legally privileged. The contents of this e-mail message and any attachments are intended solely for the party or parties addressed and named in this message. This communication and all attachments, if any, are intended to be and to remain confidential, and it may be subject to the applicable attorney - client and/or work product privileges. If you are not the intended recipient of this message, or if this message has been addressed to you in error, please immediately alert the sender by reply e-mail and then delete this message and its attachments. Do not deliver, distribute, or copy this message and/or any attachments if you are not the intended recipient. Do not disclose the contents or take any action in reliance upon the information contained in this communication or any attachments. Although this E-mail and any attachments are believed to be free of any virus or other defect that might affect any computer system into which it is received and opened, it is the responsibility of the recipient to ensure that it is virus free and no responsibility is accepted by The Fabricio Law Firm, P.A. for damage arising in any way from its use.

Naomi, Amelia

From: Tom Fabricio <tom@fabriciolaw.com>
Sent: Wednesday, November 5, 2025 2:30 PM
To: Naomi, Amelia
Subject: Re: Your Formal Ethics Advisory Opinion

In this case, it's a first time applicant.

Tom Fabricio, Esq.

The Fabricio Law Firm, P.A.

305.606.3071

PRIVILEGE AND CONFIDENTIALITY NOTICE: This e-mail is covered by the Electronic Communications Privacy Act, 18 U.S.C. § 2510-2521 and is legally privileged. The contents of this e-mail message and any attachments are intended solely for the party or parties addressed and named in this message. This communication and all attachments, if any, are intended to be and to remain confidential, and it may be subject to the applicable attorney - client and or work product privileges. If you are not the intended recipient of this message, or if this message has been addressed to you in error, please immediately alert the sender by reply e-mail and then delete this message and its attachments. Do not deliver, distribute, or copy this message and or any attachments if you are not the intended recipient. Do not disclose the contents or take any action in reliance upon the information contained in this communication or any attachments. Although this E-mail and any attachments are believed to be free of any virus or other defect that might affect any computer system into which it is received and opened, it is the responsibility of the recipient to ensure that it is virus free and no responsibility is accepted by The Fabricio Law Firm, P.A. for damage arising in any way from its use.

On Nov 5, 2025, at 2:27 PM, Naomi, Amelia <NAOMI.AMELIA@leg.state.fl.us> wrote:

Representative Fabricio,

I hope you are doing well. I was wondering if you would feel comfortable letting me know what type of applicant you wish to represent. Is it a first-time applicant, or is it an applicant seeking readmission after having been disbarred or having resigned pending disciplinary proceedings?

Best,
Amelia Naomi

From: Tom Fabricio <tom@fabriciolaw.com>
Sent: Tuesday, October 21, 2025 2:06 PM
To: Naomi, Amelia <NAOMI.AMELIA@leg.state.fl.us>
Subject: Re: Your Formal Ethics Advisory Opinion

That's perfect. Talk to you then.

All the best,
-Tom

Thomas P. Fabricio, Esq.
The Fabricio Law Firm, P.A.
7900 Oak Lane, Ste 400-4160
Miami Lakes, FL 33016
Office: 305-328-9112
Fax: 305-676-9257
www.truefreedomtitle.com/attorneys

In some circumstances this firm may be deemed a "debt collector" as defined by the Fair Debt Collection Practices Act and other applicable law. In such a case, this is an attempt to collect a debt. Any communication obtained may be used for that purpose.

PRIVILEGE AND CONFIDENTIALITY NOTICE: This e-mail is covered by the Electronic Communications Privacy Act, 18 U.S.C. § 2510-2521 and is legally privileged. The contents of this e-mail message and any attachments are intended solely for the party or parties addressed and named in this message. This communication and all attachments, if any, are intended to be and to remain confidential, and it may be subject to the applicable attorney-client and/or work product privileges. If you are not the intended recipient of this message, or if this message has been addressed to you in error, please immediately alert the sender by reply e-mail and then delete this message and its attachments. Do not deliver, distribute, or copy this message and/or any attachments if you are not the intended recipient. Do not disclose the contents or take any action in reliance upon the information contained in this communication or any attachments. Although this E-mail and any attachments are believed to be free of any virus or other defect that might affect any computer system into which it is received and opened, it is the responsibility of the recipient to ensure that it is virus free and no responsibility is accepted by The Fabricio Law Firm, P.A. for damage arising in any way from its use.

On Tue, Oct 21, 2025 at 2:05 PM Naomi, Amelia <NAOMI.AMELIA@leg.state.fl.us> wrote:

That sounds great. I will call you at 3:15 tomorrow, is the number in your email signature a good one for me to call?

Best,

Amelia

From: Tom Fabricio <tom@fabriciolaw.com>
Sent: Tuesday, October 21, 2025 2:02 PM
To: Naomi, Amelia <NAOMI.AMELIA@leg.state.fl.us>
Cc: Steverson, Kathryn <STEVERSON.KATHRYN@leg.state.fl.us>
Subject: Re: Your Formal Ethics Advisory Opinion

Let's talk tomorrow in the afternoon. 3pm onward should work for me if you are available.

Re my research see e.g.: In re Florida Bd. of Bar Examiners, 353 So. 2d 98, 100 (Fla. 1977) where the FSC states that "the Florida Board of Bar Examiners is an **attache** of this Court." This is from the context that the Florida Legislature has **no power** whatsoever to control (that is, legislate, appoint members to the FBBE or appropriate funds thereto) over what is constitutionally within the realm of the FSC.

Thomas P. Fabricio, Esq.

The Fabricio Law Firm, P.A.

7900 Oak Lane, Ste 400-4160

Miami Lakes, FL 33016

Office: 305-328-9112

Fax: 305-676-9257

www.truefreedomtitle.com/attorneys

In some circumstances this firm may be deemed a "debt collector" as defined by the Fair Debt Collection Practices Act and other applicable laws. In such a case, this is an attempt to collect a debt. Any communication obtained may be used for that purpose.

PRIVILEGE AND CONFIDENTIALITY NOTICE: This e-mail is covered by the Electronic Communications Privacy Act, 18 U.S.C. § 2510-2521 and is legally privileged. The contents of this e-mail message and any attachments are intended solely for the party or parties addressed and named in this message. This communication and all attachments, if any, are intended to be and to remain confidential, and it may be subject to the applicable attorney-client and/or work product privileges. If you are not the intended recipient of this message, or if this message has been

addressed to you in error, please immediately alert the sender by reply e-mail and then delete this message and its attachments. Do not deliver, distribute, or copy this message and or any attachments if you are not the intended recipient. Do not disclose the contents or take any action in reliance upon the information contained in this communication or any attachments. Although this E-mail and any attachments are believed to be free of any virus or other defect that might affect any computer system into which it is received and opened, it is the responsibility of the recipient to ensure that it is virus free and no responsibility is accepted by The Fabricio Law Firm, P.A. for damage arising in any way from its use.

On Tue, Oct 21, 2025 at 1:52 PM Naomi, Amelia <NAOMI.AMELIA@leg.state.fl.us> wrote:

Hello,

I would be happy to discuss your research with you! Would you be free for a phone call tomorrow? If so, let me know a time that works best for you. I'll be available all day.

Best,

Amelia Naomi

From: Tom Fabricio <tom@fabriciolaw.com>
Sent: Tuesday, October 21, 2025 1:09 PM
To: Naomi, Amelia <NAOMI.AMELIA@leg.state.fl.us>
Cc: Steversen, Kathryn <STEVERSON.KATHRYN@leg.state.fl.us>
Subject: Re: Your Formal Ethics Advisory Opinion

Good afternoon Ms. Naomi,

Thank you for reaching out. I've done extensive legal research on this issue and found it to be interesting. Let me know if you wish to discuss.

All the best,

-Tom

Thomas P. Fabricio, Esq.

The Fabricio Law Firm, P.A.

7900 Oak Lane, Ste 400-4160

Miami Lakes, FL 33016

Office: 305-328-9112

Fax: 305-676-9257

www.truefreedomtitle.com/attorneys

In some circumstances this firm may be deemed a "debt collector" as defined by the Fair Debt Collection Practices Act and other applicable law. In such a case, this is an attempt to collect a debt. Any communication obtained may be used for that purpose.

PRIVILEGE AND CONFIDENTIALITY NOTICE: This e-mail is covered by the Electronic Communications Privacy Act, 18 U.S.C. § 2510-2517 and is legally privileged. The contents of this e-mail message and any attachments are intended solely for the party or parties addressed and named in this message. This communication and all attachments, if any, are intended to be and to remain confidential, and it may be subject to the applicable attorney-client and/or work product privileges. If you are not the intended recipient of this message, or if this message has been addressed to you in error, please immediately alert the sender by reply e-mail and then delete this message and its attachments. Do not deliver, distribute, or copy this message and/or any attachments if you are not the intended recipient. Do not disclose the contents or take any action in reliance upon the information contained in this communication or any attachments. Although this E-mail and any attachments are believed to be free of any virus or other defect that might affect any computer system into which it is received and opened, it is the responsibility of the recipient to ensure that it is virus free and no responsibility is accepted by The Fabricio Law Firm, P.A. for damage arising in any way from its use.

On Tue, Oct 21, 2025 at 11:56 AM Naomi, Amelia <NAOMI.AMELIA@leg.state.fl.us> wrote:

Dear Representative Fabricio,

I hope you are doing well. My name is Amelia Naomi and I have been assigned your formal opinion request. I will reach out if I have any questions for you as I begin to draft your opinion. Please do not hesitate to reach out to me if you have any questions for me as well.

Best,

Amelia L. Naomi

Attorney

Florida Commission on Ethics

NAOMI.AMELIA@leg.state.fl.us

Telephone: 850-488-7864 | Fax: 850-488-3077

268 So.2d 371
Supreme Court of Florida.

In re FLORIDA BOARD OF BAR
EXAMINERS Re: Question as to whether
their Employees are State Employees.

No. 42858
|
Oct. 26, 1972.

Synopsis

Original proceeding on submission of question by State Board of Bar Examiners. The Supreme Court held that employees of State Board of Bar Examiners are state employees within contemplation of state and county officers' and employees' retirement system and within contemplation of group insurance laws affecting public employees.

Question answered.

Opinion

*372 PER CURIAM.

The question has been submitted to us by the Florida Board of Bar Examiners concerning whether its employees are state employees within the contemplation of state and county officers and employees retirement system (F.S. Ch. 122, F.S.A., see particularly Section 122.02(1), F.S.A.) and within the contemplation of group insurance laws affecting public employees. See Ch. 112 as amended by Ch. 72—338 and Ch. 72—399 (see particularly  Section 112.075(2), F.S.A.).

We answer in the affirmative. The Florida Board of Bar Examiners is an agency established by the Supreme Court of Florida pursuant to authority given it under Sections 3 and  Section 23 of Article V of the State Constitution of 1885 F.S.A. as amended. In the latter section it is provided the Court 'may provide for an agency to handle admissions (of attorneys) subject to its supervision.'

See rules of the Supreme Court relating to admissions to the Bar by which the Florida Board of Bar Examiners was created, pages 717 to 726, Florida Rules of Court, West's Desk Copy.

It follows, of course, that this agency created pursuant to authority of the State Constitution is a state agency under the judicial branch of the government and its employees are state employees just as, for example, legislative employees under the legislative branch are state employees.

The regular employees of the Florida Board of Bar Examiners compensated on a fixed periodic salary basis are eligible for state retirement and state group insurance benefits. As a matter of history such employees have been participating in the state's retirement system since approximately 1955. Even if there was no statutory basis for their participation, the State would appear to be collaterally estopped at this late date to deny these employees the right to so participate.

ROBERTS, C.J., and ERVIN, CARLTON, ADKINS, BOYD, McCAIN and DEKLE, JJ., concur.

All Citations

268 So.2d 371

353 So.2d 98
Supreme Court of Florida.

In re FLORIDA BOARD OF BAR EXAMINERS.
In re QUESTION OF LAW CERTIFIED
(CHAPTER 77-63, LAWS OF FLORIDA)
ADMISSION OF EXAMS TO BLIND AND DEAF.

No. 52017.
I
Dec. 8, 1977.

Synopsis

Florida Board of Bar Examiners petitioned for advisory opinion concerning validity of law dealing generally with modification or adaption of certain examinations administered by state agencies to persons who are classified as blind or deaf. The Justices of the Supreme Court were of the opinion that the law was invalid as applied to the Board since it constituted an impermissible interference with the Court's exclusive constitutional jurisdiction to regulate admission of persons to the practice of law.

Question answered.

Attorneys and Law Firms

*98 Parks M. Carmichael, Chairman, Gainesville, and C. Graham Carothers, Tallahassee, for Florida Bd. of Bar Examiners, petitioner.

Robert L. Shevin, Atty. Gen., and David J. Baron, Asst. Atty. Gen., for respondent.

Opinion

PER CURIAM.

This cause is before us upon petition of the Florida Board of Bar Examiners for an advisory opinion concerning the validity of Chapter 77-63, Laws of Florida,¹ and its *99 applicability to the Board. At the urging of this Court the Attorney General has filed a response to the petition. We have jurisdiction under Article V, Section 15, Florida Constitution.²

Chapter 77-63, Laws of Florida, deals generally with the modification or adaptation of certain examinations administered by state agencies to persons who are classified

as blind or deaf. This enactment seeks to encourage and assist blind or deaf persons to receive personal and vocational independence by eliminating certain barriers so as to make them competitive in qualifying for state career service jobs and admission to The Florida Bar. The Board notes that Chapter 77-63, Laws of Florida, specifically addresses itself to the administration of The Florida Bar examination and purports to regulate the manner in which *100 this examination is administered by the Board. Additionally, the act provides that a violation thereof shall constitute a criminal misdemeanor punishable by fine not to exceed \$500. The Board now questions whether the Florida Legislature may properly enact this legislation without violating Article V, Section 15 of the Constitution of the State of Florida and, if it can, whether the act is valid as applied to the Florida Board of Bar Examiners. Because the Florida Constitution by its express terms vests exclusive jurisdiction in this Court to regulate the admission of persons to the practice of law, because the Florida Board of Bar Examiners is an attache of this Court, and because the act imposes criminal penalties upon the Board for failure to adhere to its provisions, we find the act invalid as to the Board of Bar Examiners in administering the Florida Bar Examination. Our Constitution prohibits legislative interference with this Court's exercise of its power to govern admissions to The Florida Bar. Article V, Section 15, Florida Constitution.

For more than six centuries prior to the adoption of our Constitution, the English courts exercised the right to determine who should be admitted to the practice of law. Matter of the Sergeants at Law, 6 Bingham's New Cases, 235. This authority was grounded upon the rationale that if the courts and the judicial power were to be regarded as an entity, the power to determine who should be admitted to practice law was a constituent element of that entity. This was so because the quality of justice dispensed by the courts depended in no small degree upon the integrity and competence of its bar. An unfaithful or incapable bar could visit reproach upon the administration of justice and upon the courts themselves.

The drafters of the Florida Constitution recognized this inherent right of the courts to regulate the admission of persons to the practice of law, imbuing the Supreme Court with exclusive jurisdiction to direct such admissions. Article V, Section 15, Florida Constitution. See *The Florida Bar v. Massfeller*, 170 So.2d 834 (Fla.1964). In the exercise of its constitutional authority, this Court created the Florida Board of Bar Examiners to evaluate candidates for admission to The

Florida Bar. As an arm of this Court, the Board is answerable solely to this tribunal. Any legislative enactment which constitutes an usurpation of this Court's constitutionally endowed power, by seeking to govern the Board's activities must be invalid.

In the case sub judice, Chapter 77-63, Laws of Florida, clearly seeks to regulate the manner in which the Florida Bar Examination is administered by the Board. It requires the Board to adopt specific examination modifications and adaptations designed to make handicapped individuals more competitive with other candidates. The enactment authorizes the Division of Personnel of the Department of Administration and the Department of Education to jointly formulate rules pursuant to these examination modifications. Finally, it imposes criminal penalties upon the Board if the Board violates the provisions of the act. The Board logically inquires how it may properly be answerable to the direction of this Court and at the same time the dictates of the legislature embodied in Chapter 77-63. It is the age-old dilemma of attempting to serve two masters.

Respondent has conceded that the enactment appears to conflict with Article V, Section 15, Florida Constitution, if applied to the Florida Board of Bar Examiners. With respect to the enactment's effect upon the Board, however, respondent urges this Court to construe the act as an advisory expression of the appropriate public policy, as determined by the legislature. Respondent asserts that such construction is preferred because it must be assumed that the legislature intended for the law to be constitutional. Consequently, concludes respondent, the word "shall" as found in the act, when applied to the Board actually means "may." However, when the act applies to any other State agency, the word "shall" actually means "shall." We reject such sophistry as constituting an inaccurate interpretation of legislative intent.

***101** Respondent suggests that the statute in question was meant to serve a commendable purpose, i. e., to provide a sound approach to compliance with the provisions of Article I, Section 2, Florida Constitution, providing that "(n)o person shall be deprived of any right because of race, religion or physical handicap." We agree with respondent's proposition and note that the Board concurs with the legislative policy embodied in Chapter 77-63, Laws of Florida. We take note of the fact that the Board has for some time given special consideration to the physically handicapped in administering the bar examination. Furthermore, the Board has recently memorialized its sensitivity to the physically handicapped by adopting formal policies and guidelines relating to the administration of the Florida Bar Examination to persons having such handicaps. These policies and guidelines are compatible with the provisions of Chapter 77-63.

Our decision today constitutes no more than a determination of the intent of the framers of our Constitution with respect to the seat in which the power herein enunciated should reside. No greater responsibility rests with this Court than maintaining in form and substance the government established by the people through our organic document.

Accordingly, we hold that Chapter 77-63, Laws of Florida, is invalid as applied to the Florida Board of Bar Examiners. Nothing in this opinion addresses the applicability or validity of Chapter 77-63 with respect to any other agency mentioned therein.

It is so ordered.

OVERTON, C. J., BOYD, ENGLAND, SUNDBERG and HATCHETT, JJ., and DREW (Retired), J., concur.

All Citations

353 So.2d 98

Footnotes

1 Ch. 77-63, Laws of Florida, reads:

"CHAPTER 77-63

"Committee Substitute for Senate Bill No. 249

"AN ACT relating to state government; providing for modification or adaptation of certain examinations administered by state agencies so that blind or deaf persons can more equitably compete with sighted or hearing persons taking any such examination; providing criteria for certain modifications and adaptations; providing for rules; providing penalties; providing an effective date.

"Be It Enacted by the Legislature of the State of Florida:

"Section 1. Examinations administered by state agencies; modifications with respect to blind or deaf persons; duties of state agencies; penalties.

(1) The purpose of this section is to further the policy of the state to encourage and assist blind or deaf individuals to achieve maximum personal and vocational independence through useful and productive gainful employment by eliminating unwarranted barriers to their competitively qualifying for state career service jobs and to their admission to The Florida Bar.

(2) As used in this section:

(a) 'Blind person' means an individual having central visual acuity $20/200$ or less in the better eye with correcting glasses or a disqualifying field defect in which the peripheral field has contracted to such an extent that the widest diameter or visual field subtends an angular distance no greater than 20 degrees.

(b) 'Deaf person' means an individual having an 82 decible loss of hearing and manual communication is necessary to communicate.

(c) 'Agency' includes each department and agency of the state, the Florida Board of Bar Examiners, and each subdivision or agency thereof.

(3)(a) The Florida Board of Bar Examiners with respect to The Florida Bar examination, and the Division of Personnel of the Department of Administration, with respect to all competitive examinations administered by it or any other agency to applicants for employment within the State Career Service System, shall adapt such examinations so that blind or deaf persons taking any such examinations can more equitably compete with sighted or hearing persons taking the examinations. The modifications or adaptations required by this subsection shall include, but not be limited to, the following:

1. The provision of at least 50 percent more time to complete the examination for the blind or deaf person taking the examination to allow for the slowness of readers or interpreters.

2. Competent reader service provided by the agency or by the appropriate blind services agency of the Department of Education or certified interpreter service provided by the agency or by the appropriate office of Vocational Rehabilitation of the Department of Health and Rehabilitative Services at no expense to the blind person taking the examination.

3. The exclusion from the examination of graphs, charts, tables, and questions which might, per se, be unfamiliar to a blind person or would be difficult for a blind person to interpret because of his blindness as, for example, estimating distances visually.

(b) Each agency shall allow a blind or deaf person taking such an examination to use any necessary special equipment, aids, or appliances including, but not limited to, the following:

1. Note-taking equipment as, for example, slate and stylus or Braillewriter.

2. Computational aids as, for example, the cramer abacus, as a substitute for hand calculations for sighted competitors.

3. Low-vision aid devices.

(c) Blind or deaf examinees shall be given sufficient privacy to insure good testing conditions and prevent disruption of others' testing environment.

(d) If there are two or more blind or deaf examinees, they shall be seated either in separate rooms or far enough apart so that they do not interfere with or help one another.

(4) The examination modifications and adaptations required under the provision of this section shall be accomplished in consultation with the appropriate blind services agency of the Department of Education or the Office of Vocational Rehabilitation of the Department of Health and Rehabilitative Services and may be accomplished in consultation with the United States Civil Service Commission for utilization of current research findings. Rules promulgated pursuant to this section shall be jointly formulated by the Division of Personnel of the Department of Administration and the Department of Education.

(5) No agency, as herein defined, shall be allowed to evade the intent and meaning of this act. Any agent or employee of such agency who intentionally violates the provisions of this act is guilty of a misdemeanor of the second degree, punishable by a fine not to exceed \$500.

"Section 2. This act shall take effect January 1, 1978.

"Approved by the Governor May 26, 1977.

"Filed in Office Secretary of State May 26, 1977."

2 Art. V, s 15, Fla.Const., reads:

"Attorneys; admission and discipline.

The supreme court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted."

362 So.2d 926
Supreme Court of Florida.

Kenneth M. MYERS, Petitioner,
v.
Paula F. HAWKINS, Chairman, William T.
Mayo, Commissioner, and William H. Bevis,
Commissioner, of and constituting the Florida
Public Service Commission, Respondents.

No. 52639
|
Sept. 14, 1978.

Synopsis

State senator sought review on writ of certiorari of order of State Public Service Commission which prohibited him from practicing before such agency pursuant to provision of "Sunshine Amendment" that no member of legislature shall personally represent another person for compensation during term of office before any state agency other than judicial tribunals. The Supreme Court, England, C. J., held that: (1) affected agency is not appropriate body to make determination of its own status as a judicial tribunal under constitutional amendment limiting appearances by legislators; (2) predominant characteristics test should be applied to determine whether state agency has characteristics which are judicial in nature for purposes of determining its status as judicial tribunal; (3) term "judicial tribunals" in constitutional provision includes judges of industrial claims, Industrial Relations Commission and all courts of state created under Constitution, but it does not include the Public Service Commission, and (4) constitutional provision did not apply to affected officials who held office on effective date of amendment.

Order of Public Service Commission quashed.

Attorneys and Law Firms

*927 J. Elliott Messer, Robert S. Goldman and Robert L. Hinkle of Thompson, Wadsworth, Messer, Turner & Rhodes, Tallahassee, for petitioner.

William L. Weeks, Gen. Counsel; and Barrett G. Johnson, Tallahassee, for respondents.

Bruce C. Starling, Gen. Counsel; and Nancy G. Linnan, Asst. Gen. Counsel, Tallahassee, for Reubin O'D. Askew, Governor of the State of Florida.

James D. Whisenand, Deputy Atty. Gen. and Sharyn L. Smith and Frank A. Vickory, *928 Asst. Attys. Gen., for Robert L. Shevin, Atty. Gen. of the State of Florida, Tallahassee, amici curiae.

Philip C. Claypool, Tallahassee, for the State of Florida Commission on Ethics, amicus curiae.

Opinion

ENGLAND, Chief Justice.

We are asked by Kenneth M. Myers, a member of The Florida Bar and an elected state senator, to review an order of the Florida Public Service Commission which prohibits him from practicing before that agency. The genesis of the present controversy was Myers' request for a declaratory statement from the Commission, pursuant to Section 120.565, Florida Statutes (1977), as to whether he would be permitted to continue practicing before the Commission¹ following the 1976 adoption by the voters of Florida of the so-called "Sunshine Amendment" to the Florida Constitution.² Among the provisions added to the Constitution by that amendment was  Article II, Section 8(e), which provides in pertinent part:

"No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals."

The principal issues before us are whether the Public Service Commission is a "judicial tribunal" within the meaning of this provision, and if not whether the amendment applies to legislators in office on its effective date.

I

The Commission answered Myers' request for a declaratory statement by stating its belief that the Commission is a judicial tribunal. It nonetheless denied his right to continue practice before the Commission so that the issue could be passed upon by this Court. The governor and the attorney general, as amici curiae before the Court, challenge the propriety of this entire proceeding on the ground that the Florida Commission on

Ethics, an entity created by the Sunshine Amendment,³ is the only governmental body empowered to determine what is or is not a “judicial tribunal” within the meaning of  Section 8(c).

We share amici's view that the Administrative Procedure Act, Chapter 120, Florida Statutes (1977), is not the appropriate mechanism by which to determine the meaning of ambiguous constitutional terms.⁴ Indeed, declaratory statements authorized by Section 120.565 are particularly unsuited to that purpose. That section is available only to persons seeking to determine “the applicability (to them) of any Statutory provision or of any Rule or Order of the agency.” (Emphasis added.) In this case the Public Service Commission endeavored to couch its order in a manner which would declare the applicability of one of its rules of practice to Myers. Nonetheless, it is quite clear that Myers had been and remained eligible to practice before the

***929** Commission but for  Article II, Section 8(e) of the Constitution.⁵ We now hold that an affected agency is not the appropriate body to make a determination of its own status under  Section 8(c) only the Ethics Commission should make those determinations.

Nevertheless, we recognize that the procedure employed by Myers in this instance was dictated by necessity. Prior to the effective date of the Sunshine Amendment, Myers had asked the attorney general for an opinion as to his right to practice before the Public Service Commission in light of the amendment's apparent prohibition. The attorney general consulted with the executive director of the statutory predecessor of the Ethics Commission and concluded that Myers would be prohibited from practicing before the Commission.⁶ (The attorney general was and is required by law to render assistance to the Ethics Commission when requested.)⁷ There is no reason to believe that Myers would have obtained a different legal opinion had he requested one from the Ethics Commission after the effective date of the Sunshine Amendment, since the matter undoubtedly would have been referred again to the attorney general for advice. For this reason alone, we decline to remand this case to the Public Service Commission to discharge the proceeding under Section 120.68(13)(a), Florida Statutes (1977). The courts will not require parties to engage in a series of useless acts. *Kawasaki of Tampa, Inc. v. Calvin*, 348 So.2d 897, 901 (Fla. 1st DCA 1977). Accordingly, we take this occasion to construe the term “judicial tribunal” in  Article II, Section

8(e) of the Florida Constitution, and to resolve Myers' status before the Commission.

II

The term “judicial tribunal” is found in the Florida Constitution only in  Section 8(e) of Article II, although the terms “courts” and “administrative agencies” are used elsewhere frequently. We presume that the language differentiation was intentional.⁸

Amici allege that the term was drafted by the governor⁹ to prohibit legislators from appearing before all bodies of state government except three the courts, the Industrial Relations Commission, and the judges of industrial claims. They rely on materials submitted as an appendix to their brief, basically comprising the governor's early drafts of the proposed initiative petition which used the term “courts” and a written request of the chairman of the Industrial Relations Commission to expand the proposed terminology to embrace that tribunal and industrial claims judges.

Myers argues, basically, that whatever may have been the governor's intent when he selected this term for the Constitution, his intent is less important than the understanding of the voters to whom it was submitted for adoption. He suggests that the governor's thought processes and drafting materials were not available to the people of Florida before their vote, and that they were guided only by the bare terminology in the proposal and an explanatory flyer which accompanied the petition when it was circulated for placement on the ballot. The flyer's only reference to this provision stated:

“The subsection also prohibits members of the legislature from representing clients before state agencies except before judicial tribunals. Judicial tribunals would include the courts, the Industrial ***930** Relations Commission and judges of industrial claims.”

Myers maintains that the critical word “include” is patently non-exclusive, and that the agencies listed behind it would be understood by the average voter to be examples of non-court tribunals rather than an enumeration of the only ones covered.

We have already held that the intent of the framer of a constitutional provision adopted by initiative petition will be given less weight in discerning the meaning of an ambiguous constitutional term that the probable intent of the people

who reviewed the literature and the proposal submitted for their consideration.  Williams v. Smith, 360 So.2d 417, No. 52,840 (Fla., opin. filed June 9, 1978).

We are charged, then, to divine how the term “judicial tribunal” and the word “include” were generally perceived by the voters of Florida. To perform this task we initially consult widely circulated dictionaries, to see if there exists some plain, obvious, and ordinary meaning for the words or phrases approved for placement in the Constitution.¹⁰ There appear two simple enough definitions in Webster's Third New International Dictionary (1971), where the words “judicial” and “tribunal” are defined, respectively, to mean:

judicial: of, relating to, or concerned with a judgment, the function of judging, the administration of justice, or the judiciary . . . (;) of, characterized by, or expressing judgment (;) . . . belonging or appropriate to a judge or the judiciary (.) (Webster's at 1223.)

tribunal: . . . the seat of a judge or one acting as a judge: the bench on which a judge and his associates sit for administering justice . . . (;) a court or forum of justice: a person or body of persons having authority to hear and decide disputes so as to bind the disputants . . . (;) something that decides or judges: something that determines or directs a judgment or course of action (.) (Id. at 2441.)¹¹

The word “include” is defined in the same dictionary to be non-exclusive, as Myers suggests.¹²

Beyond merely finding dictionary definitions for these terms, however, we are always obliged to interpret a constitutional term in light of the primary purpose for which it has been adopted.¹³ Both Myers and the amici recognize that the Sunshine Amendment was evolved to establish an arsenal of protections against the actual and apparent conflicts of interest which can arise among public officials, and that  Section 8(e) was designed specifically to prevent those who have plenary budgetary and statutory control over the affairs of public agencies from potentially influencing agency decisions (or giving the appearance of having an influence) when they appear before the agencies as compensated advocates for others.

Bearing in mind the agreed purpose of the provision, we see our responsibility, essentially, as having to draw a line

between two closely related alternatives.¹⁴ A first alternative is that the term “judicial tribunals” includes only courts (as delineated in ***931** Article V of the Florida Constitution), the Industrial Relations Commission, and the judges of industrial claims. Amici urge this position on three grounds: the gloss evident from the governor's development of the phrases; the fact that we recently declared the Industrial Relations Commission to be “a judicial tribunal meeting constitutional requirements,”¹⁵ and the desirability of construing an exception to the constitutional constraint on conflicts of interest as narrowly as possible. A second alternative, urged by Myers, is that the term includes not only the three bodies named but also the Public Service Commission and select other agencies which perform functions in a manner equivalent to the judicial branch of government.¹⁶ Myers argues for this construction on the ground that judicial tribunals which the  Section 8(e) exception would “include” generally would be understood by the average voter to encompass governmental bodies which possess four basic hallmarks: proceedings which are adversary; an impartial group of decisionmakers; the power to issue final orders which the agency itself may enforce; and an identifiable standard of appellate review which tests for due process in the agency's decisional processes. This test to determine what is or is not a judicial tribunal, Myers argues, accords with both principles of constitutional construction which are appropriate here that is, the likely common understanding of the term employed, and the need for consistency between the obvious purpose of the provision and the circulated explanation.

Myers persuasively suggests that we focus our attempt to identify exempted non-court judicial tribunals by reference to publicly-perceived characteristics of the agencies, rather than the technical materials leading to the selection of the terminology. It does not follow, however, that the use of Myers' suggested test will produce the consequence which he suggests. That depends on whether we accept his further suggestion that the range of included agencies should be broadly construed to encompass those which possess the requisite judicial characteristics for some aspect of their activities, rather than those which possess those characteristics for all (or virtually all) of their activities.¹⁷ That choice, we believe is dictated by the Constitution itself.

 Article II, Section 8(e), governs representation by legislators “before any state agency other than judicial tribunals.” The thrust of the prohibition is to distinguish

judicial tribunals from all other state agencies; it is not to identify functions within multi-faceted agencies which may, in part, have characteristics judicial in nature. The obvious proscription against legislators is in relation to governmental bodies, not to governmental functions. By confining the constitutional exception to judicial activities, we track the conceded purpose of the prohibition more precisely than the other alternative would allow. Moreover, this conclusion avoids the troublesome problem of searching among diverse responsibilities of each commission, agency and board of the state to determine whether it is endowed to some degree with the four critical characteristics.¹⁸

Applying the “predominant characteristics” test described above, we find that although the term “quasi-judicial” has been used to refer to some of the Public Service Commission's functions,¹⁹ the statutory range of the Commission's responsibilities is so vast that the agency in fact exercises judicial-like powers in performing only a fraction (albeit a highly visible and significant fraction) of its duties.²⁰ Plainly, the exercise of judicial-like powers by the Commission is not inherent in all (or virtually all) of its statutory activities, and we are satisfied that it would not have been perceived by the public as being a judicial tribunal. Industrial relations commissioners and judges of industrial claims, in contrast, do meet the appropriate requirements for a judicial tribunal under Article II, Section 8(e).²¹ There may be other agencies which satisfy that standard, but clearly the Public Service Commission does not.

We hold, therefore, that the term “judicial tribunals” in this provision of the Florida Constitution includes the judges of industrial claims, the Industrial Relations Commission, and all courts of the state created under Article V of the Constitution. (We do not now decide whether there may exist other agencies which may be “judicial tribunals” within the contemplation of Article II, Section 8(e), because they have as their sole, or virtually exclusive responsibility, the resolution of controversies.)

III

Inasmuch as Article II, Section 8(e), bars the appearance of legislators before the Public Service Commission, we are forced to consider whether the prohibition extends to legislators in office when it became effective.²² The issue is a difficult one. In addition to the complexity of the narrow legal

question posed, it is apparent that our decision with respect to the applicability to incumbent legislators of the “during term” prohibition in Section 8(e) will determine as well the applicability, to a variety of incumbent officeholders, of the two-year “after term” ban, containing identical operative language, which appears as the first sentence of the same constitutional provision.²³

***933** We can quickly dismiss any concern that Section 8(e) has retroactive effect with respect to Myers' pre-1977 practice before the Public Service Commission. No one suggests that his representation of clients at the Commission before the amendment became effective has breached the public trust.²⁴ The question posed here, although cast by the parties in terms of the amendment's “retroactivity” and “prospectivity”,²⁵ is whether the application of Section 8(e) after its adoption impermissibly impairs, during the unexpired portion of Myers' four-year elective term, any of the rights, duties, or privileges appertaining to or dependent upon his public office. Five Florida decisions are said to bear on this question, but three of them are readily distinguishable.

In *State ex rel. Judicial Qualifications Commission v. Rose*, 286 So.2d 562 (Fla.1973), the Court refused to apply to an incumbent judge a constitutional amendment creating a mandatory retirement age which he had passed at the time the amendment became effective. The *Rose* decision, however, is not really helpful here. There the Court was obliged to reconcile two competing provisions of the newly adopted constitution, one elevating Judge Rose to the status of a circuit judge as of January 1, 1973, and the other prohibiting judicial service by persons who had attained his then age. The Court reconciled these two provisions to prevent the ridiculous result of “elevating” a judge to a position he was instantly ineligible to occupy.²⁶ Obviously the problem there has no parallel here.

In *Johnson v. Trader*, 52 So.2d 333 (Fla.1951), the Court refused to apply a city ordinance enacted to prohibit civil service employees from engaging in a liquor business to a Pensacola policeman who owned a liquor enterprise, without a reasonable post-adoption period for compliance. In *Johnson*, of course, the Court was forced to resolve a practical dilemma posed by the precipitous enforcement of the municipality's reasonable regulation governing the conduct of civil service employees. In so doing, the Court fashioned an equitable resolution for the parties grounded on the ***934** factual peculiarities of the manner in which the city had

handled its transactions with officer Johnson, and on the need for concern with his accrued pension benefits.²⁷ No similar due process concern or vested property right affects Myers' situation.

In *Hall v. Strickland*, 170 So.2d 827 (Fla.1964), the Court upheld a Dade County charter amendment which terminated the offices of certain incumbent judges whose terms had not expired. In *Hall* the Court was confronted with two questions: whether a constitutional ban against shortening the term of an incumbent judge was applicable at all to a court created by municipal ordinance, and whether the municipality's particular court was abolished or its incumbent judges removed. By deciding that the constitutional prohibition did not apply at all because of the particular court involved, and that the court was abolished rather than its judges removed, the Court avoided issues (like the one before us) relative to the abridgement of an incumbent officeholder's term.

More akin to the present situation are *Holley v. Adams*, 238 So.2d 401 (Fla.1970), and *State ex rel. Reynolds v. Roan*, 213 So.2d 425 (Fla.1968). In *Reynolds* the Court refused to allow a school board to oust its appointed superintendent an attempt grounded on a constitutional amendment directing that school board superintendents shall serve at the pleasure of their appointing boards when the incumbent superintendent had received a pre-amendment board appointment for a fixed term extending beyond the amendment's effective date. The Court's opinion discussed to some extent whether superintendent Reynolds' appointed term was definite, and thereby continuable to the end of its pre-amendment contract duration, or indefinite, and thereby subject to the newly-created termination authority. The Court's decision hinged, however, on an absence of express language in the constitutional amendment directing its application to existing contracts.²⁸

"(A)n intention to apply the shortened term of an office, or the changed qualifications thereof, to an incumbent, resulting in his ouster from the office before the end of his term, must be clearly expressed in the statute or constitutional amendment making the change before it will be given that effect."²⁹

In *Holley*, by contrast, the Court did apply a newly-enacted statute to incumbent officeholders forcing a direct curtailment of the term of office but nowhere identified the presence of an unambiguous directive in the statute to the effect that it should apply to incumbents. Apparently, the Court there approached

the applicability problem from another perspective. By first concluding that the so-called "resign-to-run" statute did not affect the qualifications of office³⁰ or shorten by its operation the term of office,³¹ the Court eliminated any possible reasons that the statute should not apply to incumbents. By this approach the need to consider an expression of intent in the statute became unnecessary, since the impermissible feature of statutory or constitutional change an effective "ouster" was not present in the enactment.

Whether we approach the applicability of Section 8(e) from the perspective of *Reynolds* or *Holley*, the conclusion is the same. Section 8(e) should Not be considered applicable to persons in office on its effective date.³²

*935 A *Reynolds* approach would assume for the purpose of discussion an effective ouster by the constitutional amendment and direct our attention to whether the amendment on its face expresses an intention that it be applied to those in office. If not, the amendment would not be so applied. There can be no disagreement that Section 8(e) on its face, or even in conjunction with other provisions of the Sunshine Amendment, does not express a clear and unequivocal intention to apply its strictures to existing officeholders.³³ Compare the expressions of intended application in the provisions construed in *Hall v. Strickland*, 170 So.2d 827 (Fla.1964), and in *Klein v. Schulz*, 87 So.2d 406 (Fla.1956). Under a *Reynolds* approach, then, even assuming that Section 8(e) affects the qualifications of office, the absence of clear language applying it to incumbents prevents its applicability to Myers.

A *Holley* approach focuses attention directly on the question assumed under a *Reynolds* approach whether the constitutional change has abolished the office, changed the qualifications of office, or imposed new and onerous requirements on some or all of the incumbents who desire to continue in office.³⁴ The resign-to-run law considered in *Holley* led the Court to conclude that neither an ouster nor an impermissible burden on officeholding was imposed.³⁵

The same cannot be said of Section 8(e). To apply newly-created professional limitations on a part-time Florida legislator in the midst of his term of office obviously defeats expectations honestly arrived at when the office was initially sought.³⁶ The office itself is not abrogated or its duties altered, of course, but the privileges of officeholding are

no less impaired by curtailing non-legislative employment opportunities than they would be if the office was made full-time and outside employment prohibited altogether.³⁷ The abridgement in either case is tantamount to changing the qualifications of office. There was absolutely no employment limitation when the term of office was sought.³⁸

We hold, therefore, that  Section 8(c) does not apply to affected officials legislators and statewide elected officers who held office on its effective date.³⁹ Myers, therefore, is

not barred from practicing before *936 the Public Service Commission for compensation on behalf of others during his senatorial term which began prior to January 4, 1977. The order of the Public Service Commission is quashed.

It is so ordered.

ADKINS, BOYD, OVERTON and HATCHETT, JJ., concur.

All Citations

362 So.2d 926

Footnotes

1 Myers, who was first elected to his senatorial seat on November 5, 1968, has specialized in a public utility law practice, which often requires representation before the Public Service Commission. He is registered with the Commission as a "class A" practitioner under its Rule 25-2.13, Florida Administrative Code.

2  Art. II, s 8, Fla.Const. This provision was proposed by the governor's initiative petition in July 1976 and approved by the voters of Florida on November 2, 1976. It became effective on January 4, 1977. For additional history, see  Williams v. Smith, 360 So.2d 417, No. 52,840 (Fla., opin. filed June 9, 1978).

3  Article II, Section 8(f) of the Constitution states:

"There shall be an independent commission to conduct investigations and make public reports on all complaints concerning breach of public trust by public officers or employees not within the jurisdiction of the judicial qualifications commission."

4 Generally speaking, administrative agencies are not the appropriate forum in which to consider questions of constitutional import. See  Department of Revenue v. Amrep Corp., 358 So.2d 1343 (Fla.1978);  Gulf Pines Memorial Park, Inc. v. Oaklawn Memorial Park, Inc., 361 So.2d 695 (Fla.1978);  Department of Revenue v. Young American Builders, 330 So.2d 864 (Fla. 1st DCA 1976).

5 The artificiality of this declaratory proceeding is apparent from the Commission's "decision" that it is a judicial tribunal and its "order" that it is not.

6 1976 Op.Att'y Gen.Fla. 076-242 (Dec. 22, 1976)1976 Op.Att'y Gen.Fla. 076-242 (Dec. 22, 1976).

7 s 112.322(5), Fla.Stat. (1975), now appearing as s 112.322(6), Fla.Stat. (1977).

8 See State ex rel. Gibbs v. Couch, 139 Fla. 353, 376, 190 So. 723, 732 (1939) (Whitfield, J., concurring); Mugge v. Warnell Lumber & Veneer Co., 58 Fla. 318, 321, 50 So. 645, 646 (1909); Halle v. Einstein, 34 Fla. 589, 604, 16 So. 554, 558-59 (1894).

28

- 9 As to the governor's role as draftsman of the "Sunshine Amendment," see  Williams v. Smith, 360 So.2d 417, No. 52,840 (Fla., opin. filed June 9, 1978).
- 10 See, for example, Hillsboro Island House Condominium Apartments, Inc. v. Town of Hillsboro Beach, 263 So.2d 209, 213 (Fla.1972). In general, a dictionary may provide the popular and common sense meaning of terms presented to the voters.
- 11 Definitions supplied by Black's and Ballentine's law dictionaries are quite similar. See Ballentine's Law Dictionary 684, 1300 (3d ed. 1969); Black's Law Dictionary 983-84, 1677 (4th ed. 1968).
- 12 See Webster's at 1143.
- 13 Gray v. Bryant, 125 So.2d 846 (Fla.1960); State ex rel. McKay v. Keller, 140 Fla. 346, 191 So. 542 (1939).
- 14 Two other alternatives to hold that the term "judicial tribunal" means either only those courts created by Article V of the Florida Constitution or all agencies which possess quasi-judicial power within the contemplation of Article V, Section 1, of the Florida Constitution are not urged by either party. In light of the explanatory material which accompanied the initiative petition, we find no basis to adopt either of these more extreme positions, although there is some intellectual appeal to the former.
- 15 Scholastic Systems, Inc. v. LeLoup, 307 So.2d 166, 170 (Fla.1974). At oral argument, the attorney general proposed as a possibility that we overrule Scholastic Systems and pare back the term "judicial tribunal" to courts alone. The posture of this case obviously precludes that possibility.
- 16 Agencies which Myers identified in this category include, at least, the Public Employees Relations Commission and the Career Service Commission.
- 17 We recognize that the judicial branch of government performs some duties which conceptually could be classified as legislative or quasi-legislative in nature, such as the rulemaking power conferred in Article V, Section 2(a) of the Constitution, and the admission and discipline of attorneys conferred in Article V, Section 15. The administrative responsibilities for adopting rules of practice and procedure for the courts of the state, and for controlling the flow of persons authorized to appear before the courts, are intimately connected with the exercise of courts' exclusively judicial activities. As such they are incidental, but indispensable, to the mission of the courts. They have no other independent significance, however, and to this extent courts differ from most executive and quasi-legislative bodies which exist for reasons other than simply to resolve disputes.
- 18 Illustrative of the problem are In re Advisory Opinion to the Governor, 223 So.2d 35 (Fla.1969); Greyhound Lines, Inc. v. Mayo, 207 So.2d 1 (Fla.1968); Florida East Coast Ry. v. State, 79 Fla. 66, 83 So. 708 (1920).
- 19 See Florida Motor Lines, Inc. v. Railroad Comm'rs, 100 Fla. 538, 129 So. 876 (1930), where, in discussing the authority of the Commission's predecessor, we carefully differentiated the exercise of quasi-judicial authority from the judicial powers of the courts. And see  Canney v. Board of Public Instruction, 278 So.2d 260 (Fla.1973).
- 20 The many non-judicial functions of the Public Service Commission prescribed in the Florida Statutes include the authority to franchise and regulate ferries and toll bridges (ch. 347), and extensive rate-making and regulatory authority over railroads and common carriers (ch. 350), telegraph and telephone companies (ch. 364), private wire services and the statewide emergency telephone system (ch. 365), public utilities supplying electricity or gas (ch. 366), public water and sewer systems (ch. 367), and gas transmission or distribution facilities (ch. 368).

- 21 We note that a legal background is not required for persons seeking to serve as a public service commissioner. Compare *ss* 440.45(1) and *ss* 20.17(3)(a) (1), Fla.Stat. (1977), requiring for industrial claims judges and industrial relations commissioners, respectively, virtually the same qualifications as for circuit and district court judges. And see *In re Workmen's Compensation Rules of Procedure*, 343 So.2d 1273 (Fla.1977); *Scholastic Systems, Inc. v. LeLoup*, 307 So.2d 166 (Fla.1974); *In re Florida Workmen's Compensation Rules of Procedure*, 285 So.2d 601 (Fla.1973).
- 22 Although this issue was not originally argued by the parties, the Court on its own motion directed that the parties file supplementary briefs addressing this question. See Fla.R.App.P. 9.040(a). As noted earlier, Myers has served in the Florida Senate continuously since 1968. His present four-year term began on November 2, 1976.
- 23 In its entirety, *ss* Article II, Section 8(e), reads:

"No member of the legislature or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of two years following vacation of office. No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals. Similar restrictions on other public officers and employees may be established by law."

- 24 The retroactive application of a constitutional amendment to pre-adoption conduct was summarily rejected in *Baillie v. Town of Medley*, 262 So.2d 693, 697 (Fla. 3d DCA 1972), *Appeal dismissed*, 279 So.2d 881 (Fla.1973).
- 25 The labels "retroactive" and "prospective" do not aid our analysis.

"In dealing with the problem of retroactivity, it is extremely difficult to establish definite criteria upon which court decisions can be foretold. A statute must not act unreasonably upon the rights of those to whom it applies, but what is reasonable and what is unreasonable is difficult to state in advance of actual decisions. '... (T)he method to be pursued is not the unerring pursuit of a fixed legal principle to an inevitable conclusion. Rather it is the method of intelligently balancing and discriminating between reasons for and against.' It is misleading to use the terms 'retrospective' and 'retroactive,' as has sometimes been done, to mean that the act so labelled is unconstitutional, since the question of validity rests on further subtle judgments concerning the fairness or unfairness of applying the new statutory rule to affect interests which accrued out of events which transpired and under circumstances which obtained when a different prior rule of law was in force

One of the fundamental considerations of fairness recognized in every legal system is that settled expectations honestly arrived at with respect to substantial interests ought not be defeated. There is evidence that results achieved through application of judicial instinct, manifested in the pattern of decisions on retroactivity problems, are perhaps best explainable in terms of this fundamental principle of justice." 2 Sands, *Sutherland Statutory Construction* s 41.05, pp. 259-61 (4th ed. 1973).

If there is an appropriate characterization, Florida case law seems to describe the application of a constitutional amendment to conduct following its effective date as prospective in nature. See *State ex rel. Judicial Qualifications Commission v. Rose*, 286 So.2d 562, 563 (Fla.1973). And see *Department of Health*

- & Rehabilitative Services v. Harrell, 258 So.2d 340, 344 (Fla. 1st DCA 1972), Cert. discharged, 272 So.2d 151 (Fla.1973), using the same term in the context of conduct following a statutory change.
- 26 286 So.2d at 563.
- 27 52 So.2d at 336-37.
- 28 Both the Rose and Reynolds decisions express the view that a constitutional provision Can operate to eliminate an office or a right, provided the amendment unambiguously expresses that intention. The Hall decision illustrates office abolition.
- 29 213 So.2d at 428.
- 30 See  Holley, 238 So.2d at 405-06, as to the distinction between the eligibility for office and the qualifications of office.
- 31 "(T)he reduction of the term, if any, is caused solely by the act of the office holder in abandoning the office which he presently holds."  238 So.2d at 407.
- 32 We express no view on the applicability of a constitutional or statutory change to persons who assume office simultaneously with the effective date of the change.
- 33 Indeed, the last sentence of  Section 8(e) speaks prospectively of action the legislature may take to expand that provision's coverage to other governmental personnel.
- 34 New and onerous requirements for officeholding may be considered the equivalent of an ouster. See  238 So.2d at 406-07.
- 35 "(The resign-to-run statute) is not a burden imposed upon the office of circuit judge presently held by Holley. His term of office as circuit judge remains as before and this right is affected only by the voluntary act of the incumbent in office."  238 So.2d at 406.
- 36 See Sands, note 25 above.
- 37 See, for example, Art. V, s 13, Fla.ConstArt. V, s 13, Fla.Const., prohibiting certain outside employment for full-time judges.
- 38 Not every statutory or constitutional impairment in the expectations or in the status of officeholders, either in their official or private capacity, will operate only as to future officeholders. This case does not present an occasion to announce other circumstances in which an impairment would be considered tantamount to an ouster, to use the Reynolds phraseology. Wherever a line may ultimately be drawn to separate permissible impairment from that which is impermissible, it is clear that this constitutional change so substantially abrogates Myers' status as a part-time legislator and as a member of The Florida Bar that it would fall well outside the established boundary.
- 39 The inapplicability of the "after term" ban of  Section 8(e) to persons in office on its effective date rests on the same policy considerations as the "during term" ban. The joinder of these prohibitions in the same constitutional paragraph, designed as we have indicated to prevent conflicts of private and public interests, quite plainly stems from the same ethical considerations and requires parallel treatment. The Standards and Conduct Committee of the Florida House of Representatives reached this same conclusion in an opinion

concerning the applicability of the "after term" ban to House members in office on its effective date. Opin. No. 39, H.R.J., Reg. Sess. 888 (1978).

End of Document

© 2025 Thomson Reuters. No claim to original U.S. Government Works.

398 So.2d 446
Supreme Court of Florida.

THE FLORIDA BAR.
In Re ADVISORY OPINION
CONCERNING the APPLICABILITY OF
CHAPTER 119, FLORIDA STATUTES.

No. 57866.

I

April 30, 1981.

Synopsis

The Board of Governors of State Bar petitioned for advisory opinion. The Supreme Court held that the public records law *did not apply to unauthorized practice of law investigative files maintained by state bar.*

Order accordingly.

Attorneys and Law Firms

***446** Leonard H. Gilbert, President of The Florida Bar, Tampa, James P. Hollaway, Deputy Staff Counsel, and H. Glenn Boggs, Asst. Staff Counsel-UPL, Tallahassee, Ronald R. Richmond, Chairman, Standing Committee on UPL, New Port Richey, and C. Harris Dittmar, Board Liaison Member, Standing Committee on UPL, Jacksonville, for petitioner.

Jim Smith, Atty. Gen., and Frank A. Vickory, Asst. Atty. Gen., Tallahassee, for respondent.

Opinion

***447** PER CURIAM.

This cause is before us upon petition of the Board of Governors of The Florida Bar for an advisory opinion concerning the applicability of chapter 119, Florida Statutes (1979) (Public Records Law), to the committee of The Florida Bar on unauthorized practice of law. Particularly, we are asked to determine whether unauthorized practice of law investigative files are "public records" subject to inspection by members of the press under the authority of chapter 119, Florida Statutes. Jurisdiction is predicated on the Court's inherent and exclusive constitutional authority over its agencies who act in its behalf. In *Re Florida Board of Bar Examiners*, 278 So.2d 266 (Fla.1973); In *Re The Florida Bar*, 215 So.2d 613 (Fla.1968). In *Re Florida Board of*

Bar Examiners, 353 So.2d 98 (Fla.1977), was an advisory opinion concerning a statute requiring state agencies to adapt their entrance or qualifying examinations to accommodate individuals who are blind or deaf. Even though we recognized the benefits of such a policy, we held it invalid as applied to the Florida Board of Bar Examiners, stating:

Because the Florida Constitution by its express terms vests exclusive jurisdiction in this Court to regulate the admission of persons to the practice of law, because the Florida Board of Bar Examiners is an attache of this Court, and because the act imposes criminal penalties upon the Board for failure to adhere to its provisions, we find the act invalid as to the Board of Bar Examiners in administering the Florida Bar Examination. Our Constitution prohibits legislative interference with this Court's exercise of its power to govern admissions to The Florida Bar. Article V, Section 15, Florida Constitution.

353 So.2d at 100 (emphasis added.)

The drafters of the Florida Constitution recognized this inherent right of the courts to regulate the admission of persons to the practice of law, imbuing the Supreme Court with exclusive jurisdiction to direct such admissions. Article V, Section 15, Florida Constitution. See *The Florida Bar v. Massfeller*, 170 So.2d 834 (Fla.1964). In the exercise of its constitutional authority, this Court created the Florida Board of Bar Examiners to evaluate candidates for admission to The Florida Bar. As an arm of this Court, the Board is answerable solely to this tribunal. Any legislative enactment which constitutes an usurpation of this Court's constitutionally endowed

power, by seeking to govern the Board's activities must be invalid.

Id. (Emphasis added.)

The definition of “public records” in  section 119.011(1), Florida Statutes (1979), and the definition of the term “agency” as contained in  section 119.011(2) are far reaching, and broad enough to include the records of judicial branch entities. It is fundamental that all the legislative power of the state which is not withheld or vested elsewhere by the constitution resides in the legislature. Where a limitation does exist, however, the legislature may not exceed such limitation. If judicial entities are included within the scope of chapter 119, the legislature has sought to exercise legislative power concerning a matter that is explicitly withheld and vested elsewhere in the constitution, i. e., article V.

Article II, section 3, Florida Constitution, provides no person belonging to one branch of government shall exercise any power appertaining to either of the other branches unless explicitly provided in the constitution. Neither the legislature nor the governor can control what is purely a judicial function.

In *Re The Florida Bar*, 316 So.2d 45 (Fla.1975), was an advisory opinion concerning the applicability of chapter 74-177, Laws of Florida, commonly known as the Financial Disclosure Law, to members of The Florida Bar acting in their historical professional capacity as “officers of the Court.” We held that the Financial Disclosure Law was inapplicable as a code of conduct to officers of the judicial branch explaining

this Court had the inherent right to supervise the bar as an incident to this Court's power to control, *448 admit to practice, and discipline attorneys. This right is given to this Court by virtue of Article V, section 15, Florida Constitution.

The unauthorized practice of law investigative files of The Florida Bar, as an official arm of this Court, are subject to the control and direction of this Court and not to either of the other branches of the government.

As a practical matter, the public interest is best served by shielding The Florida Bar unauthorized practice of law investigative files from disclosure under chapter 119, Florida Statutes, for to do otherwise might allow adverse and harmful publicity to focus on persons innocent of any wrongdoing but who, nevertheless, are subject to an unfounded complaint. When probable cause appears that someone is engaged in the unauthorized practice of law, the bar initiates litigation. From that point all records, of course, are open for a public inspection.

We hold that chapter 119, Florida Statutes, does not apply to The Florida Bar's Unauthorized Practice of Law investigation files.

It is so ordered.

SUNDBERG, C. J., and ADKINS, BOYD, OVERTON and ALDERMAN, JJ., concur.

All Citations

398 So.2d 446

Menu ▼

RULES OF THE SUPREME COURT RELATING TO ADMISSIONS TO THE BAR

As amended by order dated February 10, 2022

RULE 1 GENERAL

1-10 Authority and Mission.

1-11 Introduction. The admission of attorneys to the practice of the profession of law is a judicial function.

1-12 Rules. The Rules of the Supreme Court Relating to Admissions to the Bar are reviewed, approved, and promulgated by the Supreme Court of Florida. Modifications to the rules require the filing of a petition with the Supreme Court of Florida and subsequent order by the court.

1-12.1 Deadlines on Weekend or Holiday. If a deadline described in these rules falls on a Saturday, Sunday, or holiday, then the deadline will be extended until the end of the next business day.

1-13 Florida Board of Bar Examiners. The Florida Board of Bar Examiners is an administrative agency of the Supreme Court of Florida created by the court to implement the rules relating to bar admission.

1-14 Background Investigations.

1-14.1 Purpose. The primary purposes of the character and fitness investigation before admission to The Florida Bar are to protect the public and safeguard the judicial system.

1-14.2 Responsibility. The board must ensure that each applicant has met the requirements of the rules with regard to character and fitness, education, and technical competence prior to recommending an applicant for admission.

1-15 Bar Examination.

1-15.1 Purpose. The primary purpose of the bar examination is to ensure that all who are admitted to The Florida Bar have demonstrated minimum technical competence.

1-15.2 Responsibility. The board is responsible for preparing, administering, and grading written examinations. Board members must be willing and available to discuss with applicants the purposes, policies, and procedures of the admissions process.

1-16 Admission Recommendations. Following each of its meetings, the board will recommend the admission of every applicant who has complied with all the requirements of the applicable rules, who has attained passing scores on the examination, and who has demonstrated the requisite character and fitness for admission.

1-20 Florida Board of Bar Examiners.

1-21 Membership. The Florida Board of Bar Examiners consists of 12 members of The Florida Bar and 3 public members who are not lawyers.

1-21.1 Additional Members. The board may submit to the court a request for additional members to serve, as necessary. The request and appointee recommendations must be submitted in the same manner as appointee recommendations under rules 1-22.2 and 1-23.2. The term of service of a member appointed under this rule will be as provided in rules 1-22.3 and 1-23.3 or as otherwise approved by the court.

1-22 Attorney Members.

35

1-22.1 Qualifications. Attorney members must be active members of The Florida Bar, and have been so for at least the 5 years immediately preceding their appointments to the board, and otherwise deemed qualified by the Court to assess whether applicants for admission to The Florida Bar meet the essential eligibility requirements as provided in these Rules.

1-22.2 Appointments. A joint committee composed of 3 members of the board and 3 members of The Florida Bar Board of Governors must submit to the court not less than 90 days before the expiration of the term of any attorney member of the board, or within 90 days of a vacancy, a group of 3 recommended appointees.

1-22.3 Term of Service. Appointments will be for no more than 5 years and the term of all appointments will extend to October 31 of the last year of the term. Any vacancy occurring during a term must be filled by appointment. No attorney appointed by the court as a result of a vacancy occurring during a term will be appointed for more than 5 years.

1-23 Public Members.

1-23.1 Qualifications. Public members must not be lawyers, must have an academic bachelor's degree, and otherwise must be deemed qualified by the Court to assess whether applicants for admission to The Florida Bar meet the essential eligibility requirements as provided in these Rules.

1-23.2 Appointments. A joint committee composed of 3 members of the board and 3 members of The Florida Bar Board of Governors must submit to the court not less than 90 days before the expiration of the term of any public member of the board, or within 90 days of a vacancy, a group of 3 recommended appointees.

1-23.3 Term of Service. Appointments will be for no more than 3 years and the term of all appointments will extend to October 31 of the last year of the term. Any vacancy occurring during a term must be filled by appointment. No public member appointed by the court as a result of a vacancy occurring during a term will be appointed for more than 3 years.

1-24 Board Members Emeritus.

1-24.1 Eligibility. A former member of the board may accept the designation of board member emeritus, if eligible under rule 1-34
(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/1a6b2db4bf13be6485257c400073a6fc?Redirect).

1-24.2 Purpose. To assist the board in fulfilling its investigative and adjudicative functions, a board member emeritus is authorized to participate as a member of an investigative or formal hearing panel as provided by rule 3-22
(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/729778e9181b426785257c590059b4d6?Redirect) and 3-23.2
(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/ae874582c7560c6a85257c59005a959c?Redirect). The formal hearing panel must consist of a majority of current members of the board. At least 1 member of an investigative hearing panel must be a current member of the board. All recommendations of investigative hearing panels must be approved by a quorum of the current board.

1-25 Officers.

1-25.1 Vice Chair. During the board meeting preceding November 1 of each year, the board must designate a vice chair who will hold office for a period of 1 year beginning on November 1. The designation will be determined by majority vote. In the event of an irreconcilable tie vote, the matter will be certified to the Supreme Court of Florida, and the court will designate the vice chair for the next year.

1-25.2 Chair. On November 1 of each succeeding year, the previously elected vice chair will become chair for a period of 1 year.

1-26 Office Location. The office of the board will be maintained in Tallahassee, Florida.

1-30 Board Member Responsibilities.

36

1-31 Tenure. A board member should be appointed for a fixed term but should be eligible for reappointment if the board member's work is of high quality. Members of the board should be appointed for staggered terms to ensure continuity of policy but with sufficient rotation to bring new views to the board and to ensure continuing interest in its work.

1-32 Devotion to Duty. A board member should be willing and able to devote whatever time is necessary to perform the duties of a board member.

1-33 Essential Conduct. A board member should 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. Each board member should be just and impartial in recommending the admission of applicants and should exhibit courage, judgment, and moral stamina in refusing to recommend applicants who lack adequate general and professional preparation or who lack good moral character.

1-34 Board Influences, Conflicting Duties, and Obligations. Board members should not have adverse interests, conflicting duties, inconsistent obligations, or improper considerations that will in any way interfere or appear to interfere with the proper administration of their functions. A member of the board or a board member emeritus may not serve as a judge of any court; a regular or adjunct professor of law; an instructor, advisor or in any capacity related to a bar review course, or in other activities involved with preparation of applicants for bar admission; or as a member of the governing or other policy-making board or committee of a law school or the university of which it is a part. A board member is not prohibited from service on the board or as an officer of alumni groups that support law schools or universities or from assisting them with fund raising activities.

1-35 Compensation. Board members will serve without compensation, but will be reimbursed for reasonable travel and subsistence expenses incurred in the performance of their services for the board.

1-40 Board Meetings.

1-41 Conducting Board Meetings. The board will meet in formal session throughout the State of Florida on a regularly scheduled basis to consider administrative, applicant, and registrant matters and to conduct investigative and formal hearings. Subject to the approval of the board, the place and time of meetings will be determined by the chair of the board.

1-42 Special Hearing Panels. Hearings may also be conducted by special hearing panels of the board convened at other times and places fixed by the board.

1-43 Telephone Conference Meetings. On reasonable notice, the chair of the board may conduct a meeting of the board by conference telephone call for routine administrative action or for emergency action.

1-50 Fiscal Authority.

1-51 Budget. The board will annually prepare a budget and submit it to the Supreme Court of Florida for approval.

1-51.1 Income. Subject to the approval of the court, the board may classify applicants and registrants, and fix the charges, fees, and expenses that will be paid by each.

1-51.2 Expenses. The board will make such disbursements as are required to pay the necessary expenses of the board.

1-52 Audit. The board will have an annual audit conducted by a certified public accountant. The annual audit must be filed with the Clerk of the Supreme Court of Florida.

1-53 Staffing. The board will employ an executive director and other assistants as it may deem necessary. It will provide for the compensation of employees and will pay expenses incurred in the performance of their official duties. All employees must be bonded as may be directed by the board.

1-60 Confidentiality.

1-61 Confidentiality. All information maintained by the board in the discharge of the responsibilities delegated to it by the Supreme Court of Florida is confidential, except as provided by these rules or otherwise authorized by the court.

1-62 Custodian of Records. All records including, but not limited to, registrant and applicant files, investigative reports, examination materials, and interoffice memoranda are the property of the Supreme Court of Florida, and the board will serve as custodian of all the records.

1-63 Release of Information. The board is authorized to disclose information relating to an individual registrant, applicant, or member of The Florida Bar, absent specific instructions from the court, in the following situations only.

1-63.1 Public Request. On request, the staff will confirm if a person has filed a Registrant Bar Application, Examination Application, or Bar Application with the board, and will provide the date of admission of any attorney admitted to The Florida Bar.

1-63.2 National Data Bank. The name, date of birth, Social Security number, and date of application will be provided for placement in a national data bank operated by, or on behalf of, the National Conference of Bar Examiners.

1-63.3 The Florida Bar. On written request from The Florida Bar for information relating to disciplinary proceedings, reinstatement proceedings, or unlicensed practice of law investigations, information will be provided with the exception of any information received by the board under the specific agreement of confidentiality or otherwise restricted by law.

1-63.4 National Conference of Bar Examiners or Foreign Bar Admitting Agency On written request from the National Conference of Bar Examiners, or from foreign bar admitting agencies, foreign bar associations, or other similar agencies, when accompanied by an authorization and release executed by the person about whom information is sought, information will be provided with the exception of any information received by the board under a specific agreement of confidentiality or otherwise restricted by law.

1-63.5 Documents Filed by Registrant or Applicant. On written request from registrants or applicants for copies of documents previously filed by them, and copies of any documents or exhibits formally introduced into the record at an investigative or formal hearing before the board, and the transcript of hearings, copies will be provided. Costs of copies are set out below:

a. The fee for a copy of any document or portion of a document is \$25 for the first page and 50 cents for each additional page.

b. The fee for a copy of the Bar Application or Registrant Bar Application is \$50.

1-63.6 Documents Filed on Behalf of the Registrant or Applicant. On written request from registrants or applicants, copies of documents filed on their behalf, or at the request of the board with the written consent of the party submitting the documents, will be provided. If the documents would be independently available to the requesting registrant or applicant, then consent of the party submitting the documents will be deemed waived. The fees for requested copies are \$25 for the first page and 50 cents for each additional page.

1-63.7 Grand Jury or Florida State Attorney. On service of a subpoena issued by a Federal or Florida grand jury, or Florida state attorney, in connection with a felony investigation only, information will be provided with the exception of any information that is otherwise restricted by law.

1-63.8 Third Parties. The board may divulge the following information to all sources contacted during the background investigation:

a. name of applicant or registrant;

b. former names;

c. date of birth;

d. current address; and

e. Social Security number.

1-63.9 List of Candidates. Following the board's recommendation under rule 5-10 (/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/8c9eacb95c13060b85257c0b0059b910?Redirect) and the court's approval for an applicant's admission to The Florida Bar, the applicant's name and mailing address is public information.

1-64 Breach of Confidentiality. Whenever any person intentionally and without authority discloses confidential information maintained by the board, the person may be in contempt of the board. The board must report to the Supreme Court of Florida the fact that the person is in contempt of the board for proceedings against the person as the court may deem advisable.

1-65 Disclosure of Information. Unless otherwise ordered by the Supreme Court of Florida, the chair of the board, or the presiding officer at a hearing before the board, nothing in these rules prohibits any applicant or witness from disclosing the existence or nature of any proceeding under rule 3 (/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/57f1215b09ea865985257c0b0059922e?Redirect), or from disclosing any documents or correspondence served on, submitted by, or provided to the applicant or witness.

1-70 Immunity and Privilege.

1-71 Board and Employee Civil Immunity. The board and its members, employees, and agents are immune from all civil liability for damages for conduct and communications occurring in the performance and within the scope of their official duties relating to the examination, character and fitness qualification, and licensing of persons seeking to be admitted to the practice of law.

1-72 Immunity and Privilege for Information. Records, statements of opinion, and other information regarding an applicant for admission to The Florida Bar, communicated without malice to the board, its members, employees, or agents by any entity, including any person, firm, or institution, are privileged, and civil suits for damages predicated on those communications may not be instituted.

RULE 2 APPLICATION REQUIREMENTS

2-10 Application Qualifications. To seek admission to The Florida Bar, a person must meet the qualifications, file the appropriate applications and fees as set out in this rule, and comply with rules 3 (/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/57f1215b09ea865985257c0b0059922e?Redirect) and 4 (/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/51f08918061afec385257c0b00599d19?Redirect).

2-12 Proof of Character and Fitness. All applicants seeking admission to The Florida Bar must produce satisfactory evidence of good moral character, an adequate knowledge of the standards and ideals of the profession, and proof that the applicant is otherwise fit to take the oath and to perform the obligations and responsibilities of an attorney. See rule 3 (/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/57f1215b09ea865985257c0b0059922e?Redirect), Background Investigation.

2-13 Prohibitions Against Application. A person is not eligible to apply for admission to The Florida Bar or for admission into the General Bar Examination unless the time period as indicated below has expired, or the required condition or status has been met.

2-13.1 Disbarment. A person who has been disbarred from the practice of law in proceedings based on conduct that occurred in Florida for the disbarment will not be eligible to apply for readmission for a period of 5 years from the date of disbarment, such other time as is set forth in any Florida rules of discipline, or longer period set for readmission by the Supreme Court of Florida. If the person's disbarment is based on conduct that occurred in a foreign jurisdiction, then the person will not be eligible to apply for admission or readmission to The Florida Bar until the person is readmitted in the foreign jurisdiction in which the conduct that resulted in discipline occurred. Readmission must occur in the foreign jurisdiction in which the conduct occurred even if Florida imposed discipline prior to the imposition of discipline in the other jurisdiction and even if the person would otherwise be eligible for readmission under the terms of any Florida discipline.

2-13.15 Public Hearing. Once eligibility has been established, and following completion of the background investigation, the applicant who has been disbarred, or who has resigned pending disciplinary proceedings, will be required to appear for a formal hearing that is open to the public as provided by rule 3-22.7 (/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/47e61a35a212da2f85257c59005a57dd?Redirect).

39

2-13.2 Suspension for Disciplinary Reasons. A person who has been suspended for disciplinary reasons from the practice of law in a foreign jurisdiction is not eligible to apply until expiration of the period of suspension. If the person's suspension occurred in the person's home state, then the person is not eligible to apply for admission to The Florida Bar until the person is reinstated to the practice of law in the person's home state.

2-13.25 Satisfaction of Court-Ordered Restitution and Disciplinary Costs. Except upon a showing of exceptional circumstances, a person who was disbarred, resigned with pending disciplinary proceedings, or was suspended in Florida or from a foreign jurisdiction will not be eligible to apply except on proof of satisfaction in full of any restitution and disciplinary costs. Restitution consists of the following:

- a. restitution imposed by a court in its order of disbarment, resignation, or suspension;
- b. restitution ordered by a court in any underlying criminal case that resulted in the disbarment, resignation, or suspension; and;
- c. restitution owed for the payment of any claims by the Client's Security Fund in Florida or by a similar bar fund in a foreign jurisdiction.

Exceptional circumstances may be established by showing that the applicant has made diligent, good-faith efforts to satisfy the restitution and costs obligation and has demonstrated a consistent commitment to fully satisfy the obligation; the applicant has entered a payment plan which insures satisfaction in full as soon as practicable; and the payment plan is necessary to protect the interests of any person or entity entitled to payment.

2-13.3 Convicted Felon. A person who has been convicted of a felony is not eligible to apply until the person's civil rights have been restored.

2-13.4 Serving Felony Probation. A person who is serving a sentence of felony probation, regardless of adjudication of guilt, is not eligible to apply until termination of the period of probation.

2-13.5 Found Unqualified by Board. Any applicant or registrant who was previously denied admission by the board by a negotiated consent judgment or through a "Findings of Fact and Conclusions of Law" that has not been reversed by the Supreme Court of Florida, may reapply for admission by filing a new Bar Application after 2 years or such other period as may be set in the consent judgment or the Findings. The applicant or registrant will be eligible to take the General Bar Examination during the disqualification period.

2-14 Reapplications for Admission. Any applicant or registrant who was previously denied admission by the board by a negotiated consent judgment or through a "Findings of Fact and Conclusions of Law" that has not been reversed by the Supreme Court of Florida may reapply for admission by filing a new Bar Application after 2 years or such other period as may be set in the consent judgment or the Findings. The new application must be filed on the form available on the board's website with current references, submission of fingerprints in the format required by the board, any supplemental documents that the board may reasonably require, the applicable fee, and a detailed written statement describing the scope and character of the applicant's evidence of rehabilitation as required by rule 3-13 ([/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/07d21e094daf8cfd85257c5900548c90?Redirect](https://www.floridabar.org/web/website.nsf/rule.xsp)). The statement must be sworn and may include corroborating evidence such as letters and affidavits. Thereafter, the board will determine at an investigative hearing, a formal hearing, or both, if the applicant's evidence of rehabilitation is clear and convincing and will make a recommendation as required by rule 3-23.6 ([/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/0a005fb14f146d0485257c59005ad4b8?Redirect](https://www.floridabar.org/web/website.nsf/rule.xsp)). In determining whether an applicant should appear before an investigative hearing panel, a formal hearing panel, or both, the board is clothed with broad discretion.

2-20 Applications and Fees.

2-21 Applications. Every applicant for admission to The Florida Bar must file with the board a Bar Application on the form available on the board's website. Law student registrants who register with the board under rule 2-21.2 ([/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/722db4e97a2cd45585257c440057a251?Redirect](https://www.floridabar.org/web/website.nsf/rule.xsp)) must file a Registrant Bar Application and a Supplement to Registrant Bar Application. The Bar Application or Registrant Bar Application must be completed interactively online using instructions on the board's website.

40

2-21.1 Admission to General Bar Examination. A person who, prior to the applicable filing deadline specified in rule 4-42

(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/fdcd6b3c9b27659385257c59006236b5?

Redirect) or the applicable late filing deadline specified in rule 4-43

(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/341e0ade49d8c6e385257c0b005d995b?

Redirect), has not filed with the board the Bar Application (or, in the case of a law student registrant, the Registrant Bar Application and the Supplement to Registrant Bar Application) and paid the appropriate filing fees will not be permitted to take the General Bar Examination.

2-21.2 Registration. Law students are encouraged to register with the board within the first year of law school. Every law student intending to apply for admission to The Florida Bar, following the commencement of the study of law in an accredited law school, may register with the board by filing a Registrant Bar Application on the form available on the board's website accompanied by the applicable filing fee, and any supplemental documents that reasonably may be required by the board. See rule 2-23.1

(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/0cb16cbf0a22abd485257c0b0072a165?

Redirect) for a schedule of fees. A basic character and fitness investigation will be conducted in areas of possible concern on each registrant. The Registrant Bar Application must be converted into a Bar Application by the filing of a Supplement to Registrant Bar Application available online on the board's website. Each law student registrant is encouraged to file the Supplement to Registrant Bar Application at the beginning of the student's final year in law school to ensure timely completion of the board's character and fitness investigation.

2-22 Character and Fitness Investigation. On the filing of a Bar Application or a Registrant Bar Application, the board will initiate a character and fitness investigation under these rules. When a law student registrant files a Supplement to Registrant Bar Application, the board will update the character and fitness investigation conducted following such student's filing of the Registrant Bar Application.

2-23 Application Fees. All fees are set by order of the Supreme Court of Florida and are subject to change by published order of the court. The total application fee is due and payable to the Florida Board of Bar Examiners by the applicant when filing the Bar Application, the Registrant Bar Application, or the Supplement to Registrant Bar Application, and no application will be considered complete without the full fee. Any fee paid by an applicant or registrant will not be refunded.

2-23.1 Student Registrant Fee. Except as provided below, every law student filing a Registrant Bar Application with the board must file with the completed Registrant Bar Application the fee of \$400. For any law student who files a Registrant Bar Application by the deadlines established, discounted early registration fees are available as follows:

- a. **\$100.** For those students who commence the study of law in:
 1. August or September and who file a Registrant Bar Application by the following January 15;
 2. January or February and who file a Registrant Bar Application by the following June 15;
 3. May or June and who file a Registrant Bar Application by the following October 15.
- b. **\$350.** For those students who commence the study of law in:
 1. August or September and who file a Registrant Bar Application by the following March 15;
 2. January or February and who file a Registrant Bar Application by the following August 15; or
 3. May or June and who file a Registrant Bar Application by the following December 15.

2-23.2 Student Applicant Fee. Applicants who did not file the Registrant Bar Application with the board as law students and who have not been admitted to the bar in any jurisdiction for a period in excess of 12 months, excluding time spent in military service of the United States, must file with the Bar Application the fee of \$1,000.

2-23.3 Supplement to Registrant Bar Application Fee. Applicants who filed the Registrant Bar Application with the board as law students and who have not been admitted to the bar in any jurisdiction for a period in excess of 12 months, excluding time spent in military service of the United States, must file with the Supplement to Registrant Bar Application the applicable fee as follows:

- a. **Less than 5 years.** If the Supplement to Registrant Bar Application is filed within 5 years of the filing date of the original Registrant Bar Application, the fee is \$600.

b. More than 5 years. If the Supplement to Registrant Bar Application is filed more than 5 years after the filing of the original Registrant Bar Application, the fee is \$1,000 as set forth in rule 2-23.2 ([/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/b3f1a4d568ddf7a485257c440057ef5b?Redirect](https://www.floridabar.org/web/website.nsf/52286ae9ad5d845185257c07005c3fe1/b3f1a4d568ddf7a485257c440057ef5b?Redirect)), less any fee previously paid.

2-23.4 Attorney Fee. Applicants who have been admitted to the bar in any jurisdiction for a period in excess of 12 months, excluding time spent in military service of the United States, must file with the Bar Application a fee based on the number of years the applicant has been admitted in another jurisdiction as follows:

a. Less than 5 years. If the applicant has been admitted in another jurisdiction for more than 1 year but less than 5 years, the fee is \$1,600.

b. 5 or more but less than 10 years. If the applicant has been admitted in another jurisdiction for 5 years or more but less than 10 years, the fee is \$2,000.

c. 10 or more but less than 15 years. If the applicant has been admitted in another jurisdiction for 10 years or more but less than 15 years, the fee is \$2,400.

d. 15 or more years. If the applicant has been admitted in another jurisdiction for 15 or more years, the fee is \$3,000.

2-23.5 Fee Determination. The fee for an admitted attorney is determined by the date of the filing of the Bar Application and the status of the applicant on that date as it relates to his or her admission to the bar of any foreign jurisdiction or United States military service.

2-23.6 Disbarred Attorney Fee. Applicants applying for admission after disbarment or resignation pending disciplinary proceedings in Florida or in any other jurisdiction must file with the Bar Application the fee of \$6,000.

2-23.7 Military Spouse Fee. Applicants submitting an application under the Rules Regulating The Florida Bar for authorization to practice law in Florida as military spouses while their spouse is stationed within this jurisdiction must file with the Bar Application the fee of \$1,000.

Military spouses applying for full admission to The Florida Bar and not relying on the rules regarding authorization to practice law in Florida as a military spouse under the Rules Regulating The Florida Bar will be required to pay the appropriate fee under rules 2-23.2

([/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/b3f1a4d568ddf7a485257c440057ef5b?Redirect](https://www.floridabar.org/web/website.nsf/52286ae9ad5d845185257c07005c3fe1/b3f1a4d568ddf7a485257c440057ef5b?Redirect)) or 2-23.4

([/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/0f3c3657e468010585257c590047cb74?Redirect](https://www.floridabar.org/web/website.nsf/52286ae9ad5d845185257c07005c3fe1/0f3c3657e468010585257c590047cb74?Redirect)), whichever is applicable.

2-28 Application Fee for Reapplication for Admission Based on Rehabilitation. Applicants or registrants who are reapplying for admission and asserting rehabilitation from prior conduct that resulted in a denial of admission through Findings of Fact and Conclusions of Law or Consent Judgment must file with the application a fee of \$2,200.

2-29 Stale File Fee. An applicant whose Bar Application has been on file for more than 3 years is required to file a new Bar Application on the form available on the board's website with current references, submission of fingerprints in the format required by the board, any supplemental documents that the board may reasonably require, and the applicable fee.

a. If within 5 Years. If filed within 5 years of the filing date of the last application filed, a fee of \$525 is applicable.

b. If more than 5 Years. If filed more than 5 years after the filing date of the last application filed, the full application fee under rules 2-23.2

([/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/b3f1a4d568ddf7a485257c440057ef5b?Redirect](https://www.floridabar.org/web/website.nsf/52286ae9ad5d845185257c07005c3fe1/b3f1a4d568ddf7a485257c440057ef5b?Redirect)), 2-23.4

([/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/0f3c3657e468010585257c590047cb74?Redirect](https://www.floridabar.org/web/website.nsf/52286ae9ad5d845185257c07005c3fe1/0f3c3657e468010585257c590047cb74?Redirect)), or 2-23.6

([/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/e6e05e134dbec1d185257c59004843dc?Redirect](https://www.floridabar.org/web/website.nsf/52286ae9ad5d845185257c07005c3fe1/e6e05e134dbec1d185257c59004843dc?Redirect)) above is applicable.

42

2-30 Petitions Relating to Administrative Rulings.

2-30.1 Filed with the Board. Any applicant or registrant who is dissatisfied with an administrative decision of the board that does not concern character and fitness matters may petition the board for reconsideration of the decision. Applicants also may petition the board for a suspension or waiver of any bar admission rule or regulation. A petition seeking a suspension or waiver of a rule or seeking review of an administrative decision not related to a character and fitness recommendation may be presented in the form of a letter, must be filed with the board within 60 days after receipt of written notice of the board's action complained of, and must be filed with a fee of \$75.

2-30.2 Filed with the Court. Any applicant or registrant who is dissatisfied with an administrative decision of the board that does not concern character and fitness matters may, within 60 days after receipt of written notice of that decision, file a petition with the Supreme Court of Florida for review of the action. If not inconsistent with these rules, the Florida Rules of Appellate Procedure are applicable to all proceedings filed in the Supreme Court of Florida. A copy of the petition must be served on the executive director of the board. The applicant seeking review must serve an initial brief within 30 days of the filing of the petition. The board will have 30 days to serve an answer brief after the service of the applicant's initial brief. The applicant may serve a reply brief within 30 days after the service of the answer brief.

RULE 3 BACKGROUND INVESTIGATION

3-10 Standards of an Attorney. An attorney should have a record of conduct that justifies the trust of clients, adversaries, courts, and others with respect to the professional duties owed to him or her.

3-10.1 Essential Eligibility Requirements. The board considers demonstration of the following attributes to be essential for all applicants and registrants seeking admission to The Florida Bar:

- a. knowledge of the fundamental principles of law and their application;
- b. ability to reason logically and accurately analyze legal problems; and,
- c. ability to and the likelihood that, in the practice of law, one will:
 1. comply with deadlines;
 2. communicate candidly and civilly with clients, attorneys, courts, and others;
 3. conduct financial dealings in a responsible, honest, and trustworthy manner;
 4. avoid acts that exhibit disregard for the rights, safety, or welfare of others,
 5. avoid acts that are illegal, dishonest, fraudulent, or deceitful; and,
 6. comply with the requirements of applicable state, local, and federal laws, rules, and regulations; any applicable order of a court or tribunal; and the Rules of Professional Conduct.

3-11 Disqualifying Conduct. A record manifesting a lack of honesty, trustworthiness, diligence, or reliability of an applicant or registrant may constitute a basis for denial of admission. The revelation or discovery of any of the following may be cause for further inquiry before the board recommends whether the applicant or registrant possesses the character and fitness to practice law:

- a. unlawful conduct;
- b. academic misconduct;
- c. making or procuring any false or misleading statement or omission of relevant information, including any false or misleading statement or omission on the Bar Application, or any amendment, or in any testimony or sworn statement submitted to the board;
- d. misconduct in employment;
- e. acts involving dishonesty, fraud, deceit, or misrepresentation;

- f. abuse of legal process;
- g. financial irresponsibility;
- h. neglect of professional obligations;
- i. violation of an order of a court;
- j. evidence of a mental disorder that may impair the ability to practice law;
- k. evidence of a substance use disorder that may impair the ability to practice law;
- l. denial of admission to the bar in another jurisdiction on character and fitness grounds;
- m. disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction; or
- n. any other conduct that reflects adversely on the character or fitness of the applicant.

3-12 Determination of Present Character. The board must determine whether the applicant or registrant has provided satisfactory evidence of good moral character. The following factors, among others, will be considered in assigning weight and significance to prior conduct:

- a. age at the time of the conduct;
- b. recency of the conduct;
- c. reliability of the information concerning the conduct;
- d. seriousness of the conduct;
- e. factors underlying the conduct;
- f. cumulative effect of the conduct or information;
- g. evidence of rehabilitation;
- h. positive social contributions since the conduct;
- i. candor in the admissions process; and,
- j. materiality of any omissions or misrepresentations.

3-13 Elements of Rehabilitation. Any applicant or registrant who affirmatively asserts rehabilitation from prior conduct that adversely reflects on the person's character and fitness for admission to the bar must produce clear and convincing evidence of rehabilitation including, but not limited to, the following elements:

- a. strict compliance with the specific conditions of any disciplinary, judicial, administrative, or other order, where applicable;
- b. unimpeachable character and moral standing in the community;
- c. good reputation for professional ability, where applicable;
- d. lack of malice and ill feeling toward those who, by duty, were compelled to bring about the disciplinary, judicial, administrative, or other proceeding;
- e. personal assurances, supported by corroborating evidence, of a desire and intention to conduct one's self in an exemplary fashion in the future;
- f. restitution of funds or property, where applicable; and,

g. positive action showing rehabilitation by occupation, religion, or community or civic service. Merely showing that an individual is now living as and doing those things he or she should have done throughout life, although necessary to prove rehabilitation, does not prove that the individual has undertaken a useful and constructive place in society. The requirement of positive action is appropriate for applicants for admission to The Florida Bar because service to one's community is an implied obligation of members of The Florida Bar.

3-14 Bar Application and Supporting Documentation.

3-14.1 Filed as an Applicant. Applicants are required to file complete Bar Applications. Transcripts required by this rule must be sent directly to the board from the educational institutions. The application will not be deemed complete until all of the following items have been received by the board:

- a. an authorization and release on a form available on the board's website requesting and directing the inspection of and furnishing to the board, or any of its authorized representatives, all relevant documents, records, or other information pertaining to the applicant, and releasing any person, official, or representative of a firm, corporation, association, organization, or institution from any and all liability in respect to the inspection or the furnishing of any information;
- b. a Certificate of Dean certifying the applicant's graduation from a law school accredited by the American Bar Association;
- c. an official transcript of academic credit from each law school attended including the law school certifying that the applicant has received the degree of bachelor of laws or doctor of jurisprudence;
- d. if the applicant received an undergraduate degree, then an official transcript from the institution that awarded the degree;
- e. if the applicant has been admitted to the practice of law in 1 or more jurisdictions, evidence satisfactory to the board that the applicant is in good standing in each jurisdiction, and a copy of the application for admission filed in each jurisdiction;
- f. an acknowledgment of compliance, filed on a form available on the board's website declaring that the applicant has read Chapter 4, Rules of Professional Conduct, and Chapter 5, Rules Regulating Trust Accounts, of the Rules Regulating The Florida Bar; and
- g. supporting documents and other information as may be required in the forms available on the board's website, and other documents, including additional academic transcripts, as the board may require.

3-14.2 Filed as a Registrant. A registrant is required to file a complete Registrant Bar Application. Transcripts required by this rule must be sent directly to the board from the educational institutions. The application will not be deemed complete until all of the following items have been received by the board:

- a. an authorization and release on a form available on the board's website requesting and directing the inspection of and furnishing to the board, or any of its authorized representatives, all relevant documents, records, or other information pertaining to the registrant, and releasing any person, official, or representative of a firm, corporation, association, organization, or institution from any and all liability in respect to the inspection or the furnishing of any information;
- b. if the registrant received an undergraduate degree, then an official transcript from the institution that awarded the degree; and
- c. supporting documents and other information as may be required in the forms available on the board's website, and other documents, including additional academic transcripts, as the board may require.

3-14.3 Defective Applications. A Bar Application or Registrant Bar Application initially filed in a defective condition (e.g., without supporting documents or having blank or incomplete items on the application) may delay the initiation or the processing of the background investigation. A Bar Application or Registrant Bar Application filed in a defective condition will be accepted, but a fee of \$150 will be assessed.

3-14.4 Filing Timely Amendments. An application filed by an applicant or registrant is a continuing application and the applicant or registrant has an obligation to keep the responses to the questions current, complete, and correct by the filing of timely amendments to the application, on forms available on the board's website, until the date of an applicant's submission to the Oath of Attorney in Florida. An amendment to the application is considered timely when made within 30 days of any occurrence that would change or render incomplete any answer to any question on the application.

3-14.5 Timely Processing. In order to ensure timely processing of the background investigation, an applicant or registrant must be responsive to board requests for further information. The Bar Application or Registrant Bar Application must be vigorously pursued by the applicant or registrant.

3-14.6 Non-Compliance.

a. An applicant's failure to respond to inquiry from the board within 90 days may result in termination of his or her Bar Application and require reapplication and payment of all fees as if the applicant were applying for the first time.

b. A registrant's failure to respond to inquiry from the board within 90 days may result in cancellation of his or her application and require full payment of the student registrant fee.

3-15 Withdrawal of a Bar Application without Prejudice. An applicant or registrant may request withdrawal of a Bar Application without prejudice. The board will consider acceptance of the request, but may continue its investigative and adjudicative functions to conclusion.

3-16 Withdrawal of a Bar Application with Prejudice. An applicant or registrant may request withdrawal of a Bar Application with prejudice. The board will accept the withdrawal and immediately dismiss its investigative and adjudicative functions. An applicant or registrant who files a withdrawal with prejudice will be permanently barred from filing a subsequent application.

3-17 Extraordinary Investigative Expenses.

3-17.1 Transcript or Records Cost. The cost of a transcript or any record or document reasonably required by the board in the conduct of investigative or adjudicative functions will be paid by the applicant or registrant.

3-17.2 Petition for Extraordinary Expenses. On a showing of actual or anticipated extraordinary expenditures by the board, the Supreme Court of Florida may order any applicant or registrant to pay to the board additional sums including attorney's fees or compensation necessary in the conduct of an inquiry and investigation into the character and fitness and general qualifications of the applicant or registrant including the procurement and presentation of evidence and testimony at a formal hearing.

3-20 Investigative Process.

3-21 Inquiry Process. The board will conduct an investigation to determine the character and fitness of each applicant or registrant. In each investigation and inquiry, the board may obtain information pertaining to the character and fitness of the applicant or registrant and may take and hear testimony, administer oaths and affirmations, and compel by subpoena the attendance of witnesses and the production of documents.

3-21.1 Noncompliance with Subpoena Issued by the Board. Any person subpoenaed to appear and give testimony or to produce documents who refuses to appear to testify before the board, to answer any questions, or to produce documents, may be held in contempt of the board. The board will report the fact that a person under subpoena is in contempt of the board for proceedings that the Supreme Court of Florida may deem advisable.

3-22 Investigative Hearing. An applicant or registrant may be requested to appear for an investigative hearing. Investigative hearings will be informal but thorough, with the object of ascertaining the truth. Technical rules of evidence need not be observed. The admissibility of results of a polygraph examination will be determined in accordance with Florida law. An investigative hearing will be convened before a division of the board consisting of not fewer than 3 members of the board. Any member of the board may administer oaths and affirmations during the hearing.

3-22.1 Investigative Hearing Cost. Any applicant or registrant requested to appear for an investigative hearing must pay the administrative cost of \$250.

76

3-22.2 Response and Selection of a Preferred Hearing Date. An applicant or registrant who has been requested to appear for an investigative hearing must promptly respond to written notice from the board and give notice of preferred dates. Failure to respond within 60 days will result in termination of the application for non-compliance as provided in rule 3-14.6
(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/009e4fa6f1656e3285257c590059521f?Redirect).

3-22.3 Investigative Hearing Postponement. Postponement of a previously scheduled investigative hearing is permitted on written request and for good cause when accompanied by the following fee:

- a. \$75 if the request is received at least 31 days before the hearing date; or
- b. \$125 if the request is received less than 31 days before the hearing date.

3-22.4 Board Waiver of an Investigative Hearing. In cases where the facts are undisputed regarding an applicant's or registrant's prior conduct that adversely affects his or her character and fitness for admission to The Florida Bar, the board may forgo an investigative hearing and proceed directly with the execution of a Consent Agreement or the filing of Specifications as provided in rule 3-22.5
(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/748fa7380d1ce36585257c59005a0976?Redirect).

3-22.5 Board Action Following an Investigative Hearing. After an investigative hearing, the board may make any of the following determinations:

- a. The applicant or registrant has established his or her qualifications as to character and fitness.
- b. The board will offer to the applicant or registrant a Consent Agreement in lieu of the filing of Specifications pertaining to drug, alcohol, or psychological problems and subject to provisions of rule 5-15
(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/a197d34bb2ad29f385257c5a00484c36?Redirect). In a Consent Agreement, the board is authorized to recommend to the court the admission of the applicant who has agreed to abide by specified terms and conditions on admission to The Florida Bar.
- c. Further investigation into the applicant's or registrant's character and fitness is warranted.
- d. The board will file Specifications charging the applicant or registrant with matters that, if proven, would preclude a favorable finding by the board.

3-22.6 Investigative Hearing Transcript Cost. The cost of a transcript reasonably required by the board in the conduct of investigative or adjudicative functions must be paid by the applicant or registrant.

3-22.7 Public Hearing for Disbarred/Resigned Attorneys. All applicants who have been disbarred from the practice of law, or who have resigned pending disciplinary proceedings must appear before a quorum of the board for a formal hearing. The formal hearing will be open to the public, and the record produced at the hearing and the Findings of Fact and Conclusions of Law are public information and exempt from the confidentiality provision of rule 1-60
(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/cf598d9efb2ac7e685257c40007481bc?Redirect).

3-23 Specifications. Specifications are formal charges filed in those cases where the board has cause to believe that the applicant or registrant is not qualified for admission to The Florida Bar. If the board votes to prepare and file Specifications, the Specifications are served on the applicant or registrant. The response to Specifications must be served in the form of a verified answer to the Specifications within 25 days of service of the Specifications.

3-23.1 Failure to Serve the Answer. If an applicant or registrant fails to serve an answer to the Specifications within the 25-day deadline or within any extension of time allowed by the board, the Specifications will be deemed admitted, and the failure to serve an answer shall constitute a waiver of the applicant's right to a formal hearing before the board pursuant to rule 3-23.2. The board will enter Findings of Fact, finding the Specifications proven, and appropriate conclusions of law that may include a recommendation that the applicant not be admitted to The Florida Bar, or that the registrant has not established his or her qualifications as to character and fitness.

3-23.2 Formal Hearing. Except as provided in rule 3-23.1

(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/4d011d58675697a885257fb900700151?Redirect), any applicant or registrant who receives Specifications is entitled to a formal hearing before the board, representation by counsel at his or her own expense, disclosure by the Office of General Counsel of its witness and exhibit lists, cross-examination of witnesses, presentation of witnesses and exhibits on his or her own behalf, and access to the board's subpoena power. After receipt of the answer to Specifications, the board will provide notice of the dates and locations available for the scheduling of the formal hearing. Formal hearings are conducted before a panel of the board that will consist of not fewer than 5 members. The formal hearing panel will consist of members of the board other than those who participated in the investigative hearing. This provision may be waived with the consent of the applicant or registrant. The weight to be given all testimony and exhibits received in evidence at a formal hearing must be considered and determined by the board. The board is not bound by technical rules of evidence at a formal hearing. A judgment of guilt to either a felony or misdemeanor will constitute conclusive proof of the criminal offense(s) charged. An order withholding adjudication of guilt of a charged felony will constitute conclusive proof of the criminal offense(s) charged. An order withholding adjudication of guilt of a charged misdemeanor will be admissible evidence of the criminal offense(s) charged. The admissibility of results of a polygraph examination will be in accordance with Florida law.

3-23.3 Formal Hearing Cost. Any applicant or registrant who receives Specifications that require the scheduling of a formal hearing must pay the administrative cost of \$600.

3-23.4 Selection of a Preferred Formal Hearing Date. The applicant or registrant and the board must agree on a date and location for the formal hearing. If the applicant or registrant fails to agree on 1 of the dates and locations proposed, the board will set the date and location of the hearing. If the applicant or registrant, without good cause, fails to attend the formal hearing, the Specifications will be deemed admitted. The board will enter Findings of Fact, finding the Specifications proven, and appropriate conclusions of law that may include a recommendation that the applicant not be admitted to The Florida Bar or that the registrant has not established his or her qualifications as to character and fitness.

3-23.5 Formal Hearing Postponement. Postponement of a previously scheduled formal hearing is permitted by written request and for good cause when accompanied by the following fee:

- a. \$250 if request is received between 45 and 31 days before the hearing date; or
- b. \$600 if the request is received less than 31 days before the hearing date.

3-23.6 Board Action Following Formal Hearing. Following the conclusion of a formal hearing, the board will promptly notify the applicant or registrant of its decision. The board may make any of the following recommendations:

- a. The applicant or registrant has established his or her qualifications as to character and fitness.
- b. The applicant be conditionally admitted to The Florida Bar in exceptional cases involving drug, alcohol, or psychological problems on the terms and conditions specified by the board and subject to the provisions of rule 5-15
(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/a197d34bb2ad29f385257c5a00484c36?Redirect).
- c. The applicant's admission to The Florida Bar be withheld for a specified period of time not to exceed 2 years. At the end of the specified period of time, the board will recommend the applicant's admission if the applicant has complied with all special conditions outlined in the Findings of Fact and Conclusions of Law.
- d. The applicant or registrant has not established his or her qualifications as to character and fitness and that the applicant or registrant be denied admission to The Florida Bar. A 2-year disqualification period is presumed to be the minimum period of time required before an applicant or registrant may reapply for admission and establish rehabilitation. In a case involving significant mitigating circumstances, the board has the discretion to recommend that the applicant or registrant be allowed to reapply for admission within a specified period of less than 2 years. In a case involving significant aggravating factors (including but not limited to material omissions or misrepresentations in the application process), the board has the discretion to recommend that the applicant or registrant be disqualified from reapplying for admission for a specified period greater than 2 years, but not more than 5 years. In a case involving extremely grievous misconduct, the board has the discretion to recommend that the applicant or registrant be permanently prohibited from applying or reapplying for admission to The Florida Bar.

3-23.7 Findings of Fact and Conclusions of Law. In cases involving a recommendation other than under rule 3-23.6(a) ([/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/0a005fb14f146d0485257c59005ad4b8?Redirect](https://www.floridabar.org/web/website.nsf/rule.xsp?__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/0a005fb14f146d0485257c59005ad4b8?Redirect)), the board will expeditiously issue its written Findings of Fact and Conclusions of Law. The Findings must be supported by competent, substantial evidence in the formal hearing record. The Findings, conclusions, and recommendation are subject to review by the Supreme Court of Florida as specified under rule 3-40 ([/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/ec515aadfea6739c85257c59005b6274?Redirect](https://www.floridabar.org/web/website.nsf/rule.xsp?__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/ec515aadfea6739c85257c59005b6274?Redirect)). The Findings, conclusions, and recommendation are final, if not appealed, except in cases involving a favorable recommendation for applicants seeking readmission to the practice of law after having been disbarred or having resigned pending disciplinary proceedings. In those cases, the board will file a report containing its recommendation with the Supreme Court of Florida for final action by the court. Admission to The Florida Bar for those applicants will occur only by public order of the court. All reports, pleadings, correspondence, and papers received by the court in those cases are public information and exempt from the confidentiality provision of rule 1-60 ([/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/cf598d9efb2ac7e685257c40007481bc?Redirect](https://www.floridabar.org/web/website.nsf/rule.xsp?__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/cf598d9efb2ac7e685257c40007481bc?Redirect)).

3-23.8 Formal Hearing Transcript Cost. The cost of a transcript reasonably required in the conduct of investigative or adjudicative functions must be paid by the applicant or registrant.

3-23.9 Negotiated Consent Judgments. Counsel for the board and an applicant or registrant may waive a formal hearing and enter into a proposed consent judgment. The consent judgment must contain a proposed resolution of the case under 1 of the board action recommendations specified above. If the consent judgment is approved by the full board, then the case will be resolved in accordance with the consent judgment without further proceedings.

3-30 Petition for Board Reconsideration. Any applicant or registrant who is dissatisfied with the recommendation concerning his or her character and fitness may, within 60 days from receipt of the Findings of Fact and Conclusions of Law, file with the board a petition for reconsideration with a fee of \$165. The petition must contain new and material evidence that by due diligence could not have been produced at the formal hearing. Evidence of rehabilitation as provided by rule 3-13

([/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/07d21e094daf8cfd85257c5900548c90?Redirect](https://www.floridabar.org/web/website.nsf/rule.xsp?__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/07d21e094daf8cfd85257c5900548c90?Redirect)) is not permitted in a petition for reconsideration. Only 1 petition for reconsideration may be filed.

The Office of General Counsel may file a response to the petition for reconsideration within 20 days after service to address whether the petition meets the threshold requirement of the rule, that it contains new and material evidence that by due diligence could not have been produced at the formal hearing. If it is found that the petition does not meet the threshold requirement of the rule, no further action will be taken on the petition by the board. If the petition is found to meet the threshold requirement of the rule, the Office of General Counsel will have 30 days from the date when such determination was made in which to file a response to the evidence submitted by the applicant. If the Office of General Counsel files a response, the applicant may serve a reply brief within 30 days after the service of the response.

3-40 Petition for Court Review.

3-40.1 Dissatisfied with Board's Recommendation. Any applicant or registrant who is dissatisfied with the recommendation concerning his or her character and fitness may petition the Supreme Court of Florida for review within 60 days from receipt of the Findings of Fact and Conclusions of Law, within 60 days of receipt of notice of the board's action on a petition filed under rule 3-30

([/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/596806f6f7f7d29485257c59005b4d06?Redirect](https://www.floridabar.org/web/website.nsf/rule.xsp?__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/596806f6f7f7d29485257c59005b4d06?Redirect)), or within 60 days from receipt of notice of the determination that a petition filed under rule 3-30 does not meet the criteria of that rule for reconsideration. If not inconsistent with these rules, the Florida Rules of Appellate Procedure are applicable to all proceedings filed in the Supreme Court of Florida. A copy of the petition must be served on the executive director of the board. The applicant seeking review must serve an initial brief within 30 days of the filing of the petition. The board will have 30 days to serve an answer brief after the service of the applicant's initial brief. The applicant may serve a reply brief within 30 days after the service of the answer brief. At the time of the filing of the answer brief, the executive director will transmit the record of the formal hearing to the court.

3-40.2 Dissatisfied with Length of Board's Investigation. Any applicant or registrant whose character and fitness investigation is not finished within 9 months from the date of submission of a completed Bar Application or Registrant Bar Application may petition the Supreme Court of Florida for an order directing the board to conclude its investigation. If not inconsistent with these rules, the Florida Rules of Appellate Procedure are applicable to all proceedings filed in the Supreme Court of Florida. A copy of the petition must be served on the executive director of the board. The board will have 30 days after the service of the petition to serve a response. The applicant may serve a reply within 30 days after the service of the board's response.

RULE 4 BAR EXAMINATION**4-10 General Information.**

4-11 Florida Bar Examination. The Florida Bar Examination will consist of a General Bar Examination and the Multistate Professional Responsibility Examination (MPRE).

4-12 Requirement to Submit. All individuals who seek the privilege of practicing law in the State of Florida must take the Florida Bar Examination.

4-13 Technical Competence. All applicants seeking admission to The Florida Bar must produce satisfactory evidence of technical competence by passing all parts of the Florida Bar Examination.

4-13.1 Educational Qualifications.

a. Eligibility. An applicant may take the MPRE prior to graduation from law school; however, the requirements of rule 4-18.1

(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/b15eba520e00ea0285257c59005fe47d?Redirect)are applicable. To be eligible to take any portion of the General Bar Examination, an applicant must either:

1. complete the requirements for graduation, or receive the degree of bachelor of laws or doctor of jurisprudence, from an accredited law school or within 12 months of accreditation; or,

2. be found educationally qualified under the alternative method of educational qualification provided in rule 4-13.4

(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/b35e3538964d409e85257c59005d0207?Redirect).

b. Proscribed Substitutions. Except as provided in rule 4-13.4

(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/b35e3538964d409e85257c59005d0207?Redirect), none of the following may be substituted for the required degree from an accredited law school:

1. private study, correspondence school, or law office training;

2. age or experience; or,

3. waived or lowered standards of legal training for particular persons or groups.

4-13.2 Definition of Accredited. An "accredited" law school is any law school approved or provisionally approved by the American Bar Association at the time of the applicant's graduation or within 12 months of the applicant's graduation.

4-13.3 Definition of Degree Requirements. The term "complete the requirements for graduation" refers to the time when completion of the requirements for graduation is recorded in the office of the law school dean or administrator.

4-13.4 Alternative Method of Educational Qualification. An applicant who does not meet the educational qualifications in rule 4-13.1 must meet the requirements of either subdivision (a) or subdivision (b).

a. Applicants without an LL.M.

1. evidence as the board may require that the applicant was engaged in the practice of law for at least 5 years in the District of Columbia, in other states of the United States of America, or in federal courts of the United States or its territories, possessions, or protectorates (federal courts are not limited to Article III Courts), was in good standing at the bar of the jurisdictions in which the applicant practiced, and was not suspended or disbarred from the practice of law in the 5 years prior to applying for admission to The Florida Bar; and

50

2. a representative compilation of the work product in the field of law showing the scope and character of the applicant's previous experience and practice at the bar, including samples of the quality of the applicant's work, including pleadings, briefs, legal memoranda, contracts, or other working papers that the applicant considers illustrative of his or her expertise and academic and legal training.

b. Applicants with an LL.M.

1. an LL.M. degree from an accredited law school, or within 12 months of accreditation, where the program meets the curricular criteria for the practice of law in the United States of America adopted by the board and published on board's website;

2. evidence as the board may require that the applicant was engaged in the practice of law for at least 2 years in the District of Columbia, in other states of the United States of America, or in federal courts of the United States or its territories, possessions, or protectorates (federal courts are not limited to Article III Courts), was in good standing at the bar of the jurisdictions in which the applicant practiced, and was not suspended or disbarred from the practice of law in the 2 years prior to applying for admission to The Florida Bar; and

3. a representative compilation of the work product in the field of law showing the scope and character of the applicant's previous experience and practice at the bar, including samples of the quality of the applicant's work, including pleadings, briefs, legal memoranda, contracts, or other working papers that the applicant considers illustrative of his or her expertise and academic and legal training.

c. Deadline for Filing Work Product. To be considered timely filed, the work product must be complete with all required supplemental documentation and filed by the filing deadline of the General Bar Examination as required by rule 4-42 ([/_85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/fdcd6b3c9b27659385257c59006236b5?Redirect](https://www.floridabar.org/web/website.nsf/52286ae9ad5d845185257c07005c3fe1/fdcd6b3c9b27659385257c59006236b5?Redirect)). Work product initially filed incomplete and perfected after the deadline will not be considered timely filed. Late or incomplete work product will be given consideration for admission into the next administration of the bar examination for which the deadline has not passed.

d. Acceptance of Work Product. If a thorough review of the representative compilation of the work product and other materials submitted by the applicant shows that the applicant is a lawyer of high ability whose reputation for professional competence is above reproach, the board may admit the applicant to the General Bar Examination and accept score reports from the National Conference of Bar Examiners or its designee.

e. Board Discretion. In evaluating academic and legal scholarship under subdivision (a) and subdivision (b), the board is clothed with broad discretion.

4-14 Dates of Administration. The General Bar Examination will be administered on the last Tuesday and Wednesday of February and July of each calendar year. The Multistate Professional Responsibility Examination is administered in March, August, and November of each year or on such other date as determined by the National Conference of Bar Examiners.

4-15 Location of Administration. The General Bar Examination will be held in locations in the State of Florida as the board may from time to time direct. The Multistate Professional Responsibility Examination (MPRE) is administered 3 times each year throughout the country at various locations selected by the National Conference of Bar Examiners or its designee.

4-16 Publication of Examination Topics and Study Materials. The board will publish the topics included on the bar examination and also make suggestions for the information and guidance of students to promote their studies.

4-16.1 Part A Examination Study Guide. The board will provide a bar examination study guide that includes essay questions from 2 previously administered General Bar Examinations, sample answers to the essay questions, and sample multiple-choice questions from Part A of the General Bar Examination. The study guide is available on the board's website.

4-16.2 Copies of Essay Answers. The board will provide, on request from an applicant, a copy of his or her answers to essay questions from a single General Bar Examination for the period of time from the release of the examination results until the administration of the next examination. The answers will not reflect any grading marks and will be forwarded on written request accompanied by a fee of \$50.

4-17 Test Accommodations.

4-17.1 Accommodations. In accordance with the Americans with Disabilities Act, test accommodations are provided by the board at no additional cost to applicants.

4-17.2 Requests for Test Accommodations. Applicants seeking test accommodations because of disability must file a written petition for accommodations accompanied by supporting documentation or additional information as reasonably may be required on the forms available on the board's website. Receipt of requests for test accommodations and supporting documentation are subject to the deadline and late filing fees applicable to all examinees as set forth in rules 4-42.3

(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/e1f0c6d2e3d141ce85257c5900625e88?Redirect) and 4-42.4

(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/d1742508db9c580c85257c59006269cf?Redirect).

4-18 Time Limitation on Passing Examination.

4-18.1 Twenty-Five Months. An applicant must successfully complete the General Bar Examination and the Multistate Professional Responsibility Examination (MPRE) within 25 months of the date of the administration of any part of the examination that is passed. If an applicant fails to pass all parts within 25 months of first passing any part, passing score(s) of individual parts older than 25 months are deleted.

4-18.2 Five Years. An applicant's passing scores on the Florida Bar Examination will be valid for a period of 5 years from the date of the administration of the last part of the Florida Bar Examination that he or she passed. If the 5-year period expires without admission, an applicant, except for good cause shown, will be required to retake the Florida Bar Examination and again pass all parts of the examination.

4-20 General Bar Examination. A portion of the General Bar Examination will consist of questions in the form of hypothetical fact problems requiring essay answers. Essay questions may not be labeled as to subject matter. Questions may be designed to require answers based on Florida case or statutory law of substantial importance. The General Bar Examination will consist of 2 parts (A and B). Part A will be a combination of essay and multiple-choice questions and Part B will be the Multistate Bar Examination (MBE).

4-21 Purpose. The General Bar Examination will test the applicant's ability to reason logically, to analyze accurately the problem presented, and to demonstrate a thorough knowledge of the fundamental principles of law and their application.

4-22 Part A. Part A will consist of 6 one-hour segments. One segment will include the subject of Florida Rules of Civil and Criminal Procedure and the Florida Rules of Judicial Administration. Questions on the Florida Rules of Judicial Administration will address only the following areas: disqualification of trial judges; public access to judicial branch records; minimization of the filing of sensitive information; the qualifications, restrictions, and conditions pertaining to attorneys in their representation of clients in Florida courts; and the signature of attorneys and parties on pleadings and other papers. The remaining 5 segments, each of which will include no more than 3 subjects, will be selected from the following subjects including their equitable aspects:

- a. Florida constitutional law;
- b. federal constitutional law;
- c. business entities;
- d. wills and administration of estates;
- e. trusts;
- f. real property;
- g. evidence;
- h. torts;
- i. criminal law and constitutional criminal procedure;

- j. contracts;
- k. Articles 3 and 9 of the Uniform Commercial Code;
- l. family law;
- m. Chapter 4, Rules of Professional Conduct of the Rules Regulating The Florida Bar;
- n. Chapter 5, Rules Regulating Trust Accounts of the Rules Regulating The Florida Bar; and
- o. professionalism.

4-23 Part B. Part B will be the Multistate Bar Examination (MBE) offered to each jurisdiction by the National Conference of Bar Examiners.

4-23.1 Transfer of Score. A score achieved by an applicant on the Multistate Bar Examination administered in a jurisdiction other than the State of Florida will be accepted by the board if the applicant achieved the required scaled score under rule 4-26.2, under the individual method, within the timeframe required under rule 4-18.1. The score must be transferred directly to the board by the National Conference of Bar Examiners or from the jurisdiction where the score was achieved if that jurisdiction does not utilize the NCBE score reporting service. Transferred MBE scores must be received by January 15 if an applicant intends to take Part A, only, of the February General Bar Examination or by June 15 if an applicant intends to take Part A, only, of the July General Bar Examination.

4-24 General Bar Examination Preparation and Grading. The board may use the services of expert drafters to prepare bar examination questions, either by arranging for the drafting services of qualified persons, including out-of-state law teachers, or by using the services of the National Conference of Bar Examiners or another national agency. The board may use the services of trained expert readers. Readers will be selected solely upon the qualifications of the individuals.

4-24.1 Essay Questions. Every essay question, whether drafted by the examiners or by expert drafters, will be thoroughly briefed on every point of law in the question and the question analyzed and approved by the board preceding inclusion of the question on the General Bar Examination.

4-24.2 Machine-Scored Questions. Every machine-scored item of Part A must specify authority for the best response, and every item and authority should be analyzed and approved by the board preceding inclusion of the item on the General Bar Examination.

4-25 Submission Methods. Applicants who take the General Bar Examination must do so for the sole purpose of fulfilling the admission requirements for The Florida Bar. An applicant may elect to take the General Bar Examination by either of the following methods:

a. Overall Method. Overall method is used only if the applicant takes Parts A and B during the same administration of the General Bar Examination.

b. Individual Method. Individual method is used if the applicant takes only 1 part of the General Bar Examination. Applicants who elect to take only 1 part of the General Bar Examination under the individual method may not combine a score attained on 1 part from 1 administration with a score on the other part from a different administration. Applicants may not take Part A only using this method unless they have previously taken the Multistate Bar Examination (MBE) in Florida.

4-25.1 Retention of Passing Status. If an applicant attains a passing scaled score on only 1 part and elects to take the overall method of the General Bar Examination as described above, the previous passing status will not be replaced by a failing status if the applicant fails to achieve a passing score on a subsequent submission effort.

4-26 Scoring Method. Each examination paper produced by an applicant on the General Bar Examination will be separately graded. Papers will be graded and reported by number and not by applicant's name. The name of the writer of the examination paper will not be revealed by the staff to the members of the board or readers or any source other than the Supreme Court of Florida. To ensure maximum uniformity in all grading of essay questions, the board will use the services of multiple calibrated readers.

4-26.1 Examination Scaling. The scores of each section of Part A will be converted to a common scale by a recognized statistical procedure so that each section is equally weighted. The sum of the converted section scores is the total score for Part A. All total scores attained by the applicants on Part A are converted to the same distribution as their Multistate Bar Examination (MBE) scaled scores. MBE scores (Part B) are the scaled scores on the MBE provided by the National Conference of Bar Examiners. Scaled scores are used in order to ensure that the standard of measurement of competence from examination to examination is not affected by the difficulty of the particular test or the ability of that particular group as distinguished from the general population of applicants.

4-26.2 Pass/Fail Line. Effective July 1, 2004, each applicant must attain a scaled score of 136 or better on Part A and on Part B under the individual method and an average of 136 or better under the overall method, or such scaled score as may be fixed by the court.

4-30 Multistate Professional Responsibility Examination. The Multistate Professional Responsibility Examination (MPRE) is the examination offered to jurisdictions by the National Conference of Bar Examiners.

4-31 Purpose. The purpose of the MPRE is to measure the applicant's knowledge of the ethical standards of the legal profession.

4-32 Applications and Filing Deadlines. Applications for admission into the Multistate Professional Responsibility Examination (MPRE) are distributed by and must be filed with the designee of the National Conference of Bar Examiners that administers the MPRE within the time limitations set by that authority.

4-33 Scoring Method. Each examination paper produced by an applicant on the MPRE will be separately graded. The raw score attained by each applicant will be converted to a scaled score by the National Conference of Bar Examiners or its designee in order to ensure that the standard of measurement of competence from examination to examination is not affected by the difficulty of the particular test or the ability of that particular group as distinguished from the general population of applicants.

4-33.1 Transfer of Score. The applicant must direct requests to transfer the score attained on the MPRE to the agency that administers the MPRE. Scores are transferred on a certificate supplied by the agency and must be forwarded directly by that agency to the board.

4-33.2 Pass/Fail Line. On the MPRE, each applicant must attain a scaled score of 80 or better, or such scaled score as may be fixed by the court.

4-40 Application for the General Bar Examination.

4-41 Application Requirements. By the applicable filing deadline prescribed in rule 4-42 (/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/fdcd6b3c9b27659385257c59006236b5?Redirect) or the late filing deadline prescribed in rule 4-43 (/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/341e0ade49d8c6e385257c0b005d995b?Redirect), each applicant desiring to take the General Bar Examination for the first time must submit to the board either the complete Bar Application or, in the case of law student registrants, the Supplement to Registrant Bar Application, the appropriate applicant filing fee, a current 2" x 2" photograph of the applicant, and submission of fingerprints in the format required by the board.

4-42 Examination Filing Deadlines.

4-42.1 February Filing Deadline. Timely applications for admission to the February administration of the General Bar Examination must be postmarked or received not later than November 15 prior to the examination.

4-42.2 July Filing Deadline. Timely applications for admission to the July administration of the General Bar Examination must be postmarked or received not later than May 1 prior to the examination.

4-42.3 Deadline for Test Accommodations. Petitions for accommodations and supporting documentation are subject to the examination filing deadline. Applicants seeking test accommodations must file the Bar Application, Supplement to Registrant Bar Application, or Reexamination Application, petition, and supporting documents by the examination filing deadline to avoid examination late filing fees.

4-42.4 Cutoff for Test Accommodations. To avoid an undue burden on the board while it is making final preparations for the administration of the bar examination, a minimum amount of time is required for the orderly processing of a request for accommodations. Except for emergency petitions as designated by the board, no request for test accommodations will be processed if received after January 15 for the February examination or after June 15 for the July examination.

4-43 Filing After the Deadline. Applicants seeking late filing for a General Bar Examination will be permitted to do so on payment of an additional fee as set out below, completion of the Bar Application, Supplement to Registrant Bar Application, or Reexamination Application, and receipt of all supporting documents.

4-43.1 \$325. If the Bar Application, Supplement to Registrant Bar Application, or Reexamination Application, as applicable, is postmarked or received on or before December 15 for the February examination or June 1 for the July examination, the fee is \$325.

4-43.2 \$625. If the Bar Application, Supplement to Registrant Bar Application, or Reexamination Application, as applicable, is received after December 15 but on or before January 15 for the February examination or after June 1 but on or before June 15 for the July examination, the fee is \$625. No Bar Application, Supplement to Registrant Bar Application, Reexamination Application, appropriate applicant filing fee, 2" x 2" photograph, or submission of fingerprints will be deemed to have met the late filing deadline if received after January 15 for the February examination, or after June 15 for the July examination.

4-44 Computer Option. Applicants are permitted the use of a laptop computer with software designated by the board to complete answers to the essay portion of the General Bar Examination. Applicants seeking to use a laptop computer must indicate on the examination application or otherwise provide written notice of the intent to participate in the laptop program and pay a fee of \$125 at the time of filing. The written notice and fee must be received by the board not later than January 15 for the February examination or June 15 for the July examination.

4-45 Examination Postponement. Applicants seeking to postpone the taking of an individual part or the entire General Bar Examination must file a written request with the board. The applicable postponement fees based on the received date of the postponement request are set forth in rule 4-46

(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/afdca115f96cea9285257c590062a16a?Redirect) below. Applicants who fail to request a postponement or who untimely request a postponement received by the board after the commencement of the bar examination must reapply under rule 4-47
(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/7bee03568f72461285257c590063007f?Redirect).

4-46 Reapplication after Postponement. Applicants seeking to reapply after postponing as indicated above will be permitted admission into another General Bar Examination on filing with the board the Reexamination Application on the form available on the board's website and payment of the applicable postponement fee. To be timely filed, the completed application and appropriate fee must be postmarked or received by the examination filing deadline. If the Reexamination Application is not postmarked or received on or before the filing deadline or if filed incomplete, the appropriate examination late filing fee must be included. If requested by the board, an applicant will submit a current photograph. The fee payable with the Reexamination Application will be as follows:

a. If the board receives the applicant's written notice of postponement under rule 4-45
(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/6c377ade28b8041f85257c5900628e1b?Redirect) at least 7 days before the commencement of the administration of the postponed examination, the fee is \$100.

b. If the board receives the applicant's written notice of postponement under rule 4-45
(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/6c377ade28b8041f85257c5900628e1b?Redirect) prior to but less than 7 days before the commencement of the administration of the postponed examination, the fee is \$200.

4-47 Examination Reapplication. Applicants not covered by rule 4-46
(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/afdca115f96cea9285257c590062a16a?Redirect) and seeking to reapply for all or part of the General Bar Examination will be permitted admission into another General Bar Examination on filing a Reexamination Application on the form available on the board's website and payment of the reapplication fee of \$450. To be timely filed, the completed Reexamination Application and fee must be postmarked or received by the examination filing deadline. If the Reexamination Application is not postmarked or received on or before the filing deadline or if filed incomplete, the appropriate examination late filing fee must be included. If requested by the board, an applicant will submit a current photograph.

4-50 Examination Administration.

55

4-51 Rules of Conduct. Applicants must abide by all rules governing the administration of the General Bar Examination as set out below.

4-51.1 Possession or Use of Unauthorized Materials or Equipment. Applicants must not possess or use any book bags, backpacks, purses, wallets, hat or baseball caps, notes, books, study materials, food or liquids, cellular telephones, watches, clocks, or similar time keeping devices, calculators, computers, or other electronic devices in the examination room without the prior written approval of the board.

4-51.2 Receipt of Unauthorized Aid. Applicants must not use answers or information from other applicants or any other sources while taking the examination.

4-51.3 Observance of Examination Start/Stop Announcements. Applicants must not read questions on the examination prior to the announcement to begin the examination and must not continue to answer any questions, continue to type, or otherwise utilize a writing utensil in any manner after the announcement to stop because the session has ended.

4-51.4 Observance of Confidentiality of Machine-Scored Questions. Applicants must not remove any multiple-choice, machine-scored examination questions from the examination room or otherwise communicate the substance of any of those questions to persons who are employed by or associated with bar review courses.

4-52 Examination Proctors. The board may seek the assistance of other members of The Florida Bar in proctoring the bar examination.

4-60 Release of Examination Results.

4-61 Confidentiality. No information regarding applicants' scores will be released except as authorized by the rules or as directed by the Supreme Court of Florida.

4-62 General Bar Examination. The board will notify each person submitting to any part of the General Bar Examination whether the person has passed or failed any or all parts of the examination except any person whose grades have been impounded by the Supreme Court of Florida.

4-62.1 Impoundment of Examination Results. Results of the General Bar Examination will be impounded by the court if the applicant fails to pay the full balance of any application or examination late filing fee, if it appears the applicant has taken the General Bar Examination prior to satisfying the requirements for graduation from law school, or if the applicant is suspected of a violation of the examination administration rules of conduct.

4-62.2 Release of Impounded Examination Results. On submission of documentation that establishes that the applicant has paid all application and late fees, is determined to have satisfied the requirements for graduation from law school prior to taking the General Bar Examination, is determined not to have violated examination administration rules of conduct, and on payment of a \$100 impoundment fee, the board will request the court to release the impounded grades.

4-62.3 Date of Release. The date for release of the results from the General Bar Examination will be set by the court. At that time, all applicants who have passed all parts of the examination, but who have not been recommended to the court for admission to The Florida Bar will be advised of the status of their Bar Application.

4-63 Multistate Professional Responsibility Examination. Applicants will be notified by letter whether their Multistate Professional Responsibility Examination (MPRE) scores transferred to Florida are accepted.

4-64 Investigation of Examination-Related Conduct. If the board has cause to believe that an applicant has violated any of the eligibility or conduct rules relating to the General Bar Examination, the board may conduct an investigation, hold hearings, and make Findings under rule 3-20
(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/b756de1b0739e24a85257c59005111d0?Redirect).

4-65 Invalidation of Examination Scores.

4-65.1 Relating to Educational Qualifications. If an applicant is found by the board after an investigation under rule 3-20

(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/b756de1b0739e24a85257c59005111d0?Redirect) to be in violation of rule 4-13.1

(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/aa1b4f3fc26c872f85257c59005bcc20?Redirect), the result of the Florida Bar Examination will be invalidated. Once the results are invalidated and subsequent to providing evidence that all eligibility requirements have been met, the applicant will be permitted to resubmit to the General Bar Examination by filing a new application and the reapplication fee.

4-65.2 Relating to Work Product Submission or Rules of Conduct. If an applicant is found by the board after an investigation under rule 3-20

(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/b756de1b0739e24a85257c59005111d0?Redirect) to have made a material misstatement or omission under rule 4-13.4

(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/b35e3538964d409e85257c59005d0207?Redirect), or to have violated the examination administration rules of conduct under rule 4-51

(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/2563733cbb35199085257c5900631838?Redirect), the results of the Florida Bar Examination will be invalidated. The applicant will not be eligible to submit another work product (if in violation of rule 4-13.4

(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/b35e3538964d409e85257c59005d0207?Redirect)) or submit to another examination for a period of 5 years from the date that the board delivered its adverse Findings or the period of time set in the Findings.

RULE 5 RECOMMENDATIONS AND JURISDICTION

5-10 Recommendations and Admission. Every applicant who has complied with the requirements of the applicable rules for admission into the Florida Bar Examination, attained passing scores on the examination, met the requirements as to character and fitness, complied with the requirements of the applicable rules for admission into The Florida Bar, and who is 18 years of age or older will be recommended by the Florida Board of Bar Examiners to the Supreme Court of Florida for admission to The Florida Bar.

5-11 Supreme Court Action. If the court is satisfied with the qualifications of each applicant recommended, an order of admission will be made and entered in the minutes of the court. The court will designate the manner that applicants will take the oath.

5-12 Induction Ceremonies. Formal induction ceremonies will be scheduled after each release of grades from the previous administration of the bar examination. The ceremonies will be held at the Supreme Court of Florida or the First District Court of Appeal and at each of the other district courts of appeal. Attendance at an induction ceremony is voluntary.

5-13 Oath of Attorney. Any applicant who chooses not to attend an induction ceremony may take the oath before any resident Circuit Judge or other official authorized to administer oaths, such as a notary public. All applicants must present themselves for administration of the oath not later than 90 days from the date of notification of eligibility for admission by the Clerk of the Supreme Court of Florida.

5-13.1 Filing of the Oath. An executed copy of the Oath of Attorney must be filed with the board. Upon receipt of the oath, the board will certify the applicant and the date of admission to the Supreme Court of Florida and The Florida Bar. The Clerk will maintain a permanent register of all admitted persons.

5-13.2 Certificate of Admission. The Certificate of Admission and a printed reproduction of the Oath of Attorney will be issued without charge when the duly executed oath is received by the board. Additional certificates may be purchased for \$25 each.

5-14 Board Jurisdiction after Admission. If, within 12 months of admission of an applicant to The Florida Bar, the board determines that a material misstatement or material omission in the application process of the applicant may have occurred, the board may conduct an investigation and hold hearings. After investigation and hearings, the board may make Findings and recommendations as to revocation of any license issued to the applicant and will file any Findings with the Supreme Court of Florida for final determination by the court.

5-15 Bar Jurisdiction after Admission. If an applicant is granted admission by the court under a Consent Agreement, then the terms and conditions of his or her admission will be administered by The Florida Bar. The board must provide The Florida Bar access to all information gathered by the board on a conditionally-admitted applicant, except information received by the board under a specific agreement of confidentiality or otherwise restricted by law. Conditional admission is limited to persons who will live in Florida, who will be engaged in the practice of law primarily in Florida, and who will be monitored in Florida during the entire period of conditional admission. If the applicant fails to abide by the terms and conditions of admission, including the requirement of living in Florida, The Florida Bar is authorized to institute proceedings consistent with the Rules Regulating The Florida Bar as to revocation of the license issued to the applicant under the Consent Agreement. The board must be notified of any disciplinary proceedings and have access to all information relating to the administration of a conditional admission, except information received by The Florida Bar under a specific agreement of confidentiality or otherwise restricted by law.