

**AMENDMENTS TO RULES GOVERNING
ADMISSION TO THE PRACTICE OF LAW**

ORDER OF THE COURT.

Upon consideration, the Court hereby accepts and approves the Committee Report and Recommendations to the Board of Bar Examiners and the Supreme Court Regarding any Possible Revisions to the Rules Governing Admission to the Practice of Law in Georgia Governing Educational Eligibility and Any Other Relevant Issue, said Committee Report and Recommendations having been submitted to the Court on June 2, 2008, by The Supreme Court Committee on Legal Education, which committee was created by Order of the Court on April 4, 2007.

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ORDER OF THE COURT.

The Court hereby approves the revised Waiver Process and Policy unanimously adopted by the Board of Bar Examiners in accordance with the Committee Report and Recommendations to the Board of Bar Examiners and the Supreme Court Regarding any Possible Revisions to the Rules Governing Admission to the Practice of Law in Georgia Governing Educational Eligibility and Any Other Relevant Issue, said Committee Report and Recommendations having been submitted to the Court and the Board of Bar Examiners on June 2, 2008, by The Supreme Court Committee on Legal Education, which committee was created by Order of the Court on April 4, 2007. The revised Waiver Process and Policy is attached to and made a part of this Order.

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BOARD OF BAR EXAMINERS
BOARD TO DETERMINE FITNESS OF BAR
APPLICANTS

WAIVER PROCESS & POLICY

(Adopted April 8, 2005; amended July 29, 2008)

Part F, Section 4 of the Rules Governing Admission to the Practice of Law in Georgia states that both the Board to Determine Fitness of Bar Applicants and the Board of Bar Examiners may “. . . for good cause shown by clear and convincing evidence” waive any of the Rules with certain limited exceptions (relating to the payment of fees and the regrading of the bar exam). The decision of either Board not to waive a Rule is appealable to the Supreme Court. Both Boards have adopted this statement of the process that the applicant should follow, and that the Boards will utilize, for a waiver request.

The applicant should understand that it is his/her responsibility to apply for a waiver and that the burden is on the applicant to provide the clear and convincing evidence that establishes good cause. There is no designated format which must be utilized to request a waiver. While the Boards commonly refer to a “petition” for a waiver, the request can be in any form the applicant chooses. Most commonly it is in the form of a letter to the Director of Bar Admissions, who will then place the waiver request on the agenda for the next available Board meeting.

In the “petition,” the applicant should state the basis for the waiver in his or her own words, keeping in mind that what the Board needs to approve a waiver is “good cause shown by clear and convincing evidence.” Any documentation or other evidence of the justification for a waiver should be attached to the request. Only one copy is necessary. Upon receipt of the request, the Director will write the applicant acknowledging receipt, seeking further information or documentation as necessary, and informing the applicant of the next scheduled Board meeting.

The most common waiver sought from the Fitness Board is a waiver of the filing deadlines found in Part A, Section 4 of the Rules. In such a matter, the applicant should submit a full and frank narrative of what the cause for missing the deadline was, including a statement as to why the applicant did not file the application earlier in the process (i.e., getting caught in traffic on the last day for filing does not explain why the application was not filed weeks or even months sooner). The Board will approve a waiver of the filing deadline only

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rarely, and only in the case where there is documented and justifiable good cause.

The most common request submitted to the Board of Bar Examiners is a waiver of the educational eligibility standards of Part B, Section 4 of the Rules (i.e., no undergraduate degree, or a law degree from a non-ABA-approved domestic or foreign law school). Once again, the burden is on the applicant to establish “good cause” for the waiver by “clear and convincing evidence.” The Board will consider each waiver request on a case-by-case basis and review carefully the documentation and statement of good cause submitted by the applicant.

The Supreme Court has addressed the “. . . good cause by clear and convincing evidence” standard for educational eligibility waivers in several cases [See *In re: Terese S. Oliver*, 261 Ga. 850 (1992); *In re: E.L.D.*, 268 Ga. 883 (1998); *In re: Maria Fernanda Farall-Shurman*, 266 Ga. 209 (1996); and *In re: G.E.C.*, 269 Ga. 744 (1998)]. In the *G.E.C.* case the Court wrote: “G.E.C. maintains that he has, by clear and convincing evidence, demonstrated good cause for a waiver, especially in the absence of a definition of the Standard. However, good cause in this context is not susceptible of rigid definition. It is a factual question which must be judged according to the circumstances of the case.”

In evaluating an application for waiver of the educational requirement(s) of the Rules Governing Admission to the Practice of Law in Georgia, the Board of Bar Examiners considers the following criteria:

- 1) The educational background of the applicant;
- 2) The quality of the applicant’s educational achievements;
- 3) The applicant’s substantive employment history; and
- 4) The career goals of the applicant.

In reviewing requests for waivers of the educational eligibility standards, the Board has found very important the submission of the following categories of information, and it requires that each applicant for an educational waiver provide this information or present clear and convincing evidence as to why such information should not be required of the applicant:

1. A statement as to why the applicant’s educational background does not meet the standard (i.e., why no undergraduate degree; why no qualifying J.D. degree; etc.);

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2. A thorough description of the relevant educational history (schools attended, course of study and curriculum with transcripts of educational achievement from those schools, letters of reference, particularly from law faculty, etc.);
3. Documentation of any postgraduate legal education (LLM or S.J.D. degrees);
4. Documentation of membership of the bar of another state or another country, if applicable;
5. Description of employment history, particularly any law-related employment (if the member of the bar in another state or another country, a description of legal practice and any significant achievements in the practice of law);
6. A “Dean’s” letter, which is a statement from a Dean or the Dean’s designee on the faculty at an ABA-approved law school analyzing the legal education received and stating whether or not it is the equivalent of an ABA-approved legal education (Guidelines for Dean’s Letter will be furnished to applicants upon request. The Guidelines for Dean’s Letter provide direction on the purpose and scope of the Dean’s Letter.);
7. A statement as to career goals and whether or not the applicant has obtained law-related employment in Georgia; and
8. A narrative statement as to why the applicant feels that good cause by clear and convincing evidence has been established and any other documentation, material or information that the applicant feels is relevant to the establishment of good cause.

Although no combination of the above categories of information automatically leads to approval of a waiver request, these are the issues that the Board will consider and will be important in establishing good cause by clear and convincing evidence.

If a petition for waiver of the educational eligibility requirement(s) does not contain the documentation specified above, or does not provide clear and convincing evidence as to why such information should not be required of the applicant, the Director of Admissions

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shall advise the applicant in writing that:

- (i) The information has not been properly submitted; and
- (ii) The petition for waiver will not be acted upon until such information has been provided or the applicant provides clear and convincing evidence as to why it need not be provided in support of the applicant's petition.

In the event that the Board of Bar Examiners denies a petition for waiver of the educational eligibility requirement(s), it shall provide a written statement to the applicant that the petition has been denied and the reasons therefor.

The Fitness Board meets in the early part of each month (except for March, July and August). The Board of Bar Examiners has regularly scheduled meetings in mid-January, late February and late July. It also typically holds called meetings in April, June and November. Any waiver request, including supporting documentation, that is received less than three (3) weeks prior to the scheduled meeting of either Board will not be considered until the succeeding scheduled meeting. Once the Board makes a determination on the waiver request, notice of the Board's decision will be provided in writing to the applicant as soon as possible.

If applying for a waiver, applicants should keep in mind the restrictions of Part F, Section 5 regarding communication with Board members. All communications should be through the Office of Bar Admissions. Direct contact with a Board member by an applicant or his/her representative is not permitted. Any questions about the process or any other issue related to waiver requests should be directed to the Office of Bar Admissions (404-656-3490).

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ORDER OF THE COURT.

It is ordered that effective September 3, 2008, Part A, Section 10 of the Rules Governing Admission to the Practice of Law be hereby amended by redesignating subsection (e) as subsection (f) and adding new subsection (e) as follows:

Section 10. Readmission of Disbarred Lawyers

. . .

(e) If the Fitness Board, after review and investigation, decides that an applicant should be certified, it shall file a report and the complete record of its proceedings with the Clerk of the Supreme Court. Notice shall be given to the applicant. The Supreme Court shall make the final determination regarding certification of fitness.

(f) An applicant who is seeking reinstatement to the State Bar of Georgia pursuant to Bar Rule 1-501 (b) shall file a fitness application after completing the requirements contained in that Bar Rule and shall not be required to take the bar examination. An applicant who has been terminated by the State Bar pursuant to Bar Rule 1-501 (c) is required to comply with the provisions of that Bar Rule and is required to take and pass the bar examination before being readmitted.

It is further ordered that effective October 15, 2008, Part A, Section 4 (b) of the Rules Governing Admission to the Practice of Law in Georgia be hereby amended to read as follows:

Section 4. Application Deadline

. . .

(b) Applications for Certification of Fitness to Practice Law filed between the first Wednesday in July and the first Wednesday in October for consideration for the bar examination to be administered the following February and applications filed between the first Wednesday in December and the first Wednesday in March for consideration for the bar examination to be administered the following July will be accepted for the requested examination if accompanied by a non-refundable late fee of \$400, in addition to the regular fee prescribed by these Rules. Applications so filed will be placed for processing in order of receipt, but no processing will begin until processing of all applications filed pursuant to the deadline set forth in subparagraph (a) above has begun. If appropriate, the Board may issue a temporary certification, valid for the requested examination

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only, which will permit the applicant to apply to the Board of Bar Examiners to take the examination while the investigation of the applicant's fitness to practice law is completed. An applicant who files pursuant to this subparagraph agrees that his or her bar examination results will not be released to him or her unless and until such time as the Board of Bar Examiners is informed by the Board to Determine Fitness of Bar Applicants that the applicant has been certified as fit to practice law.

...

It is further ordered that effective October 15, 2008, Part A, Section 5 be hereby amended to read as follows:

Section 5. Application Fees

*Late fees may be applicable; refer to Part A, Section 4 (b).

*(a) Filings made prior to the award of the first professional degree in law. \$500

*(b) Filings made between the award of the first professional degree in law and within one year thereof. . . . \$700

*(c) Filings made more than one year after the award of the first professional degree in law. \$800

*(d) Applications for Certification of Fitness for the Attorneys' Examination or for Admission on Motion without Examination. \$1000

(e) Petitions to determine eligibility for Admission on Motion without Examination. \$600

*(f) Applications for Readmission following disbarment by the State Bar of Georgia. \$3500

*(g) Applications for Readmission after the expiration of five years from the effective date of voluntary resignation from the State Bar of Georgia. \$1000

(h) Applications for Readmission within five years from the effective date of voluntary resignation from the State Bar of Georgia. \$800

*(i) Applications for Reinstatement following termination from the State Bar of Georgia due to non-payment of dues. \$1000

(j) Applications for Reinstatement following suspension from the State Bar of Georgia for non-payment of dues. \$800

(k) Applications for renewal of certification. \$400

Provided a request in writing for withdrawal of his or her Application for Certification of Fitness to Practice Law is filed within 15

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work days of the date of receipt of the application by the Office of Bar Admissions, the Board to Determine Fitness of Bar Applicants shall refund 2/3 of the filing fee paid by the applicant; provided, however, that no part of the late filing fees described in Section 4, above, may be refunded.

It is further ordered that effective October 15, 2008, the title and subsection (b) of Part A, Section 10 be hereby amended to read as follows:

Section 10. Readmission and Reinstatement

. . .

(b) The applicant seeking readmission shall file a Fitness Application as provided in Part A, Sections 3 and 4. The fee required for such application shall be \$3500.

It is further ordered that effective October 15, 2008, Part A, Section 11 be hereby amended to read as follows:

Section 11. Certifications of Fitness to Practice Law

Upon being satisfied that an applicant possesses the integrity and character requisite to be a member of the Bar of Georgia, the Board shall certify the applicant as fit to practice law. Certifications may be in the form of a letter to the applicant which shall include the certification's expiration date, which shall be five (5) years after the date issued; however, certifications issued by the Board prior to January 1, 1984 or by judges of the superior courts prior to July 1, 1977 shall be valid for a period of five (5) years from the date issued and until a date specified by the Board in its notification to the applicant that he or she must apply for renewal. Certifications may be renewed upon application to the Board not less than three months prior to the certificate's stated expiration date or, in case of certifications issued prior to January 1, 1984, not less than three months prior to the date specified by the Board in its renewal notification. Applications for renewal of certification shall be on such forms, including an original application form, as the Board may determine and shall be accompanied by a fee of \$400. The Board shall conduct such investigation as it deems appropriate in the circumstances, and the Board may renew, decline to renew or take such other action with respect to renewal as it might take with an original application. An applicant for renewal shall have the same rights with respect to conferences, hearings and appeals as would an original applicant. If application for renewal of certification is not made in accordance with the deadlines specified in this section and the applicant there-

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after wishes to apply to take the bar examination, he or she, to be eligible to apply to the Board of Bar Examiners to take the examination, must file a new, initial Application for Certification with the Board to Determine Fitness of Bar Applicants and must pay the appropriate fee required by these Rules.

It is further ordered that effective October 1, 2008, Part B Section 2 (e) be hereby amended, to read as follows:

Section 2. Applications for Examinations

...

(e) An applicant who fails to file in a timely manner an application to take the bar examination or fails to submit fees to the NCBE as provided above shall nevertheless be permitted to take the examination if, within 30 days of the deadline as provided above, he or she files an application to do so and pays a late fee of \$200 (in addition to the regular fee prescribed by these Rules) and submits all applicable fees to the NCBE.

It is further ordered that effective October 15, 2008, Part C, Section 2 be hereby amended by revising subsections (b) and (f) and adding new subsections (h) and (i), to read as follows:

Section 2. Eligibility

...

(b) Has been admitted by examination to membership in the bar of the highest court of another United States jurisdiction which has reciprocity for bar admissions purposes with the State of Georgia; provided, however, that if the former jurisdiction of the applicant permits the admission of Georgia judges and lawyers upon motion but that jurisdiction's rules are more stringent and exacting and contain other limitations, restrictions or conditions or the fees required to be paid are higher, the admission of the applicant from that jurisdiction shall be governed by the same rules and the applicant shall pay the same fees (if higher than the fees under these Rules) which would apply to an applicant from Georgia seeking admission to the Bar in the applicant's former jurisdiction;

...

(f) Is currently or resigned while in good professional standing in every jurisdiction in which the applicant has been licensed to practice law;

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...

(h) Must state that he or she intends to engage in the practice of law in Georgia;

(i) Must state that he or she has not engaged in the unauthorized practice of law in Georgia.

It is further ordered that effective October 15, 2008, Part C, Section 4 be hereby amended to read as follows:

Section 4. Fees and Filing Instructions

(a) Applications for Certification of Fitness to Practice Law for admission pursuant to this Rule shall be made in accordance with the requirements established in Part A of these Rules and shall be accompanied by a non-refundable fee of \$1000.

(b) Simultaneously with the Application for Certification of Fitness, the applicant must file a petition with the Board of Bar Examiners requesting admission on motion without examination. The petition from the applicant must be accompanied by a non-refundable fee of \$600. Such petition will be approved if the applicant documents to the satisfaction of the Board compliance with Section 2 of this Part and satisfies the Board that the jurisdiction in which the applicant has been admitted and practiced will admit Georgia lawyers without examination.

(c) Once the Board of Bar Examiners has approved the petition, and the Board to Determine Fitness of Bar Applicants to Practice Law has certified the applicant for fitness, the applicant shall be issued a Certification of Eligibility for Admission to the Practice of Law. The applicant shall follow the procedures specified in Part B, Sections 14, 15, 16 and 17 of these Rules in order to be sworn in by a judge of the Superior Court.

It is further ordered that effective October 15, 2008, Part D, Section 5 (a) be hereby amended to read as follows:

Section 5. Fees and Filing Deadlines

(a) Applications for Certification of Fitness to Practice Law shall be made in accordance with the deadlines established in Part A, Section 4 (a) of these Rules and shall be accompanied by a non-refundable fee of \$1000. Late filing of Applications for Certification of Fitness to Practice Law shall be accepted if made in accordance with the deadlines established in Part A, Section 4 (b) of these Rules and if accompanied by the late filing fees specified therein.

...