

THE SUPREME COURT OF THE STATE OF DELAWARE

IN RE: §
BOARD OF BAR EXAMINERS §
OF THE DELAWARE SUPREME §
COURT RULES 15, 32 and 33 §

ORDER

This 16th day of December 2010, it appears to the Court that it is desirable to amend the Board of Bar Examiners of the Delaware Supreme Court Rules 15, 32 and 33. The following amendment shall be effective immediately.

NOW, THEREFORE, IT IS ORDERED that:

Rule 15 is amended by deleting in its entirety and substituting in lieu thereof a new Rule 15 as follows:

Rule 15. Requests for Special Accommodations

- (a) *Non-discriminatory administration.* The Board will provide special accommodations at no additional cost to applicants with disabilities as defined under the Americans with Disabilities Act (ADA). The Bar Examination shall be administered in a manner that does not discriminate against individuals with disabilities. An applicant who is otherwise eligible to take the Bar Examination may request special accommodations with respect to the manner in which the examination is administered, if, by virtue of a temporary or permanent disability, the applicant is unable to take the examination under normal testing conditions.

- (b) *Form and timing of requests.* A request for special accommodations must be made by filing with the Board (i) a completed Application for Special Accommodations, a form that may be secured upon request to the Board (the "Application"), and (ii) a timely application to take the Bar Examination pursuant to Rule 5(a). The Application shall be deemed filed with the Board for purposes of this Rule only if it is filed on the same date as the applicant's timely application to take the Bar Examination pursuant to Rule 5(a), except that the Board may accept a later-filed Application upon a showing by the applicant that demonstrates to the satisfaction of the Board that the disability on which the request for special accommodations is based first manifested itself after the date of filing of that applicant's application to take the Bar Examination and that it was thereafter promptly filed with the Board. When filed, an Application must contain all information and supporting documentation upon which the applicant will rely in support of the accommodation requested. The Board shall not thereafter accept or consider any

additional oral or written information or documentation in support of the accommodation requested, except as provided below in Rule 15(c) and (d)(i).

- (c) *Procedure for ruling upon the application.* The Application shall first be submitted for disposition to a Committee of three (3) or more Board members assigned by the Chair or Vice Chair of the Board (the "Committee"). In ruling on the Application, the Committee may seek such assistance from medical, psychological, or other professionals as it may deem appropriate, and may require the applicant to undergo a physical or other examination, at the applicant's expense. The analysis and results of any such examination shall be submitted to the Committee in writing. The record upon which the Committee rules shall consist only of the Application and the materials, if any, submitted to the Committee by the consulting professional(s). In ruling upon the Application, the Committee may grant or deny the accommodation sought, or grant an accommodation different from that requested in the Application.
- (d) *Procedures relating to a denied application.* If in its initial ruling the Committee does not grant in full the accommodation sought, it shall so notify the applicant electronically with a copy sent by first class mail, and shall enclose in the notification a statement of the basis for the Committee's decision and the report of any consulting professional submitted to and relied upon by the Committee in its decision. If the applicant wishes to challenge the Committee's ruling, he or she may do so by filing with the Board a written request for a hearing on the denial of the request, in whole or in part. Such request must be filed no later than ten (10) days after the date of the Committee's written decision, must be in writing and must state with specificity the relief to be requested at the hearing. Upon receipt of such request, the Chair and Vice-Chair of the Board shall appoint a hearing panel of three (3) disinterested persons, at least two (2) of whom shall be current or former members of the Board (the "Hearing Panel"). The Hearing Panel shall thereupon convene a hearing upon notice to the applicant.
 - (i) *Proceedings before the Hearing Panel.* The Hearing Panel's consideration of the Application is *de novo*. The applicant may be represented by counsel before the Hearing Panel. Evidence admissible at the hearing shall be limited as provided in subsection (ii) below. Witnesses at the hearing shall be limited to the applicant, the expert upon whom the applicant relied in his or her Application, and the expert relied upon by the Committee in connection with its ruling on the Application. The applicant, directly or through counsel, may cross-examine the opposing expert. The Hearing Panel may examine all witnesses.
 - (ii) *The Record.* The Hearing Panel shall not accept or consider any written materials other than those before the Committee in connection with its ruling. The oral testimony of the expert witnesses before the Hearing Panel shall be limited to opinions based upon the materials before the Committee, the Committee's ruling, and the opposing expert's testimony at the hearing. The hearing proceedings shall be recorded and preserved for appeal, if any.
 - (iii) *Decision of the Hearing Panel and Appeal.* The Hearing Panel shall issue its decision within ten (10) days of the conclusion of the hearing. If the Hearing Panel does not grant the full accommodation sought, the Hearing Panel shall issue a written decision within the ten (10) day period setting forth its reasons therefore,

which decision shall be issued to the applicant or applicant's counsel electronically and by first class mail. The applicant may appeal the decision of the Hearing Panel by filing a Notice of Appeal with the Supreme Court no later than ten (10) days after the date of the Hearing Panel's written decision. The record on appeal shall consist of the record before the Hearing Panel, including a transcript of the hearing which the applicant shall procure at his or her expense, and the written decision of the Hearing Panel.

Rule 32 is amended by deleting in its entirety and substituting in lieu thereof a new Rule 32 as follows:

Rule 32. Hearing Panels.

- (a) Hearings may be conducted by a Panel of not fewer than 3 current or former members of the Board. The vote of the majority of the members of the Panel shall be the action of the Board; The Chair of the Hearing Panel shall insure that all pertinent evidence is placed in the record for the Hearing Panel's consideration.
- (b) In addition to having the authority to grant or deny permission to sit for the Bar examination or gain admission to the Bar, the Hearing Panel shall be vested with the authority to fashion and impose such remedies as it shall deem appropriate under the circumstances, including but not limited to the imposition of conditions to be satisfied by the applicant prior to his or her admission to the Bar.

Rule 33 is amended by deleting in its entirety.

BY THE COURT:


Justice