

IN THE COURT OF APPEALS OF MARYLAND

RULES ORDER

The State Board of Law Examiners having submitted to this Court proposed amendments to Rules 1, 7, and 8 of the Rules Governing Admission to the Bar of Maryland, as published in the *Maryland Register*, Vol. 32, Issue 15, Pages 1311-1312 (July 22, 2005), and

This Court having considered at an open meeting, notice of which was posted as prescribed by law, all those proposed rules changes, together with the comments received, it is this 13th day of September, 2005

ORDERED, by the Court of Appeals of Maryland, that amendments to Rules 1, 7, and 8 of the Rules Governing Admission to the Bar of Maryland be, and they are hereby, adopted in the form previously published; and it is further

ORDERED that the rules changes hereby adopted by this Court shall take effect on January 1, 2007 and apply to Maryland Bar Examinations administered thereafter; and it is further

ORDERED that a copy of this Order be published in the next issue of the *Maryland Register*.

/s/ Robert M. Bell

Robert M. Bell

/s/ Irma S. Raker

Irma S. Raker

/s/ Alan M. Wilner

Alan M. Wilner

/s/ Dale R. Cathell

Dale R. Cathell

*

Glenn T. Harrell, Jr.

/s/ Lynne A. Battaglia

Lynne A. Battaglia

/s/ Clayton Greene, Jr.

Clayton Greene, Jr.

* Judge Harrell declined to sign the Order. See attached dissent.

Filed: September 13, 2005

/s/ Alexander L. Cummings

Clerk
Court of Appeals of Maryland

Harrell, J., dissenting:

Although I have no quarrel with the substance of the subject changes to the Rules Governing Admission to the Bar of Maryland (either as to the substitution of the Multistate Performance Test (“MPT”) for some essay questions in the Bar examination or the elimination of the authority of the State Board of Law Examiners (the “Board”) to provide for carry over from prior examinations of a passing score on either the essay or Multistate Bar Examination (“MBE”) portion), I dissent from the Order approving those changes because the Majority of the Court refuses concurrently to raise by an appropriate amount the Bar application fee, provided for in § 10-208(b)(2) of the Business Occupations and Professions Article of the Maryland Code,¹ to offset the costs associated with adding the MPT component to the examination. The effect of this refusal will exacerbate an already intolerable and substantial budgetary deficit incurred each year, over the last twelve years, in administering the Bar examination and admission process.

The total expenses of the Board substantially have outpaced the Board’s total revenues since at least 1993.² In 2002, the last time it was calculated, the Board’s deficit was projected to be \$311,900 for fiscal year (“FY”) 2003.³ Although a number of Board activities not

¹ Unless otherwise provided, all statutory references are to sections within Maryland Code (1989, 2004 Repl. Vol.), Business Occupations and Professions, § 10-208.

² DEPARTMENT OF LEGISLATIVE SERVICES, EVALUATION OF THE STATE BOARD OF LAW EXAMINERS, Exhibit 3.2, 28 (1998). The annual deficits identified by the Department in this document were: FY 1993 (\$6,721), FY 1994 (\$717), FY 1995 (\$100,141), FY 1996 (\$120,780), FY 1997 (\$161,095), FY 1998 (\$206,955), and FY 1999 (\$262,935). *Id.*

³ Letter from Bedford T. Bentley, Esq., Executive Secretary, State Board of Bar
(continued...)

directly involved in administering the Bar examination contribute to the creation of the annual deficit,⁴ the cost of administering the Bar examination is by far the largest single contributor.⁵ The substitution of the MPT component affected by the Rule change approved by the Court today will increase further annual deficits because there will be additional expenditures incurred (some only at the inception of the MPT and others on a recurring basis) in the implementation and administration of the MPT, according to my understanding of what the Board informs us. Although the Board's projected additional expenditures related to the MPT appear reasonable, the Court Majority's apparent comfort with further expansion of the deficit is unreasonable.

The annual deficit is not the fault of the Board, which lacks unilateral power to regulate its revenue stream. Rather, the Legislature and the Maryland Judicial Conference shied away twice in relatively recent history from increasing the fees associated with admission to the Bar. The first instance was in 1999 when the Legislature considered a proposal to increase the Bar examination fee, which it exclusively regulates under § 10-

(...continued)

Examiners to Laura McCarty, Principal Analyst, Office of Policy Analysis of the Department of Legislative Services (Oct. 7, 2002).

⁴ The annual deficit is "covered" by the General Fund of the State.

⁵ DEPARTMENT OF LEGISLATIVE SERVICES, EVALUATION OF THE STATE BOARD OF LAW EXAMINERS, Exhibit 3.3, at 29-30. Some of the other factors contributing to the Board's operating deficit include "[salary and fringe benefit] inflation, increased character committee reimbursement, the use of multiple test sites, increased board compensation, increased cost of the MBE, and ADA compliance." *Id.* at 27.

208(b)(1), from \$100 to \$200 and require that the Board be financially self-supporting,⁶ as recommended by the Department of Legislative Service.⁷ The Judicial Conference, however, expressed its concern over both the \$100 increase and the self-supporting requirement, citing a generalized desire that Bar admission be affordable to all applicants and that the public should bear some of the cost of ADA compliance.⁸ In response, the Legislature enacted an amended bill to increase the Bar examination fee only to \$150 and remove entirely from the bill the self-supporting language. Obviously, the \$50 increase to the legislatively-controlled fee in 1999 fell far short of addressing the fiscal situation.

In 2003, the Legislature considered a proposal submitted by the Judicial Conference, the latter reversing its position from 1999 (probably in the face of the escalating deficit calculated to reach an all-time high in FY 2003 of \$311,900), to increase the § 10-208(b)(1) examination fee from \$150 to \$325 in an effort to eliminate future Board deficits. Both House Bill (H.B.) 56-2003 and Senate Bill (S.B.) 142-2003 died, for no apparent reason, in their respective committees. Had not the Board spoken in support of the bills at the

⁶ Senate Bill (S.B.) 82-1999, as reported favorably, with amendments, by the Senate Judicial Proceedings Committee.

⁷ The Department of Legislative Service recommended that the Court “increase the fees collected by the [B]oard to a level that places the [B]oard’s revenues in balance with its expenditures,” increase the § 10-208(b)(1) examination fee from \$90 to \$180, and increase by \$50 the § 10-208(b)(2) application fee from \$125 for timely filed applications to \$175 and from \$175 for late applications to \$225. DEPARTMENT OF LEGISLATIVE SERVICES, EVALUATION OF THE STATE BOARD OF LAW EXAMINERS, at 33.

⁸ Letter from the Honorable Robert M. Bell, Chief Judge, Court of Appeals, to the Honorable Leo E. Green, Vice Chairman, Senate Judicial Proceedings Committee, Maryland General Assembly (Apr. 7, 1999).

respective committee meetings, one would think from an examination of the public record that this “initiative” was a parentless child.

I do not propose at this time that the Court increase the § 10-208(b)(2) Bar application fee, entrusted to its discretion, to such a level as to eradicate virtually assured future deficits. That would be overreaching until a better understanding is put on the record for why the two branches of government have been unable to agree on a fiscally responsible approach to this situation. Nonetheless, we should authorize a modest fee increase sufficient to cover the estimated cost of introducing and administering the new MPT component.

As it stands today, only five other states have a Bar admission fee schedule lower than Maryland’s fee structure.⁹ The Court is authorized to increase the § 10-208(b)(2) Bar application fee, for which no other approval is required nor “cap” imposed by the Legislature. The Court has not increased this fee since 1999. With the authority to regulate the fee comes the responsibility to administer the Bar admission process in a responsible fiscal manner. If a concern lingers that admission to the Bar may become unaffordable to some applicants, we have the means to address individual cases of merit through deferred payment or other creative measures. The Court’s unwillingness to engage in meaningful discussion of solutions is puzzling.

⁹ See NATIONAL CONFERENCE OF BAR EXAMINERS AND AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS, Chart XI: Bar Admission Fee, 5 (2005), at <http://www.abanet.org/legaled/publications/compguide2005/chart11.pdf> (listing the Bar registration and examination fees for each state and jurisdiction).

MARYLAND RULES OF PROCEDURE
RULES GOVERNING ADMISSION TO THE BAR OF MARYLAND

AMEND Bar Admission Rule 1 to add the Multistate Performance Test ("MPT") to the list of Definitions, as follows:

Rule 1. DEFINITIONS.

In these Rules, the following definitions apply, except as expressly otherwise provided or as necessary implication requires:

. . .

(e) MBE

"MBE" means the Multistate Bar Examination published by the National Conference of Bar Examiners.

(f) MPT

"MPT" means the Multistate Performance Test published by the National Conference of Bar Examiners.

~~(f)~~ (g) Oath

"Oath" means a declaration or affirmation made under the penalties of perjury that a certain statement or fact is true.

~~(g)~~ (h) State

"State" means a (1) a state, possession, territory, or commonwealth of the United States or (2) the District of Columbia.

Source: This Rule is derived from former Rule 1.

MARYLAND RULES OF PROCEDURE
RULES GOVERNING ADMISSION TO THE BAR OF MARYLAND

AMEND Bar Admission Rule 7 to add the Multistate Performance Test as a component of the Maryland Bar Examination, to delete a certain provision pertaining to carrying over a certain passing score, and to make certain stylistic changes, as follows:

Rule 7. BAR EXAMINATION.

. . .

(c) Format and Scope of Examination

The Board shall prepare ~~and grade~~ the examination. ~~The Board and~~ may adopt the MBE and the MPT as part of ~~its~~ examination it. ~~Essay answers shall be required on all parts of examination except the MBE part. The examination shall include an essay test.~~ The Board shall define by rule the subject matter of the essay examination test. ~~An examination but the essay test~~ shall include at least one question dealing in whole or ~~in~~ part with professional conduct.

(d) Grading

(1) The Board shall grade the examination and shall by rule establish passing grades for the examination. ~~If the examination includes the MBE, the Board may provide by rule that an examinee who fails one part (the MBE or the essay test) but passes the other may carry over the passing score to the next examination~~

~~only.~~ The Board may ~~also~~ provide by rule that an examinee may satisfy the MBE part of the Maryland examination requirement by applying a grade on an MBE taken in another jurisdiction at the same ~~or the immediately preceding~~ examination.

(2) At any time before it notifies examinees of the results, the Board, in its discretion and in the interest of fairness, may lower, but not raise, the passing grades it has established for any particular examination.

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 7 a and b.

Section (b) is derived from former Rule 7 c.

Section (c) is derived from former Rule 7 d and e.

Section (d) is derived from former Rule 7 e.

MARYLAND RULES OF PROCEDURE
RULES GOVERNING ADMISSION TO THE BAR OF MARYLAND

AMEND Bar Admission Rule 8 to add certain provisions allowing unsuccessful examinees to review their Multistate Performance Test ("MPT") answer books and the National Conference of Bar Examiners' MPT Point Sheet and Grading Guidelines and to clarify the right of unsuccessful examinees to review their essay test answer books, as follows:

Rule 8. NOTICE OF GRADES AND REVIEW PROCEDURE.

. . .

(b) Review Procedure

On written request filed with the Board within 60 days after the mailing date of examination results, unsuccessful examinees, ~~may (1)~~ in accordance with the procedures prescribed by the Board, may (1) review their examination essay test answer books and the Board's analysis for the essay test, and (2) review their MPT answer books, (3) order the National Conference of Bar Examiners' MPT Point Sheet and Grading Guidelines, and (4) upon payment of the required costs, obtain confirmation of their MBE scores. No further review of the MBE will be permitted.

Source: This Rule is derived as follows:

Section (a) is derived in part from former Rule 7 f and in part new.

Section (b) is derived from former Rule 8 b.

