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In the Matter of the Petition to Amend  
Supreme Court Rule SCR 40.08 Relating to  
Adverse Determinations of Bar Applicants'  
Character and Fitness

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PETITION

To: Chief Justice Shirley S. Abrahamson  
Justice Ann Walsh Bradley  
Justice N. Patrick Crooks  
Justice David Prosser, Jr.  
Justice Patience D. Roggensack  
Justice Louis B. Butler  
Justice Annette Kingsland Ziegler

Filed with the Clerk of Court David R. Schanker  
Clerk of Supreme Court Office  
110 East Main Street, Suite #215  
Madison, WI 53703

The Board of Bar Examiners, by its director John E. Kosobucki, hereby petitions the Supreme Court of Wisconsin for an order amending SCR 40.08 as follows:

PROPOSED AMENDMENTS:

**SCR 40.08 Adverse determination.**

(1) Before declining to certify an applicant's satisfaction of requirements under this chapter, the board shall notify the applicant in writing of the basis for its ~~decision~~ determination that the application is at risk of being denied and, except as to failure of the bar examination under SCR 40.04, the applicant shall have the opportunity to ~~respond in writing within 20 days~~ request a hearing within thirty days of the mailing of notification of the board's decision to the applicant at the last address furnished by the applicant in writing to the board.

~~(2) The board shall grant a hearing to an applicant only upon a showing that there are facts bearing on the applicant's case that cannot be presented in writing. The board shall not grant a hearing on its decision on waiver under SCR 40.10.~~

(3) Not less than 30 days prior to the hearing the board shall notify the applicant of the time and place thereof, the issues to be considered and that the applicant may be represented by counsel and present evidence.

(4) If the determination of the board following a hearing is adverse to the applicant, the board shall mail a copy of the board's findings of facts and conclusions of law to the applicant at the last address furnished by the applicant in writing to the board.

(5) A petition to the supreme court for review of an adverse determination of the board under this rule shall be filed with the clerk of the supreme court within 30 days of the date on which written notice thereof was mailed to the applicant and a copy shall be filed with the board promptly thereafter. However, if the applicant petitions the board for reconsideration of an adverse determination, the deadline for seeking supreme court review shall be 30 days after written notice of the board's disposition of the petition for reconsideration was mailed to the applicant.

#### JUSTIFICATION:

When the board makes a preliminary determination that proof is lacking of an applicant's qualifications for admission, it now sends what is called an "intent-to-deny" letter. The terminology is unfortunate, for it suggests that the board has made up its mind to deny admission. The first proposed amendment to SCR 40.08(1) more accurately describes this always preliminary board determination as a notice that the application is at risk of being denied.

The second amendment gives applicants who receive this notice thirty days, instead of twenty, to file a response and to request a hearing. The board believes this additional time will be useful to applicants without appreciably delaying the board's final decision.

The proposed repeal of SCR 40.08(2) is a largely insubstantial change. In practice, the board's final determination as to an at-risk application usually turns on the applicant's credibility. Consequently, a hearing at which the applicant can answer board members' questions is usually necessary for fairness.

The proposed amendments to SCR 40.08(5) deal with procedures after the board makes a final determination to deny a candidate's application for admission. The first change requires candidates who appeal to this court to also file an informational copy of their challenge with the board. That will give the board an opportunity to ask to be heard if the board believes it can further assist the court in its review.

The second amendment provides a window of opportunity for candidates who prefer to seek reconsideration from the board rather than immediately seeking review in this court. If the court adopts the latter amendment, board rules of procedure will provide for reconsideration when the applicant believes the board has made a material error of fact or law or believes he or she has discovered new evidence sufficient to change the board's decision.

Dated this 31<sup>st</sup> day of March, 2008.

Respectfully submitted,

// Original Signed //

John E. Kosobucki,  
State Bar #1016065  
Director, Board of Bar Examiners  
110 East Main Street, Suite #715  
Madison, Wisconsin 53703