

**STATE OF WISCONSIN**

**IN SUPREME COURT**

In the Matter of the Petition to  
Repeal and Recreate Supreme Court Rule SCR 40.08  
Relating to Adverse Determination

SECOND AMENDED  
PETITION  
No. 08-11

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To: Chief Justice Shirley Abrahamson  
Justice Ann Walsh Bradley  
Justice N. Patrick Crooks  
Justice David T. Prosser, Jr.  
Justice Patience D. Roggensack  
Justice Annette Kingsland Ziegler  
Justice Michael J. Gablemen  
16 East State Capitol  
Madison, WI 53701

The Board of Bar Examiners, by its director Jacquelynn B. Rothstein, hereby petitions the Supreme Court of Wisconsin for an order repealing and recreating SCR 40.08 as follows:

TEXT OF RULE

SECTION 1. SCR 40.08 is repealed and recreated to read:

**SCR 40.08 Adverse determination.**

(1) *Notice of At Risk Determination.* 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 determination that the application is at risk of being denied. The board's notice shall provide that, except as to failure of the bar examination under SCR 40.04, the applicant may challenge the determination upon filing a written request for a hearing and statement responding to the board's notice. The board's notice shall contain a statement identifying the date of mailing. The board shall serve the notice on the applicant by mail to the last address furnished by the applicant in writing to the board.

(2) *Applicant's Request for Hearing and Response.* Within 30 days of the mailing of an at risk determination notice, the applicant may challenge the determination by filing (a) a written request for a hearing and a statement setting forth the grounds on which the board's determination should be reversed, or (b) a written supplement to the record. If the applicant does not request a hearing or file a supplement to the record within 30 days, the board's adverse determination becomes final and non-appealable.

(3) *Scheduling of Hearing.* The board shall grant a hearing upon the applicant's timely and written request.

(4) *Notice of Hearing.* The board shall provide written notice of the hearing at least 30 days

prior to the hearing date. The notice shall state the time and place of the hearing and the issues to be considered. The notice shall advise the applicant that he or she may be represented by counsel and present evidence.

(5) *Decision by board.* The board shall notify the applicant of its determination by mailing a copy to the applicant at the last address furnished by the applicant in writing to the board. The board's decision shall contain a statement identifying the date of mailing. An adverse determination by the board shall include findings of fact and conclusions of law and shall be final, unless the applicant timely files a review under sub. (6) or (7). A determination to certify that the applicant has satisfied the requirements of this chapter by the board does not require findings of fact and conclusions of law.

(6) *Review by board.* An applicant may seek review of an adverse determination by filing a written request with the board within 30 days of the mailing of the adverse determination. A request for review shall be granted only on the basis of a material error of law or fact, or the discovery of new evidence sufficiently strong to reverse the adverse determination. The board shall notify the applicant of its determination by mailing a copy to the applicant at the last address furnished by the applicant in writing to the board. The board's decision shall contain a statement identifying the date of mailing.

(7) *Review by supreme court.* An applicant may seek review of an adverse determination by filing a petition for review with the supreme court and serving a copy on the board within 30 days of the mailing of the board's decision. However, if the applicant has filed a timely request for review under sub. (6), the deadline for seeking review by the supreme court shall be within 30 days of the mailing of the board's disposition of the applicant's request to review.

Dated this 22<sup>nd</sup> day of October, 2010.

Respectfully submitted,

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