

**SUPREME COURT OF WISCONSIN**

## NOTICE

This order is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 07-04

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**In the matter of the Amendment of SCR 40.04  
Legal Competence Requirement: Bar Examination;  
SCR 40.04(5) An Applicant**

**FILED****JAN 17, 2008**

David R. Schanker  
Clerk of Supreme Court  
Madison, WI

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On March 23, 2007, Arnold A. Moncada Jr. filed a petition proposing to amend SCR 40.04(5), Legal competence requirement: Bar examination, to provide that there be no limit to the number of times an applicant may sit for the Wisconsin bar examination under this provision, to provide for a right of appeal for applicants who fail the bar examination under certain conditions, and to make these rule changes retroactive. A public hearing was held on Wednesday, November 7, 2007. Mr. Moncada presented his petition. John Kosobucki, director of the board of bar examiners, appeared in opposition to the petition. Attorney Thomas Boykoff also appeared on behalf of the board of bar examiners to advise the court of certain proposed changes to the rules governing the board of bar examiners.

At the ensuing open administrative conference, the court discussed the matter and tentatively voted to delete SCR 40.04(5), such that there would be no limit on the number of times an individual could sit for the Wisconsin bar examination. The court voted to reject the proposal to impose an appeal process for applicants who have failed the bar examination and rejected the proposal to make such a process available retroactively. The court sought additional information on other states' policies regarding limitations on the number of times an applicant may sit for a bar examination.

At its open administrative conference on January 9, 2008, the court discussed the matter further and formally approved, on a 6 to 1 vote, the decision rendered in open conference on November 7, 2007. Justice Ann Walsh Bradley dissented, noting that she opposed a policy that imposes no limitation on the number of times an applicant may sit for the Wisconsin bar examination. Therefore,

IT IS ORDERED that effective the date of this order, Supreme Court Rule 40.04 (5) is repealed.

IT IS FURTHER ORDERED that the remainder of the requests set forth in the petition seeking a right of appeal for applicants who fail the bar examination and making any such rule change retroactive are denied.

IT IS FURTHER ORDERED that within 30 days of the date of this order, the board of bar examiners shall ensure that the rules of the board of bar examiners, SCR ch. 40 Appendix, are consistent with this order.

IT IS FURTHER ORDERED that notice of this amendment of SCR 40.04(5) be given by a single publication of a copy of this order in the official state newspaper and in an official publication of the State Bar of Wisconsin.

Dated at Madison, Wisconsin, this 17th day of January, 2008.

BY THE COURT:

David R. Schanker  
Clerk of Supreme Court

