

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. 08-11

In the matter of the amendment of SCR 40.08
relating to adverse determinations of bar
applicants' character and fitness.

FILED

MAR 1, 2011

A. John Voelker
Acting Clerk of
Supreme Court
Madison, WI

On April 1, 2008, the Board of Bar Examiners by its former director, John E. Kosobucki, petitioned this court for an order amending Supreme Court Rule (SCR) 40.08 relating to adverse determination of a bar applicant's character and fitness. An amended petition was filed on July 24, 2008. A public hearing on the petition was held on Friday, February 26, 2010. A second amended petition was filed on October 22, 2010, by BBE Director Jacquelynn Rothstein. A public hearing on the second amended petition was held on Wednesday, January 12, 2011.

Upon consideration of matters presented at the public hearing and submissions made in response to the proposed amendment, the court adopted the second amended petition with modifications.

IT IS ORDERED that effective April 1, 2011, SCR 40.08 is repealed and recreated to read:

SCR 40.08 Adverse determination.

(1) *At Risk Notice.* 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 notice 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 at risk notice 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.* (a) Within 30 days of the date of mailing of an at risk notice, the applicant may challenge the at risk notice by filing any of the following:

1. A written request for a hearing and a statement setting forth the grounds on which the board's at risk notice should be reversed.

2. A written supplement to the record.

(b) If the applicant does not request a hearing or file a supplement to the record within 30 days, a subsequent adverse determination by the board becomes final and the applicant may not seek review under sub. (6) or (7).

(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) *Board's decision on certification of application.* The board shall notify the applicant of its decision 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. A decision that is 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 decision 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 a decision that is an adverse determination by filing a written request with the board within 30 days of the date of 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 decision 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 a decision that is 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 date of mailing of the board's adverse determination. 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 date of mailing of the board's disposition of the applicant's request to review.

IT IS FURTHER ORDERED that within 6 months 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 Supreme Court Rule 40.08 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 1st day of March, 2011.

BY THE COURT:

A. John Voelker
Acting Clerk of Supreme Court

