

1987

# In re: Pace Jefferson McConkie, Petition for Admission to the Utah State Bar : Brief of Petitioner

Utah Supreme Court

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870416

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IN THE SUPREME COURT OF THE STATE OF UTAH

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In re:  
Pace Jeffers McConkie, :  
Petition for Admission to : Brief of Petitioner  
the Utah State Bar, :  
: No. 870416  
:

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Appeal from the adverse decision  
of the Grievance Petition Committee  
of the Utah State Bar in its Letter  
dated October 23, 1987

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### JURISDICTION

The Utah Supreme Court has full jurisdiction to hear this matter in accordance with Utah Const. Art. VIII, § 4; Utah Code Ann. § 78-2-4(c)(1987); Bar Examination Review and Appeal Procedure (1987) as adopted by the Utah State Bar Association and the Utah Supreme Court.

### ISSUES PRESENTED

1. Whether Petitioner's nonadmission to the Utah State Bar is arbitrary, unfair, or unreasonable?

2. Whether Petitioner should be admitted to practice law in this State in order to prevent manifest injustice?

### RULES AND REGULATIONS

Bar Examination Review and Appeal Procedure (1987); Revised Rules of the Utah State Bar for Admission to the Bar (1987-88); Rules Governing Criteria for the Bar Examination (1987-88).

### STATEMENT OF THE CASE

Petitioner respectfully petitions this Court for admission to the Utah State Bar. In accordance with the rules promulgated by the Board of Commissioners of the Utah State Bar as approved by this Court, Petitioner filed a Petition for Review and Admission to the Utah State Bar before the Board of Commissioners on September 24, 1987. (R.6) The matter was heard before the Grievance Petition Committee of the Utah State Bar on October 16, 1987. (R.21) This committee was comprised of three members of the Board of Bar Commissioners. On October 23, the Board of Commissioners, on recommendation of the Grievance Petition Committee, denied the Petition. (R.27-29)

In May 1987, Petitioner graduated with honors and high recognitions from an American Bar Association fully-accredited law school. Petitioner sat for the Utah State Bar Examination administered July 29-31, 1987, at the Radisson Hotel in Salt Lake City. The examination consisted of one full day of multiple choice questions on the Multi-state Bar Examination and two full days of essay questions. The Multi-state Bar Examination consists of 200 multiple choice questions divided into two 3-hour sessions of 100 questions each. Applicants have an average of 110 seconds to read the often lengthy facts of each question, consider the call of the question, and select the



best answer out of four possible answers. The essay examination consists of 18 essay questions divided into two days of 9 questions each day. Applicants have an average of 40 minutes to answer each essay question.

In a letter dated August 28, 1987, Petitioner was notified by the Executive Director of the Utah State Bar that he had failed to pass the examination. (R.2) Specifically, automatic passage of the examination requires a scaled score of 125 or higher on the Multi-state Examination and the passing of 12 and 18 essay questions written and graded by members of the Utah State Bar. Petitioner passed 16 essay questions and ranks in the top 3% of all applicants who sat for the bar examination. On the Multi-state Bar Examination, it is reported that Petitioner achieved a scaled score of 124, less than one fraction of one point short of automatic passage. (R.3) Petitioner successfully passed each and every essay question dealing with Multi-state Examination subject matter, i.e., Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Real Property (two essay questions), and Torts. (R.3) Regardless of Petitioner's high scores on the essay questions (2/3 of the total Bar Examination), Petitioner was denied admission to the Utah State Bar solely because he achieved a Multi-state Bar Examination score of 124 rather than the score of 125 required for automatic passage. (R.3, 28)

### SUMMARY OF ARGUMENTS

Petitioner submits that it is arbitrary and manifestly unjust for the Board of Bar Commissioners to conclude that he is not competent to practice law in regards to knowledge of the law. Petitioner repeatedly demonstrated the "substantive knowledge and the analytical skills requisite to the practice of law" by passing at least 16 of 18 essays (top 3%) and achieving a scaled score of 124 on the Multi-state Bar Examination, less than one point short of automatic passage.

It is arbitrary to determine that Petitioner does not qualify to practice law where his overall bar examination score is considerably higher than the lowest scores of persons already admitted to the Bar in 1987. Rather than give determinative weight to the Multi-state Bar Examination score, the Utah Supreme Court has directed the Bar to determine an applicant's overall score by giving one-third weight to the Multi-state Examination and two-thirds weight to the Utah essay questions. In this case, the Bar denied Petitioner's admission solely because of his Multi-state score, without regard for his success on the essay questions.

It is arbitrary for the Bar to deny Petitioner admission to practice law because of his Multi-state score and to have previously admitted 1986 petitioners with equal or lower scores

on both the Multi-state and essay examinations under the exact same Rules Governing Criteria for the Bar Examination.

The only constitutionally permissible State objective in licensing attorneys is to assure that applicants are capable and fit to practice law. Petitioner demonstrated, by means of the bar exam, his competency as to knowledge of the law. There is no rational relationship between Petitioner's non-admission and the State's legitimate objectives.

In reality, Petitioner was denied a fair and meaningful hearing before the Bar Commissioners because he did not have access to or review of his Multi-state Exam questions and answers. Because Petitioner was denied admission to the Bar solely because of his Multi-state score, non-access to the exam is contrary to the notions of fairness and due process.

Petitioner has a grave interest in being admitted to the Utah State Bar. This interest is worthy of the protection of this Court. Having successfully satisfied the requirements as to knowledge of the law, Petitioner should be admitted to practice in order to prevent manifest injustice.

#### ARGUMENT

##### I

IT IS UNREASONABLE, ARBITRARY AND  
MANIFESTLY UNJUST TO DENY PETITIONER  
ADMISSION TO PRACTICE LAW IN THE  
STATE OF UTAH

Under the Bar Examination Review and Appeal Procedure set forth by the Board of Commissioners of the Utah State Bar and approved by this Court, relief shall be granted to Petitioner in order "to prevent manifest injustice." Petitioner submits that he is entitled to relief and admission to the Bar to prevent manifest injustice and, further, that his non-admission to the practice of law in this State is the result of arbitrary or capricious conduct. Where Petitioner "clearly demonstrates that he has been treated in an unfair, unreasonable or arbitrary manner," this Court must grant relief by admission to the Bar. In re Thorne, 635 P.2d 22, 23 (Utah 1981).

A. It is unreasonable and arbitrary to deny Petitioner admission to the Utah State Bar and admit other applicants with comparable or lower bar examination results.

Petitioner passed 16 of 18 essay questions and achieved a scaled score of 124 on the multiple choice Multi-state Bar Examination when automatic passage required a scaled score of 125. According to the Multi-state Bar Examination scale, Petitioner is less than one point short of automatic passage in Utah.

The Revised Rules of the Utah State Bar for Admission to the Bar, Section 1-2(1987) provides that the "Board shall recommend and certify to the Supreme Court for admission to the Bar such persons, and only such persons, who possess the necessary qualifications of learning, ability and character

which are prerequisite to the privilege of engaging in the practice of law." In turn, Rule I of the Rules Governing Criteria for the Bar Examination (1987) states that a passing grade shall be given to all essay answers which "demonstrate[s] the substantive knowledge and the analytical skills requisite to the practice of law." The purpose of the bar examination is to determine minimal competence to practice law. The Utah Supreme Court has stated that the purpose of the bar examination is to "meet the requirement as to knowledge of the law." In re Thorne, 635 P.2d at 24. Petitioner submits that it is arbitrary conduct on the part of the Bar Commissioners and manifestly unjust to determine that Petitioner, who repeatedly demonstrated the "substantive knowledge and the analytical skills requisite to the practice of law" on at least 16 of 18 essays, and achieved a scaled score of 124 on the Multi-state Bar Examination, is not minimally competent to practice law in the State of Utah.

It is arbitrary to determine, for example, that in accordance with the Rules Governing Criteria for the Bar Examination, an applicant who achieves a scaled score of 125 on the Multi-state examination and passes only 12 of 18 essay questions is automatically deemed competent to practice law where an applicant who achieves a scaled score of 124 on the Multi-state examination and passes as many as 16, 17 or all 18

essays is automatically deemed not competent to practice law. The result of denying admission to the latter applicant is manifestly unjust. The July 1987 bar examination results reveal that several applicants were admitted to the Bar with Multi-state scores of 125 and essay scores considerably lower than Petitioner's score. Clearly, it is manifestly unjust and arbitrary to deny Petitioner admission to the Bar on grounds that he is not competent to practice law or lacks the requisite knowledge, while concluding that persons with almost identical Multi-state scores and lower essay scores are competent to practice law and have demonstrated the requisite knowledge.

Surely, the legal profession should be regulated to ensure professional competence and certain guidelines or "cut-off" points may be drawn concerning automatic passage of bar examinations. It is contrary to established law and procedure as handed down by this Court, however, to deny admission to an applicant solely because he is one fraction of one point short of automatic passage on the Multi-state examination. Where a petitioner establishes that his or her "overall" score is higher than the lowest overall score of an admitted applicant, the petitioner must be admitted to the Bar to prevent manifest injustice. In re Guyon, Nos. 14920, 14921, 14922, 14923, and 14949 (Utah 1977) (unpublished opinion). In In re Guyon, the Utah Supreme Court took an open

stand concerning criteria of the bar examination and what specific weight should be given to the Multi-state examination and the essay questions. In granting the petitions of several applicants petitioning the Court for admission to the Bar, the Court set forth a clear and unequivocal policy:

It is our opinion that it would be unreasonable under all of the circumstances attendant upon the grading procedures of this July 1976 examination not to allow all student applicants to be admitted to the Utah State Bar who received an overall passing score equal to or above the combined score of the student applicant that received the lowest passing score of all . . . applicants who passed this . . . examination. The formula to be used for determining the applicant who received said lowest passing score and other applicants is as follows: one-third weight should be given to the Multi-state Bar Examination and two-thirds weight should be given to the Utah State essay examination. As all petitioners received a combined score above subject applicant, their petitions should be and are hereby granted.

In re Guyon at 1.

While the Bar Association has changed its rules since the July 1976 examination, the July 1987 examination was the same with one day devoted to the Multi-state Bar Examination and two days given for the Utah essay questions. In turn, the grading procedures for these examinations are very similar (60% passing score required on essays and 60% passing score required on Multi-state Exam in 1976; in 1987 66% passing score is required on essays and 62% passing score required on Multi-state Exam).

It is clear that in the case at bar, Petitioner was denied admission to practice law solely because of his Multi-state Exam score. The Bar Commissioners failed to give one-third weight to the Multi-state Exam and two-thirds weight to the Utah essays. To the contrary, the Commissioners gave 100% weight to the Multi-state Examination score and denied admission to Petitioner in spite of the fact that he passed 16 of 18 essays. By combining the scores as the Supreme Court directs, Petitioner's "overall" score is much higher than the lowest scores of applicants already admitted to the Bar (one applicant already admitted passed only 12 of 18 essays and scored 126 on the Multi-state exam; another passed 14 of 18 essays and scored 125 on the Multi-state exam). Petitioner should be admitted to prevent manifest injustice.

In 1986, under the same rules which apply to Petitioner in 1987-88, the Board of Commissioners admitted at least two persons to the practice of law, upon petition for review, who had achieved equal or lower scores on both the Multi-state and essay examinations. (See Appendix) One of the 1986 petitioners passed 13 of 18 essay questions and scored 124 on the Multi-state examination. The other petitioner successfully passed the essay portion of the exam (total number of essays passed unknown to this Petitioner) and received a scaled score of 123 on the Multi-state examination. Both petitioners were



admitted to the Bar "to prevent manifest injustice." It is arbitrary to deny Petitioner admission to the Bar while having admitted the 1986 petitioners who sat for the exam under the same exact Rules Governing Criteria for the Bar Examination. Such action is contrary to the notions of due process and equal protection and the result is manifestly unjust. Concerning petitions of this nature by applicants who have been denied admission to practice law in Utah, the Utah Supreme Court has ruled:

The State cannot exclude a person from practice in contravention of due process or equal protection . . . One of the limitations placed upon us is the duty to assure that a rational procedure was followed in subsequently admitting some, but not others. . . . Certainly the individual review . . . must meet standards fair to all, and the opportunity to retake the examination is not the applicable remedy. . . . Stare decisis demands uniform yardsticks. Where scores showed that applicants with lower points than appellants were passed but appellants were not, the Bar Examiners acted arbitrarily and capriciously in violation of both the due process and equal protection clauses of the Fourteenth Amendment.

In re Petition of John Randolph-Seng, 669 P.2d 400, 402-03 (Utah 1983) (citations omitted) (emphasis added). Surely, this ruling should apply to Petitioner who was denied admission to the Bar where prior petitioners were admitted under the same rules and circumstances.

B. Petitioner has demonstrated, by means of the bar examination, the requisite knowledge of the law and skills necessary to practice law in Utah.

The United States Supreme Court has held that "[a] State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice law." Schwartz v. Board of Bar Examiners, 353 U.S. 232, 239 (1957). The Utah Supreme Court pointed out that Schwartz requires "a rational relationship between a petitioner's non admission and the state's legitimate objectives." Petition of Randolph-Seng, 669 P.2d at 402. The only constitutionally permissible state objective in licensing attorneys is to assure that the applicant is capable and fit to practice law. Louis v. Supreme Court of Nevada, 490 F.Supp. 1174, 1182 (D.Nev. 1980); Martin-Trigona v. Underwood, 529 F.2d 33 (7th Cir. 1975).

Certainly, there would be danger to the public if the legal profession were not regulated to assure that lawyers have moral integrity and professional competence. These legitimate objectives of the State of Utah, however, will be neither harmed nor compromised by Petitioner's admission to the Bar. Petitioner has repeatedly demonstrated his competence as to knowledge of the law by passing at least 16 of 18 essay

questions, a considerably high score in comparison to most applicants admitted to the Bar. In turn, Petitioner achieved a score of 124 on the Multi-state Bar Examination, less than one point short of automatic passage. Thus, there is no rational relationship between Petitioner's non admission and the State's legitimate objectives. The State's power to license persons engaged in the legal profession is not the power to create a privileged class by means of arbitrary determinations that exclude competent and fit persons. Louis v. Supreme Court of Nevada, 490 F.Supp. at 1183. The practice of law is not a matter of the State's grace or favor. For those who possess the necessary qualifications it is a right. Louis v. Supreme Court of Nevada, 490 F.Supp. at 1183. Petitioner's admission to the Bar would serve to prevent a manifestly unjust result.

C. It is arbitrary and unreasonable for the Bar Commissioners to place determinative importance on the Multi-state Bar Examination at the exclusion of the Utah essay questions.

The Bar Commissioners have made it very clear that Petitioner was denied admission to practice law in the State of Utah solely because of his Multi-state Bar Examination score. Such a denial is contrary to the principles discussed in In re Guyon, Petition of Randolph-Seng, and Schware v. Board of Bar Examiners, supra. The Bar Commissioners acted in an arbitrary manner by placing determinative importance on one-third of the exam at the total exclusion of the other

two-thirds of the exam. The result of such action is Petitioner's non admission to the Bar and "the opportunity to retake the examination is not the applicable remedy." Petition of Randolph-Seng, 669 P.2d at 402.

Most states comply with the standards set forth by the United States Supreme Court and the Utah Supreme Court by combining the Multi-state scores with the essay scores to determine the competence of Bar applicants. The combination of these scores is a more accurate way to determine an applicant's competency in regards to knowledge of the law. Most importantly, an applicant is not arbitrarily disqualified from practicing law because of one fraction of one point on a 200 multiple-choice questions examination. These jurisdictions include, but are not limited to: Alaska, Arkansas, California, Connecticut, Hawaii, Illinois, Kansas, Kentucky, Maryland, Massachusetts, Minnesota, Mississippi, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Tennessee, Wisconsin. (Based on information received by telephone survey of Bar Admission Administrators in 25 states. See Appendix). In light of the procedure used in these jurisdictions, it seems especially unjust to deny one who scored in the top 3% on the essay examinations and was less than one point short of automatic passage on the Multi-state Bar Examination.

## II

### PETITIONER'S HEARING BEFORE THE GRIEVANCE PETITION COMMITTEE OF THE UTAH STATE BAR WAS LACKING IN FAIRNESS AND WAS NOT A MEANINGFUL HEARING

The Bar Examination Review and Appeal Procedure, as promulgated by the Board of Bar Commissioners, purports to establish a meaningful procedure for review of bar examinations; meaningful in the sense that where circumstances are such that an applicant has stated meritorious claims, a decision favorable to him will be rendered and he will be recommended for admission to the Bar. The document states that relief "shall be granted only upon a showing that the Petitioner failed to pass the examination as a result of arbitrary or capricious conduct . . . or to prevent manifest injustice." (R.4) Inherent in such statements is the prospect of success on review before the Commission where stated grievances justify relief.

While it is true that Petitioner was given the opportunity to state his case before the Grievance Petition Committee, he was denied admission to the Bar without any explanation, reasons, or response to his meritorious claims and arguments. (R. 27-29) The Findings of Fact and Recommendation of the Grievance Petition Committee are vague, illusive, and completely unresponsive to Petitioner's Petition for Review. It is clear that the Bar Commission denied the Petition solely on

the grounds of Petitioner's Multi-state Bar Examination score without answering his claims, arguments and the legal authorities in support thereof. Such conduct on the part of the Bar Commissioners makes the review process an exercise in futility and the determination of the Commission should not be allowed to stand.

In addition, Petitioner was, in reality, denied access to and review of his Multi-state Bar Examination questions and answers, contrary to the notions of fairness and due process. In accordance with the principles of fairness and due process as discussed in Schware v. Board of Bar Examiners, and Petition of Randolph-Seng, supra, Petitioner is entitled to review his Multi-state exam and answers before being denied admission to the Bar. See also Application of Obermeyer, 717 P.2d 382, 390-91 (Alaska 1986). Petitioner was informed by officials at the Utah State Bar that access to the Multi-state Examination is possible only upon release of the exam by the National Conference of Bar Examiners (NCBE) under the strictest of security conditions. In the past, the NCBE has released the exam only upon a court order or statutory mandate. In this case, Petitioner was informed that the NCBE would release his exam if the Utah Bar petitioned the NCBE and established several provisions relating to security of and access to the exam. The result would have been a considerable delay in this Petition for

Review and in obtaining a hearing. Such a delay would have been highly prejudicial to Petitioner's best interests. Because Petitioner was faced with the choice of having a timely hearing or delaying his hearing by several weeks or months while awaiting access to his Multi-state examination, Petitioner chose to proceed without review of the exam. Any other choice would have compromised his position and have been a detriment to his best interests. Thus, in reality, Petitioner had no choice but to proceed without access to his examination.

The Supreme Court of Alaska addressed this type of problem by holding:

Despite NCBE policy, we believe Obermeyer should have been granted an opportunity to review the MBE questions and answers . . . the . . . policy of denying a failing applicant access to essay questions and answers on the bar exam amounted to denial of a fair hearing. We are convinced that this rationale also applies to the multiple-choice MBE. . . . We believe simply that to fail a bar applicant and to deny him entry to his chosen profession, while keeping the exam on which the denial is based cloaked in absolute secrecy, offends a sense of fairness.

Application of Obermeyer, 717 P.2d at 390.

Neither Petitioner nor the Bar Commissioners know exactly what questions were used on the exam and what wrong choices were made in answering the questions. Even the Committee of Bar Examiners are unaware of the questions used and answers given on the exam. The only known information is Petitioner's score

without any information or explanation as to why certain answers were deemed incorrect. With such limited information, it is arbitrary and manifestly unjust for the Bar Commissioners to determine that, based solely on the Multi-state exam, Petitioner is not competent to practice law in this state.

### III

PETITIONER IS UNFAIRLY PREJUDICED  
BY BEING DENIED ADMISSION TO THE  
BAR AT THE EARLIEST  
POSSIBLE DATE

It is very clear, not only as a matter of common sense, but also as a matter of judicial pronouncement, that a person trained to practice law has an interest in practicing law which is exceedingly grave and worthy of the protection of this Court. Concerning the importance of this matter, the United States Supreme Court stated in a previous bar admission case:

While this is not a criminal case, its consequences for [Petitioner] take it out of the ordinary run of civil cases. The Committee's action prevents him from earning a living by practicing law. This deprivation has grave consequences for a man who has spent years of study and a great deal of money in preparing to be a lawyer.

Konigsberg v. State Bar of California, 353 U.S. 252, 257-58 (1957).

Petitioner has successfully satisfied the requirements of the Revised Rules of the Utah State Bar for Admission to the Bar and should be admitted to practice law in this state. He

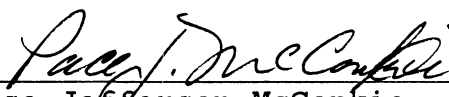


graduated from an American Bar Association accredited law school, wherein he achieved numerous law school and national honors in academics, moot court, and trial advocacy. He has a grave interest in being admitted to the Utah State Bar at the earliest possible date. These interests transcend professional, monetary, and personal spheres. Of most importance is the fact that Petitioner is flatly being denied the opportunity to practice law in this State. Such denial is arbitrary and manifestly unjust.

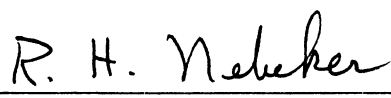
#### CONCLUSION

For the reasons set forth, Petitioner respectfully requests this Court to grant his Petition for Admission to the Utah State Bar and such other relief as may be proper.

RESPECTFULLY SUBMITTED this 11 day of December, 1987.

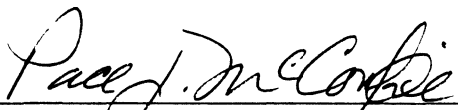
  
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CERTIFICATE OF SERVICE

The undersigned certify that four (4) copies of the foregoing Brief of Petitioner were hand delivered to Mr. Stephen F. Hutchinson, Executive Director of the Utah State Bar, at 425 East First South, Salt Lake City, Utah 84111, this 11 day of December, 1987.

  
Pace Jefferson McConkie

and

  
Richard H. Nebeker

## APPENDIX

PACE JEFFERSON MCCONKIE  
1304 E. 900 South, #4  
Salt Lake City, Utah 84105  
(801) 583-1489

EDUCATION:

Juris Doctor (May, 1987)  
University of Arkansas at Little Rock School of Law

Bachelor of Arts, 1984  
University of Utah (Major/Minor: English/Political Science)

LAW SCHOOL HONORS AND ACHIEVEMENTS:

Arkansas Trial Lawyers Association (ATLA) Award -  
Most Outstanding Performance in Trial Advocacy, 1986-87

Selected by faculty to represent Law School at the National Mock  
Trial Advocacy Competition (advanced to Regional Finals), 1987

Selected by faculty to participate in the annual Judge Henry  
Woods Trial Advocacy Competition (sponsored by the Arkansas Bar  
Association Board of Trial Advocacy), 1987

Winner, Appellate Moot Court Competition; represented Law School  
at the National Moot Court Competition in Dallas, Texas, 1986-87

1987 Bogle-Sharp Scholarship Award - selected by law students of  
the Class of '87 as the person most likely to succeed in the  
practice of law

Selected by national committee to participate in National Legal  
Seminar on the First Amendment, Washington, D.C., 1986

Graduated in top one-half of Law School class.

EXPERIENCE AND EMPLOYMENT:

Judicial Clerkship, 1987 -  
Law Clerk for Justice Richard C. Howe, Supreme Court, State of  
Utah

Law Clerk, 1985-87  
G. Ross Smith & Associates, P.A., 1690 Union National Plaza,  
Little Rock, Arkansas 72201 (general civil practice, specialty  
in Education Law)

Office Staff, 1984  
Office of the Governor of the State of Utah, Honorable Scott M.  
Matheson, Governor; aid to Governor on education policy; staff

to Utah Education Reform Steering Committee; staff to Utah State Department of Community and Economic Development

Office Staff, 1983

Office of Honorable Senator Edward M. Kennedy, United States Senate, Washington, D.C.; awarded Scholarship Internship in Senator Kennedy's office and worked primarily on issues in education, labor, and national defense; offered staff position on the Senate Labor and Human Resources Committee and worked as an education aid to Senator Kennedy

Legislative Intern, 1982

Utah State Department of Health, Dr. James O. Mason, Executive Director; internship awarded by Hinckley Institute of Politics, University of Utah; drafted and promoted legislation during 45th Session of Utah State Legislature

#### OTHER HONORS AND ACTIVITIES:

Delegate, Utah Democratic State and County Conventions, 1984

Co-Chair, United States Senate Campaign on the University of Utah campus, 1982

Utah State Democratic Party Central Committee, 1981-82

Volunteer religious service, Auckland, New Zealand, 1979-81

Leadership Scholarship Award, University of Utah, 1979, 1981

#### PERSONAL:

Born: October 30, 1960, Salt Lake City, Utah

Excellent physical health; Height: 6'2" Weight: 170 lbs

Married, June 1983, to Marilyn Mahas

Other interests include public speaking, music, basketball, baseball, waterskiing

Special legal interests include Education Law, Civil Rights Law

BEFORE THE BOARD OF COMMISSIONERS  
OF THE UTAH STATE BAR

Hearing Committee: Gordon J. Low, Chairman  
Kent M. Kasting  
B. L. Dart

---oooOooo---

IN RE: :  
: FINDINGS OF FACT  
: AND RECOMMENDATION  
Petitioner. :

---oooOooo---

The Petition of  came before the  
Hearing Committee for Hearing on the 28th day of May, 1986. The  
Petitioner was present in person and represented by counsel,  
Also in attendance were Julee Smiley of the Utah  
State Bar Association staff in charge of Bar admissions and  
and  as expert witnesses. Evidence  
was received by the Committee, and the matter having been  
submitted, and the Committee being fully advised makes the  
following:

FINDINGS OF FACT

1. Petitioner sat for the February 1986 Bar  
Examination and passed 13 of the 18 essay questions which gave  
him a passing score on the essay portion of the test. Petitioner  
scored 124 on the Multi-state Bar Examination (MBE) and since a  
score of 125 is required to pass, failed the MBE portion of the

Bar Examination. By reason of this failure, Petitioner was denied admission to the Utah State Bar.

2. Petitioner contends that his failing score on the MBE portion of the Examination was caused by the distraction of noise during the examination process. In support of his petition, Petitioner alleged that for both the morning and afternoon sessions, he was assigned a seat for the Examination which was next to the doors and hallway linking the examination room to the banquet serving and set-up areas of the hotel where the test was conducted.

Petitioner alleges that during the morning session, there were several incidents of noise from the employees of the hotel moving food trays and chairs, conversing and talking on a telephone which was located in close proximity to the doors.

Petitioner asserts that on several occasions he raised his hand to get the assistance of the proctor, and on one or two occasions, the proctor did go into the adjacent area to bring the noise level down. Petitioner asserts that on several occasions the proctor did not see him and because Petitioner was pressed for time, he did not attempt further to get the proctor's attention.

Prior to the commencement of the afternoon session, Petitioner requested that his seat be moved away from the distraction caused by proximity to the noisy area, but this

request was denied. Petitioner testified that in the afternoon session there were further disruptions, one of which was quite major requiring the proctor to again quiet the hotel employees. Petitioner represented that because of the distractions, he was unable to complete the MBE portion of the test and left between one and four of the questions completely unanswered. It is petitioner's contention that but for the distraction, he would have scored at least one point higher and thereby have passed the MBE portion of the test.

3.

was called as an expert witness.

this job oversees all activities and personnel of the Center which is involved in testing roughly 18,000 individual and group administered tests yearly. She testified on behalf of Petitioner, stating that if undue disruption would not occur to the other persons taking the test, a person who requests a move of seat because of noise should have that request granted if other seating is available.



5. Julee Smiley, currently in charge of Utah State Bar Admissions, testified that Petitioner had complained during the morning of noise from the adjacent service area, but is not aware of more than one complaint having been made to the proctor of noise. It is her recall that the room generally was quiet and a good room for the taking of tests. She did state that Petitioner did request that his seat be moved and that this request was denied because of the desire to keep the seating chart intact so that she knew which applicant at each seat. This was done because it is necessary to hand out to the applicants their test under the same number in the afternoon session following the morning session.

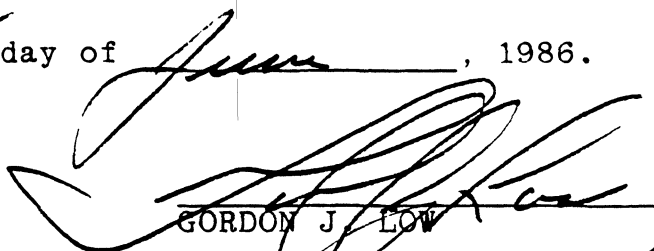
Julee Smiley acknowledged that other seats were available to which the Petitioner could have been moved and that the move could have been made with little disruption since Bar applicants were free to get up and leave the room during the testing and many did so without disrupting the other test takers.

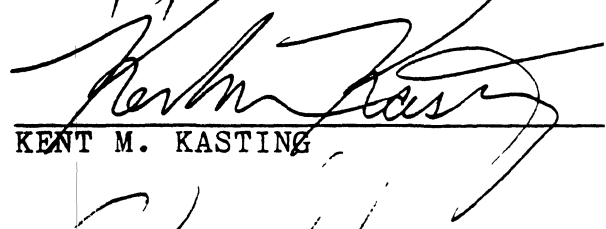
6. The Hearing Committee having carefully considered the petition, arguments and evidence is persuaded that Petitioner having requested an opportunity to change his seat because of distractions of noise should have had his request granted. The Committee is further persuaded that had Petitioner been allowed to change his seat, he would have probably scored sufficiently higher on the examination to have achieved a passing score.

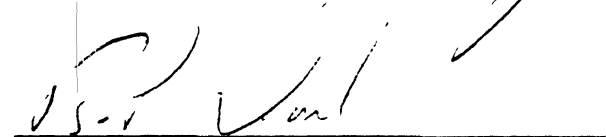
Because of these facts, it is the opinion of the Committee that relief should be granted to prevent manifest injustice.

The recommendation to the Board of Commissioners of the Utah State Bar is that based upon the foregoing, the petition of \_\_\_\_\_ be approved and he be allowed admission to the Utah State Bar.

DATED this 5<sup>th</sup> day of June, 1986.

  
GORDON J. LOW

  
KENT M. KASTING

  
B. L. DART

BEFORE THE BOARD OF BAR COMMISSIONERS  
OF THE UTAH STATE BAR

Hearing Panel:  
Hans Q. Chamberlain, Chairman  
Stewart M. Hanson, Jr.  
Reed L. Martineau

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IN RE:	)	
	)	
	)	DETERMINATION AND
	)	RECOMMENDATION
	)	
Petitioner.	)	
	)	

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The petition for review filed by \_\_\_\_\_ came on for hearing before the Committee on Grievance Petitions, pursuant to notice, on October 21, 1986, at 9:00 o'clock a.m. The petitioner appeared before the Committee. \_\_\_\_\_ Esq. appeared and testified on behalf of the petitioner. Also in attendance was Julee G. Smilley, Admissions Administrator.

1. Petitioner claims that his failure to pass the Utah State Bar Examination resulted from arbitrary or capricious conduct on the part of the Committee of Bar Examiners.

2. Specifically, petitioner alleges that he successfully passed the essay portion of the exam, but failed the MBE because he received a scaled score of 123, which was just 2 points below the scaled score of 125 that was necessary to pass the exam. Petitioner further claimed that English is his second language,

with Tongan being his primary language, and that he was forced to guess at approximately 20 questions on the MBE because of the extra time it took to assimilate the questions in English.

3. Both petitioner and  Esq., stated that there are approximately 12,000 Tongans living in the Salt Lake Valley who find it difficult to seek legal counsel, that Salt Lake has no fellow Tongan to serve them in the legal community and that because of the language barrier, the Tongan community is deprived of access to legal service.

Based upon the foregoing, the Committee makes the following findings:

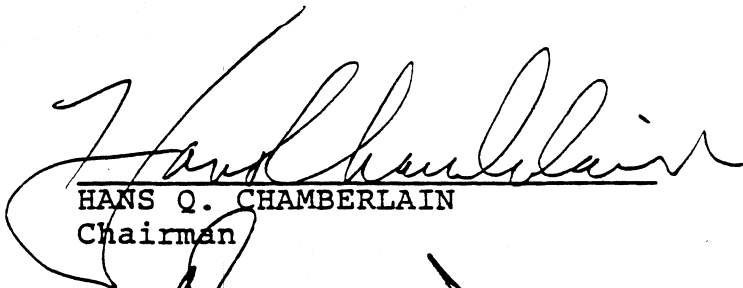
1. Petitioner established that because of the time constraints imposed on the petitioner during the multi-state portion of the bar exam and his need to assimilate the questions in English, that had additional time been given, or had the language barrier not existed, that he would have correctly answered one or two additional questions which would have established his scaled score at a passing level.

2. That petitioner has established and carried the burden of proof that he should be admitted to the Bar to prevent manifest injustice.


Based upon the foregoing, it is the decision and recommendation of the Committee that the petition be granted, and

that petitioner be admitted to practice law in the State of Utah.

DATED this \_\_\_\_\_ day of October, 1986.

  
HANS Q. CHAMBERLAIN  
Chairman

  
STEWART M. HANSON, JR.

  
REED L. MARTINEAU

## BAR EXAMINATION REVIEW AND APPEAL PROCEDURE

Any person having failed to pass the Utah State Bar Examination, may within thirty (30) days after written notice thereof, file with the Executive Director of the Utah State Bar a Petition directed to the Board of Commissioners of the Utah State Bar, or a Review Committee designated by it, for a hearing on the determination that petitioner has failed to pass the Bar Examination. The Petition shall contain a short and plain statement of the claim showing that the Petitioner is entitled to relief. Relief shall be granted only upon a showing that the Petitioner failed to pass the examination as a result of arbitrary or capricious conduct on the part of the Committee of Bar Examiners or in the administration of the examination, or to prevent manifest injustice.

✓ Except in extraordinary circumstances, the Board of Bar Commissioners and/or any Review Committee designated by it shall not reread examination answers or substitute their judgment for that of the Committee of Bar Examiners that the Petitioner's examination or any part thereof is classified as pass or fail.

✓ The President of the Utah State Bar shall appoint three or more members of the Board of Commissioners, or the Board may appoint a Committee consisting of three active members of the Utah State Bar in good standing as a Review Committee, one of whom shall be designated as Chairman, to serve as a Review Board to consider all Petitions duly filed under this rule.

The Chairman of the Review Board, without undue delay, shall notify each petitioner and the Chairman of the Committee of Bar Examiners in writing of the time and place set for the hearing. Petitions setting forth common issues of law or fact, as determined by Chairman of the Review Board, may be consolidated for hearing in whole or in part. The Review Board shall hear all relevant evidence within the scope of the review herein provided for. After hearing, the Review Board shall file with the Board of Commissioners its written Recommendations and Findings of Fact on all Petitions. The Board of Commissioners, without undue delay, shall make its decision on each Petition and shall notify each petitioner in writing of its decision and of the Findings of Fact upon which its decision is based. All notices herein provided for shall be sufficient if mailed by regular mail, postage prepaid, to the person designated, at his or her address as shown by the records of the Utah State Bar. Notice shall be deemed given on the date of mailing.

Within thirty (30) days after service of the Findings and Decision upon the petitioner and/or counsel for the petitioner, the petitioner may appeal to the Supreme Court of the State of Utah by filing written Notice of Appeal with the Clerk of the Supreme Court setting forth in said Notice the basis for the appeal, specifying any errors or grounds for appeal upon which the petitioner intends to rely. A copy of the Notice of Appeal shall be served on the Executive Director of the Utah State Bar. The record of the Proceedings shall be prepared by the Executive Director and shall be filed with the Clerk of the Supreme Court within 15 days following the filing of the Notice of Appeal. The Supreme Court shall set a date for hearing of the appeal and shall afford the appellant and the Utah State Bar an opportunity to file Briefs and appear before the Court in support of their respective positions. As nearly as may be, the proceedings before the Supreme Court shall be conducted in accordance with the existing Rules of Civil Procedure of the State of Utah, modified only in the particulars herein set forth.

The procedure set forth in this rule shall be the exclusive remedy for review of or appeal from the refusal of the Board of Commissioners of the Utah State Bar to certify any applicant for admission to the Utah State Bar for failure to pass the Utah State Bar Examination. No appeal or original Petition will be accepted by the Clerk of the Utah Supreme Court unless the requirements of this rule have been met.

REVISED RULES OF THE UTAH STATE BAR  
FOR ADMISSION TO THE BAR  
As Amended by the Supreme Court  
by Order of June 15, 1987, to be  
Effective January 1, 1988.

RULE ONE

Board of Commissioners - General Powers

SECTION 1-1. Definition. Except as otherwise indicated, the word "Board" as used in these rules refers to the Board of Commissioners of the Utah State Bar.

SECTION 1-2. Admission to the Bar. The Board shall recommend and certify to the Supreme Court for admission to the Bar such persons, and only such persons, who possess the necessary qualifications of learning, ability and character which are a prerequisite to the privilege of engaging in the practice of law, and who fulfill the requirements for admission to the Bar, as provided by these rules.

SECTION 1-3. Subpoena Power. Any member of the Board, or the Executive Director or the Secretary or an Assistant Secretary thereof, shall have power to issue subpoenas for the attendance of witnesses or for the production of documentary evidence before the Board or before anyone authorized to act in its behalf.

SECTION 1-4. Administration of Oaths. Any member of the Board or the Executive Director shall have power to administer oaths in relation to any matter within the functions of the Board.

SECTION 1-5. Taking of Testimony. Any member of the Board, and any other person who has power to administer oaths, shall have power, upon order of the Board, to take testimony in reference to any matter within the function of the Board.

SECTION 1-6. Regulations. The Board is empowered to adopt and enforce such reasonable regulations and to appoint such committees in furtherance of the purpose of these rules and to facilitate their administration as may be necessary or advisable.

RULE TWO  
Applicants

SECTION 2-1. Applicants, Definitions. For the purpose of these rules, applicants are classified either as "student applicants" or as "attorney applicants".

SECTION 2-2. Student Applicants, Classification. To be classified as a student applicant and recommended as such for admission to the Bar, person must satisfy the requirements of Rule Three hereof.



SECTION 2-3. Attorney Applicants, Classification. To be classified an attorney applicant and recommended as such for admission to the Bar, a person must satisfy the requirements of Rule Four hereof.

SECTION 2-4. Readmission Following Resignation. Readmission to the Ohio State Bar following resignation shall be in accordance with the provisions of Rule Thirteen hereof.

### RULE THREE Student Applicants

SECTION 3-1. Requirements of Student Applicants. To be recommended as a student applicant for admission to the Bar, a person must:

1. Have filed an application for Bar Examination and Admission to the Bar as a student applicant in accordance with Rules Five and Six hereof;
2. Be of the age of at least twenty-one years;
3. Possess the requisite educational qualifications as prescribed in Rule Seven hereof;
4. Be of good moral character and have satisfied the requirements of Rule Nine hereof;
5. Have successfully passed the Bar examination as prescribed in Rule Ten hereof;
6. Have complied with the provisions of Rule Eleven hereof concerning enrollment fees.
7. Beginning January 1, 1988, have successfully passed the Multi State Professional Responsibility Examination (MPRE) with a scaled score of 80 within two years before the date of the application and shall have furnished proof of passing to the Board as provided in Rule Fourteen hereof.

### RULE FOUR Attorney Applicants

SECTION 4-1. Requirements of Attorney Applicants. To be recommended as an attorney applicant for admission to the Bar, a person must:

1. Have filed an Application for Admission to the Bar as an attorney applicant in accordance with Rules Five and Six hereof;
2. Be of the age of at least twenty-one years;

3. After having successfully passed a student bar examination in a sister state or the District of Columbia, have been admitted to practice law before the highest court of that sister state or the District of Columbia and following admission shall have been actively, substantially and lawfully engaged in the practice of law in said jurisdiction as a principal occupation for four of the five years immediately preceding the filing of the application (teaching in a law school approved by the American Bar Association or service as judge of a court of general or appellate jurisdiction requiring admission to the Bar as a qualification for judges thereof, or service in the armed forces in the Judge Advocate Department in a legal capacity in any state, shall be considered and are examples of the "practice of law" within the meaning of the rule);

4. Have successfully passed the Bar Examination as prescribed in Rule Eight hereof;

5. Be of good moral character and have satisfied the requirements of Rule Nine hereof;

6. Present himself/herself before the Board, or a committee thereof, at such times and places as may be required for oral examination as to his/her moral character or as to any of his/her other qualifications, and furnish to the Board at any time after filing his/her Application for Admission to the Bar such supplemental information and evidence, and in such forms, as may be required relating to his/her moral character or any of his/her other qualifications;

7. Have complied with the provisions of Rule Eleven hereof concerning enrollment fees.

8. Beginning January 1, 1988, have successfully passed the Multistate Professional Responsibility Examination (MPRE) with a scale score of 80 within two years before the date of the application and shall have furnished proof of passing to the Board as provided in Rule Fourteen hereof.

#### RULE FIVE Filing Fees

SECTION 5-1. Application Forms, Fees. Every person seeking admission to the Bar as a student applicant or as an attorney applicant shall pay to the Utah State Bar the sum of \$15.00 for the application forms and rules for admission to the Bar.

SECTION 5-2. Student Application Filing Fees. The filing fee of a student applicant which shall accompany the application shall be as follows:

For Utah resident students the fee shall be \$250.00;  
For nonresident students the fee shall be \$375.00.

For purposes of this section, a Utah resident shall be defined as an applicant who has resided physically and continuously within the State of Utah for one year immediately preceding the filing of his or her application for admission.

SECTION 5-3. Attorney Application Filing Fees. The filing fees of an attorney applicant which shall accompany the application shall be \$75.00.

#### RULE SIX Application for Bar Examination

SECTION 6-1. Dates for Filing Student Applications. Every person seeking admission to the Bar as a student applicant must file an application for Bar Examination and Admission to the Bar on forms provided by the Board to be filed on or before April 1 for the summer examination and November 1 for the spring examination.

SECTION 6-2. Dates for Filing Attorney Applications. Every person seeking admission to the Bar as an attorney applicant must file an application for Bar Examination and Admission to the Bar on forms provided by the Board on or before the following dates.

For the February Attorney Examination, by October 1;  
For the May Attorney Examination, by January 1;  
For the July Attorney Examination, by March 1;  
For the October Attorney Examination, by June 1.

SECTION 6-3. Withdrawal of Applications. If the attorney or student application is withdrawn in writing prior to thirty days before the examination date for which applicant has filed to sit, one-half of the filing fee shall be refunded.

#### RULE SEVEN Educational Qualifications

SECTION 7-1. The educational qualification required of all student applicants is:

Graduation with a degree of LL.B., (J.D.), or the equivalent from a resident American Bar Association approved law school which requires for such a degree a minimum of six years regular professional and academic study in an accredited college or university.

#### RULE EIGHT The Attorney Bar Examination

SECTION 8-1. Every attorney applicant shall pass the Attorney Bar Examination as provided in this rule.

The attorney examination shall consist of one full day of essay examination and shall include questions on substantive and procedural Utah Law. Until December 31, 1987, there shall be two questions on the Rules of Conduct of the Utah State Bar including the Code of Professional Responsibility. Beginning January 1, 1988, there shall be one question on the Rules of Conduct of the Utah State Bar including the Code of Professional Responsibility. The attorney examination shall include nine questions to be answered within a six-hour period in a single day, divided into a session of five questions and a session of four questions. Attorney applicants will be required to pass six of nine questions on a pass/fail basis.

The attorney's examination shall be given four times yearly, in February to coordinate with the last day of the student examination; in May on the last Friday of the month; in July to coordinate with the last day of the student examination; and in October on the last Friday of that month.

SECTION 8-2. An applicant who fails the attorney examination may sit for subsequent examinations, including successive examinations, upon payment of the fees provided for in these Rules.

#### RULE NINE Moral Character

SECTION 9-1. Every applicant must be of good moral character. Investigations in reference to the moral character of applicants may be informal, but shall be thorough, with the object of ascertaining the truth.

SECTION 9-2. In its sole discretion, the Board or a committee appointed by the Board may act in the first instance as to any applicant without requiring the applicant to appear before it, or the Board or committee may require the applicant to appear before it and be sworn and interrogated. If upon such action or appearance the Board or committee shall not be prepared to certify the applicant, it shall promptly notify the applicant that it cannot certify that he/she is of approved good moral character and general fitness to practice law. Such notification shall be sent him/her by certified mail.

SECTION 9-3. The applicant shall have the right to file a written request for hearing within ten days after such notice, and a hearing shall be granted by the Board under the following rules of procedure:

- a. The Secretary of the Board shall notify the applicant of
  - (1) the date, time and place of such hearing;
  - (2) the matters adverse to applicant which were disclosed in the preliminary hearing or hearings;
  - (3) if such matters were based in whole or in part upon adverse statement from other persons, the names of such persons; and

(4) the applicant's right to be represented by counsel at the hearing, to examine and cross-examine witnesses, to adduce evidence bearing on the aforesaid adverse matters and upon the applicant's moral character and general fitness to practice law, and for such purpose to make reasonable use of the Board's subpoena powers.

b. The hearings before the Board shall be private unless the applicant shall request that they be public. The hearings shall be conducted in a formal manner, with the applicant having the rights set forth in this rule. The burden of proof shall be on the applicant to establish that he or she is possessed of good moral character and entitled to the high regard and confidence of the public, and of removing any and all reasonable suspicions of moral unfitness. The Board shall not be bound by the formal rules of evidence; it may in its discretion take evidence in other than testimonial form, having the right to rely upon records and other materials furnished to the Board in response to its request for assistance in its inquiries; and it may in its further discretion determine whether evidence to be taken in testimonial form shall be taken in person at the hearing or upon deposition, but all testimonial evidence shall in either event be taken under oath. A complete stenographic record of the hearing shall be kept, and a transcript may be ordered by the applicant at his or her own expense.

c. If after such hearing the Board does not certify the applicant, it shall make written findings and conclusions and it shall deliver a copy thereof to the applicant.

#### RULE TEN The Student Bar Examination

SECTION 10-1. Every student applicant shall pass the Student Bar Examination.

SECTION 10-2. The student examination shall consist of such questions as the Board may select relating to law, use of law books, legal ethics and legal history and it shall otherwise comply with the procedure and criteria set forth in the Revised Rules Governing Criteria for the Bar Examination.

SECTION 10-3. An applicant who fails the student examination may sit for subsequent examinations, including successive examinations, upon payment of the fees provided for in these rules.

#### RULE ELEVEN Certificate of Admission, Membership and Fees

SECTION 11-1. Upon being notified that the Board has acted favorably on his or her application, and before a recommendation is made to the

Supreme Court for admission, the applicant shall pay to the Utah State Bar the fee for an active member, and also the admission fee of fifty dollars (\$50.00) to be transmitted by the Utah State Bar to the Clerk of the Supreme Court upon the issuance of the applicant's Certificate of Admission.

SECTION 11-2. If the applicant fails to comply with the preceding section and appear for admission to the Bar within six months after being called to appear before the Supreme Court for admission, the approval of his or her application for admission to the Bar shall be deemed to be withdrawn. The Board may reapprove such application upon a satisfactory showing of the qualifications of the applicant at the time he appears for admission to the Bar, or may grant an extension of the time for making appearance upon application.

#### RULE TWELVE Practice of Law in Utah

SECTION 12-1. Practice of Law. To practice law in this state, an attorney must be an active member of and in good standing with the Utah State Bar.

SECTION 12-2. Admissions Pro Hac Vice. For the purpose of an individual case, no member of the bar of any jurisdiction may appear in the courts of this state without associating a licensed active attorney upon whom pleadings and other papers may be served and who shall be responsible for the ethical conduct of such attorney under the provisions of the Rules of Conduct of the Utah State Bar.

#### RULE THIRTEEN Readmission After Resignation

SECTION 13-1. Readmission subsequent to the resignation of a member of the Bar shall be by petition in writing verified by the petitioner, addressed to the Board and filed with the Executive Director. The petition shall set forth the name, age, residence and address of the petitioner, his residence and occupation during the period subsequent to his resignation, the reasons for this resignation and a copy of the order of the Supreme Court, if any, with respect to the resignation. The petition must be accompanied by a filing fee of \$200.00.

#### RULE FOURTEEN Professional Responsibility

Beginning January 1, 1988, no person, whether a student applicant or an attorney applicant, shall be issued a license to practice law in this State until there has been furnished by the applicant to the Board evidence that such person has passed the Multistate Professional Responsibility Examination (MPRE) with a scaled score of 80 within two years before the date of application.

The MPRE is administered by the National Conference of Bar examiners. Any person seeking to take the MPRE shall file an application with and pay the fee specified by the National Conference of Bar Examiners

To be eligible to have his or her score on the MPRE accepted by the board as satisfying the requirements of this Rule, a student applicant must have completed one year of law school.

RULES GOVERNING CRITERIA FOR THE BAR EXAMINATION  
(As Amended January 1, 1988)

RULE I

The grading of each Utah Essay Examination question shall be Pass or Fail based upon the following standards:

Grade	Explanation
<u>Pass</u>	<u>Answer demonstrates the substantive knowledge and the analytical skills requisite to the practice of law.</u>
Fail	Answer indicates applicant does not demonstrate substantive knowledge or analytical skills for the practice of law.

RULE II

The Essay part of the Bar Examination shall:

- (A) Consist of eighteen (18) questions, two (2) of which shall be on Legal Ethics. Beginning January 1, 1988, there shall be one essay question on Legal Ethics. An average of forty (40) minutes shall be allowed to answer each of eighteen (18) questions; and
- (B) Be administered in two (2) days with five (5) questions given during the two morning sessions of three hours and twenty minutes (3:20) each and four (4) questions given during the two afternoon sessions of two hours and forty minutes (2:40) each.

RULE III

To pass the Utah Bar Examination, each applicant must:

- ✓ (A) Achieve a score of Pass on twelve of the eighteen essay questions or the Utah Essay Examination; and
- ✓ (B) Achieve an MBE scaled score of 125 or higher. *automatic pass if*
- (C) Beginning January 1, 1988, achieve an MPRE scaled score of 80 within two years before the date of the examination and provide proof thereof.
- (D) A failure of only one portion, either the essay examination or MBE will require the retaking of only the failed exam for a period encompassing the four following examinations administered by the Utah State Bar.



MBE scores earned in outside jurisdictions will not be accepted subject to the requirements of Rule Fourteen of the Revised Rules of the Utah State Bar for Admission to the Bar. MPRE scores earned in outside jurisdictions will be accepted.

#### RULE IV

Model answer outlines will be prepared by the writer of the question, and each answer or outline shall be submitted to the Bar Examination Review Committee with the question no later than two months before the examination, unless the time is waived by the Bar Commission for good cause shown.

#### RULE V

The test questions and model answers will be reviewed by a Review Committee of not less than three attorneys, which Committee shall be independent of the Bar Examiners and shall critique the questions and model answer. The Review Committee shall have the authority to require the Bar Examiners to rewrite the questions and model answers.

## INSTRUCTIONS TO APPLICANTS

Applicants should designate whether they are "student applicants" or "attorney applicants: when requesting forms.

All applicants are required to be fingerprinted. (Fingerprints can be obtained through the Bureau of Identification, Hall of Justice Building, Salt Lake City, Utah, and will be mailed to the Bar by that office. Fingerprints from other sources must be mailed to the Bar from the sources rather than filed by the applicant. The applicant should provide the finger print source with a large, postage prepaid envelope pre-addressed to the Utah State Bar, 425 East First South, Salt Lake City Utah 84111.)

With their application, all applicants must submit a recent photograph, portrait type (including head and shoulders), approximately 2-1/2 x 2-1/2 inches in size.

### A. FILING FEES ARE AS FOLLOWS:

Student applicant:	Resident	\$250.00
	Nonresident	\$375.00
Attorney applicant:		\$475.00

A fee of \$15.00 is required in order to receive the application form

### B. LATE FILING FEES ARE AS FOLLOWS:

#### Applications (student):

Up to 15 days after deadline	\$ 50.00
15-30 days after deadline	\$ 75.00
More than 30 days after deadline (Special Board approval required)	\$100.00

No application will be accepted 60 days after the deadline.

#### Documents (student):

Documents filed after the deadline but filed by the 15th of the month in which the exam is scheduled	\$ 5.00
After the 15th of the month in which the exam is scheduled (Special Board approval is required)	\$ 10.00

No late fee is assessed on late attorney applications or documents.

TO AVOID ERROR AND DELAY:

1. Read the entire application carefully before making any entries.
2. Have answers typewritten or printed legibly.
3. Give specific answers to EACH PART of ALL questions. Do not leave any spaces blank. If the question is not applicable, so indicate in the space provided for the answer (n/a).
4. Give complete dates, i.e., month, day and year, wherever possible.
5. Complete all addresses, giving street name and number, city and state. Include postal zip code.
6. Clearly identify clients, references, employers, associates, and partners, as such, wherever their names are used.
7. Avoid the use of abbreviations, particularly those which are not self-explanatory, or provide an explanation where they are used.
8. Please give reference for areas of residence as well as areas where you have practiced law.
9. When using additional paper to supplement answers, give the information in the same manner as is called for in the application.
0. Please sign both of the Authorization and Release forms and have them properly notarized.
1. Handicapped applicants should notify the Admissions Office no later than two months prior to the examination date. Information regarding specific certification and verification of handicap will be supplied to each individual applicant.

STUDENT APPLICANTS:

Application filing deadlines are: November 1, for the following February examination; April 1, for the following July examination. Student applicant must file the following certificates on letterheads of persons or institutions making the same:

1. Transcript of credits from law school showing subjects studied, grades obtained, and degree awarded. \*
2. Certification of passage of the Multistate Professional Responsibility Examination.

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\*In the event the time frame renders it impossible to provide a transcript as set forth in paragraph "1." above, the State Bar Office will accept a certification from the Office of the Dean of the Law School, to the effect that the applicant has met all of the requirements for graduation and that the applicant will graduate at the specified time, along with the application. However, the transcript must be filed before the applicant will be admitted to the Utah State Bar.

3. Certificates (letters) as to moral character from three persons unrelated to applicant and not fellow students, stating the length of time applicant has been known to the person making the certificate, the nature of their association, and any facts concerning the applicant of which such person has knowledge. Said certificates shall be original documents reflecting the facts set forth above.
4. Certificates (letters) as to moral character, from two attorneys unrelated to applicant and not fellow students, similar to those required by the preceding paragraph.
5. Certificates (letters) from two persons unrelated to applicant and not fellow students, as to applicant's residence in the State of Utah at the time of filing the application, if the applicant seeks to be examined as a resident student.
6. Certificate of Passing of the Multistate Professional Responsibility Examination with a scaled score of 80.

**E. ATTORNEY APPLICANTS:**

Application filing deadlines:

February Examination . . . . .	October 1
May Examination . . . . .	January 1
July Examination . . . . .	March 1
October Examination . . . . .	June 1

Attorney applicants must file the following certificates in support of their applications:

1. Certificate under the seal of the highest court in the jurisdiction in which he has resided and practiced, dated not more than three months prior to the filing of the application, showing the date of his admission to the Bar thereof, his standing therein, and whether or not any disciplinary proceedings have been initiated against him, and if so, the result thereof; or
2. A certificate from the chief administrative office of each Bar to which applicant has been admitted if said Bar is integrated or unified, on the official letterhead of that organization, to the effect that he is in good standing, and stating whether any disciplinary proceedings have been initiated against applicant, and if so, the result or status thereof.
3. Certificate of Passing of Multistate Professional Responsibility Examination with a scaled score of 80.
4. (a) Certificates from two judges of courts of original general jurisdiction or appellate jurisdiction, on the official letterheads of the judges, bearing the court seal, showing the length of time the applicant has been engaged in the practice of law as a principal occupation; certificates from two attorneys on their letterheads showing the dates during which the applicant has been engaged in the practice of law as a principal occupation; and letters from two clients for whom he has handled legal business stating the nature of any business handled and whether or not the services have been satisfactory; or,

(b) Certificates from the Dean of an accredited Law School, in which the applicant has been engaged in teaching law, on official letterhead and bearing the seal of the school, showing the length of time that he has been so engaged; or,

(c) Certificate from the Secretary of State or other proper officer of the state wherein the applicant has served as a judge of a court of record, bearing the seal of the officer making the same, showing the dates during which he has so served; or,

(d) Certificate from the Judge Advocate Department showing service in that department in a legal capacity, and showing the dates he has served.

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