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IN THE SUPREME COURT

STATE OF ARIZONA

In the Matter of

PETITION TO AMEND RULES
34, 35, AND 36, RULES OF THE
SUPREME COURT OF ARIZONA

Supreme Court No. R-22-_____

RULE 28 PETITION

Pursuant to Rule 28, Rules of the Supreme Court of Arizona, David K. Byers, Administrative Director, Administrative Office of the Courts, respectfully requests this Court amend Rules 34, 35, and 36, Rules of the Supreme Court of Arizona, concerning the admission to the practice of law.

I. Purpose of the Proposed Rule Amendments.

A. To clarify application of the “good standing” requirement.

Rule 34(b)(1) provides that “[n]o applicant will be recommended for admission to the practice of law in Arizona by the Committee on Character and Fitness unless the Committee is satisfied” that the applicant has met the requirements of subsections A through F. Among them is the requirement, for an applicant who

has ever been admitted to practice in any jurisdiction, that “the applicant is presently in good standing, or the applicant resigned in good standing or is capable of achieving good standing status in that jurisdiction.” Rule 34(b)(1)(E).

This requirement is commonly misconstrued by applicants as a requirement that they be in good standing to sit for the uniform bar examination. During the COVID-19 pandemic, some jurisdictions have established provisional admission programs pending examination. For example, Rule 9.49, California Rules of Court, established a program for provisionally licensing eligible 2020 law school graduates through June 1, 2022. This program generally allows a person to be provisionally admitted without sitting for or passing the California Bar Exam if they practice under a supervising lawyer who is in good standing with the California State Bar. The person’s provisional license may be terminated for a variety of reasons, including leaving the employment of the supervising lawyer. The termination or suspension of a person’s California provisional license for leaving employment has resulted in confusion about the person’s eligibility to sit for the Arizona uniform bar examination.

The purpose of the proposed amendment to Rule 34(e)(1) is to clarify that Rule 34(b)(1)(E) need not be satisfied to apply for admission by Arizona uniform bar examination or to be certified to sit for the Arizona uniform bar examination. Eliminating any possible confusion will reduce staff time associated with this issue.

B. To clarify that an aggrieved applicant has no right to reply in support of applicant’s petition for review.

Rules 35(d)(1) and 36(h)(1)(B) concern the briefing process in connection with a petition for review filed by an applicant aggrieved by the respective decisions of the Committee on Examinations and the Committee on Character and Fitness. Each rule provides for the filing of the applicant’s petition for review and the committee’s response but is silent as to any right to reply.

Although Rules 35(d)(1) and 36(h)(1)(B), by their silence, confer no right to reply, more than a few petitioners take the liberty of filing replies. When an unauthorized reply is filed, the volunteer Chairs of the Committees on Examination and Character and Fitness then spend additional time and resources addressing the unauthorized reply. The proposed amendments to Rules 35(d)(1) and 36(h)(1)(B) aim to alert petitioners that replies are not permitted and prevent their filing.

II. The Proposed Rule Changes.

A. Amending Rule 34 to clarify when the “good standing” requirement must be satisfied.

The proposed amendment to Rule 34(e)(1) simply adds a sentence stating that an applicant may be certified to sit for the Arizona uniform bar examination before satisfying the requirement of paragraph (b)(1)(E) of this rule. A draft of the proposed amendment is provided in the attached *Appendix A*.

B. Amending Rules 35 and 36 to expressly prohibit the filing of a reply in support of an aggrieved applicant's petition for review.

The proposed amendment to each of Rules 35(d)(1) and 36(h)(1)(B) affirmatively states that no reply may be filed unless ordered by the supreme court *sua sponte*. A draft of the proposed amendments is provided in the attached *Appendices B and C*. Including this statement should discourage petitioners from filing unauthorized replies or requesting permission to file replies. Additionally, it will provide authority for the Clerk to, *sua sponte*, reject replies filed in violation of these Rules.

For the foregoing reasons, Petitioner respectfully requests the Court amend Rules 34, 35, and 36, Rules of the Supreme Court of Arizona, as proposed in the attached *Appendices*.

RESPECTFULLY SUBMITTED this 10th day of January, 2022.

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APPENDIX A

Additions are shown by underline; deletions are shown by ~~striketrough~~.

Rule 34. Application for Admission

(a) through (d) [No change]

(e) Arizona Uniform Bar Examination Application Filing Schedule; Fees

1. On the basis of an application for admission by Arizona uniform bar examination properly and timely filed, with all required supporting documents and fees, the applicant will be certified to sit for the Arizona uniform bar examination. An applicant may be certified to sit for the Arizona uniform bar examination before satisfying the requirement of paragraph (b)(1)(E) of this rule.

2. through 3. [No change]

(f) through (n) [No change]

APPENDIX B

Additions are shown by underline; deletions are shown by ~~striketrough~~.

Rule 35. Examination Requirements

(a) through (c) [No change]

(d) **Review by the Court.**

1. *Petition for Review.* An applicant aggrieved by any decision of the Committee on Examinations may, within twenty (20) days after such decision, file a verified petition for review with this Court; however, the Committee on Examination's decision regarding any applicant's grade score is final and will not be reviewed by the Court absent extraordinary circumstances. The petition must succinctly state the facts that form the basis for the petition and the applicant's reasons for believing this Court should review the Committee's decision. A copy of the petition must be promptly served upon the Committee. The Committee will have thirty (30) days after service to file a response and transmit the applicant's file to this Court. Thereupon the Court will consider the matter and render a decision. No reply in support of the petition may be filed unless ordered by the supreme court *sua sponte*.

2. [No change]

APPENDIX C

Additions are shown by underline; deletions are shown by ~~strikethrough~~.

Rule 36. Procedure Before the Committee on Character and Fitness

(a) through (g) [No change]

(h) **Review by the Court.**

1. *Petition for Review.*

A. An applicant aggrieved by any decision of the Committee on Character and Fitness may, within twenty (20) days after such decision, file a verified petition for review with this Court. The petition must succinctly state the facts that form the basis for the petition and the applicant's reasons for believing this Court should review the decision of the Committee.

B. A copy of the petition must be promptly served upon the Committee. The Committee will have thirty (30) days after service to transmit the applicant's file, including all findings and reports prepared by or for the Committee, and a response to the petition fully advising this Court as to the Committee's reason for its decision and admitting or contesting any assertions made by the applicant in the petition. Thereupon this Court ~~shall~~will consider the papers so filed, together with the petition and response, and make such order, hold such hearings, and give such directions as it may in its discretion deem best adapted to a prompt and fair decision as to the rights and obligations of applicant judged in the light of the Committee's and this Court's obligation to the public to see that only qualified applicants are admitted to practice as attorneys at law. No reply in support of the petition may be filed unless ordered by the supreme court *sua sponte*.

2. through 3. [No change]