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9 **IN THE SUPREME COURT**
10 **STATE OF ARIZONA**

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PETITION TO AMEND RULE 34
OF THE ARIZONA RULES OF THE
SUPREME COURT

Supreme Court No. R-12-0002
**Comment of the State Bar of
Arizona on Petition to Amend
Rule 34, Ariz. R. Sup. Ct.**

The State Bar of Arizona supports Petition No. R-12-0002, which would amend Rule 34, Ariz. R. Sup. Ct., to allow third-year law students to take the bar examination.

If adopted, the rule, which was proposed by the deans of the three Arizona law schools, would require the schools to certify that those students are enrolled in a course of study that, if satisfactorily completed, will result in graduation within 120 days following the bar examination, and that the students otherwise satisfy the law school's certification requirements. If a student does not graduate within 120 days, then the examination results would be void.

According to the National Conference of Bar Examiners, fourteen jurisdictions currently allow third-year students to take the bar examination prior to receiving their degrees, although they have varying restrictions:

- Six states – Kentucky, Missouri, New York, Vermont, Virginia, and West Virginia – allow students to take the examination as long as they

1 have completed their degree requirements, even though the degree may
2 not have been conferred.

- 3 • Six states allow students to take the examination as long as they will
4 receive their degrees within a specified time afterward:
 - 5 ○ 60 days for Mississippi, Nebraska, and Wisconsin;
 - 6 ○ 45 days for Iowa; and
 - 7 ○ 30 days for North Carolina and Kansas.
- 8 • Texas allows students who are within four credit hours of completing
9 graduation requirements to take the examination.
- 10 • Indiana allows students to take the examination if they have fewer than
11 five credit hours to complete, are within 100 days of graduation, and have
12 completed two hours of professional responsibility training and all
13 requirements for bar admission.

14 At least one state formerly allowed law students to take the bar examination
15 before graduation but no longer does. Beginning in 1974, Georgia allowed all law
16 students to take the bar examination that was administered immediately before they
17 graduated. Georgia reversed course in 1995 to again require that examinees have
18 graduated.

19 According to an October 1995 memorandum prepared by the Georgia
20 Supreme Court Office of Bar Admissions, attached hereto as Appendix A, the
21 Georgia court changed the rule because:

- 22 • Most students took advantage of the opportunity to take the bar
23 examination early, and the third year of law school was “severely
24 disrupted” by students studying for it rather than attending and
25 participating in classes;

- 1 • Law schools had to adjust their curricula to put more core classes into
- 2 the first two years and to schedule spring break in February;
- 3 • Students missed educational experiences, including clinical
- 4 opportunities;
- 5 • After taking the examination, students had difficulty returning to the
- 6 law school routine; and
- 7 • The Georgia Board of Bar Examiners believed that bar examination
- 8 performance would improve if students could study for it full time
- 9 without competing classroom demands.

10 According to the Georgia memorandum, the Board of Bar Examiners requested the
11 change after discussing the matter with the state's law school deans.

12 Despite Georgia's experience, the Arizona deans have a well-thought-out
13 plan for allowing only "certified" law students to take the bar examination that is
14 part of a larger response to the "critiques of modern legal education." See
15 memorandum attached as Appendix B distributed by the petitioners at the March 2,
16 2012, State Bar Board of Governors Rules Committee meeting.

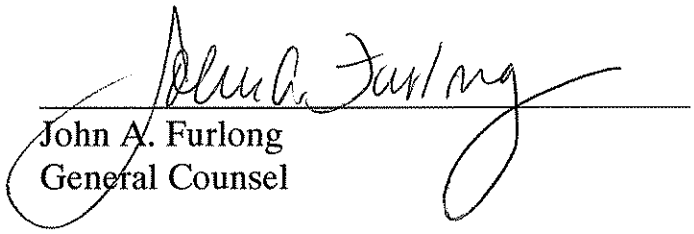
17 For those students who opt to take the bar examination and are certified to
18 do so, the University of Arizona and Arizona State University law school deans
19 plan to modify their third-year, second-semester curricula to accommodate them,
20 and to focus the post-examination period on classes "that are more closely tied to
21 the transition from theory to practice."

22 The State Bar Board of Governors Rules Committee sought input on this
23 proposal from bar members but received only six responses. Five lawyers who
24 responded disagreed with the petition, arguing – among other points – that law
25 students cannot juggle law school with studying for the bar examination. The sixth
26 comment came from a first-year law student who supported the petition.

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For the above reasons, the State Bar of Arizona supports allowing third-year law students to take the bar examination.

RESPECTFULLY SUBMITTED this 7th day of May, 2012.



John A. Furlong
General Counsel

Electronic copy filed with the Clerk of the Supreme Court of Arizona this 7th day of May, 2012,

by: Kathleen A. Lundgren

APPENDIX A

SUPREME COURT OF GEORGIA
OFFICE OF BAR ADMISSIONS

POST OFFICE BOX 38466
ATLANTA, GEORGIA 30334

BOARD TO DETERMINE FITNESS
OF BAR APPLICANTS

BOARD OF BAR EXAMINERS

HULETT H. ASKEW
DIRECTOR OF ADMISSIONS

MEMORANDUM

To: Chief Justice Benham
From: Hulett H. Askew *B.*
Date: October 23, 1995
Subject: "Early Bar" Rule

As we discussed, I have prepared the attached one page description of the Court's decision to change the "early bar" rule. Once you have edited and approved this document, I would propose that I meet with Tom Boller to provide this to him for his use and to seek advice from him about how else we should prepare for legislative interest in this issue.

I will wait to hear from you before doing anything further.

CHANGE IN "EARLY BAR" RULE

In 1994 the Supreme Court of Georgia acted upon a request from the Board of Bar Examiners and entered an order changing the "early bar" rule. This rule permitted all third year law students to take the bar examination in February of their third year of law school, prior to completion of their legal studies. The Court changed the rule to require graduation before taking the bar examination.

The reasons the Court changed the rule are as follows:

- Georgia was the only state in the U.S. that permitted all third year students to take the exam early (some allow for hardship waivers on a case-by-case basis);
- the third year of law school was severely disrupted by students studying for the bar exam rather than attending and participating in class;
- law schools were forced to adjust their course schedules and curriculum in response to the effects of this rule (i.e. more "core" courses in the first two years; scheduling spring break for February);
- the students were missing educational experiences, including clinical opportunities, which had been determined to be important professionally;
- after the exam, the students were exhausted both physically and psychologically and had difficulty adjusting back to the law school routine; and,
- the Board of Bar Examiners also believed that performance on the exam would improve if students take it in July after they have graduated and had full-time to prepare without the demands of classroom preparation.

Ultimately, the Supreme Court and the Board of Bar Examiners believe that the sacrifice to a student's legal education far outweighs any head start these students obtained by taking the bar exam early, a benefit which they could not obtain in any other state. Therefore, the Court changed the rule and as of July 1, 1995 the Rules Governing Admission to the Practice of Law in Georgia require law school graduation before sitting for the bar examination.

APPENDIX B

Petition to Amend Rule 34, Rules of the Arizona Supreme Court

Summary and Background

The Petition to Amend Rule 34, submitted by the three Arizona law schools, responds in part to the critiques of modern legal education, and in particular the third year of law school, as not sufficiently focused on preparing students for practice. The proposed rule change also responds to significant increases in the cost of legal education and the highly competitive state and national job market.

Summary of proposed changes

- The changes proposed to Rule 34 would allow third year law students, subject to policies developed by the school they attend, to take the Arizona bar exam in February of their third year.
- This would be an **option** for students. Any student wishing to pursue this option would have to comply with the policies of their law school in order to be certified to take the exam. Any student wishing to take more traditional courses and clinics could do so.
- All other requirements for taking the bar exam and being admitted to the bar would remain the same – only the timing of taking the bar exam would change.

Benefits of the proposed changes

- Allowing third year law students to take the February bar exam would allow the applicants to receive the results of the bar exam in May – about five months earlier than they would receive their results if they took the July bar exam.
- This would allow those who pass the exam to begin work earlier, effectively reducing the cost of their legal education.
- It would also allow students to compete at graduation for the many jobs in both the private and public sector which require bar admission, rather than having to wait until October for admission to the bar.
- Students who took the Arizona bar exam in February could also opt to take another state's bar exam in July, giving the student more employment options.

Changing the Third Year to Focus on Practice

- If the proposed changes are adopted, schools that allow their students to take the February bar would make curricular changes.
- The University of Arizona James E. Rogers College of Law and the Sandra Day O'Connor College of Law at Arizona State University will modify the third year second semester curriculum **for those students who opt to and are certified by the school to take the February Bar** as follows:
 - January and February would be set aside for bar study so that the students could enroll in a bar review preparation course, just as they do for the July bar. Generally students would be prohibited from taking classes and working during this time, although one course might be required, offered to complement bar preparation.
 - From March through the end of the academic year, a different array of classes would be offered that are more closely tied to the transition from theory to practice. In addition, field placements might be offered during March and April to help bolster this transition.
 - These short courses would address subjects such as emerging issues in different areas of practice; recurring discovery issues; collegiality, professionalism, and ethics; client development; malpractice; law office management; effective motions practice; appellate practice; Bar resources; evidence in the courtroom.
- Depending on the law school, third year students who do not opt for the February bar could take a traditional curriculum, or could take the "theory to practice" curriculum.