

SUPREME COURT OF ARKANSAS

IN RE RULES GOVERNING
ADMISSION TO THE BAR OF
ARKANSAS

Opinion Delivered February 18, 2010

PER CURIAM

By per curiam order dated January 11, 2007, this court authorized the Board of Law Examiners to use the Multi-State Essay Examination (MEE), which is developed by the National Conference of Bar Examiners (NCBE), to the extent it could under the existing testing regimen. At that time, and currently, the Arkansas Bar Examination is administered over two and one-half days. Four essay examinations are given on Tuesday afternoon and four on Thursday morning. The Thursday morning questions are written by members of our Board. MEE questions can *only* be given on Tuesday afternoon since it is a nationwide test.

The crux of the matter is that our current rules allow each applicant forty-five minutes in which to answer each essay question. Thus, currently, only four MEE questions could be given on Tuesday afternoon, which would not ensure that all eleven subjects required by Rule IX would be covered during the examination by either MEE questions or the Multi-State Bar Examination (MBE).



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At its most recent meeting, the Board unanimously voted to recommend that the testing time allotted for each essay question be reduced to thirty minutes. In this manner, six MEE questions can be given on Tuesday afternoon and the locally developed Arkansas questions that had previously been given on Thursday morning can be eliminated. Although there will be a net reduction of two essay questions, the Board is satisfied that, either through the MBE or the MEE, all eleven subjects should be covered by each examination. In the highly unlikely circumstance that the MEE questions offered for any given exam did not (when combined with the MBE) cover all eleven subjects, the Board voted unanimously to ask the court to change the mandatory “shall” in paragraph A of Rule IX to the permissive “may,” so that it reads: “All examinations shall be in writing and *may* cover the subjects hereinafter listed”

At the request of the Board, this court authorized the employment of expert consultants to evaluate the effect of the proposed change on the pass/fail rate. The consultants (who are utilized by a number of other states for similar purposes) evaluated our applicants’ performance over the last six exams in light of whether the proposed changes would have any material effect on the pass/fail rate. The professional opinion of the consultants was that there would be “no significant loss of precision” provided that the MBE be given fifty percent of the weight in determining an applicant’s pass/fail status. As a consequence, also at its most



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recent Board meeting, the Board voted unanimously to recommend such a change in the rule.

The Board noted that having the NCBE draft all essay questions and provide model answers will lend uniformity and objectivity to the essay part of the exam and allow the Board to take advantage of NCBE's expertise.

We agree with the unanimous request of the Board of Law Examiners and amend certain rules of the *Rules Governing Admission to the Bar of Arkansas* as follows:

1. Paragraph A titled "General Examination" of Rule IX shall be amended to read as follows:

A. General Examination

All examinations shall be in writing and may cover the subjects hereinafter listed and such other subjects as the Board may direct, subject to prior Court approval.

2. Further on in Rule IX the paragraph titled "Pass/Fail Determination" shall be amended as follows:

Pass/Fail Determination

The answers to each essay question and each MPT question will be graded on a scale ranging from 65 through 85. This score shall be designated as the applicant's "raw" score on a question. The raw score on each MPT question will be multiplied by 1.5. The resulting products from the MPT questions will be added to the sum of the raw scores from the essay questions to yield a "total written raw" score.

The distribution of the total written raw scores acquired by applicants on a given examination will be converted to a score distribution that has the same mean and standard deviation as



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those same applicants' Multistate Bar Examination scale scores on that examination. The score on this converted scale that corresponds to the applicant's total written raw score shall be designated as the applicant's "written scale" score. An applicant's total examination score shall be determined by the following formula: **total score = written scale score + MBE scale score**. An applicant shall pass the examination if he or she earns a total score of **270** points or higher.

Finally, the "standard" of forty-five minutes being allotted in which to answer each essay question was never memorialized as a rule. In a per curiam order dated November 30, 2000, this court adopted the Multi-State Performance Test (MPT) and made other modifications to our testing format. At that time we adopted the forty-five-minute provision. By this per curiam, we rescind that previous language and now direct the Board of Law Examiners to allot thirty minutes in which to answer an essay question. To be clear, the thirty minutes is an NCBE "recommended" period of time for each question. In actual practice, each exam session is three hours in length and by allotting thirty minutes per answer, six questions can be given instead of four. It is this change that allows use of the MEE as the source of all essay questions in that six can now be given on Tuesday afternoon as opposed to only four.