

FLORIDA BOARD OF BAR EXAMINERS

# **TESTING COMMISSION**

FINAL REPORT  
TO THE  
SUPREME COURT OF FLORIDA

SUBMITTED MARCH 11, 2009

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## **Purpose and Work of the Florida Board of Bar Examiners Testing Commission**

The Florida Board of Bar Examiners (Board) is an administrative agency of the Supreme Court of Florida charged with making recommendations to the Court for the admission of applicants to The Florida Bar. In fulfilling its responsibilities to the Court, the Board conducts a character and fitness investigation and requires passing the bar examination. “The primary purpose of the bar examination is to ensure that all who are admitted to The Florida Bar have demonstrated minimum technical competence.” (Rule 1-15.1 of the Rules of the Supreme Court Relating to Admissions to the Bar).

Chief Justice R. Fred Lewis appointed the Board's Testing Commission (Commission) by Administrative Order No. AOSC08-20 dated June 17, 2008.

The Administrative Order created the Commission for the following purposes:

- To evaluate the data, information, and materials previously collected by the Board;
- To obtain any further data or materials that may be necessary for an informed decision;
- To formulate and submit recommendations to the Board and the Court as to the subjects and any particular areas within those subjects which should be included in the Florida Bar Examination.

The Commission convened in Coral Gables on July 17, 2008, and established five committees to consider specific areas of law for Part A of the General Bar Examination and to make recommendations to the full Commission. Upon completion of their assigned tasks, the committees' reports and

recommendations were considered by the Commission in Tampa on October 14, 2008. Drafts of a final report were circulated for comment and a telephonic meeting was held on February 13, 2009. In due course, the Commission adopted the recommendations in this report.

The Board's staff provided the following reference materials to each committee:

- Scope of the Board's Test Specifications Project
- The information collected through the Test Specifications Project including the Survey Instruments and Survey Results
- Excerpts from The Bar Examiner article titled, *Admission to the Bar: We've Come a Long Way*, February 1999
- Article from The Alabama Lawyer titled, *The New Alabama State Bar Exam*, July 2003
- October 2, 2003 change to Rules Governing Admission to the Practice of Law in Georgia concerning the subjects covered on the essay portion of the Georgia Bar Examination
- Table prepared by the National Conference of Bar Examiners (NCBE) comparing subjects tested in other jurisdictions
- Chronology of subjects and format of Florida Bar Examination from 1963-2008
- Florida Bar Examination Study Guide
- 2008 Multistate Bar Examination (MBE) Information Booklet provided by NCBE
- 2008 Multistate Professional Responsibility Examination (MPRE) Information Booklet provided by NCBE
- NCBE Comprehensive Guide to Bar Admission Requirements 2007 and 2008

## Members of the Florida Board of Bar Examiners Testing Commission

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### **Chair's Remarks**

Since June, 2008, the members of the Commission have actively participated and contributed many voluntary hours toward this final report. The inclusion in the membership of the Commission of judges, former Justices of the Florida Supreme Court, law professors and deans, former bar examiners, as well as practicing attorneys, provided a broad perspective for the review of the subjects tested on the Bar Examination as well as the test specifications in each subject area tested.

The Commission is grateful to Michele Gavagni, Tom Pobjecky, Brian Rains and all of the staff of the Florida Board of Bar Examiners for their support and input in this process. The Commission also acknowledges the generous assistance of The Florida Bar in hosting the Commission meeting held in October 2008.

Last, but not least, we would like to thank the Supreme Court of Florida for their steadfast support of the Board of Bar Examiners and their work in the bar admissions process. The Commission particularly appreciates Justice Lewis' active participation in the Commission's meetings and deliberations.

It is my honor to respectfully present this final report of the Florida Board of Bar Examiners' Testing Commission. It has been a privilege to chair this Commission and to work with the members of the Commission.

Franklin R. Harrison  
Chair  
Florida Board of Bar Examiners  
Testing Commission

## **Executive Summary**

The Commission offers a number of recommendations for the Court's consideration. While acknowledging the considerable efforts of the Board to ensure the reliability and validity of the Florida Bar Examination (Exam), the Commission has identified areas in which the examination can be improved. In conducting its study, the Commission affirms the importance of identifying those areas most important to the competent practice of law and of producing test specifications for utilization by both the drafters and the bar applicants.

The Commission commends the Board and its staff for their efforts to ensure that Part A of the General Bar Examination remains a reliable, valid, and fair instrument for measuring minimum technical competence of Florida bar applicants. The Board's practice of utilizing a test and measurement consultant to review the overall performance of the examination and each question on the examination, to make sure that each is performing within acceptable limits, is laudable.

## **Test Subjects**

- 1) The Commission recommends that Articles 3 and 9 of the Uniform Commercial Code be added as test subjects. The Commission defers to the board on implementation of this recommendation.
- 2) The Commission recommends that "Criminal Law" be renamed "Criminal Law and Constitutional Criminal Procedure."

### Test Specifications

- 1) The Commission recommends that the Board adopt the recommended test specifications regarding the areas of law tested on Part A of the Exam as shown in Appendix 3.
- 2) The Commission recommends that the Board make the test specifications available to the item drafters for guidance in the development of new test questions and that from these test specifications the Board produce a condensed version of the specifications to be provided to bar applicants and the general public for their use in preparation for the Exam.
- 3) The Commission recommends that the Board continue to select the manner in which the areas of law be tested, whether by essay question or multiple-choice question.
- 4) The Commission encourages the Board to continue to review testing options, such as performance testing, that may provide for an even more reliable and valid examination.



## **Background Information on the Florida Bar Examination**

In 1955, the Supreme Court of Florida created the Board as an agency of the Court to administer the admissions process for applicants to The Florida Bar. The Rules of the Supreme Court Relating to Admissions to the Bar (Rules) require that all applicants for admission produce satisfactory evidence of technical competence by passing all parts of the Florida Bar Examination.

The Board administers the General Bar Examination. The examination occurs in February and July of each year. In 2008, the Board tested 4,743 applicants. Currently, the Florida-prepared portion of the examination consists of three essay questions and 100 multiple-choice questions.

The following is a history of the format of the Exam:

- 1956 March examination was administered over 3 days and contained 48 essay/short answer questions.
- 1961 Examinations were scheduled for 2 per year; 20 essay questions were answered and graded.
- 1965 Board approved use of multiple-choice testing in addition to essay testing.
- 1970 3 examinations were given per year with a mix of multiple-choice and essay questions. Board voted to adopt the use of Multistate Bar Examination (MBE).
- 1976 Ethics examination was prepared in Florida (40 multiple-choice questions given over a 1-hour period) and administered.
- 1977 Four examinations were given per year (February, May, July, October) with a mix of multiple-choice and essay questions and the MBE in February and July.
- 1981 Two of 4 examination administrations were eliminated, limiting testing to the entire examination in February and July. Part A consisted of 4 essays and 80 multiple-choice questions. Part B was the MBE. The Multistate Professional Responsibility Examination (MPRE) replaced the Florida Ethics portion of the examination.
- 1990 General Bar Examination format changed. Part A consisted of 3 essays and 120 multiple-choice questions. Part B was the MBE.

2000 General Bar Examination format changed. Part A was changed to 3 essay questions and 100 multiple-choice questions with the introduction of “performance” multiple-choice questions. Part B remained the MBE.

Rule 4-22 of the Rules states:

**4-22 Part A.** Part A will consist of 6 one-hour segments. One segment will include the subject of Florida Rules of Civil and Criminal Procedure and the Florida Rules of Judicial Administration 2.051, 2.060, and 2.160. The remaining 5 segments, each of which will include no more than 2 subjects, will be selected from the following subjects including their equitable aspects:

- (a) Florida constitutional law;
- (b) federal constitutional law;
- (c) business entities including corporations and partnerships;
- (d) wills and administration of estates;
- (e) trusts;
- (f) real property;
- (g) evidence;
- (h) torts;
- (i) criminal law;
- (j) contracts;
- (k) family law;
- (l) Chapter 4, Rules of Professional Conduct of the Rules Regulating The Florida Bar; and
- (m) Chapter 5, Rules Regulating Trust Accounts of the Rules Regulating The Florida Bar.

These areas of law have been tested on Part A of the General Bar Examination since 1988 when the Supreme Court of Florida approved Chapters 4 and 5 of the Rules Regulating the Florida Bar as additions to the existing list of possible examination topics.

### **Background Information on the Test Specifications Project**

After advertising nationally and soliciting proposals, the Board's Confidential Committee on Demographic Information selected Mary M. Sandifer, Ph.D., of South Carolina, to conduct a review of Florida's testing program.

Dr. Sandifer reviewed the test specifications/content, test development in multiple-choice questions and essays, and administration of the examination. Dr. Sandifer commended the psychometric soundness of the Board's procedures, the efficiency and management of the overall testing program, the practice of pre-testing both essay and multiple-choice questions, and the Board's commitment to maintaining high standards in all practices. Dr. Sandifer recommended a review of the test specifications for the Florida-prepared part of the bar examination.

In May 2003, members of the staff of the Board first met with Dr. Sandifer to plan the test specifications project. Dr. Sandifer prepared and submitted a proposal to complete the test specifications project.

With the assistance of Dr. Sandifer, the Board's staff developed questionnaires that were distributed to experienced attorneys, law school professors, and members of the Board's reader cadre. The questionnaires solicited the participants' opinions as to the most important aspects of each area of law to be tested on the bar examination.

The surveys asked the participants to weigh the relative importance of each aspect of the area of law: i.e., how frequently the need for it arises; the difficulty of understanding or recognizing it; whether it is information that can be easily

looked up; and the consequences of not knowing. The survey requested the participants to assign a value of 1-3 with 1 being most important and 3 being least important. The surveys further asked the participants to rate each concept on whether it required original or creative thinking to determine if essay or multiple-choice questions would be the best instrument for testing. The Board's staff compiled the results of the surveys and presented the data to the Commission for review.

## **Recommendations**

The Chair of the Commission created four Committees to review the areas of law currently tested on Part A of the General Bar Examination and to make recommendations to the full commission as to which aspects of those areas of law should be tested. A fifth Committee was created to consider whether additional areas of law should be tested.

## **Test Specifications**

Each Committee reviewed the materials provided by the Board's staff in relation to the areas of law it was responsible for evaluating. These four Committees were charged with the task of submitting recommended test specifications in specific subject areas for consideration by the full Commission.

Committee I, chaired by Robert Jerry, reviewed the following areas of law and made recommendations regarding test specifications:

- 1) Real Property
- 2) Contracts
- 3) Business Entities including corporations and partnerships

Committee II, chaired by Arthur England, reviewed the following areas of law and made recommendations regarding test specifications:

- 1) Florida Rules of Judicial Administration 2.051, 2.060, and 2.160
- 2) Wills and Administration of Estates
- 3) Trusts

- 4) Chapter 4, Rules of Professional Conduct of the Rules Regulating the Florida Bar
- 5) Chapter 5, Rules Regulating Trust Accounts of the Rules Regulating The Florida Bar

Committee III, chaired by Steven Wisotsky, reviewed the following areas of law and made recommendations regarding test specifications:

- 1) Criminal Law
- 2) Family Law
- 3) Florida Rules of Criminal Procedure
- 4) Evidence

Committee III also recommended that “Criminal Law” be renamed “Criminal Law and Constitutional Criminal Procedure.” The Committee believed this would be a more appropriate description of the subject matters being tested in Criminal Law.

Committee IV, chaired by Goretta Hall, reviewed the following areas of law and made recommendations regarding test specifications:

- 1) Florida Rules of Civil Procedure
- 2) Torts
- 3) Florida constitutional law
- 4) Federal constitutional law

The Commission considered the recommendation of each Committee and the Commission's final recommended test specifications for each area are included in Appendix 3.

#### Publication of Test Specifications

Currently, Rule 4-22 of the Rules provides the only official notification to bar applicants as to the areas of law that are tested on Part A of the General Bar Examination; all 15 areas are listed and applicants are advised the examination will consist of six one-hour segments, one of which will include Florida Rules of Civil and Criminal Procedure and the Florida Rules of Judicial Administration. The Board's publication of test specifications would enable applicants to better focus their examination preparation efforts.

The detailed test specifications would also be used by drafters to design the essay and multiple-choice questions in accordance with the aspects of each area of law deemed to be most important by the Commission.

The Commission recommends that the Board make the detailed test specifications available to the drafters for guidance in the development of new test questions. Dr. Sandifer and Dr. Susan Case, the Director of Testing of the National Conference of Bar Examiners, both expressed their opinions that the detailed specifications being recommended would be helpful to the item drafters. They also opined that a condensed version, rather than the detailed version, would best assist applicants in preparing for the Exam. As a result, the Commission further recommends that the Board produce a condensed, yet

comprehensive, version of the specifications to be made available to bar applicants and the general public.

#### Essay vs. Multiple-Choice Questions

Based on information provided by the Board's staff concerning the history and rationale for testing each of the areas of law in Part A with either an essay or a set of multiple-choice questions, the Commission recommends that the manner of testing for each area should continue to be determined by the Board in its discretion.

#### New Areas of Law to be Tested

Committee V, chaired by Leonard Strickman, recommended that Conflict of Laws and Articles 3 and 9 of the Uniform Commercial Code be added as test subjects on Part A of the Exam. The Commission recommends that only Articles 3 and 9 of the Uniform Code be added to the list of topics and that they be tested either as a stand-alone area of law or incorporated into one of the other areas of law. The Commission defers to the Board on implementation of that recommendation. In any event, the applicants and the law schools should be given adequate notification prior to the inclusion of these areas in an administration of the Exam.



## **Appendix**

1. Administrative Order No. AOSC08-20
2. Rules of the Supreme Court Relating to Admissions to the Bar
3. Proposed Test Specifications
4. Survey instruments with instructions
5. Curriculum vitae of Mary Sandifer, Ph.D.
6. Subjects tested in other jurisdictions