STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8008

OFFICE OF
APPELLATE COURTS
MAY 02 2012
FILED

ORDER FOR HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE RULES FOR ADMISSION TO THE BAR

IT IS HEREBY ORDERED that a hearing be held before this Court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on August 21, 2012 at 2:00 p.m., to consider a Petition from the Board of Law Examiners (BLE) to amend the Rules for Admission to the Bar to modify the list of tested topics and the format of the bar examination so as to permit Minnesota to become a Uniform Bar Examination (UBE) jurisdiction by 2014. A copy of the petition is annexed to this order. In addition, the Court will consider an amendment to Rule 4B, Rules for Admission to the Bar, to delete an applicant's option of designating the Clerk of Appellate Courts as agent for service of process.

IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 12 copies of such statement with Bridget Gernander, Clerk of Appellate Courts, 305 Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Boulevard, St. Paul, Minnesota 55155, on or before July 27, 2012, and

2. All persons desiring to make an oral presentation at the hearing shall file 12 copies of the material to be so presented with the Clerk of Appellate Courts, together with 12 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before July 27, 2012.

DATED: May 1, 2012

BY THE COURT:

Lorie S. Gildea
Chief Justice

STATE OF MINNESOTA
In Supreme Court

FILE NO. ADM-10-8008

Petition of the Minnesota State Board of Law Examiners for Amendment of the Rules for Admission to the Bar

PETITION FOR RULE AMENDMENT

TO: THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

Petitioner, the Minnesota State Board of Law Examiners ("Board"), respectfully petitions this Court to amend the Rules for Admission to the Bar ("Rules") in order to make certain modifications to the list of tested topics and to the format of the bar examination permitting Minnesota to become a Uniform Bar Examination (UBE) jurisdiction by 2014.

1. The Minnesota Supreme Court has the exclusive and inherent power to regulate the practice of law in Minnesota. Minn. Stat. §481.01 (2011).

2. Under the supervision of the Court, the Board is responsible for ensuring that lawyers who are admitted to the Bar in Minnesota have the competence as well as the character and fitness required to maintain the trust and confidence of clients, the public, the legal system, and the legal profession. Rule 1 of the State of Minnesota Rules for Admission to the Bar (2011).

3. The Board seeks certain Rule amendments that will change the present format of the Minnesota Bar Examination. Currently, the Minnesota Bar Examination includes

one 90-minute Multistate Performance Test (MPT) question,[1] six 45-minute essay questions drafted by out-of-state law professors, and 200 Multistate Bar Examination (MBE)[2] questions. The Minnesota bar examination has been comprised of these test instruments since the MPT was added in 2001. The MBE has been a part of the Minnesota Bar exam since 1980.

4. The Board seeks to make changes to the Minnesota Bar Examination to permit Minnesota to become a Uniform Bar Examination (UBE) state. A UBE state is a U.S. jurisdiction that administers a common set of bar exam components in accordance with agreed upon policies and procedures thereby permitting examinees to achieve a score that may be transported to another UBE state for the purpose of being admitted in that state without sitting for another bar examination.

5. As a UBE state, examinees sitting for the Minnesota Bar Examination will achieve a score that may be used not only to qualify for admission in Minnesota but also to seek admission in other UBE states. Each UBE jurisdiction sets its own passing score and dictates other requirements for admission, such as character and fitness. Currently nine jurisdictions have adopted or conditionally approved adoption of the UBE.[3] Many other states are contemplating becoming UBE states. The value of being a UBE state will continue to grow as more states adopt the UBE.

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[1] The Multistate Performance Test is designed to test an applicant's fundamental lawyering skills in a realistic legal task. Each performance test includes a file containing the facts of the case, a library containing cases, statutes, regulations, or rules, and the written task the examinee is to complete, using only the factual information contained in the file and legal authority found in the library. Currently 33 of the 50 states and the District of Columbia use at least one MPT question on the bar exam, and two other states have approved its use on future exams.

[2] The Multistate Bar Examination (MBE) is a 200-question multiple choice test of legal knowledge in the areas of Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Real Property, and Torts. Currently, 48 of the 50 states and the District of Columbia use the MBE on the bar exam, and one additional state will begin using the MBE in July 2013.

[3] Alabama, Arizona, Colorado, Idaho, Missouri, Montana, Nebraska, North Dakota, and Washington. (See also Paragraph 16.)

6. Grading will continue to be done locally. Each UBE jurisdiction grades the Multistate Essay Examination (MEE)[4] and MPT answers of the applicants tested in that jurisdiction. Raw scores are then sent to the National Conference of Bar Examiners (NCBE) so that the NCBE can scale the examinees' MEE and MPT scores to the range of MBE scores achieved in that state. To enhance consistency in grading, NCBE provides detailed grading materials and guidelines for use by graders in the UBE states. UBE jurisdictions may participate, in person or telephonically, in grading workshops held by NCBE after each administration of the examination. The grading workshops are led by experienced facilitators familiar with the question being graded. The workshop familiarizes graders with the grading materials and encourages calibration of grading standards among UBE states. During the workshop, samples of examinee answers from various jurisdictions are graded and the grading standards are discussed and refined.

7. The UBE examination will be weighted as follows: each of the two MPT questions will be weighted 10%, totaling 20% of the total examination score; each of the six MEE questions will be weighted 5%, totaling 30% of the total examination score; and the MBE will be weighted 50% of the total examination score.

8. The score portability that the UBE permits is especially critical now because law graduates are entering a challenging legal job market and need to be ready to practice in the state where a job is available. In addition, a new lawyer may seek employment with, or be employed by, a national or international legal employer engaged in a multi-jurisdictional practice. Differences in the law among the various states are not significant as tested on the bar examination. Minnesota and many other states are no longer testing state-specific subjects on the bar examination but instead are testing general legal concepts within each bar exam topic. Most law

[4] The MEE is the Multistate Essay Examination, a test instrument prepared by the National Conference of Bar Examiners and designed to test an examinee's ability to identify legal issues, separate relevant from irrelevant information, present a reasoned analysis of the relevant issues, and demonstrate an understanding of the legal principals presented by the fact pattern. Currently 23 of the 50 states and District of Columbia use the MEE as part of their bar exam. One additional state is scheduled to begin testing the MEE in July 2013.

schools are also teaching general legal concepts, not state-specific law. All of these factors suggest that a uniform bar examination and a portable bar examination score will greatly facilitate the flexibility of new lawyers as they seek employment in more than one state and as they move among states early in their careers.

9. As proposed, the UBE does not diminish the existing bar examination process. In fact, it will enhance the process of determining minimum competency because it will permit the Board to consistently use carefully drafted essay questions and it will increase the number of performance questions that simulate practice problems a new lawyer is likely to encounter.

10. The UBE is comprised of the following test components, all of which are made available by the National Conference of Bar Examiners: two 90-minute Multistate Performance Test (MPT) tasks; six 30-minute Multistate Essay Examination (MEE) questions, and the 200-question multiple-choice Multistate Bar Examination (MBE).[5]

11. To become a UBE state, Minnesota must bring its bar examination into conformity with the format used by other UBE states. This can be done by increasing the number of MPT questions currently used from one per examination to two per examination, and by discontinuing the use of out-of-state law professors to draft 45-minute essay questions. As a UBE state, Minnesota would administer six 30-minute MEE essay questions drafted by the NCBE. The same six MEE questions are used by all UBE states. Minnesota, like 48 other states and the District of Columbia, will continue to use the MBE.[6]

12. Each of the MEE questions is drafted and edited by a committee of the National Conference of Bar Examiners comprised of law professors, practitioners and judges who have expertise in the specific subject matter being tested. Once drafted and

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[5] The Director of the Minnesota Board of Law Examiners is a member of the Board of Trustees of the National Conference of Bar Examiners, a not for profit corporation headquartered in Madison, Wisconsin.
[6] Currently, Louisiana and Washington are the only two states that do not use the MBE. When Washington becomes a UBE state in July 2013, it will begin using the MBE and Louisiana will be the only state that will not be using the MBE.

edited, questions are pre-tested by recently admitted lawyers. The pre-testers' responses are carefully reviewed by the question drafters as well as NCBE testing experts and the questions are edited accordingly. This process is designed to determine whether the questions are functioning appropriately when taken under exam conditions by individuals whose background and experience are similar to that of bar applicants. Questions that do not perform as anticipated are modified and pretested again, or eliminated entirely from consideration. The result is a set of professionally drafted and carefully edited examination questions that operate with a high degree of accuracy and reliability as test instruments. The Board's current process of obtaining essay questions from out of state law professors and then pretesting and editing them locally, does not produce essay questions that are as carefully drafted and edited as those that comprise the MEE.

13. The Board has been carefully studying the UBE process for the past several years. In contacting other states, the Board determined that several have given up their state essays in favor of using the MEE because they found it to be a superior test instrument when compared with state drafted essay questions. The Board concluded that Minnesota examinees stand to be significantly benefitted by the adoption of the MEE as one of the components of the UBE.

14. The Board's primary interest in adopting the UBE is to provide Minnesota's examinees with a degree of score portability rather than requiring that examinees take one state bar exam after another to earn the ability to practice in more than one state. Because the bar examination is administered throughout the country only twice a year, examinees are significantly limited in their options if their employment requires that they be licensed in another jurisdiction or in multiple jurisdictions.

15. In the months leading up to the filing of this Petition for Rule Amendment, the Board convened a meeting of the Bar Admissions Advisory Council[7] including the deans of

[7] The Bar Admissions Advisory Council is convened under the authority of Rule 19 of the Rules for Admission to the Bar and is comprised of representatives of the MSBA and each of the Minnesota law

the four Minnesota law schools as well as representatives of the Minnesota State Bar Association (MSBA) and discussed at length the reasons to become a UBE state. During this June 2011 meeting, the Minnesota law school deans each expressed support for the Board's proposal to become a UBE state stating that they appreciated the benefits that such a bar exam would provide to their graduates who are entering a difficult legal job market. The deans were supportive of the Board moving to the UBE even though it would require some modification in the specific subjects tested on the Minnesota Bar exam. The two MSBA representatives on the Bar Admissions Advisory Council, who were present at the meeting, were also in favor of the change.

16. Over the past two years, nine jurisdictions have agreed to become UBE states: Missouri (effective February 2011), North Dakota (effective February 2011), Alabama (effective July 2011), Colorado (effective February 2012), Idaho (effective February 2012), Arizona (effective July 2012), Nebraska (conditionally approved with anticipated effective date of February 2013), Washington (effective July 2013), and Montana (conditionally approved with an effective date to be determined). Several other jurisdictions are actively discussing the possibility of becoming UBE states.

17. Adopting the UBE will increase exam score portability and make it possible for Minnesota law school graduates to seek admission in any of the above jurisdictions without retesting. In addition, it will permit applicants who have taken a UBE in another jurisdiction to use that UBE score to seek admission in Minnesota without retesting.[8] Before an individual with a UBE score is admitted in Minnesota, the

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schools and provides a forum for those interested in bar admissions to meet with the Board and discuss policy considerations, possible rule amendments and other matters related to bar admissions.

[8] Applicants who have obtained a scaled MBE score of 145 or higher on a bar examination taken within the past two years may apply for admission on motion in Minnesota under Rule 7B so long as the applicant was successful on the examination in the state where tested and was admitted there. The Board does not review the essay answers of applicants under Rule 7B because the Board has determined that it is highly unlikely that an examinee with a MBE score of 145 achieved in another state would fail the Minnesota bar examination. By contrast, a UBE applicant would need only a 260 on the UBE (the same passing score as one who sits for the examination in Minnesota) and would not need to first be admitted to the jurisdiction where the UBE was taken in order to be admitted in Minnesota on the basis of the UBE score.

Board office will conduct a full character and fitness investigation and recommend admission based upon its investigation.

18. In order to become a UBE state, several changes will need to be made to the Board's Rules, beginning with the addition of a definition of the Uniform Bar Examination as stated in proposed amended Rule 2A(12).

19. Rule 6E lists the topics that are currently tested by essay in Minnesota. The proposed amendment to Rule 6E will modify the list of tested topics to conform to the list of topics tested by the MEE. The proposed topic amendments are as follows:

    a. Federal Income Taxation would be removed from the list of examination topics. Income Taxation is not one of the tested topics on the MEE.
    b. Ethics and Professional Responsibility would be removed from the list of essay examination topics but would continue to be tested on the Multistate Professional Responsibility Examination on which all Minnesota applicants must achieve a successful score. In addition, ethical considerations may be included as part of the Multistate Performance Test questions.
    c. Uniform Commercial Code (UCC) topics Secured Transactions and Negotiable Instruments would be added as both of these topics are tested on the MEE.
    d. The MEE also tests conflict of laws, a topic not included in the list of topics tested in Minnesota, but an area of the law which has nevertheless been tested on occasion because the topic is subsumed within civil procedure questions.

20. To become a UBE state, the Board must have a specific rule provision permitting a UBE test score obtained in another UBE jurisdiction to be transferred to Minnesota. The proposed Rule 7C addresses eligibility for admission by UBE score and permits an applicant who receives a scaled score of 260 or higher[9] on the UBE taken in another state to transfer that score into Minnesota, so long as the score was

[9] The UBE passing scaled score of 260 is equivalent to the scaled score of 260 currently required to pass the Minnesota bar examination.

achieved within the 36 months prior to the date of application in Minnesota. After the score is transferred, the individual is not admitted in Minnesota until the character and fitness investigation is completed and the Board makes a recommendation for admission.

21. Minnesota's current passing score is a combined scaled score of 260[10] earned on the essay, MPT and MBE sections of the exam. If Minnesota becomes a UBE state, the passing score will continue to be a scaled score of 260. Examinees who have taken the UBE in another state will qualify to be admitted to the Minnesota Bar on the basis of a scaled score of 260. There will be no difference between the passing score required of examinees who sit for the exam in Minnesota and examinees who sit for the exam in another UBE state.

22. The Board determined that 36 months is a reasonable period of time within which a UBE score should remain viable. This is consistent with current Rule 6J which provides that a passing score achieved on the Minnesota Bar Examination is valid for a period of 36 months. Six of the other UBE jurisdictions have established a time period for the life of the UBE score, with the average time being 31.5 months. The longest period of time was established in Arizona which permits a score to be valid up to 5 years. The shortest period of time is in Alabama which permits a score to be valid up to 20 months from the date the score was achieved in another state.[11]

23. NCBE maintains a central repository of UBE scores, certifies those scores as UBE scores, and transfers those scores to other UBE states at the request of the examinee. The amendment to Rule 14C(4) authorizes the NCBE to release an examinee's score to the examinee or to the bar admission authority of another jurisdiction at the written request of the examinee.

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[10] The maximum possible score is a combined (MBE, essay and MPT) total score of 400.
[11] Comprehensive Guide to Bar Admission Requirements, 2012, page 35.

24. With these proposed amendments, Minnesota will become the tenth UBE state. The number of UBE states is expected to grow as other states realize the advantages of providing examinees with transportable bar examination scores.

25. The Board recommends adoption of these changes to become effective either with the February 2014 Minnesota Bar Examination, or six months from the date the Court issues its Order, whichever is later. A delayed effective date is necessary so that the office can implement administrative changes and give timely notice of this change to prospective examinees.

The Board respectfully requests that the Court amend the current Rules for Admission to the Bar and adopt the proposed amended Rules attached to this Petition as Exhibit A.

Dated: March 19, 2012

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RULE 2. DEFINITIONS AND DUE DATE PROVISIONS

A. Definitions. As used in these Rules:

* * *

(12) "Uniform Bar Examination" or "UBE" is an examination prepared by the National Conference of Bar Examiners (NCBE), comprised of six Multistate Essay Examination questions, two Multistate Performance Test questions, and the Multistate Bar Examination.

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RULE 4. GENERAL REQUIREMENTS FOR ADMISSION

A. Eligibility for Admission. The applicant has the burden to prove eligibility for admission by providing satisfactory evidence of the following:

(1) Age of at least 18 years;
(2) Good character and fitness as defined by these Rules;
(3) Either of the following:
  (a) Graduation with a J.D. or LL.B. degree from a law school that is provisionally or fully approved by the American Bar Association; or
  (b) (i) A bachelor's degree from an institution that is accredited by an agency recognized by the United States Department of Education;
  (ii) a J.D. degree from a law school located within any state or territory of the United States or the District of Columbia;
  (iii) and that the applicant has been licensed to practice law in any state or territory of the United States or the District of Columbia in 60 of the previous 84 months, and
  (iv) the applicant has been engaged, as principal occupation, in the practice of law for 60 of the previous 84 months in one or more of the activities listed in Rule 7A(1)(c).
(4) Passing score on the written examination under Rule 6 or qualification under Rules 7A, 7B, 7C, 8, 9, or 10. An applicant eligible under Rule 4A(3)(b) but not under Rule 4A(3)(a) must provide satisfactory evidence of a passing score on the written examination under Rule 6 and is not eligible for admission under Rules 7A, 7B, 7C, 8, 9, or 10;
(5) A scaled score of 85 or higher on the Multistate Professional Responsibility Examination (MPRE); and
(6) Not currently suspended or disbarred from the practice of law in another jurisdiction.

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RULE 6. ADMISSION BY EXAMINATION

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E. Scope of Examination. The Minnesota Bar Examination shall ~~consist~~ be the Uniform Bar Examination prepared by the National Conference of Bar Examiners, comprised of six ~~essay~~ Multistate Essay Examination (MEE) questions, two Multistate Performance Test (MPT) questions, and the Multistate Bar Examination (MBE)~~, and at least one performance test question~~.

(1) Essay Questions. The essay examination is comprised of six 30-minute MEE questions, covering ~~may include~~ any one or more of the following subjects:
  Business Associations (Agency and P~~p~~artnerships~~,~~; ~~proprietorships, and~~ C~~c~~orporations~~, including~~; and Limited Liability Companies)
  ~~Civil Procedure~~

Conflict of Laws
Constitutional Law
Contracts (including contracts under the Uniform Commercial Code (UCC))
Criminal Law and Procedure
~~Ethics and Professional Responsibility~~
Evidence
Family Law
Federal Civil Procedure
Negotiable Instruments (Commercial Paper) under the UCC
~~Federal Individual Income Taxation~~
Real Property
Secured Transactions under the UCC
Torts
Trusts and Estates (Decedents' Estates; Trusts and Future Interests)
~~Uniform Commercial Code, Art. 1, 2~~
~~Wills, Estates and Trusts~~

(2) Multistate Performance Test. The performance test shall include ~~one or more~~ two 90-minute questions testing the applicant's ability to perform a lawyering task using legal and factual materials provided.

* * *

RULE 7. ADMISSION WITHOUT EXAMINATION

A. Eligibility by Practice.

(1) **Requirements.** An applicant may be eligible for admission without examination if the applicant otherwise qualifies for admission under Rule 4 (excluding applicants who qualify only under Rule 4A(3)(b)) and provides documentary evidence showing that for at least 60 of the 84months immediately preceding the application, the applicant was:

(a) Licensed to practice law;

(b) In good standing before the highest court of all jurisdictions where admitted; and

(c) Engaged, as principal occupation, in the lawful practice of law as a:

i. Lawyer representing one or more clients;

ii. Lawyer in a law firm, professional corporation, or association;

iii. Judge in a court of law;

iv. Lawyer for any local or state governmental entity;

v. House counsel for a corporation, agency, association, or trust department;

vi. Lawyer with the federal government or a federal governmental agency including service as a member of the Judge Advocate General's Department of one of the military branches of the United States;

vii. Full-time faculty member in any approved law school; and/or

viii. Judicial law clerk whose primary responsibility is legal research and writing.

(2) **Jurisdiction.** The lawful practice of law described in Rule 7A(1)(c)(i) through (v) must have been performed in a jurisdiction in which the applicant is admitted, or performed in a jurisdiction that permits the practice of law by a lawyer not admitted in that jurisdiction. Practice described in Rule 7A(1)(c)(vi) through (viii) may have been performed outside the jurisdiction where the applicant is licensed.

B. **Eligibility for Admission by MBE ~~Test~~ Score.** An applicant may be eligible for admission without examination under Rule 4A(4) if the applicant has received a scaled score of 145 or higher on the MBE taken as a part of and at the same time as the essay or other part of a written bar examination given by another jurisdiction, was successful on that bar examination, and was subsequently admitted in that jurisdiction. The applicant shall submit evidence of the score and a completed application to the Board within 24 months of the date of the qualifying examination being used as the basis for the admission.

C. **Eligibility for Admission by UBE Score.** An applicant may be eligible for admission without examination under Rule 4A(4) if the applicant has received a scaled score of 260 or higher earned in another jurisdiction on the UBE and the score is certified as a UBE score by the National Conference of Bar Examiners. The applicant shall submit evidence of the score and a complete application for admission to the Board within 36 months of the date of the qualifying examination being used as the basis for the admission.

D. **Transfer of MBE or UBE Score.** An applicant seeking to transfer a MBE or UBE score achieved in another jurisdiction to Minnesota shall submit a written request for transfer to the National Conference of Bar Examiners.

E. **MBE Score Advisory.** Upon written request, the director will advise an applicant or potential applicant who took and passed a bar examination in another jurisdiction whether or not his or her MBE score satisfies the requirements of Rule 7B. Requests for score advisory shall include the following:
(1) Complete name and social security number of the examinee; and
(2) Month, year, and jurisdiction of test administration.

F. **No Waiver of Time Requirements.** The minimum time requirements and the timely filing requirements of this Rule shall be strictly enforced.

G. **Eligibility After Unsuccessful Examination.** An applicant may be eligible for admission without examination under this Rule notwithstanding a prior failure on the Minnesota Bar Examination.

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RULE 14. CONFIDENTIALITY AND RELEASE OF INFORMATION

A. Application File. An applicant may review the contents of his or her application file with the exception of the work product of the Board and its staff. Such review must take place within two years after the filing of the last application for admission in Minnesota, at such times and under such conditions as the Board may provide.

B. Work Product. The Board's work product shall not be produced or otherwise discoverable, nor shall any member of the Board or its staff be subject to deposition or compelled testimony except upon a showing of extraordinary circumstance and compelling need and upon order of the Court. In any event, the mental impressions, conclusions, and opinions of the Board or its staff shall be protected and not subject to compelled disclosure.

C. Examination Data.

(1) Statistics. Statistical information relating to examinations and admissions may be released at the discretion of the Board.

(2) MBE Score Advisory. The director may release individual MBE scores as provided in Rule ~~7D~~7E.

(3) Transfer of MBE Score. The score of an examinee may be disclosed to the bar admission authority of another jurisdiction, upon the examinee's written request to the National Conference of Bar Examiners (NCBE).

(4) Transfer of UBE Score. The score of an examinee may be disclosed to the examinee or to the bar admission authority of another jurisdiction, upon the examinee's written request to the National Conference of Bar Examiners (NCBE).

(4)(5) Release of Examination Scores and Essays to Unsuccessful Examinees. The director may release to an unsuccessful examinee the scores assigned to each of the various portions of the examination; and, upon payment of the fee specified by Rule 12K, the director may release copies of an unsuccessful examinee's answers to the ~~essay~~ MEE and MPT questions.

~~(5)~~(6) Release of Examination Scores to Law Schools. At the discretion of the Board, the examination scores of an examinee may be released to the law school from which the examinee graduated.

D. Release of Information to Other Agencies. Information may be released to the following:

(1) Any authorized lawyer disciplinary agency;
(2) Any bar admissions authority; or
(3) Persons or other entities in furtherance of the character and fitness investigation.

E. Referrals. Information relating to the misconduct of an applicant may be referred to the appropriate authority.

F. Confidentiality. Subject to the exceptions in this Rule, all other information contained in the files of the office of the Board is confidential and shall not be released to anyone other than the Court except upon order of the Court.