STATE OF MINNESOTA

IN SUPREME COURT

C5-84-2139

ORDER FOR HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE RULES OF THE MINNESOTA SUPREME COURT AND STATE BOARD OF LAW EXAMINERS FOR ADMISSION TO THE BAR

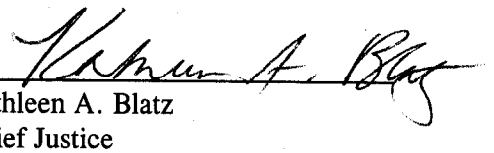
IT IS HEREBY ORDERED that a hearing be had before this Court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on April 21, 1998 at 2:30 p.m., to consider the petitions filed on December 23, 1997 and February 2, 1998 of the Minnesota State Board of Law Examiners to consolidate, edit and reorganize the Rules of the Minnesota Supreme Court and State Board of Law Examiners for Admission to the Bar into a single set of rules, to add a new test instrument called the Multistate Performance Test to the Minnesota Bar Examination, and to make other changes to the rules. The Court will also consider the petition of Michael Ravnitzky, filed on November 14, 1997, which requests that administrative portions of Board of Law Examiners meetings be open to the public and that administrative portions of board minutes, past and future, be available to the public. Copies of the petitions are annexed to this order.

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 Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Constitution Avenue, St. Paul, Minnesota 55155, on or before April 15, 1998, 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 aforesaid Clerk together with 12 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before April 15, 1998.

Dated: February 24, 1998

BY THE COURT:



Kathleen A. Blatz
Chief Justice

THE SUPREME COURT OF MINNESOTA

BOARD OF LAW EXAMINERS

Minnesota Judicial Center
25 Constitution Avenue
Suite 110
St. Paul, Minnesota 55155
(612) 297-1800
(612) 296-5866 Fax

TTY Users - 1-800-627-3529
Ask For 297-1857

Margaret Fuller Corneille, Esq.
Director

April 21, 1998

Fred Grittner
Clerk of Appellate Court
Minnesota Supreme Court
Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

RE: Stipulation
Court File No. CS-84-2139

Dear Mr. Grittner:

Enclosed for filing you will find the above-referenced Stipulation. Please distribute this document before the hearing that is scheduled for 2:30 p.m. this afternoon. Thank you.

Very truly yours,

MINNESOTA BOARD OF LAW EXAMINERS

Margaret Fuller Corneille
Director

bb
Enclosure

GRITNRMM

STATE OF MINNESOTA
IN SUPREME COURT
FILE NO. CS-84-2139

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

STIPULATION

Petitioner, the Minnesota State Board of Law Examiners ("Board"), has petitioned the Court with respect to several matters concerning the operation of the Board. We, the Deans of the three law schools in Minnesota, join in support of this petition with respect to the administration of a multi state performance test, subject to the following stipulations.

First, the Board and Deans recommend to the Court the postponement of implementation of the exam until February 2001.

Second, that prior to giving the performance test, the Board will provide opportunities for students to take sample performance tests, and will give feedback to students through mechanisms, such as conducting seminars on the performance test.

Third, that it is our understanding that the Board recognizes the concerns expressed by the Deans regarding the substantive law content and skills to be tested and the Deans and the Board have a good faith understanding that every effort will be made to have performance test questions reflect areas of substantive law for which applicants already

have notice and skills for which training is commonly available to students in ABA approved law schools.

The Deans have no comment on nor have we taken a position regarding the remaining elements of the boards petition.

Based on the foregoing, the undersigned respectfully request that the Court adopt the amended Rules as contained in the petition filed February 2, 1998.

Dated: April 17, 1998

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THE SUPREME COURT OF MINNESOTA

BOARD OF LAW EXAMINERS

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Margaret Fuller Corneille, Esq.
Director

April 14, 1998

Fred Grittner
Clerk of Appellate Court
Minnesota Supreme Court
Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

RE: Memorandum in Support of Petition of Minnesota State Board of Law Examiners for Amendment of the Rules of the Minnesota Supreme Court and State Board of Law Examiners for Admission to the Bar
Court File No. CS-84-2139

Dear Mr. Grittner:

Enclosed for filing you will find the above-referenced Memorandum with attachments.

Very truly yours,

MINNESOTA BOARD OF LAW EXAMINERS

Margaret Fuller Corneille
Director

bb
Enclosure

gritnrmm

STATE OF MINNESOTA
IN SUPREME COURT
FILE NO. CS-84-2139

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

MEMORANDUM

Petitioner Minnesota State Board of Law Examiners ("Board") respectfully submits this Memorandum in support of its Petition to the Court to amend the Rules of the Supreme Court and State Board of Law Examiners for Admission to the Bar. Also addressed herein are the issues raised by Petitioner Michael Ravnitzky which are being considered in conjunction with the Board's Petition for Rule Amendments.

1. INTRODUCTION

The present rules governing the licensing of attorneys and the authority and powers of the Board are contained in two sets of rules: the Rules of the Supreme Court (Rules I. through IX.) and the Rules of the State Board of Law Examiners (Rules 100 through 106). As currently structured, the rules contain numerous duplicative provisions regarding licensing requirements and do not adequately or clearly address a number of issues affecting Board operations. Accordingly, the Board proposes that the rules be amended, consolidated, edited, and reorganized into a single set of rules. Several substantive issues regarding Board authority and operation are modified or clarified. These issues are addressed in greater detail below.

2. BOARD AUTHORITY

Prior to 1988, there was no specific rule authorizing the Board to excuse applicants from strict compliance with the rules, although the Board occasionally did permit applicants to depart from the strict time deadlines or other requirements. In 1988, an amendment was recommended stating that the Board could grant waivers based upon "hardship and other compelling reasons." Rule I.B.(6). Since adoption of this provision, applicants appear to have been encouraged to seek waivers because the number of waiver requests has increased. Of more significant concern, the nature of the waivers sought under this provision have not been waivers of "strict compliance"

with the rules, but rather waivers of the fundamental requirements for admission. For example, waivers have been sought by applicants who have not had a passing score on the bar exam and, with increasing frequency, by applicants who have not graduated from ABA-accredited law schools. Formal hearings arising from these waiver requests have been a burden on Board resources. By striking the waiver provision, and expanding the Board's authority to adopt policy and procedure consistent with the rules, the amendment will permit the Board to provide relief from strict application of the rules, while not encouraging those who do not meet the threshold requirements.

The revised language makes explicit the delegation to the President and Director of authority to make determinations and implement the Board's policies and conduct business between Board meetings. This is consistent with established practice and does not represent an expansion of authority. Having such authority is particularly important during the periods leading up to formal hearings when procedural issues are raised and submitted, the matters to the Board for determination would result in a delay in the proceedings.

3. BOARD MEETINGS AND MINUTES OF BOARD MEETINGS: RAVNITZKY PETITION

Current Rule VIII.A. through F. provides that with certain limited exceptions, the information "contained in the files of the office of the Board is confidential and will not be released to anyone other than the Court except upon order of the Court." Based upon this comprehensive rule of confidentiality, the Board has considered its meetings to be closed to the public. In addition, most matters addressed during Board meetings concern confidential information about specific applicants and confidential information about examination matters. Occasionally, Board determinations concern administrative or general policy issues but most administrative matters are summarized in the Board's annual report or published in informational brochures and policies disseminated by the Board.

The proposed Rule 3.C. provides that future meetings will be divided between open and confidential portions. Members of the public may attend the public portion of meetings and the minutes of the public portions will be public. The Board considered whether the minutes of past meetings conducted under the previous rules governing

confidentiality should be made public, but concluded that the expense of such a project would far outweigh any benefits to the public.

The Board minutes sought by Petitioner Michael Ravnitzky consist of sixteen (16) volumes of documents compiled between 1918 and 1997, and total 3,065 pages of minutes. The bulk of the information in the minutes is confidential because it relates to individual applicants or matters involving the bar exam. Were the Court to grant Mr. Ravnitzky's request, these 3,065 pages of minutes would need to be redacted on a page by page basis. Attached as **Exhibit "A"** is a chart showing the estimated time of 124 hours needed to redact the minutes.

The costs involved in completing the project are difficult to calculate, given the fact that the Director and staff would be conducting the review. However, given the number of hours involved in the process, it is clear that the project would have a significant impact on the Board's operations. This impact would also be shared by the Board of Continuing Legal Education and the Board of Legal Certification that the Director also administers and that share staff with the Board of Law Examiners. The Board is funded by fees paid to administer the admission process. This project could deprive attorneys and applicants to the bar of timely services.

During the period 1918 to 1997, the Board conducted its meetings and recorded its minutes in accordance with Board and Court Rules that required confidentiality. Petitioner's interests are adequately served by the Board prospectively opening the meetings and making the minutes of future meetings public. The limited value of the data is outweighed by the administrative burden of providing the data.

4. APPLICATION AND STANDARDS FOR ADMISSION

Proposed Rule 5 is a comprehensive statement of the character and competence standards required of applicants to the bar. This rule combines two policy statements developed and implemented by the Board: the Essential Eligibility Requirements and Character and Fitness Standards.

A. Essential Eligibility Requirements

In 1994, a subcommittee of the Board developed a comprehensive description of the skills and abilities an attorney needs to engage in the practice of law. The Committee derived these concepts from the Statement of Fundamental Lawyering Skills and Professional Values published in the American Bar Association's *Report of the*

Task Force on Law Schools and the Profession: Narrowing the Gap (MacCrate Report—1992). The Board adopted this description, referred to as the "Essential Eligibility Requirements," to address competence, as well as character issues and to summarize the Board's purpose in screening applicants. The Essential Eligibility Requirements are used in considering the appropriate scope of the examination, in making determinations with respect to reasonable test accommodations, and in evaluating the fitness of an applicant for admission. Since 1994, every applicant to the bar in Minnesota receives a copy of the Essential Eligibility Requirements and is referred to these requirements in answering application questions about the effect of chemical dependency or mental illness on the applicant's ability to practice law. The Essential Eligibility Requirements are now incorporated in Rule 5.A.

B. Character and Fitness Standards

The Character and Fitness Standards, incorporated into proposed Rule 5.B., were developed by the Board in 1988 and adopted by the Minnesota Supreme Court on September 20, 1987. Since that time, these standards have been published as an appendix to the Board rules. These standards were originally developed by the American Bar Association's Section of Legal Education and Admission to the Bar. They were then adopted by the National Conference of Bar Examiners and the Association of American Law Schools and are part of the National Conference of Bar Examiners *Code of Recommended Standards for Bar Examiners*.

By incorporating the Character and Fitness Standards into the Rules of the Board, applicants are alerted to the kinds of conduct relevant to the Board's character and fitness decisions. The Character and Fitness Standards also describe mitigating circumstances the Board will take into consideration as evidence of rehabilitation and fitness for admission.

Proposed Rule 5.B.(3)(j) and (k) includes modifications of the Character and Fitness Standards providing that mental health and chemical dependency issues are relevant in the application process only when conduct is involved that may impair the applicant's ability to practice law.

5. ADVISORY OPINIONS

The existing rules do not provide a formal mechanism by which the Board can inform law students about the impact of past conduct on prospects for admission. The

proposed Rule 5.B.(7) permits an applicant to request an advisory, non-binding opinion regarding character or fitness issues.[1] Under this proposed provision, the Board will conduct a full investigation prior to issuing an advisory opinion.

6. THE MULTISTATE PERFORMANCE TEST

Proposed Rule 6.E. provides that the Minnesota Bar Examination will include a performance test component among the test instruments used in the semi-annual administration. Currently, the Minnesota Bar Examination consists of eight (8) essay questions (drafted by out-of-state law professors, and edited by the Board) and two hundred (200) multiple-choice questions drafted by the National Conference of Bar Examiners (NCBE), referred to as the Multistate Bar Exam (MBE).

The NCBE is a national organization that develops bar examinations for jurisdictions across the United States and has recently developed a new test instrument called the Performance Test (PT). The PT is not a test of the examinee's legal knowledge but rather a test of skills one would use in the practice of law. A PT test item consists of a 15- to 16-page packet of information that simulates an assignment a lawyer might give to a new attorney. The test packet contains all the factual and legal materials needed to complete the assigned task. Usually these materials include excerpts from a deposition, a few case summaries, copies of statutes, excerpts from medical reports and finally, a memo from the partner assigning a task. Attached as **Exhibit "B"** is an example of a performance question. A total of twenty states are now using a performance test component as part of their bar exam.[2]

The PT tests skills that the current Minnesota bar exam does not. It is a test of the examinee's ability to manage and complete a written assignment, using a significant amount of legal and factual material the examinee has never seen before. It requires examinees to read and sort relevant and irrelevant facts and law, and to draft a logical answer using the skills the examinee has acquired in law school. No other component of the exam tests this combination of legal reasoning, legal analysis, and legal writing.

---

[1] Petitioner Ravnitzky argues that law students require access to past board minutes to assist them in deciding whether to invest in law school. The advisory opinion will provide a more efficient method of determining a law student's prospects of admission to the bar.

[2] As of the February 1998 administration, the NCBE's Performance Test was used in Colorado, DC, Georgia, Hawaii, Illinois, Iowa, Mississippi, Missouri, Nevada, New Mexico, Oregon, Texas, and West Virginia. Idaho, New Jersey, North Dakota, and South Dakota will begin using the test in the next year. Montana and Pennsylvania have also determined to use the test but have not yet set a date to begin administration. In addition, California and Alaska have been using performance tests of their own creation for the past ten years.

Concerns have been raised regarding the reaction of law students to the introduction of this test and the impact that such reactions might have on the curriculum of local law schools. In order to assess the reaction of law students to the Performance Test, the Board conducted a fax survey of twenty law school deans in law schools in twelve states which either use the NCBE's Performance Test or have developed their own performance test. The deans were asked to summarize the reactions of law students after institution of the performance test was added to the state bar exam. Below is a chart summarizing those reactions.

Law School	Feedback from Students on Performance Test	Concern about Studying for Test	Effect of Performance Test on Course Registrations	Effect of Performance Test on Skills Course Enrollment	Influence of Performance Test Subject on Law School Course Registrations	Effect of Performance Test on Law School Curriculum
Hastings	Virtually None	None	None	None	None	None
Univ. of GA	Very little	None	None	None	None	None
Drake Univ.	None so far	None	None	None	None	None
U. of Iowa	Not difficult	Minor apprehension over newness	None	None	None	None
St. Louis Univ.	Some expressed anxiety; others were pleased to have an additional testing	None	None	None	None	None
Univ. of Missouri, Columbia	None	Some anxiety	None	None	None	None
Univ. of NM	None	Some concern, but bar reviews provided study aids	None	None	None	None
Univ. of CA, Berkeley	None	None	None	None	None	None
Univ. of CO	None	None	None	None	None	None
American University	None	None	None	None	None	None
GA State University	None	None	None	None	None	None
Univ. of HI	None	None	None	None	None	None

The survey finds that there have been few complaints from students about the PT in states such as Virginia and Georgia, where the PT is a new component of the bar exam, as well as in California and Colorado, where a performance test has been in place for several years. In addition, there is no evidence that the PT has encouraged students to seek curriculum changes after the test is introduced. The negative reaction in Missouri was related to inadequate preparatory information being given to students. The Board intends to prevent this problem in Minnesota by thoroughly disseminating information about the test to students through each of the Minnesota law schools and through the local bar review courses. The Board plans to implement the PT in February 2001. Board members and graders will meet with law deans, faculty, and students before the test is introduced to review performance tests administered in other states and to discuss how it will be graded and weighted in Minnesota. The Board intends to substitute one 90-minute performance test question for two 45-minute essay questions, weighting the performance question the same as the two essays. Using this approach, the PT would constitute 12.5% of the total exam.

7. TESTING ACCOMMODATIONS

Proposed Rule 6.F. revises and consolidates present Rule 101.F. and incorporates by reference the Board's Policy on Applicants with Disabilities, a copy of which is attached hereto as **Exhibit "C."** The policy was developed in compliance with the Americans with Disabilities Act (ADA) and permits a more efficient review and determination of the increased numbers of requests for special test accommodations. The number of requests for test accommodations has more than doubled in the past ten (10) years. Six (6) requests for accommodations were provided in 1987. In 1997, sixteen (16) disabled examinees required special test accommodations. The policy details the specific types of documentation needed to support requests for accommodations of physical, as well as non-physical disabilities. The proposed rule revision deletes the provision of existing Rule 101.F. that states that the cost of test accommodations may be charged to the applicant.

Applicants to the Bar in Minnesota currently have the ability to appeal an adverse action under the current Rule IX.A.(1). The revisions contained in proposed Rule 6.F. incorporate by reference the entire Policy on Applicants with Disabilities, thereby expanding upon applicants' rights to appeal. The policy provides for an expedited

appeal when the Director denies or modifies a request for test accommodations. An expedited hearing will be held before the Board Chair or his designee prior to the bar exam for which the applicant has applied to sit. The proceeding is conducted by telephone conference call, if necessary. Applicants who are not satisfied with the result of the expedited hearing, or who seek a more extensive hearing, have the option to request a formal hearing under proposed Rule 14. This hearing would take place after the bar exam.

8. TEMPORARY LICENSE FOR LEGAL SERVICES PROGRAMS

Existing Rule V. provides a temporary license for attorneys who accept employment for a legal services program. Proposed Rule 8 provides that a licensed Minnesota attorney will supervise the temporarily licensed attorney. In addition, the revision puts applicants on notice that the Board will conduct an expedited character and fitness investigation of applicants for temporary legal services licenses.

The temporarily licensed legal services attorney under current Rule V. is required to pass the bar examination or otherwise qualify for admission within 15 months of receiving the temporary license. Under this rule, Rule V. license holders had the opportunity to take the bar exam twice. If they failed the bar exam, there was no provision to revoke the license until the end of the 15-month period. Proposed Rule 8 provides that if the license holder fails the Minnesota bar examination, the temporary Rule 8 license will be revoked. While Rule 8 facilitates the admission of legal services attorneys, it holds them to the same standard of competence as other attorneys.

9. IMMUNITY

Proposed Rule 12 provides that Board members, employees, and agents, as well as persons or entities providing information to the Board, are immune from civil liability. This provision is new.

Current case law appears to recognize absolute immunity in the situations covered by the proposed rule. See Dorn v. Peterson, 512 N.W.2d 902, 906 (Minn. Ct. App. 1994); Jenson v. Olson, 273 Minn. 390, 392-93, 141 N.W.2d 488, 490 (1966); and Dugas v. City of Harahan, La., 978 F.2d 193 (5th Cir. 1992). However, codification of this principle might deter lawsuits from being brought, sparing potential defendants the inconvenience and expense of retaining counsel. The Board is aware of at least two

recent cases in which applicants have brought legal actions against persons who provided information to the Board.

Defamation actions have become more common in recent years, and people are becoming more reluctant to provide information because of fear of suit. Adopting proposed Rule 12 would assist the Board in its necessary task of gathering information about applicants. A number of licensing boards have immunity provisions. See, e.g., Rule 21, Rules on Lawyers Professional Responsibility; Minn. Stat. §§ 147.121 (1996) (Board of Medical Practice), 148.103 (1996) (Board of Chiropractic Examiners), and 148B.08 (Supp. 1997) (Board of Marriage and Family Therapy); see similarly Rule 3, Rules of Board of Judicial Standards. This provision will also serve to encourage reluctant witnesses to come forward.

10. INFORMATION DISCLOSURE

Proposed Rule 13.B. represents an amplification of the work product provision of current Rule VIII.A. and F. The current rules provide that an applicant may review the contents of his or her application file with the exception of the work product of the Board. The new language makes clear that the Board's work product is not discoverable under any circumstances and that the Board and its staff may not be subject to deposition or compelled testimony except upon order of this Court. This language is in part a reaction to several recent cases in which applicants have attempted to obtain work product by subpoenaing Board staff for depositions. The new language is modeled after Rule 20, Rules on Lawyers Professional Responsibility.

11. ADVERSE DETERMINATIONS AND HEARINGS

The proposed Rule 14 restates the hearing rights currently found in Rule 104 and clarifies the timely request for hearings, the scheduling of hearings, and other procedural matters. Proposed Rule 14 codifies the Board's hearing procedures which have been developed over the past ten (10) years.

Proposed Rule 15 provides notice to applicants regarding the procedural steps to be followed both by the Board and by the applicant when an appeal is taken. Rule 16 restates in a clearer manner the Rule IX.B. provision that persons who are denied admission are prohibited from reapplying for three (3) years from the date of the issuance of the adverse determination letter.

CONCLUSION

The Board respectfully requests that the Court adopt the amendments recommended herein.

John D. Kelly
President
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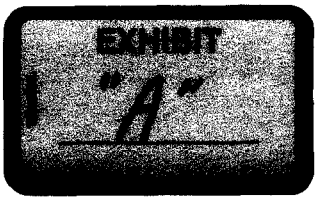
SUMMARY OF THE REDACTION OF MINUTES

	Estimated Hours
Disassemble 16 volumes, photocopy, and rebind volumes (clerical)	16
Read 3,065 pages at 30 pages per hour (Director)	50
Identification of questionable material that is neither clearly administrative nor clearly confidential (Director)	10
Review of questionable material with counsel (Director)	5
Review of matters not resolved in consultation with counsel; summarization and presentation to the Board (Director)	5
Redaction of relevant portions, either by copying or by retyping (clerical)	25
Review and verification of redacted data (Director)	10
Board Review of the final product:	3
Total number of hours:	**124 Hours**



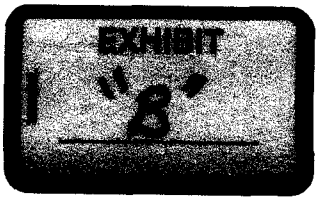
THE MPT

MULTISTATE PERFORMANCE TEST

In re Kiddie-Gym Systems, Inc.

July 1997, Test 1

ncbe



INSTRUCTIONS

1. You will have 90 minutes to complete this session of the examination. This performance test is designed to evaluate your ability to handle a select number of legal authorities in the context of a factual problem involving a client.

2. The problem is set in the fictitious state of Franklin, in the fictitious Fifteenth Circuit of the United States. In Franklin, the trial court of general jurisdiction is the District Court, the intermediate appellate court is the Court of Appeal, and the highest court is the Supreme Court.

3. You will have two kinds of materials with which to work: a File and a Library. The File contains factual information about your case. The first document is a memorandum containing the instructions for the task you are to complete.

4. The Library contains the legal authorities needed to complete the task and may also include some authorities that are not relevant. Any cases may be real, modified, or written solely for the purpose of this examination. If the cases appear familiar to you, do not assume that they are precisely the same as you have read before. Read them thoroughly, as if all were new to you. You should assume that cases were decided in the jurisdictions and on the dates shown. In citing cases from the Library, you may use abbreviations and omit page references.

5. Your response must be written in the answer book provided. In answering this performance test, you should concentrate on the materials provided. What you have learned in law school and elsewhere provides the general background for analyzing the problem; the File and Library provide the specific materials with which you must work.

6. Although there are no restrictions on how you apportion your time, you should probably allocate at least 45 minutes to organizing and writing after you have studied and digested the materials. You may make notes anywhere in the test materials; blank pages are provided at the end of the booklet.

7. This performance test will be graded on your responsiveness to instructions regarding the task you are to complete given to you in the first memorandum in the File and on the content, thoroughness, and organization of your response.

In re Kiddie-Gym Systems, Inc.

FILE

LIBRARY

FILE

Elmore, Anderson & Reed
Attorneys at Law
3722 Page Park Road
Bradley Center, Franklin 33092
(489) 555-7108

M E M O R A N D U M

To: Applicant
From: Marla Reed
Date: July 29, 1997
Subject: Kiddie-Gym Systems, Inc.

Our client, Kiddie-Gym Systems, Inc.(KGS), has been in business for almost a year. It furnishes and installs prefabricated indoor playground equipment for developers and operators of shopping malls, day-care centers, fast-food outlets, and other entities that want to provide such facilities for children of their customers. Earlier today, Jerry Martin, the president of KGS, came in to get our advice on a business problem involving playground equipment KGS bought from Poly-Cast, Inc. and installed at Bradley Center Mall, one of Cornet Development Corporation's shopping malls. The playground equipment was destroyed by a fire at the mall. I told him we would give him a written opinion within a few days.

I've transcribed my notes of the discussion I had with Mr. Martin, and they are included in the file along with some documents Mr. Martin left with me. I've also included parts of the Franklin Commercial Code (which is identical in substance to the Uniform Commercial Code) and some cases that may or may not be relevant. Here's what I would like you to do for me:

Draft for my signature an opinion letter to Mr. Martin addressing the following questions:

(1) As between KGS and Cornet, which bears the risk of loss for playground equipment destroyed in the fire at Cornet's Bradley Center shopping mall?

(2) Is KGS obligated to pay the shipping and handling charges billed by Poly-Cast?

Attached for your guidance is a memorandum regarding our firm's practice in writing opinion letters.

Elmore, Anderson & Reed
Attorneys at Law
3722 Page Park Road
Bradley Center, Franklin 33092
(489) 555-7108

MEMORANDUM September 8, 1995

To: Associates

Re: Opinion Letters

The firm follows these guidelines in preparing opinion letters to clients:

- State each client question independently.

- Following each question, provide a concise one-sentence statement giving a "short answer" to the question.

- Following the short answer, write an explanation of the issues raised by the question, including how the relevant authorities combined with the facts lead to your conclusions and recommendations.

- Bear in mind that, in most cases, the client is not a lawyer, so use language appropriate to the client's level of sophistication. Remember also to write in a way that allows the client to follow your reasoning and the logic of your conclusions.

NOTES OF DISCUSSION WITH JERRY MARTIN, PRESIDENT OF KGS
July 29, 1997

KGS installs indoor molded plastic playground equipment in places like fast-food restaurants, shopping malls, day-care centers, etc.

- A little over 2 months ago, KGS landed its largest contract so far—with Cornet Developers—3 major shopping centers in Franklin—1st one, in Bradley Center, just completed and opened to the public on July 23, 1997—2 other malls under construction. Contract drafted by Cornet's attorneys.
- Martin shopped Cornet's specifications around and found a new supplier, Poly-Cast, Inc., located in Copley, about 100 miles from here—Poly-Cast's playground equipment meets Cornet's specs—got what he thought was very favorable pricing from Melissa Parker, Poly-Cast's sales manager.
- Poly-Cast shipped 1st playground system to Bradley Center job site on time and in good condition—it arrived at the site in heavy protective wooden crates—unnecessary as far as Martin is concerned—it just costs Poly-Cast money to do the crating and costs KGS time and labor to uncrate and dispose of the wood.
- Re Bradley Center Mall, KGS crew began assembly on July 21, 1997 and finished physical installation of playground equipment and general site clean-up on July 22—removed construction barriers at end of the day and told Charlie Short, Cornet's job superintendent, Martin would be back the next day to do final site check and crew would return within 2 weeks to do final "tune-up."
- Martin went to job site the next day, July 23, about 11:00 a.m. and found 20 - 30 kids already playing on the equipment; checked with Charlie Short and learned that he had given the mall manager the green light to let the kids begin using the playground—Martin did a visual check, found things in order, and left, intending to send crew back in two weeks to do final tune-up per contract.
- Fire broke out at Bradley Center Mall on July 24—damaged part of the mall and destroyed the playground equipment—best guess is that the fire started from a cigarette someone threw into a trash bin.

- Charlie Short has told Martin that KGS won't get paid for Bradley Center job until it installs replacement equipment—Charlie also said no pay because title to the playground system hadn't yet passed to Cornet.
- Martin says Short had already given his OK for kids to begin using the equipment—can't understand why KGS should bear the loss—the fire wasn't KGS's fault—KGS hasn't been able to afford insurance for this kind of loss; is pretty sure Cornet is insured. KGS might be willing to make some accommodation on labor costs during installation of replacement system at Bradley Center Mall, at least to the extent of Cornet's insurance deductible, if any.
- Obviously, KGS can't perform final tune-up on the system that was destroyed—Martin says final tune-up is no big deal—the Poly-Cast systems shouldn't need much if any final adjustments and, at most, it would've been an hour's work by 2 workers.
- To make matters worse, Martin just received Poly-Cast's invoice for the first system, and Poly-Cast has included a $2,500 charge for shipping and handling (amount not surprising, judging from the fancy wooden crate job)—Martin got a range of quotes that would meet specs from Melissa Parker, Poly-Cast's sales manager; the one for Model PC 443-7 was $25,000 per playground system—no mention of additional charges—that's why KGS's purchase order states "price all-inclusive."
- Martin didn't look too closely at Poly-Cast's acknowledgement form when he received it on or about June 16, 1997, other than to notice that it agreed with the price on KGS's purchase order—just yesterday, noticed the fine print re shipping and handling.
- Even if KGS doesn't have to pay the cost to replace the Bradley Center unit, if KGS has to pay the $2,500 in freight charges, KGS will barely break even (maybe even take a slight loss) on the Cornet contract after labor and overhead. If he'd known, he could have had his own driver pick up the shipment at Poly-Cast plant—no trouble for him to do that.
- KGS is between a rock and a hard place with respect to both Cornet and Poly-Cast—can't afford to eat the loss on the Bradley Center Mall or agree to pay the Poly-Cast freight, but needs to preserve relations with both because of the other 2 malls.

CONSTRUCTION AND SERVICE CONTRACT

This contract for construction and services is made and entered into by and between Cornet Development Corporation ("Cornet") and Kiddie-Gym Systems, Inc. ("KGS") this 23rd day of May, 1997.

1. Work: KGS shall furnish all labor, equipment and materials necessary for the installation of molded plastic indoor playground equipment ("playground systems") at each of the three (3) Cornet shopping malls listed below. The playground systems shall be installed at locations designated by Cornet within each mall and shall conform to the specifications prepared by Cornet and delivered previously to KGS. Not later than 30 days after completion of installation of each playground system, KGS shall perform a follow-up inspection and make such final adjustments ("tune-up") of the system as shall be required, if any, as the result of initial use by patrons of the mall.

2. Mall Sites and Projected Opening Dates: KGS shall perform its work at the following mall sites and shall complete installation no later than one day before the projected opening date of each mall: Bradley Center, due to open July 23, 1997; Sedona Hills, due to open September 29, 1997; and Mayfair, due to open January 26, 1998.

3. Price and Payment Terms: The total price to be paid by Cornet to KGS is $120,000, each playground system to be paid for at $40,000 ("site price") upon completion of the work at each mall site.

4. Passage of Title: Title to each playground system shall pass to Cornet upon completion by KGS of the final tune-up of the system.

5. Penalty for Delay: KGS shall forfeit $500 for each day of delay in the completion of the installation of the playground system at each site.

6. Entire Agreement: This writing sets forth the entire agreement of the parties, and any prior or contemporaneous promises or representations made and not set forth in this writing shall be of no effect. No modification of this agreement may be made except in a writing executed by both parties.

Cornet Development Corporation

By Thomas G. Bodette
Thomas G. Bodette
Vice President for
Development

Kiddie-Gym Systems, Inc.

By Jerome A. Martin
Jerome A. Martin
President

PURCHASE ORDER

Date: May 29, 1997

No. 447A

Kiddie-Gym Systems, Inc.
4722 Industrial Way
Bradley Center, FN 33087
(489) 554-6249

Seller: Poly-Cast, Inc.
790 Polypropylene Way
Copley, FN 33124

Ship To: Per Instructions

This constitutes order by Kiddie-Gym Systems, Inc. of three (3) Poly-Cast molded playground systems, Model No. PC443-7. Systems per sample shown and to conform to Cornet Development specifications furnished to Poly-Cast.

Systems to be delivered by Poly-Cast to Cornet Development job sites per instructions to be given by Kiddie-Gym Systems. First system to be delivered to Bradley Center Mall job site not later than July 21, 1997. Delivery to other job sites (Sedona Hills and Mayfair) per later instructions.

Price: $25,000 per unit, all-inclusive, per quote from Melissa Parker. Payable net 60 days after delivery.

General Conditions

Seller warrants all goods are of merchantable quality and fit for the intended purpose. Seller warrants that all goods are free and clear of all liens and claims by third parties and that Seller possesses all rights to sell said goods free and clear.

Date: May 30, 1997

Authorized Signature: Jerome A. Martin

Jerome A. Martin

ACKNOWLEDGEMENT OF ORDER

POLY-CAST, INC.
Premier Molded and Extruded Plastic Products
790 Polypropylene Way
Copley, FN 33124
(489) 550-0900

No. 277695

Date: June 9, 1997

Buyer: Kiddie-Gym
4722 Industrial Way
Bradley Center, FN 33087
(489) 554-6249

Ship To: Per Instructions

Contact: Jerry Martin

Poly-Cast hereby acknowledges your Order per your PO #447A dated May 29, 1997:

- Three (3) Model PC443-7 playground systems
  Unit price $25,000
- Systems to conform to Cornet Development specs
- Will ship first system to Cornet site at
  Bradley Center Mall by July 21, 1997 per instructions
- Will wait for shipping and delivery instructions on
  Sedona Hills and Mayfair sites
- Payable net 30 days from date of invoice

Arthur Haskins
Vice President/Sales

Conditions Applicable To All Sales: All goods subject to limited warranties of merchantability and fitness. All shipments subject to charges for shipping and handling to be paid net 30 days from date of invoice. Goods are guaranteed against defects discovered and reported within ten (10) days of delivery. Late charges at 10% per month for past due payments; minimum late charge $10.00. Shipments travel at the risk and cost of Buyer. Risk of loss passes to Buyer at time of identification of goods to the contract at Seller's loading dock.

POLY-CAST, INC.
Premier Molded and Extruded Plastic Products
790 Polypropylene Way
Copley, FN 33124
(489) 550-0900

INVOICE

Date: July 25, 1997 No. 114076-96

Customer: Kiddie-Gym
4722 Industrial Way
Bradley Center, FN 33087

Attention: Jerry Martin

Your PO# 447A

Quantity	Description	Price
1	Poly-Cast playground system - Model PC443-7 delivered July 21, 1997 per customer's instructions	$25,000.00
	Shipping & handling	$ 2,500.00
	Total Due (net 30 days)	$27,500.00

Make checks payable to Poly-Cast, Inc.

Franklin Commercial Code

* * * *

§ 2102. Scope: Unless the context otherwise requires, this division of the Commercial Code applies only to transactions in goods; it does not apply to any transaction which is solely for the sale of services.

* * * *

§ 2104. Definitions: "Merchant"; "Between Merchants":

(1) "Merchant" means a person who deals in goods of the kind . . . involved in the transaction . . . .

(2) "Between merchants" means any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

§ 2105. Definitions: "Goods": "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid.

* * * *

§ 2207. Additional Terms in Acceptance or Confirmation:

(1) A definite and seasonable expression of acceptance or written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

(a) The offer expressly limits acceptance to the terms of the offer;

(b) They materially alter it; or

(c) Notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such a case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this code.

* * * *

§ 2319. F.O.B.:

(1) Unless otherwise agreed the term F.O.B. (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which

(a) When the term is F.O.B. the place of shipment, the seller must at that place ship the goods and bear the expense and risk of putting them into the possession of the carrier; or

(b) When the term is F.O.B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them.

* * * *

§ 2401. Passing of Title: Each provision of this division of this code with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision of this code refers to title. Insofar as situations are not covered by the other provisions of this division of this code and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract. Subject to these provisions, title to goods passes from the seller to the buyer in any manner and on conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods.

* * * *

§ 2503. Manner of Seller's Tender of Delivery: Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery.

* * * *

§ 2509. Risk of Loss in the Absence of Breach: The risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery. The provisions of this section are subject to contrary agreement of the parties.

Coakley, Inc. v. Washington Plate Glass Co.

Franklin Court of Appeal (1991)

PER CURIAM: Washington Plate Glass Co. had a contract "to furnish and install aluminum and glass curtain wall and storefront work" on a building owned by Coakley, Inc. To accomplish its contractual undertaking, Washington purchased the glass required from Shatterproof Glass Corp. Other materials were acquired elsewhere.

The contract price under the Coakley/ Washington contract was $262,500. The glass purchased from Shatterproof cost $87,715. The other materials necessary for the performance of the contract, aluminum, anchor clips, fittings, field fasteners, etc., cost approximately $80,000.

Within a year, the glass began to discolor. When Coakley complained to Washington and Shatterproof, they declined to replace the glass, so Coakley filed suit against them in the Franklin District Court. Coakley alleged breach of implied warranties of merchantability and fitness for a particular purpose created by Franklin Commercial Code §§ 2314 and 2315.

Shatterproof moved for dismissal on the sole ground that the FCC was inapplicable. The District Court granted the motion and Coakley appeals.

Whether the FCC applies turns on whether the contract between Coakley and Washington involved principally a sale of goods or a provision of services. Unless there has been a buyer of goods, the implied FCC warranties of merchantability and fitness do not apply. Thus, the question as to the availability of warranties comes down to whether the transaction between Coakley and Washington was a sale of goods or the provision of services. Any requirement for privity between Coakley and Shatterproof is abolished if the FCC applies. See FCC § 2314(1)(b): "Any previous requirement of privity is abolished as between the buyer and the seller in any action brought by the buyer."

The cases dealing with this issue turn upon whether the thrust of the contract is to supply goods or to furnish services. The mixed character of the contract does not remove it from the ambit of the sales division of the FCC. The words of § 2102 of the FCC support this conclusion: The sales division of the FCC "does not apply to any transaction which is solely for the sale of services."

Therefore, we apply the test articulated in *Wilson v. Sharpe* (Franklin Supreme Court, 1974): in situations where the contract is a mixed contract involving both the sale of goods and the rendition of services, it will be deemed that the contract comes within the sales division of the Franklin Commercial Code if the value of the goods being furnished under the contract exceeds

one half of the total contract price. By that measure, at least, it can be clearly said that the predominant factor in the contract is the sale of goods and that the sale of goods is more than merely incidental to the contract.

Applying that principle to the case at hand, we note that more than one-half of the price in the Coakley/Washington contract is attributable to the value of the goods to be furnished thereunder. The contract therefore falls within the Franklin Commercial Code. Accordingly, we reverse.

Hughes v. Al Green, Inc.

Franklin Court of Appeal (1993)

Laura Hughes purchased a new 1989 Lincoln Continental from Al Green Dodge-Lincoln. She tendered a cash down payment and arranged to finance the balance through a local bank. In the meantime, she completed the necessary application for a certificate of title. The parties agreed that Hughes would take immediate possession of the automobile but that she would return it to the dealership on the following Monday for certain new car preparations and installation of the CD player. En route from the dealership to her home, Hughes was involved in a collision and the automobile was substantially damaged. The title documents, showing Hughes as the legal owner, were subsequently delivered to her.

Hughes refused to pay the balance and sued Al Green, Inc. for breach of contract alleging that the vehicle had been transferred to her in a damaged condition. Her claim is based on the notion that, when the certificate of title was issued to her, thereby legally transferring title to her, she no longer possessed that for which she had bargained, i.e., an undamaged 1989 Lincoln Continental.

A jury found for Green. The case is now before us on appeal.

We must determine whether the buyer or the seller bore the risk of loss or damage to the automobile at the time of the collision. To say that the buyer had the risk of loss at the time the goods were destroyed is to say that the buyer is liable for the price. To say that the seller had the risk of loss at the time the goods were destroyed is to say that the seller is liable in damages to the buyer for nondelivery unless he tenders a performance in replacement for the destroyed goods.

Franklin Commercial Code § 2509 provides that "the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery." This provision represents a significant shift away from the prior importance of the concept of title in determining the point at which risk of loss passes from seller to buyer. Under the common law, title to the contract goods determined the locus of risk of loss. Under the Commercial Code, however, each provision relating to the rights, obligations and remedies of sellers and buyers applies irrespective of title except where the provision of the code itself refers to such title. (FCC § 2401.)

FCC § 2509 sets forth a contractual approach, as distinguished from the property concept of title, to solving issues arising when goods are damaged or destroyed. The section focuses on specific acts, such as tender of delivery by the seller or receipt of the goods by the buyer. Title is relevant under this section only if the parties provide

that risk of loss shall depend upon the locus of title. Unless the contract specifically provides that risk of loss depends upon the locus of title, it is irrelevant where title resides.

In this case, the buyer had received possession of the automobile as partial execution of a merchant-seller's obligations under a purchase contract. There is no question but that the buyer, having physical possession and use of the vehicle, had "receipt" within the meaning of the FCC. Nothing in the contract purported to shift the risk of loss dependent upon the locus of title. Thus, Hughes, as a buyer in receipt of goods identified to the contract, must bear the risk of loss of the car's value resulting from the collision.

Affirmed.

Album Graphics, Inc. v. Craig Adhesive Company

Franklin Court of Appeal (1995)

Plaintiff Album Graphics, Inc. brought a complaint against Craig Adhesive Company alleging a breach of express and implied warranties. The trial court dismissed.

Album manufactures containers for cosmetics. Craig manufactures and sells adhesives (glue). A salesperson employed by Craig visited Album's plant and, after discussions with Album's manufacturing superintendent, offered to manufacture a special glue that would meet Album's needs for the assembly of newly designed cosmetics packages. During a later visit, the salesperson demonstrated the glue and instructed plaintiff's personnel on its use. As a result of the two meetings, Album ordered a quantity of the glue and used it on the new packages. Album sold a number of the new cosmetics packages to a customer. The packages fell apart, and Album had to recall and replace them using a different glue.

The parties in the present case do not dispute that a contract for sale was entered into, or that express or implied warranties may have been created on the basis of the facts pleaded in Album's complaint. Craig alleges that such warranties were effectively disclaimed. Craig asserts its disclaimer theory on two grounds. First, each container of glue delivered to Album had a label on which there was conspicuously printed language to the effect that the only warranty made was that all goods were manufactured of standard materials and, if any material proved to be defective, Craig would either replace the goods or refund the price. Second, Craig's invoices also contained explicit disclaimers of warranties.

Though it may be questionable that the labels and invoices are "confirmatory memoranda" of the agreement reached by the parties, we will, for the purpose of analysis, accept the defendant's contention and assume that they are. Hence, they would be "written confirmation" of the prior agreement entered into by the parties as that term is used in Franklin Commercial Code § 2207.

The general purpose of § 2207 is to allow the parties to enforce their agreement, whatever it may be, despite discrepancies between an oral agreement and a written confirmation, and despite discrepancies between a written offer and a written acceptance. Also, it allows for additional terms stated in an acceptance or written confirmation to become terms of the agreement in certain cases. Hence, the section allows a written confirmation to "operate" as acceptance for the above purposes.

Here, the question is only whether the additional terms in the written confirmations became part of the agreement. For this, we must look at § 2207(2), which states in part: "Between merchants such terms become part of the contract unless: *** (b) They

materially alter it. . . ."

Official Comment 4 to the FCC gives as examples of typical clauses that would materially alter the contract and so result in surprise or hardship if incorporated without the express awareness by the other party: "a clause negating such standard warranties as that of merchantability or fitness in circumstances in which either warranty normally applies. . . ." We believe that Craig's unilateral disclaimer of warranties and limitation of damages clauses are such as to result in "surprise or hardship" and therefore could not become part of the contract under § 2207(2) because they "materially alter it." On that basis alone, Craig's disclaimers were ineffective.

There is, however, an additional basis for reaching the same result. Here, the parties effectively performed their contract without taking cognizance of the conflicting terms that later resulted in this dispute. That is to say, Album ordered the goods, Craig shipped them, and Album used them. In such circumstances, § 2207(3) comes into operation. Under that section, if the conduct of the parties recognizes the existence of a contract, then a contract for sale is formed even though the writings of the parties do not establish a contract. In such a case, the contract contains "those terms on which the writings of the parties agree," and all other terms either "drop out" or are supplied by the "gap-filling" provisions of the Commercial Code.

In the present case, since Craig's labels and the invoices do not contain a term which also appears as part of the writing sent by Album, the label and invoice terms cannot become part of the contract. The terms relating to the warranty issue are then supplied by §§ 2314 and 2315, which are sections of the Code that statutorily create the implied warranties of merchantability and fitness for a particular purpose. The warranties created by those sections are imported as "gap fillers" into the contract by operation of § 2207(3). The contract is then deemed to contain the implied warranties. Accordingly, we reverse.

Rev. 04/14/98
SUMDISPO

MINNESOTA BOARD OF LAW EXAMINERS' POLICY ON APPLICANTS WITH DISABILITIES

POLICY

The Minnesota Board of Law Examiners ("Board") welcomes persons with disabilities to use the services of the Board. Reasonable testing accommodations will be made for persons with disabilities. The office of the Board is fully accessible, as is the St. Paul RiverCentre, the usual location of the bar exam and admission ceremony. The Minnesota Bar Examination is a two-day long, six-hour per day, timed test. The bar exam is designed to test the knowledge and skills necessary for one who seeks admission to the practice of law. The Minnesota Board of Law Examiners is a "public entity" covered by the Americans with Disabilities Act ("ADA").

It is the policy of the Minnesota Board of Law Examiners ("Board") to administer the bar examination and all other services of this office in a manner that does not discriminate against qualified applicants with disabilities. A qualified applicant with a disability who is otherwise eligible to take the bar examination, but who cannot demonstrate under standard testing conditions that he/she possesses the knowledge and skills to be admitted to the Bar of the State of Minnesota, may request reasonable testing accommodations.

The Board will make reasonable modifications in any policies, practices, and procedures which might otherwise deny equal access to individuals with disabilities. Such modifications will be made unless a fundamental alteration in the examination or other admission requirements would result. In order to accomplish this, the Board will furnish additional testing time, as well as auxiliary aids and services to ensure effective communication. Charges will not be assessed to individuals with disabilities to cover the costs of reasonable accommodations.

Individuals with disabilities will not be tested separately from other examinees, unless necessary to ensure that the test is equally effective for all examinees. If the individual prefers not to accept a reasonable accommodation, the Board will not require that the accommodation be accepted.

DEFINITIONS

"Disability" means a physical or mental impairment that substantially limits one or more of the major life activities of the applicant and substantially limits the ability of the applicant to demonstrate, under standard testing conditions, that the applicant possesses the knowledge, skills and abilities tested on the Minnesota State Bar Exam.

"Physical impairment" means a physiological disorder or condition or anatomical loss affecting one or more of the body's systems. *"Mental impairment"* means a mental or psychological disorder such as organic brain syndrome, emotional or mental illness, attention deficit disorder and specific learning disabilities. *"Qualified applicant with a disability"* means an applicant with a disability who with reasonable modifications to rules, policies, or practices; the removal of architectural, communication, or transportation barriers; or the provision of auxiliary aids and services; is capable of demonstrating that he/she possesses the knowledge, skills and abilities tested on the Minnesota Bar Exam, and set forth in the Essential Eligibility Requirements of the practice of law in Minnesota which are enclosed with the application packet.

"Reasonable accommodation" means an adjustment or modification of the standard testing conditions that ameliorates the impact of the applicant's disability without fundamentally altering the nature of the

EXHIBIT
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examination, or the Board's ability to determine whether the applicant possesses the essential eligibility requirements for the practice of law in Minnesota without imposing an undue burden on the Board, and without compromising the security and validity of the examination.

REQUESTS FOR ACCOMMODATIONS

A request for reasonable testing accommodations must be submitted along with the application for admission on or before the application filing deadline on forms prescribed by the Board describing the disability, the accommodations requested, and how the accommodation will ameliorate the applicant's disability. A statement from the applicant's treating physician or licensed treating professional must be included. Medical or other documentation is considered to be current in most instances if less than three years old.

The Director will review requests for testing accommodations on a case-by-case basis. The Director may request additional documentation and may refer the applicant's records to a medical or other specialist for evaluation at the expense of the Board. The Director will issue a written statement granting, denying, or modifying the request for accommodation. When denied or modified, the applicant may appeal the Director's decision by making a written request for review within **five (5) business days** of receipt of the Director's decision.

APPEALS

An applicant who is adversely affected by the Director's denial or modification of request for testing accommodation may appeal to the President of the Board or designee by submitting a written request for review within **five (5) business days** of the applicant's receipt of the Director's notice of denial or modification. An expedited hearing before the President or designated member of the Board will be scheduled in response to applicant's request for appeal and will take place by telephone conference, if necessary, prior to the bar examination. Written notice of the date, time, and place of the hearing will be sent to the applicant.

The expedited hearing will be held within **ten (10) business days** of receipt of the request for hearing. The applicant may be represented by counsel, and may call witnesses whose testimony cannot be provided in affidavit form. The expedited hearing will be tape-recorded and a copy of the tape will be provided to the applicant upon request.

Upon the conclusion of the expedited hearing, the President or designee will prepare brief written findings of fact and determination. A copy will be mailed to the applicant by regular mail and certified mail, return receipt requested, within **five (5) business days** of the hearing. The applicant may appeal the written decision to the Board by making a written request pursuant to the hearing procedures set forth in Board Rules.

If you have any questions about the Board's policies with respect to reasonable accommodations in testing, you should call Margaret Fuller Corneille, Director, or Terri Sudmann, Bar Admissions Administrator of the Minnesota Board of Law Examiners, at:

(612) 297-1857
TDD users: (612) 297-5353 or
800-627-3529 and ask for 297-1857 (in greater Minnesota).

You may also call the United States Department of Justice ADA information line at:

(202) 514-0301 (voice) or
(TDD) (202) 514-0381/0383.

MARK R. ANFINSON
ATTORNEY AT LAW
LAKE CALHOUN PROFESSIONAL BUILDING
3109 HENNEPIN AVENUE SOUTH
MINNEAPOLIS, MINNESOTA 55408
612-827-5611
FAX: 612-827-3564

April 17, 1998

Mr. Frederick K. Grittner
Clerk of the Appellate Courts
305 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

Re: Petition of Ravnitzky
Case No. C8-97-2104

Dear Mr. Grittner:

Enclosed are 14 copies (2 unbound) of the Letter Memorandum of the Minnesota Newspaper Association in the above-captioned matter. Thank you for your assistance.

Yours truly,

Mark R. Anfinson

MARK R. ANFINSON

ATTORNEY AT LAW

LAKE CALHOUN PROFESSIONAL BUILDING
3109 HENNEPIN AVENUE SOUTH
MINNEAPOLIS, MINNESOTA 55408

612-827-5611
FAX: 612-827-3564

April 17, 1998

Chief Justice Kathleen Blatz
Minnesota Supreme Court
Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

Re: Letter Memorandum—Petition of Ravnitzky
Case No. C8-97-2104

Dear Justice Blatz:

I act as attorney for the Minnesota Newspaper Association (MNA). I am submitting this letter memorandum in order to offer MNA's views on the issues raised in the above-captioned matter, which relates to the State Board of Law Examiners and public access to its records and meetings.

The Minnesota Newspaper Association is a voluntary association of all of the general-interest newspapers and most of the special-interest newspapers in the state. It is the principal representative of the organized press in Minnesota. MNA thus presents the cumulative experience of nearly 400 newspapers throughout the state, from the smallest to the largest.

Based on the Petition of Mr. Ravnitzky, and the response submitted by the Board of Law Examiners, it seems there is little or no dispute as to whether meetings and records of the Board should be presumed to be publicly accessible *in the future*. MNA agrees that such a presumption of public access should prevail with respect to the Board, just as it does with virtually every other public agency in the state. Naturally there will be circumstances where meetings of the Board, and its records, should not be accessible. However, the exact boundaries of the exceptions to public access are beyond the scope of this memorandum, and possibly outside that of the current proceeding.

Some conflict between the parties does appear to exist as to whether minutes of *past* Board meetings, and records accumulated by the Board in *prior* years, should be publicly accessible.

It is MNA's position that a similar presumption of public access should apply in these cases as well.

However, we appreciate the practical difficulties (outlined by the Board in its brief to the Court) that would be caused by allowing immediate, unconditional access to records compiled in the past, when it may have been assumed that no public access existed. These factors may justify a deliberative approach under which public access to prior records and meeting minutes would be phased in. Nonetheless, the practical difficulties alone would not seem to justify a complete and permanent ban on access.

Mr. Ravnitzky acknowledges that the minutes of prior meetings and the records generated by the Board in the past would be of interest primarily to historians and researchers (see Petition, 2, 12). At the same time, those records of the Board may well have value to members of the public in ways that cannot now be anticipated. MNA therefore hopes that the Court will establish a procedure by which decisions about allowing access to the historical records can be made, and through which most of those records will eventually be generally accessible.

I have filed the requisite number of copies of this letter with the Clerk of the Appellate Courts, and would respectfully ask that they be distributed in the same fashion as would a formal brief. I do not intend to testify at the April 21 hearing on the Petition.

Thank you for considering our views.

Yours truly,

Mark R. Anfinson

pc:

Brian Bates, Esq.
Linda Falkman, Minnesota Newspaper Association
Randy Lebedoff, Esq., *Star Tribune*
Michael Ravnitzky
Thomas C. Vasaly, Esq., Office of the Attorney General

SPJ
SOCIETY OF PROFESSIONAL JOURNALISTS
Minnesota Pro Chapter

April 15, 1998

Clerk of Court
Minnesota Supreme Court
25 Constitution Avenue
St. Paul, MN 55155

Clerk of Court:

Enclosed here please find a position paper regarding Supreme Court case number C8-97-2104.

We would hope this material would be included in the file for consideration by the court regarding the upcoming hearing slated for April 21st.

Thankyou.

Rick Kupchella
MnSPJ President

cc: Michael Ravnitzky
Brian Bates
Margaret Fuller Corneille

P.O. Box 19127 Minneapolis, MN 55419
www.mnspj.org

SPJ
SOCIETY OF PROFESSIONAL JOURNALISTS
Minnesota Pro Chapter

STATE OF MINNESOTA
IN THE SUPREME COURT
C8-97-2104

In Re Petition for Order of this Court Directing the State Board of Law Examiners to Open Administrative Portions of Board Meetings and Make Administrative Portions of Board Minutes, Past and Future, Available to the Public.

The Society of Professional Journalists, Minnesota Professional Chapter, respectfully submits the following regarding the November 13, 1997, petition of Michael Ravnitzky in the above-entitled matter.

The society is a national nonprofit organization that represents individual print and broadcast journalists, former journalists and teachers of journalism. This chapter represents the society in the State of Minnesota.

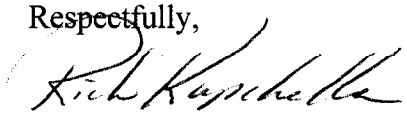
After examination of Michael Ravnitzky's petition and the response of the Board of Law Examiners, the Minnesota chapter of the society endorses the petition of Mr. Ravnitzky to open administrative board records, past, present and future. We support a determination of openness for material that was returned to the board from state archives.

If rules of the court and the board neither authorize nor prohibit openness, it would seem appropriate that openness should predominate, consistent with the state presumption of openness expressed in the Data Practice Act.

We are mindful that every determination of openness carries with it a certain administrative burden. We suggest that that is a small price to pay for citizens' access to the records and workings of their governmental agencies.

While we are not in a position to evaluate the possible newsworthiness of board records and meetings, we suggest that there is significant public and historical interest in the workings of all government agencies to mandate that they should be subject to public scrutiny whenever possible.

Respectfully,



Rick Kupchella
MnSPJ President
April 15, 1998

P.O. Box 19127 Minneapolis, MN 55419
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THE SUPREME COURT OF MINNESOTA
BOARD OF LAW EXAMINERS

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Margaret Fuller Corneille, Esq.
Director

April 20, 1998

Fred Grittner
Clerk of Appellate Court
Minnesota Supreme Court
Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

RE: Response to Comment of William J. Wernz
Court File No. CS-84-2139

Dear Mr. Grittner:

Enclosed for filing you will find the above-referenced Response to Comment of William J. Wernz.

Very truly yours,

MINNESOTA BOARD OF LAW EXAMINERS

Margaret Fuller Corneille
Director

bb
Enclosure

GRITNRMM

STATE OF MINNESOTA
IN SUPREME COURT
FILE NO. CS-84-2139

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

RESPONSE TO COMMENT OF WILLIAM J. WERNZ

This is in response to William J. Wernz's Comment.

1. With respect to proposed Rule 4.D. which provides that an applicant has the duty to cooperate with the Board, Mr. Wernz suggests that the text be modified to state that applicants have a duty to cooperate with "reasonable requests" for information and that a means of challenging unreasonable requests should be provided, as in Rule 25 of the Minnesota Rules on Lawyers Professional Responsibility. Rule 25 grants jurisdiction over such motions to the Ramsey County District Court.

Such a modification is not necessary in the Rules of the State Board of Law Examiners because adequate safeguards are already in place. The applicant has a right to a formal hearing before the Board upon issuance of an adverse determination. See existing Rule 104; proposed Rule 14.A. In addition, the applicant may appeal to the Court whenever the applicant is "adversely affected by a final decision of the Board." See existing Rule IX; proposed Rule 15.A. Applicants are aware of the broad scope of the bar admission investigation because it is set forth in the questions asked in the application, described in the Rules, and is further described in the Board's public information brochures. Unlike lawyer disciplinary matters, in bar admission matters, the burden of establishing good character is on the applicant. In re Haukebo, 352 N.W.2d 752,754 (Minn. 1984). Proposed Rule 5.B.2. incorporates this into the Rules of the Board.

2. Mr. Wernz also recommends that proposed Rule 7 should be amended to facilitate the admission of attorneys who have practiced as corporate counsel in several

jurisdictions but who may not have met the requirements of the five (5) years of license to practice requirement for admission without examination.

The existing Rule IV.A. allowing for admission in Minnesota of attorneys licensed in other jurisdictions is generous in that it permits attorneys to be admitted by years of practice, by exam score achieved in another state, as well as by taking the Minnesota bar exam. Few states are so generous; in fact, many jurisdictions, such as California and Florida, require that all attorneys take a bar exam.

Collins v. State Board of Law Examiners, 295 N.W.2d 83 (Minn. 1980), cited by Mr. Wernz, was decided on the wording of former Board Rule VIII which has been modified and renumbered as Rule VI. In 1988, Rule VI was amended to require that applicants seeking admission based upon years of practice must have been licensed to practice in another jurisdiction "and as principal occupation [have] been *actively and lawfully engaged* in the practice of law in that jurisdiction or pursuant to that license for at least five of the seven years immediately preceding the application." The language in italics was added in 1988 to clarify that an attorney applying for admission without examination could count time spent practicing in another jurisdiction, so long as the attorney was licensed by that jurisdiction. Mr. Wernz' example of an attorney who has been practicing in another jurisdiction, but who has not actually been licensed in that jurisdiction is not persuasive. A person who does not meet the minimum requirements of the rule, whether or not employed as corporate counsel, cannot be admitted pursuant to the rule and must take the bar examination in order to qualify for admission.

Dated: April 20, 1998

Margaret Fuller Corneille
Director
Minnesota Board of Law Examiners
25 Constitution Ave.
St. Paul, MN 55155
612-297-1857
Attorney ID# 179334

BRIAN BATES

ATTORNEY AT LAW

1985 Grand Avenue
Saint Paul, Minnesota 55105

(612) 690-9671

March 24, 1998

Clerk of Court
Minnesota Court of Appeals
25 Constitution Avenue
Saint Paul, Minnesota 55155

RE: Petition of Ravnitzky; Case Number: C8-97-2104.
Bar admission Rules

Dear Clerk:

This matter is to be heard by the Supreme Court on April 21, 1998 at 2:30pm. Please reserve the appropriate amount of time for me, Mr. Ravnitzky's counsel, and if appropriate for Mr. Ravnitzky.

Regards,

Brian Bates

DORSEY & WHITNEY LLP

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April 15, 1998

Mr. Frederick Grittner
Clerk of the Appellate Courts
305 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

Re: Petition of the Minnesota State Board of Law Examiners for Amendment of the Rules of the Minnesota Supreme Court and State Board of Law Examiners for Admission to the Bar
File No. C5-84-2139

Dear Mr. Grittner:

Enclosed are 12 copies of the Comment of William J. Wernz. I will not be making an oral argument.

Very truly yours,

William J. Wernz
Attorney at Law

WJW/lk
Enclosures

cc w/enc: Ms. Margaret Fuller Corneille
Thomas C. Vasaly, Esq.

STATE OF MINNESOTA

IN SUPREME COURT

FILE NO. C5-84-2139

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

COMMENT OF WILLIAM J. WERNZ

William J. Wernz respectfully submits to the Minnesota Supreme Court the following Comments on the Petition of the Minnesota State Board of Law Examiners for Amendment of the Rules of the Minnesota Supreme Court and State Board of Law Examiners for Admission to the Bar. The proposed Rule changes generally appear to be a commendable attempt to codify existing and desirable practices. The following proposed Rule changes appear to be in need of further consideration:

1. Proposed Rule 4.D., "Required Cooperation," provides, "An Applicant has the duty to cooperate with the Board and the Director by timely complying with requests, ..."

Comment: Footnote 14 to this proposed Rule states, "this provision is new and is similar to Rule 25 of the Minnesota Rules of Lawyers Professional Responsibility." However, Rule 25 of the Minnesota Rules on Lawyers Professional Responsibility (RLPR) provides that it is the duty of a lawyer being investigated to comply "with reasonable requests . . .." In addition, Rule 25 provides, "such requests

shall not be disproportionate to the gravity and complexity of the alleged ethical violations." Rule 25 also provides for a means of challenging allegedly unreasonable requests, and also provides that a good faith challenge is not to be the subject of discipline. It is respectfully suggested that if the Rules of the Supreme Court and State Board Law Examiners are to be amended according to the model of Rule 25, RLPR, the limits and safeguards of Rule 25 should also be provided.

2. Rule 7. Admission Without Examination

Comment: Collins v. State Bd. of Law Examiners, 295 N.W.2d 83 (Minn. 1980) is a holding of the Minnesota Supreme Court which has not been incorporated into the proposed Rule nor into the ordinary practice of the Minnesota Board of Law Examiners. In Collins, two lawyers licensed elsewhere practiced as house counsel for Minnesota corporations while residing in Minnesota, and to be admitted needed to have their years in Minnesota as house counsel counted toward eligibility. The Board denied admission. The Court reversed.

In my limited experience, the Board has been willing to apply Collins only to lawyers whose practice is principally in Federal Court or before the United States Patent Office. The dissent in Collins noted "that a revision that would more nearly comport with the reality of the growing specialization in the practice of law in the interstate mobility of lawyers is long overdue." 295 N.W.2d at 84. What was "long overdue" nearly 20 years ago appears to be still longer overdue now.

I would respectfully recommend that the Court instruct the Board to submit a proposed amendment to Rule 7 which, particularly for house counsel, more

adequately recognizes the interstate mobility of lawyers and the growing national practices of many lawyers, particularly house counsel for corporations which are national and international in their legal needs. In my experience it is very common for house counsel to have practiced in several jurisdictions and for their licensing in different jurisdictions not to closely match up with their employment experience. Thus, for example, a lawyer may have been admitted in Illinois in 1988, move to Connecticut in 1991, be admitted to Connecticut in 1993, move to Minnesota in 1996 and apply for a Minnesota license in 1998. In this scenario it is my understanding that the Board would count toward eligibility only the three years from 1993 to 1996, during which the house counsel both worked in Connecticut and was licensed there. The years from 1996 to 1998 would not be counted. However, the calculation in Collins would count the Minnesota period. It is respectfully suggested that Collins be codified in the amended rules.

Dated: April 15, 1998

Respectfully submitted,

DORSEY & WHITNEY LLP

By _____
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