

## BOARD OF BAR EXAMINERS

### BOARD TO DETERMINE FITNESS OF BAR APPLICANTS

#### WAIVER PROCESS & POLICY

(Adopted April 8, 2005; revised July 29, 2008;  
approved by Supreme Court of Georgia September 3, 2008)

Part F, Section 5 of the **Rules Governing Admission to the Practice of Law** in Georgia states that both the Board to Determine Fitness of Bar Applicants and the Board of Bar Examiners may “. . . for good cause shown by clear and convincing evidence” waive any of the **Rules** with certain limited exceptions (relating to the payment of fees and the regrading of the bar exam). The decision of either Board not to waive a Rule is appealable to the Supreme Court. Both Boards have adopted this statement of the process that the applicant should follow, and that the Boards will utilize, for a waiver request.

The applicant should understand that it is his/her responsibility to apply for a waiver and that the burden is on the applicant to provide the clear and convincing evidence that establishes good cause. While the Boards commonly refer to a “petition” for a waiver, there is no designated format which must be used to request most waivers; however, the Board of Bar Examiners requires that a request for waiver of the educational requirements of the **Rules** should follow the **Instructions and Checklist for Filing Petition for Waiver of Educational Requirements**. A request for waiver of the other **Rules** may be in any form the applicant chooses. Most commonly it is in the form of a letter to the Director of Bar Admissions, who will then place the waiver request on the agenda for the next available Board meeting.

In the “petition,” the applicant should state the basis for the waiver in his or her own words, keeping in mind that what the Board needs to approve a waiver is “good cause shown by clear and convincing evidence.” Any documentation or other evidence of the justification for a waiver should be attached to the request. Upon receipt of the request, the Director will write the applicant acknowledging receipt, seeking further information or documentation as necessary, and informing the applicant of the next scheduled Board meeting.

The most common waiver sought from the Fitness Board is a waiver of the filing deadlines found in Part A, Section 4 of the **Rules**. In such a matter, the applicant should submit a full and frank narrative of what the cause for missing the deadline was, including a statement as to why the applicant did not file the application earlier in the process (i.e., getting caught in traffic on the last day for filing does not explain why the application was not filed weeks or even months sooner). The Board will approve a waiver of the filing deadline only rarely, and only in the case where there is documented and justifiable good cause.

The most common request submitted to the Board of Bar Examiners is a waiver of the educational eligibility standards of Part B, Section 4 of the **Rules** (i.e., no undergraduate degree, or a law degree from a non-ABA-approved domestic or foreign law school). Once again, the burden is on the applicant to establish “good cause” for the waiver by “clear and convincing evidence.” The Board will consider each waiver request on a case-by-case basis and review carefully the documentation and statement of good cause submitted by the applicant.

The Supreme Court has addressed the “. . . good cause by clear and convincing evidence” standard for educational eligibility waivers in several cases [See In re: Terese S. Oliver, 261 GA 850 (1992); In re: E.L.D., 268 GA 883 (1998); In re: Maria Fernanda Farall-Shurman, 266 GA 209 (1996); and In re: G.E.C., 269 GA 744 (1998)]. In the G.E.C. case the Court wrote: “G.E.C. maintains that he has, by clear and convincing evidence, demonstrated good cause for a waiver, especially in the absence of a definition of the Standard. However, good cause in this context is not susceptible of rigid definition. It is a factual question which must be judged according to the circumstances of the case.”

In evaluating an application for waiver of the educational requirement(s) of the **Rules Governing Admission to the Practice of Law** in Georgia, the Board of Bar Examiners considers the following criteria:

- 1) The educational background of the applicant;
- 2) The quality of the applicant’s educational achievements;
- 3) The applicant’s substantive employment history; and
- 4) The career goals of the applicant.

In reviewing requests for waivers of the educational eligibility standards, the Board has found very important the submission of the following categories of information, and it requires that each applicant for an educational waiver provide this information or present clear and convincing evidence as to why such information should not be required of the applicant:

1. A statement as to why the applicant’s educational background does not meet the standard (i.e., why no undergraduate degree; why no qualifying J.D. degree; etc.);
2. A thorough description of the relevant educational history (schools attended, course of study and curriculum with transcripts of educational achievement from those schools, letters of reference, particularly from law faculty, etc.);
3. Documentation of any postgraduate legal education (LL.M or S.J.D. degrees);
4. Documentation of membership of the bar of another state or another country, if applicable;
5. Description of employment history, particularly any law-related employment (if a member of the bar in another state or another country, a description of legal practice and any significant achievements in the practice of law);
6. A “Dean’s” letter, which is a statement from a Dean or the Dean’s designee on the faculty at an ABA-approved law school analyzing the legal education received and stating whether or not it is the equivalent of an ABA-approved legal education (Guidelines for Dean’s Letter is attached). The Guidelines for Dean’s Letter provides direction on the purpose and scope of the Dean’s Letter.

7. A statement as to career goals and whether or not the applicant has obtained law-related employment in Georgia; and
8. A narrative statement as to why the applicant believes that good cause by clear and convincing evidence has been established and any other documentation, material or information that the applicant feels is relevant to the establishment of good cause.

Although no combination of the above categories of information automatically leads to approval of a waiver request, these are the issues that the Board will consider and will be important in establishing good cause by clear and convincing evidence.

If a petition for waiver of the educational eligibility requirement(s) does not contain the documentation specified above, or does not provide clear and convincing evidence as to why such information should not be required of the applicant, the Director of Admissions shall advise the applicant in writing that:

- (i) The information has not been properly submitted; and
- (ii) The petition for waiver will not be acted upon until such information has been provided or the applicant provides clear and convincing evidence as to why it need not be provided in support of the applicant's petition.

In the event that the Board of Bar Examiners denies a petition for waiver of the educational eligibility requirement(s), it shall provide a written statement to the applicant that the petition has been denied and the reason(s) therefor.

The Fitness Board meets in the early part of each month (except for March, July and August). The Board of Bar Examiners has regularly scheduled meetings in mid-January, late February and late July. It also typically holds called meetings in April, June and November. Any waiver request, including supporting documentation, that is received less than three (3) weeks prior to the scheduled meeting of either Board will not be considered until the succeeding scheduled meeting. Once the Board makes a determination on the waiver request, notice of the Board's decision will be provided in writing to the applicant as soon as possible.

In the rare event that an applicant is able to document a change in facts or circumstances related to a denied waiver request, the applicant may submit a request for reconsideration to either Board. The request for reconsideration shall provide documentation of the change in facts or circumstances that form the basis for the request. If such documentation is not provided, the request for reconsideration will not be considered by the Board. In the case of a request for reconsideration of a decision of either Board that was made at the meeting immediately preceding the administration of a bar examination, the request must be submitted to the Office of Bar Admissions not later than ten (10) days following the Board meeting.

In applying for a waiver, applicants should keep in mind the restrictions of Part F, Section 6 regarding communication with Board members. All communications should be through the Office of Bar Admissions. Direct contact with a Board member by an applicant or his/her representative is not permitted. Any questions about the process or any other issue related to waiver requests should be directed to the Office of Bar Admissions (404-656-3490).