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Review of Bar Examinations by Court

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REVIEW OF BAR EXAMINATIONS BY COURT

Petitioner, a Massachussetts bar member graduate from the Harvard law college and a World War II veteran, requested a review by the court of his answers to the 1946 Nevada bar examination which he had failed to pass, and an order admitting him to practice law in the courts of that state, notwithstanding the adverse recommendation of the board of bar examiners. He was one of 21 applicants for admission to practice law who, of the 32 taking the examination, fell below the passing mark of 75 per cent. Charges of unfair and unjust treatment of the petitioner were entered based on the board's grading of some examination papers more severely than others, and the board's failure to place a grade on his examination papers, which thereby rendered impossible a discovery of the means by which the examiners concluded that he had failed the examination. *Held:* that the showing made in the petition was insufficient to justify the court's compliance with the request to read and study the bar examination questions and the answers given thereto, petition dismissed. *In re Myles,* 180 P. (2d) 99 (Nev. 1947).

The attitude of the courts is that if any dissatisfied applicant can show that the board of examiners denied him passage of the state bar examination by means of fraud, imposition, or coercion, or that he was prevented from a fair opportunity to take the examinations, the court will listen to his complaint.[1] Such a requirement is not achieved until the applicant for a license to practice law satisfies the burden of showing wherein the decision of the board of bar examiners to refuse the license to practice was incorrect or unfair.[2] Inability to pass examinations which are successfully passed by other applicants will not be a subject of inquiry by the court.[3] Quite clearly the court has no obligation to review the examination papers at the request of every unsuccessful applicant regardless of the insufficiency of his pleading.[4] A petition which in substance sets forth nothing more than the opinion of the aggrieved applicant that his answers entitled him to a passing grade notwithstanding the appraisal of the board of examiners will not invoke the court's attention.[5]

No case has been found in which the allegations of the petitioner were sufficient to support his request to read and study the questions and answers of the bar examination. In *Staley* v. *State Bar of California*[6] the court refused to act on a charge that petitioner had passed the examination with a higher grade than 70 per cent, but that the board had arbitrarily and capriciously reduced this

1. In re Investigation of Conduct of Examination for Admission to Practice Law, 1 Cal. (2d) 61, 33 P. (2d) 829 (1934); Salot v. State Bar of California, 3 Cal. (2d) 615, 45 P. (2d) 203 (1935).
2. Salot v. State Bar of California, 3 Cal. (2d) 615, 45 P. (2d) 203 (1935); Staley v. State Bar of California, 17 Cal. (2d) 119, 109 P. (2d) 667 (1941); In re Hughey, 62 Nev. 498, 156 P. (2d) 733, 734 (1945).
3. In re Investigation of Conduct of Examination for Admission to Practice Law, 1 Cal. (2d) 61, 33 P. (2d) 829, 830 (1934); Salot v. State Bar of California, 3 Cal. (2d) 615, 45 P. (2d) 203 (1935); Staley v. State Bar of California, 17 Cal. (2d) 119, 109 P. (2d) 667 (1941).
4. In re Hughey, 62 Nev. 498, 156 P. (2d) 733, 735 (1945).
5. Staley v. State Bar of California, 17 Cal. (2d) 119, 109 P. (2d) 667, 668 (1941).
6. 17 Cal. (2d) 119, 109 P. (2d) 667 (1941).

to below a passing mark. This contention was regarded as nothing more than a general statement that his answer entitled him to a passing grade. A similar disposition was shown by the court *In re Hughey*, wherein the petitioner stated that he believed a re-examination conducted by the court would disclose that he had made a passing grade. Nevertheless strong dictum in both *In re Hughey*[8] and *In re Myles*[9] would seem to support the belief that a charge specifically indicating which examination questions were unreasonably difficult, or which markings of the answers were unreasonably strict and severe would render a petition acceptable to the court as having sufficiently shown wherein the conduct of the board of examiners amounted to fraud or imposition.

The case of *In re Investigation of Conduct of Examination for Admission to Practice Law*[10] is to be considered separately. Although none of the applicants were admitted to practice as a result of the case it notably constitutes a departure from the dictum of *In re Myles* and *In re Hughey* in that the court did cause the papers to be re-read despite the generality of the pleadings. The petitions requested a review of the entire conduct of the examination, but stated no charges of specific unfair acts, only statements that the gradings were discriminatory and unfair, and that the examination was very hard. The court, pressed by the great number of unsuccessful applicants,[11] and by solicitation in their behalf by members of the bar and others, deemed it proper to grant the request and enter into a consideration of the situation to ascertain why such a large number of applicants should fail to pass the August, 1933, bar examination. Accordingly the records pertaining to that bar examination were inspected by the court, and those examination papers bearing a grade of 60 up to 70 per cent, the passing grade, were re-read. The court itself did not do the re-reading, but directed that such be accomplished either by the reviewers regularly employed by the bar examiners, or personally by the committee of bar examiners. As a result of the investigation the court permitted all unsuccessful applicants, who were barred from future examinations, to take the forthcoming February, 1934, bar examination if their grades were above 50 per cent.

The unsuccessful bar applicant may well devote his time to preparation for a future opportunity to be examined rather than to contesting that which has been determined. No record has been found which shows that an applicant has actually been admitted to practice as a result of such contest, and few cases show that the court has even listened to the contesting complaint. The obstacles to a

7. 62 Nev. 498, 156 P. (2d) 733, 734 (1945).
8. 62 Nev. 498, 156 P. (2d) 733, 734 (1945). "The motion does not state wherein the examinations were unfair and unjust. It fails to say which questions are claimed to be unreasonably difficult, or which of the gradings assigned to applicant's answers are unreasonably strict or severe."
9. 180 P. (2d) 99, 100 (Nev. 1947). "It is not stated in applicant's petition that the examination questions were unreasonably difficult, nor that the markings of the answers were too strict."
10. 1 Cal. (2d) 61, 33 P. (2d) 829, 832 (1934).
11. In re Investigation of Conduct of Examination for Admission to Practice Law, 1 Cal. (2d) 61, 33 P. (2d) 829, 830 (1934). "The report of the results of the August, 1933, bar examinations disclosed that of the 831 applicants taking the examinations only 263, or 31.6 per cent were passed and recommended to this court for admission to practice law."

review of one's questions and answers are numerous. The board of examiners was created to relieve the court of the task of determining an applicant's legal proficiency and learning.[12] In appreciation of this aid the courts declare that nothing short of a specific showing of fraud will move it to listen to a petition. The answer is quite obvious that, unless the applicant has access to his examination paper after it has been graded, and unless a grade is placed on each answer to each question, his petition may be found defective, for otherwise he is helpless to designate which question and which grading is unreasonable.

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WYOMING STATE BAR SECTION

"WHO'S WHO—DIGEST OF WOMEN LAWYERS AND JUDGES" SOON TO BE PUBLISHED

Nearing final stage of completion is the new *Who's Who—Digest of Women Lawyers and Judges,* which will be published by the Embry Newspapers, Incorporated, of Kentucky, and promises to be a really excellent book of information concerning the experience, ability and identity of women lawyers in the United States and its possessions.

Editor of this book is Laura Miller Derry, Louisville attorney, active practitioner, participant and office holder in local, national and international bar associations during the past ten years. She recently completed her term as President of the National Association of Women Lawyers and is now a Director of that organization. For two years she has served as Recording Secretary of the Women Lawyers International Association. Kappa Beta Pi, oldest international legal sorority, recently conferred rare honorary membership upon Mrs. Derry at a ceremony in Washington. This background, together with previous newspaper experience eminently qualifies Mrs. Derry to edit this much-in-demand book.

Assembling names and addresses of the several thousand women lawyers in the United States was no easy task, because available lists were seldom complete. In the instance of Wyoming, Mr. L. C. Sampson, President of the Wyoming State Bar Association, and Mr. Robert B. Laughlin, Secretary-Treasurer, were able to furnish the Editor with what is believed to be a complete list. If, however, any woman lawyer of this State has not received a questionnaire, she should contact the Editor at 509 Kentucky Home Life Building, Louisville, Kentucky, at once.

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12. Spears v. State Bar of California, 211 Cal. 183, 294 P. 697, 700 (1930).