

Katherine A. Fox (5278)
General Counsel
Utah State Bar
645 South 200 East
Salt Lake City, Utah 84111
Telephone: (801) 297-7047
Fax: (801) 531-0660

FILED
UTAH APPELLATE COURTS
APR 02 2010

IN THE SUPREME COURT OF THE STATE OF UTAH

IN RE:)	
)	
UTAH STATE BAR)	PETITION TO AMEND
)	ADMISSION RULE 14-707
)	FOR A REVISED FBI
)	BACKGROUND
Petitioner.)	REPORT DEADLINE
)	

INTRODUCTION

THE UTAH STATE BAR ("Bar") hereby files this "Petition to Amend Admission Rule 14-707 for a Revised FBI Background Report Deadline." One of the requirements for those applying for admission to the Bar is timely submission of a completed criminal background check report from the Federal Bureau of Investigation ("FBI"). Until recently, the FBI reports took only a few weeks to obtain. More recently, and for a variety of reasons, the reports are taking anywhere from 12-14 weeks (and in some cases as long as 20 weeks) to issue. The current Rules Governing Admission to the Utah State Bar ("Admission Rules") require that the criminal background report be submitted at the time the admission application is filed. Given the current FBI processing backlog, applicants need to begin the application process and file their request for an FBI report 4 months before the filing deadline. In order to avoid unfairly penalizing

applicants with late fees and worse, being unable to take the Bar Examination for which they want to apply, the Board of Bar Commissioners (Commission) at its January 22, 2010 regularly scheduled meeting, approved amending the Admission Rules so that applicants have up to 30 days before the Bar admission ceremony to submit the required report.

BACKGROUND

All applicants for admission to the Bar are required to submit a number of different documents in support of their application. One of those long standing requirements is a current FBI criminal background check report.¹ Contributing to the current backlog of requests for these reports is the fact that applications for purposes of professional licensing are now considered to be low priority and processing for other reasons (such as employment background checks and visas) now take precedence. The Bar's current rule regarding these FBI reports was originally drafted to provide for the reports to be timely submitted along with or shortly thereafter submitting the entire application for admission. With the FBI backlog, however, increasing numbers of applicants simply cannot reasonably be expected to obtain the report within the time period (including the extended late filing deadline) currently required by the Admission Rules.

After receiving a number of complaints from disadvantaged applicants and examining the issue, the Commission took up the issue at its January 22, 2010

¹ Prior to requiring a FBI background check report, the Bar relied upon a Western Bureau of Criminal Investigations ("BCI") background check report. With the advent of increasing numbers of applicants from other states, however, and because the BCI check was limited to the Western States, the Bar decided that a more geographically widespread investigation was needed. Towards that end, the Bar switched from requiring a BCI report to the more comprehensive FBI criminal background report.

Commission meeting. After extensive discussion, the Commission adopted the following motion to facilitate applicants' ability to obtain and timely submit a FBI background check report: "Eliminate the current requirement that applicants file the FBI reports along with their completed applications and instead, permit them to submit the reports up to 30 days before the Bar admissions ceremony."

We then requested an order from this Court to provide for the temporary suspension of the current filing deadlines for FBI background checks under Admission Rule 14-707(b) until the Court had the opportunity to consider the issue more thoroughly via a petition for a rule change. The temporary order permits applicants to take the July 2010 Bar Examination as long as the FBI report is submitted to the Bar no later than September 13, 2010, which is 30 days before the ceremony slated for October 13th. A copy of the Court's temporary order dated February 9, 2010, is attached as Exhibit "A." After the Bar received a copy of the Court's order, we changed the admission office website notice so that applicants would not be misled by the current Admission Rule deadline. A copy of the current website notice is attached as Exhibit "B."

PROPOSED REVISED RULE

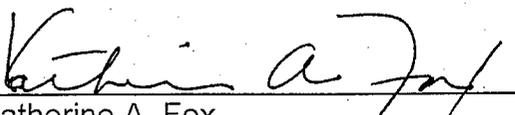
The Admissions Committee met on March 9, 2010 to decide how to revise Rule 14-707 to comport with the Commission's directions. After discussion and repeated exchanges of revised drafts, section (b) of the current rule was changed to allow an applicant to submit the required background check no later than 30 days before a Bar admissions ceremony. An applicant who is unable to submit the criminal background report along with a completed application merely needs

to execute a simple declaration stating that he or she has applied for the report and then duly provide the report by the new deadline. If the background criminal report reveals information not previously disclosed in the admission application, the Bar's Character and Fitness Committee retains the authority to withdraw or modify its previous approval until the new information can be more thoroughly assessed. Applicants who do not submit a background report by the new deadline will not be admitted at the Bar admissions ceremony. A redlined copy of the revised Admission Rule is attached as Exhibit "C" and a "clean" copy of the proposed changes is attached as Exhibit "D."

CONCLUSION

Significant backlogs in the FBI's processing time for criminal background checks have adversely impacted applicants for admission to the point where they are unable to meet current deadlines set forth in the Admission Rules. The Commission wants to alleviate this manifest unfairness by extending the deadlines in which to submit the background reports and Admission Rule 14-707 (b) has been revised to provide for the additional time. Based on the ongoing processing difficulties which are beyond the Bar's control, and for reasons of fairness, the Bar requests the Court to approve the proposed rule revisions.

Dated this 2nd day of April, 2010.


Katherine A. Fox
Utah State Bar General Counsel

IN THE SUPREME COURT OF THE STATE OF UTAH FEB 09 2010

----oo0oo----

In re: Temporary Suspension of
Filing Deadlines for Federal
Bureau of Investigations Criminal
Background Check under Rule
14-707(b) of the Admissions Rules
Governing the Utah State Bar

Case No. 20100108-SC

ORDER

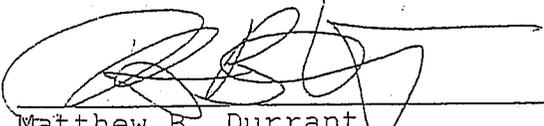
Having been advised by representatives of the Utah State Bar that the processing time for Federal Bureau of Investigations ("FBI") criminal background checks has increased from four to six weeks to thirteen to fourteen weeks, resulting in the likelihood that many applicants for the July 2010 Bar Examination will be unable to submit completed applications within the deadlines stated in Rule 14-707(b) of the Admissions Rules Governing the Utah State Bar,

IT IS HEREBY ORDERED that applicants are permitted to take the July 2010 Bar Examination without submission of the FBI criminal background check, provided, however, that such applicants must submit the criminal background check required under Rule 14-707(b) to the Utah State Bar no later than September 13, 2010.

FOR THE COURT:

2-9-10

Date



Matthew B. Durrant
Associate Chief Justice



Office of Bar Admissions

Utah State Bar >>>

- Member Services
- Find A Utah Lawyer
- Bar Directories
- Public Services
- Sections & Committees
- Bar Admissions
- New Lawyer Training
- CLE & MCLE
- Rules Policies Opinions
- OPC
- Legal Resources
- Utah State Bar Building
- Bar Journal

Site Search

Search the Site

Match ALL words

Search

Overview of Utah State Bar Admissions

Next Bar Exam: July 27 & 28, 2010 - 8:00 a.m.
 (Check below for filing deadlines)

July 2010 Bar Exam Applicants
 Completed FBI Background Checks Must be Filed By 9/13/10

Due to the uncertain timeframe for processing FBI background checks, the Court has modified the timing for the filing of background checks for the July 2010 exam applicants.

You will have until September 13th to file your FBI report with the Admissions Office to complete your application.

DO NOT DELAY IN SUBMITTING YOUR REQUEST TO THE FBI.

All other required documents must be included with the application when filed to be considered a complete application.

Incomplete applications are not accepted.

FBI background checks MUST be filed by September 13th to be eligible for the October Admissions Ceremony.

Please be aware that the processing time for a background check may take up to 20 weeks, depending on the volume of requests and FBI workload at any given time.

effective 2/10/10

Welcome to the Utah State Bar Office of Admissions. The Office of Bar Admissions administers the design and grading of the bar exam, processes applications, and coordinates the character and fitness reviews of all applicants. The Office of Bar Admissions is also responsible for managing the Admission by Motion and House Counsel admission process for attorneys that meet the required standards for that type of admission.

There are two bar exams each year, in February and July. Admissions requirements are described in detail in the Rules Governing Admission to the Utah State Bar and include:

- Graduation from an ABA approved Law School >>
- Approval by the Character & Fitness Committee
- Passing Scores on the Utah Bar Examination and the Multi-State Professional Responsibility Examination (MPRE)

The February 2010 Bar Examination will be on the 23rd and 24th.

The July 2010 Bar Examination will be on the 27th and 28th.

FILING DEADLINES

EXHIBIT "B"

Bar Admissions Resources

- Frequently Asked Questions
- Rules Governing Admissions
- Admissions Application Registration, Instructions & Forms
- Application Deadlines & Fees
- Admission by Motion/Reciprocity
- Admission as House Counsel
- Admission by Pro Hac Vice
- Admissions for Military Lawyers
- Admissions for Foreign Legal Consultants
- Other Resources

- New Lawyer Training
- Certificate of Good Standing - Utah Bar
- ABA Approved Law Schools
- Reciprocity Jurisdiction Table

Rule 14-707. Application; deadlines; withdrawals; postponements and fees.

(a) Form. Each applicant must submit a completed application for examination and admission in accordance with the instructions prescribed by the Bar. Such application shall include an authorization and release enabling the Bar to obtain information concerning the applicant.

(b) Filing deadlines generally. Except as otherwise provided herein, the Bar shall receive complete applications by October 1 preceding the February Bar Examination and by March 1 preceding the July Bar Examination. A complete application will be accepted up to 15 calendar days after the filing deadline if accompanied by the prescribed 15-day late fee. A complete application will be accepted up to November 1 for the February Bar Examination if accompanied by the prescribed 30-day late fee and up to April 1 for the July Bar Examination if accompanied by the prescribed 30-day late fee. ~~An official certificate of law school graduation reflecting graduation must be submitted by the applicant prior to being permitted to take the Bar Examination.~~ In accordance with the filing instructions and information for the application, late or incomplete applications will not be accepted with the following exceptions:

~~A fingerprint card must be submitted to the Federal Bureau of Investigations ("FBI") in order for a criminal background check to be prepared. If the FBI rejects the fingerprint card, an application will be considered complete if a copy of the rejection letter is included with the application. The applicant will then have an additional six weeks from the date of the rejection letter to submit the criminal background check to the Bar.~~

(b)(1) An applicant who will complete all law school academic requirements prior to the Bar Examination, but whose law degree will not be conferred until after the application filing deadline may file the certificate of law school graduation after the application has been submitted. Certificates of law school graduation must be received by the Bar no later than thirty (30) calendar days prior to the Bar Examination. In the event the certificate of law school graduation is not timely received by the Bar, an applicant will not be permitted to take the Bar Exam.

(b)(2) An applicant who has not received the criminal background report from the Federal Bureau of Investigation ("FBI") may submit the application without a criminal background report provided the

applicant provides proof that a criminal background request has been filed with the FBI prior to submission of the application. Sufficient proof of submission of the criminal background request shall be by declaration in the form proscribed by the Bar. The criminal background report should be submitted to the Bar within fourteen (14) calendar days of the applicant's receipt of the report but no later than thirty (30) calendar days prior to the next scheduled Admissions Ceremony. The Character and Fitness Committee may withdraw or modify its approval based upon information contained in the criminal background report. In the event the criminal background report is not timely received by the Bar, an applicant will not be admitted at the Admissions Ceremony.

(c) Filing deadlines for disbarred attorneys. Disbarred attorneys may not file an application for admission until the later of five years after the effective date of the license revocation or the date specified in the disciplinary order. Disbarred attorneys must comply with Rule 14-717(b), if applicable. Complete applications for disbarred attorneys shall be received by the Bar by September 1 preceding the February Bar Examination and by February 1 preceding the July Bar Examination. Late applications for disbarred attorneys are not permitted.

(d) Withdrawal of applications and refunds. To withdraw an application, written notice must be provided 30 calendar days before the examination date. One-half of the filing fee paid shall be refunded; late fees will not be refunded. No refund is available to admission on motion applicants or if the application is withdrawn within 30 calendar days of the date of the Bar Examination or if a notice of a formal hearing by a panel of the Character and Fitness Committee has been sent to the applicant.

(e) Postponement of application. An applicant may only postpone or transfer his or her application due to emergency circumstances or pursuant to Rule 14-708(b)(4)(A). Emergency transfers are subject to the following restrictions.

(e)(1) The applicant must provide a written request, including payment of the prescribed transfer fee, prior to the date of the Bar Examination.

(e)(2) Proof of the emergency must be provided. The reasons for the transfer are limited to two circumstances:

(e)(2)(A) a personal medical emergency, or

EXHIBIT "C-2"

(e)(2)(B) a death in the immediate family.

(e)(3) The transferring applicant must specify which future Bar Examination he or she plans to take. The exam must be taken within the next two scheduled Bar examinations.

(e)(4) The applicant must provide an updated application by filing a reapplication for admission form, updating any information that has changed since the prior application was filed and a new criminal background check. The reapplication for admission form should be submitted by the initial application deadline of October 1 preceding the February Bar Examination and March 1 preceding the July Bar Examination. A reapplication for admission will be accepted up to 15 calendar days after the filing deadline if accompanied by the prescribed 15-day late fee. A reapplication for admission form will be accepted up to November 1 for the February Bar Examination if accompanied by the 30-day late fee and up to April 1 for the July Bar Examination if accompanied by the prescribed 30-day late fee.

(e)(5) An applicant is entitled to one transfer only.

(f) Retaking Bar Examination. An applicant failing the Bar Examination who wishes to retake the examination must file a written request, including payment of the prescribed fee by the retake deadline. Late applications will not be accepted.

(f)(1) The applicant must provide an updated application form, updating any information that has changed since the application was filed and a new criminal background check.

(f)(2) An applicant who fails to achieve a passing score after six examinations may only take additional examinations with the permission of the Admissions Committee. A petition providing good cause as to why the Admissions Committee should grant such a request must be filed with the deputy general counsel by the initial application deadline for the examination. Late applications will not be accepted. Qualified applicants who have already failed six or more examinations by September 1, 2003, may be approved to take two additional examinations.

EXHIBIT "C-3"

Rule 14-707. Application; deadlines; withdrawals; postponements and fees.

(a) Form. Each applicant must submit a completed application for examination and admission in accordance with the instructions prescribed by the Bar. Such application shall include an authorization and release enabling the Bar to obtain information concerning the applicant.

(b) Filing deadlines generally. Except as otherwise provided herein, the Bar shall receive complete applications by October 1 preceding the February Bar Examination and by March 1 preceding the July Bar Examination. A complete application will be accepted up to 15 calendar days after the filing deadline if accompanied by the prescribed 15-day late fee. A complete application will be accepted up to November 1 for the February Bar Examination if accompanied by the prescribed 30-day late fee and up to April 1 for the July Bar Examination if accompanied by the prescribed 30-day late fee. In accordance with the filing instructions and information for the application, late or incomplete applications will not be accepted with the following exceptions:

(b)(1) An applicant who will complete all law school academic requirements prior to the Bar Examination, but whose law degree will not be conferred until after the application filing deadline may file the certificate of law school graduation after the application has been submitted. Certificates of law school graduation must be received by the Bar no later than thirty (30) calendar days prior to the Bar Examination. In the event the certificate of law school graduation is not timely received by the Bar, an applicant will not be permitted to take the Bar Exam.

(b)(2) An applicant who has not received the criminal background report from the Federal Bureau of Investigation ("FBI") may submit the application without a criminal background report provided the applicant provides proof that a criminal background request has been filed with the FBI prior to submission of the application. Sufficient proof of submission of the criminal background request shall be by declaration in the form proscribed by the Bar. The criminal background report should be submitted to the Bar within fourteen (14) calendar days of the applicant's receipt of the report but no later than thirty (30) calendar days prior to the next scheduled Admissions Ceremony. The Character and Fitness Committee may withdraw or modify its approval based upon information contained in the criminal background report. In the event the criminal background report is not

timely received by the Bar, an applicant will not be admitted at the Admissions Ceremony.

(c) Filing deadlines for disbarred attorneys. Disbarred attorneys may not file an application for admission until the later of five years after the effective date of the license revocation or the date specified in the disciplinary order. Disbarred attorneys must comply with Rule 14-717(b), if applicable. Complete applications for disbarred attorneys shall be received by the Bar by September 1 preceding the February Bar Examination and by February 1 preceding the July Bar Examination. Late applications for disbarred attorneys are not permitted.

(d) Withdrawal of applications and refunds. To withdraw an application, written notice must be provided 30 calendar days before the examination date. One-half of the filing fee paid shall be refunded; late fees will not be refunded. No refund is available to admission on motion applicants or if the application is withdrawn within 30 calendar days of the date of the Bar Examination or if a notice of a formal hearing by a panel of the Character and Fitness Committee has been sent to the applicant.

(e) Postponement of application. An applicant may only postpone or transfer his or her application due to emergency circumstances or pursuant to Rule 14-708(b)(4)(A). Emergency transfers are subject to the following restrictions.

(e)(1) The applicant must provide a written request, including payment of the prescribed transfer fee, prior to the date of the Bar Examination.

(e)(2) Proof of the emergency must be provided. The reasons for the transfer are limited to two circumstances:

(e)(2)(A) a personal medical emergency, or

(e)(2)(B) a death in the immediate family.

(e)(3) The transferring applicant must specify which future Bar Examination he or she plans to take. The exam must be taken within the next two scheduled Bar examinations.

(e)(4) The applicant must provide an updated application by filing a reapplication for admission form, updating any information that has changed since the prior application was filed and a new criminal

EXHIBIT "D-2"

background check. The reapplication for admission form should be submitted by the initial application deadline of October 1 preceding the February Bar Examination and March 1 preceding the July Bar Examination. A reapplication for admission will be accepted up to 15 calendar days after the filing deadline if accompanied by the prescribed 15-day late fee. A reapplication for admission form will be accepted up to November 1 for the February Bar Examination if accompanied by the 30-day late fee and up to April 1 for the July Bar Examination if accompanied by the prescribed 30-day late fee.

(e)(5) An applicant is entitled to one transfer only.

(f) Retaking Bar Examination. An applicant failing the Bar Examination who wishes to retake the examination must file a written request, including payment of the prescribed fee by the retake deadline. Late applications will not be accepted.

(f)(1) The applicant must provide an updated application form, updating any information that has changed since the application was filed and a new criminal background check.

(f)(2) An applicant who fails to achieve a passing score after six examinations may only take additional examinations with the permission of the Admissions Committee. A petition providing good cause as to why the Admissions Committee should grant such a request must be filed with the deputy general counsel by the initial application deadline for the examination. Late applications will not be accepted. Qualified applicants who have already failed six or more examinations by September 1, 2003, may be approved to take two additional examinations.

EXHIBIT "D-3"