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Jerrold V. Powers

*Former Associate Judge, Maryland Court of Special Appeals*

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## ADMISSION TO THE BAR IN MARYLAND

Jerrold V. Powers†

*This Article, which should interest law student and attorney alike, examines the Maryland bar admissions process, providing a glimpse into the workings of the Maryland State Board of Law Examiners.*

## I. INTRODUCTION

For almost everyone who undertakes the study of law, the right to practice that profession is the near goal, and a successful career in practice or in legal employment is the ultimate goal. Admission to the bar is a prerequisite to a career in law, and passing a bar examination is a prerequisite to admission.

This Article will not follow the conventional pattern of law review articles. I undertake no analyses of statutes or judicial pronouncements; I search for no trend in the development of new legal rights; nor do I attempt to stimulate legal thinking on some fascinating new proposition or legal theory. Rather, my purpose is simply to present information to the reader by explaining the procedures for admission to the bar in Maryland, and to call attention to the various statutes, Court Rules, Board Rules, and Board policies and practices under which those procedures operate.

An excellent historical review of bar examinations in Maryland is contained in a 1968 article written by William H. Adkins, II, then a member of the Maryland State Board of Law Examiners.<sup>1</sup> Mr. Adkins pointed out that at least since 1715, the duty of handling admissions to the bar in Maryland has been a judicial one; that until 1831 the matter was left to the various county courts; and that from 1831 to 1898, examinations of qualified applicants were conducted orally in the several courts, either by the judge (until 1876) or by a board of three attorneys in the presence of the court.

The procedure required that an application be made to the court, and that the applicant show that he had been a student of the law for at least two years. The applicant was examined, not only upon the law, but also as to his probity and general character. While the

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† B.A., 1930, University of Maryland; J.D., 1935, George Washington University; Member of Maryland Bar; Associate Judge, Court of Special Appeals of Maryland, 1970-1977; Chairman, Maryland State Board of Law Examiners. This Article is not an official statement of the Board of Law Examiners, and any opinions expressed are solely those of the writer.

1. Adkins, *What Doth The Board Require of Thee?*, 18 MD. L. REV. 103 (1968). Mr. Adkins, now State Court Administrator, followed his historical review with an extensive discussion of bar examinations and admission procedures in Maryland through 1967. In the present Article, the writer will try not to duplicate what Mr. Adkins covered so well, but will emphasize the present, illuminated by the recent past.

basic procedure was uniform throughout the state, the examinations, being conducted orally by the local judge or board of attorneys, must have differed considerably. Beginning in 1898, uniform written examinations for all applicants in the state have been conducted by a single State Board of Law Examiners, essentially as the examinations are given today.

So much for history. The focal point of this Article is bar admissions in the present, not the past, but a look at the recent past may help to throw light on the present and the immediate future.

## II. THE ADMISSION PROCESS

### A. *General*

The authority to admit persons to the practice of law in Maryland is vested solely in the Court of Appeals of Maryland.<sup>2</sup> Procedures by which this authority is exercised are set forth in Rules Governing Admission to the Bar of Maryland, adopted by the Court.<sup>3</sup> These Rules incorporate those aspects of the admission process concerning which the General Assembly of Maryland has enacted legislation.<sup>4</sup>

### B. *Statutes*

These legislative enactments appear in Article 10 of the Annotated Code of Maryland. Section 2 of Article 10 prescribes the number of members of the State Board of Law Examiners, that the members are appointed by the Court of Appeals, and their terms of office.

Section 3(a) requires that applications for registration as law students be filed with the Board of Law Examiners, and show that the applicant has completed the required pre-legal education. The present requirement under the statute is successful completion of three years (also expressed as 90 semester hours) of college work in fields of study prescribed by the Court of Appeals and the State Department of Education.<sup>5</sup>

The statute directs that the Board "shall examine the applicant touching his or her qualifications for admission to the bar,"<sup>6</sup> and further provides that the Board "report their proceedings in the examination of applicants to the Court of Appeals, with any recommendations said Board shall desire to make."<sup>7</sup> If the Court of

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2. See *Maryland State Bar Ass'n v. Boone*, 255 Md. 420, 429, 258 A.2d 438, 443 (1969).

3. RULES GOVERNING ADMISSION TO THE BAR OF MARYLAND, MD. ANN. CODE, vol. 9A, at 655-82 (1977 & Supp. 1978). [hereinafter cited as ADMISSION RULES].

4. MD. ANN. CODE art. 10, § 1-8 (1976 & Supp. 1978).

5. *Id.* § 4.

6. *Id.* § 3b.

7. *Id.* § 3c.

Appeals then finds the applicant to be qualified and of good moral character, worthy to be admitted, it shall pass an order admitting him or her to practice.

Under section 3(d) of Article 10, "The Court of Appeals shall prescribe rules for a uniform system of bar examination in this State, for registration as aforesaid, for character examination of each applicant, for admission to the bar; . . . and generally such other rules as may be necessary or convenient to carry out the provisions of this section."

### C. Court Rules

The present Rules Governing Admission to the Bar of Maryland were adopted by the Court of Appeals in 1970, replacing the 1955 rules then in effect. They appear, with amendments, in Volume 9A of the Annotated Code of Maryland. Court Rules of principal interest to present or prospective law students deal with pre-legal education,<sup>8</sup> registration of students as candidates for admission,<sup>9</sup> character investigations,<sup>10</sup> legal education and petition to take examination,<sup>11</sup> requirement of domicile in Maryland,<sup>12</sup> the bar examination,<sup>13</sup> reports of examination results and order for admission,<sup>14</sup> and retaking examination after failure.<sup>15</sup>

Court Rules also authorize the Board of Law Examiners to adopt rules for the proper and expeditious conduct of the bar examinations,<sup>16</sup> and direct that the Board shall by rule define the subject matter of the examination<sup>17</sup> and shall by rule establish a passing grade or grades for the examination.<sup>18</sup>

### D. Board of Law Examiners

Administration of bar examinations in Maryland is delegated to a State Board of Law Examiners.<sup>19</sup> This Board functions as an arm of the Court of Appeals, to assist that court in performing its duty relating to admissions to the bar.

Created in 1898 and then consisting of three members of the Maryland bar, the Board was charged with the responsibility of conducting uniform, statewide, written bar examinations of all eligible candidates. Those who passed the examination, and were

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8. ADMISSION RULES, RULE 3.

9. *Id.* RULE 2.

10. *Id.* RULE 4.

11. *Id.* RULE 5.

12. *Id.* RULE 10.

13. *Id.* RULE 7.

14. *Id.* RULES 11, 12 & 13.

15. *Id.* RULE 8.

16. *Id.* RULE 9a.

17. *Id.* RULE 7.

18. *Id.*

19. *Id.*

found to be of good moral character and fit for bar membership, were recommended by the Board to the Court of Appeals and, if approved, were admitted to the bar.

Board membership continued at three for some eighty years, while the volume of work required of the members increased enormously. In 1966, the Court of Appeals authorized the employment of members of the bar of Maryland as Assistants to the Board, to assist the members in preparing and grading examinations. In 1977, there were four such Assistants. By Chapter 273 of the Acts of 1977 the General Assembly amended the Code, Article 10, section 2, to provide, effective January 1, 1978, that the State Board of Law Examiners have seven members,<sup>20</sup> appointed by the Court of Appeals for terms of five years each (after some shorter initial terms provided to stagger expiration dates).

All preparation and grading of examinations are divided among the seven Board members. There are now no Assistants. The administrative staff, headed by the Secretary to the Board, assisted by the Clerk to the Board and two other employees, performs all administrative, secretarial, and clerical duties. Meetings of the Board are held as necessary.

#### *E. Character Committees*

The other arm assisting the Court of Appeals in admissions to the bar is, collectively, the Character Committees appointed by the Court of Appeals. There is a separate Committee for each of the eight judicial circuits in Maryland, with membership varying from five members in the less populous circuits to sixteen members in Baltimore City, the Eighth Judicial Circuit.<sup>21</sup>

### III. ELIGIBILITY TO TAKE THE MARYLAND BAR

#### *A. Application for Registration*

One who aspires to be admitted to the bar of Maryland by examination first becomes known to the State Board of Law Examiners when he files his Application for Registration as a Candidate for Admission to the Bar. It should be noted that this Application for Registration, required by and described in Court Rule 2, does not entitle an applicant to take the bar examination. For that, a Petition to Take the Maryland Bar Examination, referred to in Court Rule 5, must be filed. If this requirement of two filings

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20. Members of the Board, since January 1, 1978, are: Charles H. Dorsey, Jr., of Baltimore; William H. Price, II, of Easton; William F. Abell, Jr., of Rockville; David C. Daneker, of Baltimore; Diane G. Schulte, of Ellicott City; J. Frederick Sharer, of Cumberland; and Jerrold V. Powers, of Upper Marlboro, Chairman.

21. Work of the Character Committees will be discussed more fully later in this Article. See text at 75-76 *infra*.

appears to be redundant, a reading of Court Rule 2 and Court Rule 5 should make their separate purposes clear.<sup>22</sup>

The Application for Registration is intended to be filed early after admission to law school (or even before admission, if the applicant wishes to do so), and deals with qualification for admission *other than the required legal education*. The applicant must show that he is a domiciliary of Maryland,<sup>23</sup> and that he has completed the required pre-legal education.<sup>24</sup> He identifies the law school in which he is enrolled or intends to enroll. He must also disclose such of his personal history and previous conduct as may throw light upon his moral character fitness for bar membership.<sup>25</sup>

Part II of the Application for Registration is a Character Questionnaire, which is first examined and checked in the Board's office before being transmitted to the appropriate Character Committee for investigation, as provided in Court Rule 4.

Should there be a deficiency in the applicant's pre-legal education, should he be enrolled, or intend to enroll, in a law school which does not satisfy the legal education requirement,<sup>26</sup> or if he is not domiciled in Maryland, an early applicant may take corrective measures with a minimum of inconvenience. If there should be a serious character problem or some insurmountable obstacle to admission to the bar, an early applicant will have the opportunity to change his plans for the future and avoid wasted effort.

Section b of Court Rule 2 requires the Application for Registration to be filed not later than designated dates, which are approximately one year before the examination for which the applicant intends to sit. The fee for a timely filed Application is \$50.00. The purpose of the Application suggests the desirability of early filing. Section f of Rule 2, however, permits later filing of an Application for Registration, upon payment of an additional fee of \$50.00, and provides no time limit for filing.<sup>27</sup>

Requirements for pre-legal education are set forth in detail in Court Rule 3. Briefly, the applicant shall have completed three years

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22. Rule 2 outlines the procedures to be followed in the entire admissions process, including character evaluation. Rule 5 deals exclusively with procedures to be followed enabling the applicant to take the written examination.

23. ADMISSION RULES, RULE 10.

24. *Id.* RULE 3.

25. *Id.* RULE 2c.

26. *Id.* RULE 5; see text at 75 *infra*.

27. This means that the Application for Registration may be filed with the Petition to Take, which may be as late as the 20th day before the examination. With the rush of last minute filings, transmission of the Questionnaires to the Character Committee is delayed. When the Board reports the names of successful applicants to the Court of Appeals, its recommendation for admission must be a conditional one as to a substantial number of applicants because their character investigations have not been completed. The Board has proposed amendments to the Court Rules to alleviate this crunch by requiring the Application for Registration to be filed by December 20th for a February examination, and by May 20th for a July examination.

of college academic work, which is defined to mean successful completion of ninety semester hours of study, selected by the student from the following twelve fields: English, history, economics, political sciences, psychology, sociology, mathematics, philosophy, Latin, German, Romance languages, and natural sciences. Within the ninety semester hours, the Rule requires that there be not fewer than eight hours of English, including composition or other course work requiring original writing, and not fewer than eight hours of courses listed under history, economics, or political sciences.

As a practical matter, the Board presently accepts as sufficient evidence of the required pre-legal education a certification by the dean or other authorized officer of the law school that its records show that the applicant attended a college or university, successfully completed his college academic work, and received a bachelor's degree. Only if the applicant did not receive a degree does the Board require a list of the subjects in which semester hour credits were earned. Lacking a list of subjects, the Board has no alternative but to assume that the law school admission requirements for pre-legal education are at least as stringent as those of Court Rule 3.

#### *B. Petition to take Examination*

The original Petition to Take the Maryland Bar Examination, which may be filed up to twenty days before the examination date, merely identifies the applicant, reasserts the fact of his domicile in Maryland, and includes a certification by the law school that the applicant has graduated, or has completed the required course of study and is unqualifiedly eligible for graduation.

Requirements for legal education are stated in Court Rule 5. They are, simply stated, that the applicant graduated from a law school approved by the American Bar Association. The Board has discretion to waive the educational requirements as to a person who has been admitted by examination to the bar of another United States jurisdiction and who, by reason of education or experience, is, in the Board's opinion, qualified to take the Maryland examination.

#### IV. THE CHARACTER INVESTIGATION

All procedure relating to character and fitness is governed by Court Rule 4. It is the duty of each Character Committee, through one or more of its members, to interview personally each applicant referred to it, verify the facts, including domicile, stated in the Character Questionnaire, contact the references given, and make such further investigation as it may deem desirable or necessary. The Committee is required to consider the character and fitness of the applicant to be admitted to the bar, and to transmit to the Board its report and recommendations. The Character Committees may, and sometimes do, hold hearings. Whether based upon a hearing,

other investigatory material, or both, if the Committee's recommendation is against admission, its report must set forth its reasons for rendering an adverse recommendation and the facts upon which it is based.

All reports and recommendations transmitted to the Board by the Character Committees are carefully reviewed in the Board's office. If the Board concludes that proper grounds for disapproval appear to exist, it notifies the applicant and gives him the opportunity to appear for a hearing before the Board. This may be done, and in rare cases has been done, even when the Committee's recommendation is favorable. If the Board concludes that an adverse report should be made to the Court of Appeals, it first notifies the applicant, who has the privilege at that time of withdrawing his application. If the application is not withdrawn, the Board's recommendation is transmitted to the Court of Appeals. The Court then requires the applicant to show cause why his application should not be denied. The burden to establish his good moral character remains throughout upon the applicant.

A Character Committee may file exceptions with the Court to a favorable recommendation by the Board. Lastly, the Court may be unpersuaded by a favorable recommendation by the Board, and set the matter for a hearing. All proceedings in the Court of Appeals relating to character and fitness for admission are heard upon the records made by the Committee and the Board.

Some Character Committee members have expressed a sense of frustration at the lack of guidelines, standards, or precedents to aid them in arriving at consistent results.<sup>28</sup> The Maryland State Bar Association's Section Council on Legal Education and Admissions to the Bar plans to present a program on the proper role and functions of Character Committees at the 1979 mid-winter meeting of the Association. Perhaps the near future holds promise of an improved system designed to achieve clearer and more consistent results in this difficult area.<sup>29</sup>

## V. THE BAR EXAMINATION

### A. *Time and Place*

Bar examinations in Maryland are conducted twice a year, once in the winter and once in the summer. Each examination is held on two successive days. The writing time for the two days may not be more than twelve hours, nor less than nine hours.<sup>30</sup>

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28. Pines, "Fitness to Practice Law": *The Character Committee*, XI MARYLAND BAR JOURNAL 34 (Summer 1978).

29. Two recent Court of Appeals cases have highlighted this problem. Compare *In the Matter of the Application of David H. for Admission to the Bar of Maryland*, \_\_\_ Md. \_\_\_, \_\_\_ A.2d \_\_\_ (filed October 23, 1978) with *In re Application of Allan S.*, 282 Md. 683, 387 A.2d 271 (1978).

30. ADMISSION RULES, RULE 7b.

Winter examinations are held on the last Wednesday of February and on the immediately preceding Tuesday; summer examinations are held on the last Wednesday of July, and on the Tuesday before. This somewhat awkward time calculation is made necessary because the Multistate Bar Examination, given simultaneously in some forty-five United States jurisdictions, is held on the last Wednesdays of February and July, and Maryland's scheduling must conform. Location of the examinations in recent years has been the Baltimore Civic Center. No change is contemplated.

### *B. Format*

On the first day of the examination, the Board's essay test is given. Prior to the July 1978 examination the essay test was designed to require six hours writing time, as then provided by Board Rule 2b. A Rule amendment in May, 1978, permitted the Board to shorten the essay test to four and one-half hours.

Shortly before the examination seat numbers are assigned, by random selection, to all eligible applicants. Each is notified of his number. In the examination hall, tables are set up, each to accommodate two applicants. Seat numbers are marked on the tables.

The essay test is divided into six Parts, designated A, B, C, D, E, and F. The questions for each Part have a value of 30 or 35 points, and are designed to require about forty-five minutes of writing time. The morning session, Parts A, B, and C, and the afternoon session, Parts D, E, and F, are two and one-quarter hours each.

The second day of the examination is devoted to the Multistate Bar Examination, referred to as the MBE. This examination, prepared by the National Conference of Bar Examiners, in conjunction with Educational Testing Service, Princeton, New Jersey, consists of two hundred multiple choice questions each with a weight of one point. There are six subjects. Forty questions each are allocated to torts and to contracts; thirty each to criminal law, constitutional law, evidence, and real property. The questions are not grouped together or labeled by subject.

The MBE is designed to be a six-hour test. It is distributed in two parts, one for the three-hour morning session and one for the three-hour afternoon session. Answer sheets are identified, of course, only by the applicant's seat number. Within a day or two after the examination, the MBE answer sheets are sent to Educational Testing Service, where the answers are read and tabulated by machine. The results undergo various analyses and a statistical adjustment, which converts each applicant's "raw score" (the number of correct answers) to a "scaled score".

Scaling is designed to adjust the scores for variations which arise because an MBE test given at one time may be more or less

difficult than the MBE test given at another time. The effect of scaling is to convert to a comparable basis the MBE scores for all tests given throughout the country since 1974. Of the Maryland takers of MBE in July, 1978, the mean raw score of 134 was scaled up to 141; the lowest group (between 75 and 80 correct answers) was scaled up by 11 points; and the highest group (whose raw scores were in the high 170's) was scaled up 4 points. Some states use the raw MBE score in their pass-fail decision. The Board in Maryland uses only the scaled MBE score.

Within three weeks after the examination is held the Board receives from Educational Testing Service a complete print-out of raw scores and scaled scores of all Maryland takers. These MBE scaled scores are then entered on the grade tabulation sheets already set up in the Board's office.

Some comments about the MBE are appropriate. A few years ago, when it was first proposed for use in Maryland, there was considerable skepticism about its value as a test of competence to practice law. The Court of Appeals, in Court Rule 7e, authorized, but did not require, the Board of Law Examiners to adopt the MBE as part of its examination. The Board felt that it should be tried, as a test of legal knowledge, and used along with an essay test, which could then be reduced in length to one day.

The Board adopted the MBE as part of the Maryland examination, beginning with July, 1972. It decided to use the MBE results only in such a way as to help an applicant, but not to hurt him. This policy is expressed in the Board's present Rule 2e, which places great emphasis on passing the Board's essay test. A candidate passes if he attains 70% on the essay test, provided his scaled MBE score is at least 110 (55%). This is not to say that 55% on the MBE is considered to be a *passing* score, but the Board deems it to be an *acceptable* score, and the passing is achieved with the essay score. A check of the Board's records for several years discloses no essay passer who failed the examination.

Conversely, a good MBE score (over 140) often brings above the pass line an applicant whose essay score is a few points short of passing. An applicant passes if his combined score is 70%. In this combination, the MBE score is given equal numerical weight.

Some two and a half to three months before the day for an MBE test, the members of the Maryland Board have a preview session with a representative of Educational Testing Service. The proposed test is examined, answers are checked, and any appropriate comments and suggestions are made. These are submitted to the Bar Examination Committee of the National Conference for its consideration before it approves the test in final form.

### C. *The Board's Essay Test*

#### 1. Preparation of Questions

Court Rule 7d prescribes the subject matter of the Maryland Bar Examination, which shall be within but need not include all of these ten subjects: agency, business associations, commercial transactions, constitutional law, contracts, criminal law and procedure, evidence, Maryland civil procedure, property, and torts. Each subject is defined in more detail in Board Rule 1.

Under present practice, the seven members of the State Board of Law Examiners meet well in advance of each examination, assign subjects, and adopt a pre-examination schedule. One member is designated to prepare and grade the three-hour test given to out-of-state attorneys.<sup>31</sup> Each of the other six members is assigned two of the ten subjects listed in Court Rule 7d. Two subjects are assigned to two different members. Each of those six members is responsible to prepare the questions for one of the six Parts into which the essay test is divided. Each Part is expected to require about forty-five minutes for the applicant to read and answer. Each Part is later assigned a point value of 30 or 35 points.

Within the applicable times and point values, the number of questions is left to each member. With each question the member prepares a proposed Board Analysis, discussing the points which should be covered in an answer. Three "teams" of two members each are designated. First drafts of questions and analyses are submitted by each member to the other member of his team. Comments, criticisms, and suggestions are exchanged, and questions are rewritten where necessary. When this is completed, each member sends his proposed questions and analyses to all other members, for a full round of comments and suggestions. These are usually made in writing and sent to all other members. After allowing another week or ten days for further revisions, the Board meets for a full consideration of the examination as a whole. All questions are agreed upon in final form, and the Board decides upon time allocations, point values, and the sequence of the six Parts. A few more days are allowed for final rewriting, if necessary. The examination is then ready for the printer.

#### 2. Grading and Regrading

Court Rule 7e directs the Board to establish a passing grade or passing grades for the bar examination. This has been done in Board Rule 2. There are two ways to pass:

1. Attain a score of 70% on the Board's essay test and a scaled MBE score of 110.
2. Attain a combined score of 70%.

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31. See text at 84 *infra*.

After the number of persons eligible to take an examination is known, the Board adopts a grading schedule, concluding with the target date. This is the date on which the Board expects to file its report to the Court of Appeals, listing those who passed the examination, and those who did not.

Each member grades all answers to that Part of the examination for which he wrote the questions. Thus, each of six Board members reads and grades a Part of every applicant's examination. In this way, the total essay score of every applicant reflects equally whatever tendencies individual Board members may have to be strict or lenient in grading.

An area of deep concern is the lag time between the examination and the announcement of the results. Lag time after July, 1977, was almost four months. After July, 1978, the lag time was two and one-half months. We shall continue to work for further improvement.

Each Board member picks up the answer books of all applicants for that member's Part of the examination either at the examination, or within the next few days at the Board's office. The work of grading then begins.

All examination books are, of course, identified only by seat number. The seat numbers are entered on each of the six books in which each applicant writes. This is done by the Board's administrative staff before the examination. Obviously, the staff keeps a cross reference of seat numbers and applicants' names, but all applicants are completely anonymous to the Board member grading answers.

Each member is supplied with blank grade sheets, with seat numbers entered in appropriate columns. Other columns are provided for entering the grade for each question, and the total for that Part of the examination. When the grades for each question are entered, the member adds the columns across and enters the grade for the Part. These grade sheets are sent to the Board office, where all addition is double checked, and the Part totals entered on the master grade sheets. When the grades of all six Parts are entered, they are added across to obtain the total essay score.

For many years the Maryland examination was graded on the basis of a possible 300 points, and a score of 210, or 70%, was necessary to pass. This was so when the examination covered two full days, and remained so as to the Board's essay test when it was shortened to one day with the advent of the MBE in July, 1972. The MBE is scored on the basis of 200 points. To combine those results to obtain each applicant's score expressed as a percentage, it was necessary to reduce both to a common value, requiring hundreds of calculations.

To simplify the calculation process, the total essay test value has now been changed from 300 to 200 points. Simple addition of the essay score and the MBE score, which are entered in adjacent columns, results in a total score out of a possible score of 400. Even

that simple addition is unnecessary for candidates who score 140 (70%) or better on the Board's essay test and 110 or better on the MBE, a result which is obvious at a glance. When the addition is necessary, a total of 280 (70% of 400) is passing, a result which again is obvious at a glance. No scores need be converted to percentages.

Once it has been initially determined which applicants pass and which do not, by applying the passing requirements of Board Rule 2e (140 essay and 110 MBE, or 280 combined), the Board invokes its review procedure. The job of evaluating and assigning grade points to written answers to essay-type questions is undertaken with the utmost fairness, but it is after all a subjective process, and some variations from uniform exactness are impossible to avoid.

To assure fairness to those applicants who did not quite attain the standards for passing, the Board has established what it calls a review range. This does not mean that the passing requirements are lowered — it means generally that the Board will take another look at the answers of applicants who missed by 5% on the essay test, or by 5% on the combined score. As to some of those at the top of this group the Board, based upon its experience over several years, makes an arbitrary but justifiable assumption. It assumes that one with an essay score of 138 or 139 (69%) and an MBE score of 125, and one whose combined score is 270 (67½%) or better, is in fact entitled to the few additional points necessary to pass. The points are granted, and those applicants are passed.

As to the remainder of the applicants in the review range, the Board's staff notifies each Board member of the seat numbers, and those examination books are regraded. A regraded applicant passes by achieving a passing grade if the essay score reaches 140 or if the combined score is 280 or more.

Results of this regrading in the last three years have been as follows:

<i>Examination</i>	<i>Takers</i>	<i>Number Regraded</i>	<i>Passed On Regrading</i>
Feb. 1976	465	61	17
July 1976	756	92	32
Feb. 1977	445	61	27
July 1977	743	103	29
Feb. 1978	402	69	13
July 1978	645	72	14

### 3. Review of Answers by Unsuccessful Applicants

An applicant who is notified that he failed to pass the examination may, by written request within sixty days, review and obtain a copy of his answers at the Board's office. He may also read

or obtain copies of two answers selected by the Board, written by other applicants, to any question, as well as read the Board's analysis of each question. This review procedure aids an applicant in preparing for the next examination.

#### 4. Right to Retake Examination

After failure, an applicant may take the Maryland Bar Examination a second time and a third time, by filing a petition to do so, and paying the examination fee. Although no limit is specified, after three failures, permission to take the examination again may be conditioned upon completion of specified courses of additional study.

Under Board Rule 2f, adopted in May, 1978, an unsuccessful applicant may carry over to the next succeeding examination a score of 70% or better on the essay test, or a scaled MBE score of at least 140, and need not retake the test for which he carried over a score.

### VI. IS MARYLAND A TOUGH STATE? — SOME COMPARISONS

There are those who say that the Maryland bar examination is unusually difficult to pass. There are also those who say that the Board of Law Examiners of Maryland, whatever its standards may be, is not tough enough.

Professional and amateur statisticians compile and analyze thousands of figures, state and national, and draw countless statistical conclusions about bar examinations and those who take those examinations. I shy away from too much reliance upon statistics and averages. I cannot forget the unfortunate statistician who drowned while wading in a pond with an average depth of three feet.

I have reviewed numerous reports of bar examination results in Maryland and in other states. Some of the information, which may be of interest to the reader, is presented here, but I leave to the reader the task of extracting the message. For the last four years the number of takers in Maryland, the number of passers, and the percentage of passers have been as follows:<sup>32</sup>

<i>Examination</i>	<i>Takers</i>	<i>Passers</i>	<i>% Passed</i>
Feb. 1975	429	212	49
July 1975	728	413	57
Feb. 1976	465	198	43

32. Adkins, *What Doth the Board Require of Thee?*, MD. L. REV. 103, 106 (1968). Mr. Adkins stated that in 1967 the passing rate for the winter examination was 34.5% and for the summer examination was 49%. He noted that in 1965 and 1966, the passing rates were below 50%, and that prior to a 1939 increase in pre-legal education requirements, passing rates of 25% to 33½% were common.

<i>Examination</i>	<i>Takers</i>	<i>Passers</i>	<i>% Passed</i>
July 1976	756	442	58
Feb. 1977	445	236	53
July 1977	743	430	58
Feb. 1978	402	194	48
July 1978	645	431	67

In the table set out above, it is apparent that the passing rate for the February examination is generally well below the passing rate in July. A fact which may be relevant is that of the 445 applicants who took the February, 1977 examination, 253, or 57%, had previously taken and failed the Maryland examination. Of the 253 repeaters, 49% passed. Of the 192 first time applicants in February, 1977, 71% passed.

The July, 1977 examination was taken by 743 applicants, of whom only 162, or 22%, were repeaters. The passing rate for the 162 repeaters was 18%, but the passing rate for the 580 first timers was 69%.

Because comparisons of passing rates in the various states are often made, I have extracted some statistics from summaries of 1977 results nationwide, published by the National Conference of Bar Examiners.<sup>33</sup> The ten states with the highest passing rates in 1977 were the following:

<i>State</i> <sup>34</sup>	<i>Takers</i>	<i>Passers</i>	<i>% Passed</i>
West Virginia	55	55	100
North Dakota	99	97	98
Kansas	393	373	95
South Carolina	369	350	95
Nebraska	245	214	94
Oklahoma	486	453	93
Utah	237	217	92
Maine	226	207	92
North Carolina	604	543	90
Wisconsin	186	167	90

The ten states with the lowest passing rates in 1977 were the following:

Tennessee	703	484	69
Washington	1,050	700	67

33. 47 THE BAR EXAMINER 113-14 (1978).

34. Puerto Rico, with 1,065 takers and a passing rate of 36%, has not been included.

<i>State</i>	<i>Takers</i>	<i>Passers</i>	<i>% Passed</i>
Vermont	109	72	66
District of Columbia	1,068	692	65
New Jersey	1,953	1,236	63
Maryland	1,188	666	56
California	11,206	5,672	51
New Hampshire	185	87	49
Georgia	2,047	1,011	49
Mississippi <sup>35</sup>	254	94	37

The reader may find some significance in the fact that in the ten high-pass-rate states the aggregate number of applicants examined was 2,900, and in the ten low-pass-rate states the aggregate number examined was 19,763.

## VII. SEVEN OTHER LEGAL WAYS TO DO LEGAL WORK IN MARYLAND

So far, I have discussed admission to the bar in Maryland by examination — the route followed in the vast majority of cases. The reader may be surprised to learn, however, that there are seven other legal ways, some limited to be sure, in which an individual may be permitted to do legal work in Maryland.

Best known is the procedure authorized in Court Rule 14, which governs admission by petition of a Maryland resident who previously has been admitted to the bar of another state or states, and who for at least five of the last seven years has been engaged as a practitioner of law, or as a full-time teacher of law at an approved law school, or as a judge of a court of record. If admitted as a practitioner of law, the petitioner must have been regularly engaged in the practice of law, in a jurisdiction where he was a member of the bar, as the principal means of earning his livelihood.

Such an "out-of-state attorney" must also take and pass a three-hour written examination conducted by the State Board of Law Examiners, relating to the Maryland Rules, civil and criminal, and to the Code of Professional Responsibility. These examinations are given twice a year, on the same days as the Board's essay test.

Court Rule 18 permits a senior law student, who is enrolled in or has completed a clinical program for credit, in an approved law school in Maryland or the District of Columbia, to appear in any of the trial courts or the Court of Special Appeals, without compensation, for an indigent defendant or litigant. The student must be

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35. Three of the states in this tabulation admitted certain candidates in 1977 under a diploma privilege, without examination. They are West Virginia, 124; Wisconsin, 404; and Mississippi, 171.

under the immediate and personal supervision of a member of the Maryland bar, who must be in attendance when the student appears in court.

Under Court Rule 19, a graduate of an approved law school who is a member of the bar of another state and who is employed by or associated with an organized legal services program for indigents may, for a period not longer than two years, practice in all courts of Maryland. The program must be approved or recognized by the Legal Aid Bureau, Inc.; the attorney may appear only in causes in which he is associated with the program; he must be under the supervision of a member of the Maryland bar; and his name and all facts necessary to establish his eligibility under the Rule must be on file with the Clerk of the Court of Appeals.

Last of the categories covered by the Rules Governing Admission to the Bar falls under Court Rule 20, which provides that a member of the bar of another United States jurisdiction may be permitted to appear in the courts of Maryland in a specific case as co-counsel with a Maryland attorney of record, upon written motion filed by the Maryland attorney.

The principle of Federal supremacy permits departments and agencies of the United States to employ persons to do legal work for the government, without regard to admission to the bar of the state where the person performs the duties of his employment. The idea involves numerous ramifications, such as appearances as privately employed counsel before Federal boards, agencies, and even courts, but for the purposes of this Article it is sufficient to point out that what the Federal government permits, a state may not forbid.<sup>36</sup>

Two statutory provisions in the Annotated Code of Maryland create exceptions to the general prohibition of the practice of law in Maryland by a person who is not a member of the Maryland bar. Article 10, section 32(b) permits an attorney admitted to the highest court of another United States jurisdiction to be employed in Maryland as corporate house counsel, so long as his activities are limited to giving advice to the corporation, and do not include appearances in the courts or State agencies or commissions.

Article 27, section 14A of the Maryland Annotated Code provides that the prohibition against law practice by a corporation does not apply to an officer of a corporation appearing in the district court for the corporation in a civil suit involving a claim not exceeding \$500. The corporate officer in a small claim is in much the same position as an individual who appears in proper person.

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36. See, e.g., *Sperry v. Florida*, 373 U.S. 379 (1963).

## VIII. WHAT DOTH THE BOARD REQUIRE OF THEE?

## THE BOARD REQUIRETH COMPETENCE AND CHARACTER.

In performing the duties entrusted to it the Board of Law Examiners must at all times act with complete fairness, first to the public, but also to the applicant and the legal profession.

The purpose of bar admission procedures is two-fold. An applicant is examined to test his knowledge of legal principles and his ability to recognize, analyze, and intelligibly discuss legal problems and apply his knowledge in reasoning their solution. Put another way, a bar examination is a test of one's ability to identify significant legal problems in a given fact situation, and to discuss them articulately and logically. Only those who already have acquired the necessary pre-legal and legal education and are otherwise qualified will be examined.

It is obvious that a really comprehensive test of one's legal knowledge simply is not practical. It can only be hoped that the examination will yield a reasonably reliable sample of an applicant's legal knowledge and ability, upon which the examining board may rely in judging his potential to be a competent lawyer. Though competence is what we seek, I use the word "potential" for a good reason. To be a competent lawyer, one needs more than the educational background, the legal knowledge, and the ability to analyze and to articulate. He also needs a large measure of industry and sense of duty to responsibilities undertaken. A lawyer may work hard, but if he is stupid or inarticulate, he is not competent. A lawyer may be brilliant, but if he is lazy, he is not competent to serve the public. Competence to practice law is a happy combination of many attributes. Some of them can be isolated, tested, and evaluated. Others must be left to the future. The Board of Law Examiners can judge only an applicant's *potential* for competence.

The other purpose of admission procedures is to enable the Character Committees, the Board, and ultimately the Court of Appeals, to form a judgment of an applicant's "moral character fitness" for bar membership. The virtue we look for is difficult to define precisely, but it involves characteristics of general honesty, intellectual honesty, and integrity, among others. Judgments which must be made as to a person's moral character, honesty, and integrity are guided by relevant facts from the past and the present, and by the personal interview with a member of the Character Committee.

Members of the Board know, of course, that in any group of individuals, measurable ability ranges up and down the scale. It would be futile to expect that every one be equal in competence to the best. But in the nature of things, there is a line, or level, which

permits us to say that those persons above it are potentially competent to practice law.

It is that level for which we on the Board of Law Examiners search. It is equally our purpose to admit the competent, and to exclude the mediocre and the incompetent. Our duty to the public, to the applicant, and to the profession requires no less.

The Court of Appeals of Maryland recently spoke<sup>37</sup> on this point. It said,

Because of the vital role an attorney, licensed to practice, plays in the legal process, he must act with competence and proper care in representing his clients. His admission to the Bar attests to the public that he has met the standards for admission and is competent to discharge his duties toward his clients with strictest fidelity.

One comment I purposely leave to the last, in the hope that it will not be forgotten. It is sometimes suggested that the Board of Law Examiners decides before an examination what percentage of the applicants will be passed — a sort of a quota system. It was asserted recently in a legal publication in Maryland that the Board of Examiners operates on a supply and demand theory, passing a larger percentage when there are fewer takers, and the other way around.

Such speculations are utterly preposterous. The level of difficulty of the questions and the level of strictness or leniency in grading are a blend of the attitudes and judgments of six or seven experienced practitioners of law in Maryland. When each is grading a Part of every applicant's examination, there is no possible way for him to know how his colleagues are grading those same applicants on other Parts of the examination.

Whether 90% will pass, or only 10% will pass, nobody knows until all the components of grading are assembled and the final calculations made. The quality of the applicants, and nothing else, determines the percentage of passers. This is as it should be.

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37. *Maryland State Bar Ass'n v. Phoebus*, 276 Md. 353, 361, 347 A.2d 556, 561-62 (1975).