

2/21/01

SUPREME COURT OF LOUISIANA

NO. 2000-OB-1360

ALFREDA TILLMAN BESTER

VERSUS

LOUISIANA SUPREME COURT COMMITTEE ON BAR ADMISSIONS

**ORIGINAL PROCEEDING ON PETITION FOR WRIT OF
MANDAMUS, INJUNCTIVE RELIEF AND DECLARATORY RELIEF**

Calogero, C.J., concurring in part, dissenting in part.

I agree with the majority's conclusion that the Supreme Court has plenary, inherent authority to regulate all facets of the practice of law in Louisiana, including the admission of persons to the Bar. I also agree that the interim Bar Examination review procedure did not apply to petitioner's February 2000 Bar Examination. I dissent, however, from the majority's entire denial of relief to petitioner. While we may have no obligation, legal or otherwise, to allow petitioner Bester to review her February 2000 examination, I would in fact allow such review.

The exercise of our inherent and plenary authority to except bar examination documents and procedures from the scope of the public records law does not prohibit us from making select documents available for limited review for limited purposes. In fact, we did just that when we adopted the new Interim Bar Examination Review Procedure on June 28, 2000.

This Court recognized that review of a conditioned or failed bar examination can be beneficial to bar applicants in improving their performance in future reexaminations. Immediately prior to the July 2000 bar examination, with the concurrence of the Committee on Bar Admissions, the Court in its administrative

capacity adopted an interim bar examination review procedure for the July 2000 and February 2001 bar examinations. This review procedure was subsequently extended by Order until February 1, 2002, covering the February 2001 and July 2001 Bar Examinations.

This interim bar examination procedure was adopted in part in recognition that a number of states, other than Louisiana, provide failing bar applicants with a post-examination opportunity to review either their failing papers or chosen “best papers.” In adopting this interim procedure, the Court attempted to balance the competing interests of bar applicants, who expend a tremendous amount of time and resources to qualify for and prepare to take the bar examination and can benefit greatly from such a review, with the administrative logistics of a grading system coordinated by the Committee on Bar Admissions, which is composed of volunteer attorneys who also expend a tremendous amount of time and energy preparing, reviewing, grading and re-grading the bar examination.

At the time of its adoption, I believed that the limited review procedure was fair and helpful to bar applicants and did not pose an insurmountable administrative burden to the Committee on Bar Admissions. At this juncture, after reviewing the results of the July 2000 Bar Examination Review Procedure, it appears that my belief was correct. The review procedure has proven beneficial both to the bar applicant (as attested to in written comments received by the Committee on Bar Admissions) and to the Committee on Bar Admissions, which I understand has welcomed the comments and suggestions of the bar applicants concerning the bar examination grading and review process. Upon expiration of the interim Order, the Court will evaluate the procedure to determine if additional improvements might be

warranted and/or whether this procedure should be extended or made permanent.

Considering that our interim bar examination review procedure has proven both beneficial to the bar applicants and workable for the Committee on Bar Admissions, I see no reason to deny petitioner Bester's request to review her February 2000 examination simply because we have the power to do so and simply because she took the bar exam four months before the review process went into effect.

I further understand that the Committee on Bar Admissions has, for now, retained copies of all exams from the February 2000 exam, both passed and failed. For this reason, I would allow Ms. Bester, and any other applicant who conditioned or failed the February 2000 exam, to review their February 2000 examinations. I would not, however, require the Committee on Bar Admissions to go back and construct a composite representative "good answer", as is required under the present Interim Review procedure. Thus, I would contemplate that such review of any conditioned or failed February 2000 examinations would be without the ability to compare such examination to a "representative good answer", but would otherwise be within the same strictures and conditions as the present Interim Review Procedure.¹

¹The Order enacting the present Interim Review Procedure provides in part:

Applicants must complete their review before the close of each session. Applicants must sign a receipt for all examination booklets and representative answers received for review. Applicants will not be allowed to copy or remove any Part I failed examination or representative answers. No person other than the applicant will be allowed to review his/her failed examination booklets or representative answers. No person other than the applicant will be allowed to participate in the review. Applicants must return all examination booklets and representative answers to the monitor before being allowed to sign out. ...