

Comments and Recommendations for
Modification of SCR 40.08 Relating to
Adverse Determination. Respectfully
Submitted by Attorney Daniel L.
Shneidman, 1007576.

SECOND AMENDED
PETITION
No. 08-11

To: Chief Justice Shirley Abrahamson
Justice Ann Walsh Bradley
Justice N. Patrick Crooks
Justice David T. Prosser, Jr.
Justice Patience D. Roggensack
Justice Annette Kingsland Ziegler
Justice Michael J. Gablemen
16 East State Capitol
Madison, WI 53701

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1. The life experiences of the would-be Wisconsin lawyer applicant will range from the 23-year-old individual who has recently gone through college, law school and perhaps Bar Exam, as well as the 53-year-old lawyer who is in good standing in a state that grants reciprocity to Wisconsin lawyers.
2. The content and provisions of the appendix rules of the Board of Bar Examiners BA should serve as elucidation of the provisions of the Supreme Court order and not be inconsistent with the language of the Supreme Court rule.
3. SCR 40.08(2), first sentence, should be modified to read "...request for an evidentiary hearing...."
 - Explanation: If the court were to examine appendix BA 16.07 through and including BA 16.12, all are relating to matters that would occur at an "evidentiary hearing," and that the would-be Wisconsin lawyer should not have to be in a quandary whether there will be due process considerations rather than being told by the Board Chair that the "hearing" would be that all of the members of the Board of Bar Examiners will question the applicant and then when that portion of the "hearing" was completed, the applicant will have fifteen minutes to present his/her evidence, witnesses, etc. as to why the "notice of risk" is erroneous and unwarranted.
 - The Court will notice that BA 16.15 leaves no doubt that there will be discovery and other sources of witnesses' evidence.

4. SCR 40.08(4) is directly inconsistent with the more cordial provisions of BA 16.06. BA 16.06 is, in my opinion, a more professional and civil paragraph with regard to the Notice of Hearing.
5. SCR 40.08(2), last sentence, provides as follows: "If the applicant does not request a hearing or file a supplement to the record within 30 days, the board's adverse determination becomes final and non-appealable." SCR 40.08(5), third sentence, provides: "An adverse determination by the board shall include findings of fact and conclusions of law, and shall be final, unless the applicant timely files a review under sub. (6) or (7)." Is there clarity to the Wisconsin would-be lawyer as to what constitutes a review as contrasted to an appeal? When looking at BA 16.20, the note references "time for appeal," as contrasted to "time for review."
6. In SCR 40.08(6), is that section applicable to the reconsideration rule referenced in BA 16.20?