

# Waiver Requests—Guidelines and Instructions

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## 1. How to Submit a Waiver request

Pursuant to Rule 20(e), the Board is given discretion in the interpretation and application of the Rules Governing Admission to the Bar of Texas. For good cause shown to the satisfaction of the Board, upon written request, the Board may grant waivers of specific requirements described in these Rules, unless it appears therefrom that no exceptions are contemplated by the Supreme Court.

If you believe good cause exists to waive a specific requirement of the Rules, you may request the Board to do so pursuant to Rule 20(e).

1. Complete the applicable application in your ATLAS account.
2. After you have completed the application, a green “Submit” button will appear and a blue “Waiver Request” button will appear.
  - a. If you are requesting a fee waiver, use the blue Waiver Request button to submit your waiver request.
  - b. If you are not requesting a fee waiver but are requesting a waiver of a different rule, you must first use the green Submit button to submit your application and pay the fee. Only after submitting your application and paying the fee, you may use to submit your waiver request.
3. Use the “Upload Required Documents” feature to submit any supporting documentation. Label it “Waiver Documentation.” Your

request will be decided based solely on your written request submitted through the “Waiver Request” feature and any supporting documentation you have uploaded to your ATLAS account that you have labeled “Waiver Documentation.”

You have the burden to show good cause for why the Court's Rules should not apply to your particular case. Requests are presented to a 3-member panel of Board members. Your request will be decided based solely on your written request submitted through the “Waiver Request” feature and any supporting documentation you have uploaded to your ATLAS account that you have labeled “Waiver Documentation.”

Please note that your waiver request and any supporting documentation you upload are public information that will be provided to the public upon request as required by the Public Information Act.

## **2. General Guidelines**

*Adopted by the Board on March 27, 2020*

In the absence of specific guidelines for a waiving a particular Rule, the Board may consider the following when assessing whether an applicant has established good cause for why the applicant should not be required to satisfy the Court’s Rules:

- Whether the applicant is precluded or unduly hindered from satisfying the Court’s Rules because of circumstances beyond the applicant’s control, such as illness, war, or acts of God.
- Whether the applicant is precluded or unduly hindered from satisfying the Court’s Rules because of circumstances that were not readily anticipated by the Court when the Court set standards or carved out exceptions to those standards.
- Whether, given the applicant’s circumstances, the Court’s Rules provide another path to licensure for the applicant, without the necessity of waiving any requirements.

The Board may consider, but is not bound by, past decisions by the Board in similar circumstances.

### 3. Instructions and Guidelines for Requesting a Waiver of Filing Fees

Under Rule 18(b) the Board does not refund or transfer fees in the event of the withdrawal of any Declaration or Application, nor in the event a determination is made by the Board that the Applicant or Declarant does not meet admission requirements. However, Rule 18(c) provides that any fee required under these Rules may be waived or lowered by the Board upon written request and proof of indigence. Since April of 1982 it has been the Board's policy that any individual making such a request must show that indigence is a result of circumstances that are unusual in relation to those of other law students (or similar applicants) and that those circumstances were generally caused by sudden and unexpected hardship for which there is no foreseeable resolution.

1. Complete and upload an [Income and Expense form](#).
2. Upload copies of your federal income tax return, or evidence of your earnings, for the previous two years. Redact all personally identifiable information.
3. Upload a statement addressing these factors:
  - a. apparent intent of Rules 18 (b) and (c)
  - b. evidence of financial condition, including required financial information from applicant
  - c. indigence, if shown, is a result of circumstances that are unusual in relation to those of other law students, and those circumstances, if any, were generally caused by sudden, unexpected hardship for which there is no foreseeable resolution
  - d. evidence of ability or inability to obtain or borrow funds from other sources to pay filing fee
  - e. evidence as to employment, and efforts or ability to obtain even temporary employment
  - f. efforts to plan, budget or forgo other items to pay filing fees
  - g. evidence of ability or inability to obtain or borrow funds to pay for bar review courses
4. In addition, if you are requesting a waiver of any **late** fees, you must upload a statement addressing the factors set out in Instructions and Guidelines for Requesting a Waiver of Late Fees, below.

#### **4. Instructions and Guidelines for Requesting a Waiver of Late Fees**

Rule 9 provides the [filing deadlines](#) for the July and February exams, and Rule 18 sets out the applicable late fees. **No applications will be accepted after the Final Filing deadline, for any reason. No exceptions.**

Below are some factors an applicant may need to address in a request for waiver of a late fee:

1. Apparent intent of Rule 9.
2. Evidence as to conscientiousness of effort to timely comply.
3. Amount of delay (specify your deadline or due date, the date you filed, and the number of days late)
4. Reasons why your best efforts were unsuccessful
5. Conscious indifference or neglect, including applicant's lack of knowledge of deadline or familiarity with applicable rules and instructions
6. Sudden or unexpected adverse circumstances other than the usual or ordinary consequences of missing a bar application deadline and the resulting delay in obtaining professional status or employment.

#### **5. Guidelines for Evaluation of Requests for Waiver of the Five-time limit on attempts to pass the Texas Bar Examination pursuant to Rule 11(f) of the Rules Governing Admission to the Bar of Texas.**

1. The waiver request shall be in writing, on forms designated by the Board, accompanied by such fees as prescribed by the Board, and shall show good cause for waiving the Rule 11(f) five-time limit;
2. The burden of proof shall be upon the Applicant;
3. The Applicant shall not have filed a request to waive the 5 time limit under Rule 11(f) within the past two years;
4. The Applicant shall otherwise be eligible to take the Texas Bar Examination;
5. The Applicant shall demonstrate to the Board that mitigating circumstances exist and there has been a substantial change in the degree of the Applicant's legal learning which makes it probable that the Applicant will pass the Texas Bar Examination or the Applicant shall

demonstrate to the Board that substantial changes have occurred in the Applicant's life by reason of education, work, experience, training and/or personal circumstances which make it substantially more likely that the Applicant will pass the Texas Bar Examination;

6. The Applicant shall complete or have completed such additional review courses or additional legal study as the Board may require; and
7. The request to waive Rule 11(f) shall not be considered with a request to waive any other requirement of the Rules Governing Admission to the Bar of Texas.

## **6. Guidelines for Considering Requests to Waive the MPRE Requirement of Rules 2(a)(7) and 5**

*Adopted by the Board on September 15, 2017*

Rules 2(a)(7) and 5 of the Rules Governing Admission to the Bar Exam require applicants to furnish evidence that they have passed the Multistate Professional Responsibility Examination with a scaled score of 85.

Rule 20(e) gives the Board of Law Examiners discretion to waive specific requirements of the Rules "for good cause shown to the satisfaction of the Board," "unless it appears [from the Rules] that no exceptions are contemplated by the Supreme Court."

The Board may grant a request to waive the MPRE requirement for attorneys licensed in other states who are seeking admission to the Bar of Texas if the following apply:

- (1) The MPRE was not required for the attorney applicant at the time the attorney applicant was originally licensed in another state.
- (2) The attorney applicant has never been the subject of attorney discipline in another jurisdiction.
- (3) The attorney applicant has never scored less than an 85 on the MPRE.

## **7. License Portability for Military Spouses**

In 2011, the 82nd Legislature enacted TEXAS OCCUPATIONS CODE § 55.004 entitled Alternative License Procedure for Military Spouse, which provides:

- A state agency that issues a license<sup>11</sup> shall adopt rules “for the issuance of the license to an applicant who is the spouse of a person serving on active duty as a member of the U.S. armed forces,” and
- Such rules “must include provisions to allow alternative demonstrations of competency” to meet licensing requirements.

As of June 2012, approximately 23 states had passed military spouse license portability measures. A registration program for military attorneys on military assignment in Texas was recently added in Rule XXII of the Rules Governing Admission to the Bar of Texas. It permits limited practice in Texas matters by military attorneys representing members of the armed forces in certain Texas matters specified in the rule.

In July 2012 the Conference of Chief Justices adopted Resolution XV urging: “the bar admission authorities in each state and territory to consider the development and implementation of rules permitting admission without examination for attorneys who are dependents of service members of the United States Uniformed Services and who have graduated from ABA accredited law schools and who are already admitted to practice in another state or territory.”

There is already long-standing provision in Rule XIII(a)(1) of the Rules Governing Admission to the Bar of Texas providing for admission without examination. Each year the Texas Board of Law Examiners certifies hundreds of qualified attorney applicants to the Supreme Court as eligible for admission without examination. The essential qualifications under XIII(a)(1) are as follow:

1. An attorney holding a valid, active law license issued by another state is eligible for exemption from the requirement of successfully completing the Texas Bar Examination, if the attorney:
  - A. has been actively and substantially engaged in the lawful practice of law in any state or elsewhere as his/her principal business or occupation for at least five of the last seven years immediately preceding the filing of the application;

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<sup>1</sup> TEXAS GOVERNMENT CODE § 82.021 states that only the Supreme Court of Texas may issue licenses to practice law and that the power may not be delegated. The Texas Board of Law Examiners examines applicants, applies and interprets the Rules Governing Admission to the Bar of Texas, and reports to the Supreme Court on the eligibility for licensure.

B. has a J.D. degree from an approved law school; and (**Note:** *This is no longer a requirement for AWOX*)

C. has not failed the Texas Bar Examination. (**Note:** *This is no longer a requirement for AWOX.*)

The rule does not require consecutive years of law practice. It requires a minimum of five years within the seven years preceding the application. This allows for up to two years of gaps in the practice time. Moreover, Rule XX(e) of the Rules Governing Admission to the Bar of Texas delegates to the Board, on an applicant's showing of good cause, some discretion to consider requests for waiver of the strict application of the five-years-out-of-seven standard.

The Board receives several such waiver requests each year. They are decided by the same panels of Board members that are tasked with presiding over Character and Fitness hearings. Attorney applicants whose otherwise qualifying experience may be a little outside the XIII(a)(1)(A) seven year window, or a little short of the five year minimum, often receive favorable consideration when they demonstrate extenuating circumstances or other good cause.

As a rule change is not mandated by TEXAS OCCUPATIONS CODE § 55.004, the Board of Law Examiners, in consultation with the Supreme Court, has adopted policy guidelines appropriate for the Board of Law Examiners' (a) consideration of problems faced by military spouse applicants and (b) consideration of their XIII(a)(1)(A) waiver requests, as follow:

- As used in these guidelines, a military spouse applicant means an attorney holding a current active law license in another state who demonstrates that his or her spouse is a person on active duty as a member of the armed forces of the United States, whose duty station is in Texas.
- The military spouse applicant may file an application for admission in Texas at a reduced fee (the fee applicable to an out-of-state law student<sup>2</sup>) without having to demonstrate the indigence required under Rule XVIII(b) for fee waivers.

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<sup>2</sup> This is less than half the fee an attorney applicant would usually be required to pay under the fee schedules in Rule XVIII(a).

- If applying to take the Texas Bar Examination, no late fee will be incurred for filing within the times provided in Rule IX(a)(3).<sup>3</sup>
- The military spouse applying for admission without examination (“AWOX”) should meet all other eligibility criteria for admission, but if lacking only Rule XIII(a)(1)(A), then the military spouse may submit a written request for waiver of XIII(a)(1)(A) demonstrating good cause for (a) enlarging the seven-year window to encompass law practice beyond seven years, (b) accepting fewer than the minimum five years time in practice, or both.
- The military spouse’s waiver request shall be submitted on forms designated by the Board at the time of filing the application for admission, or thereafter. In addition to any other factors the military spouse applicant may consider appropriate for the Board to consider, **the applicant’s written waiver request shall include:**
  - A verifiable history of short-term moves that were compulsory for the applicant as an attorney married to an active duty military service member;
  - A detailed description of the unique problems, if any, the applicant faced as a military spouse in undertaking to engage actively and substantially in the lawful practice of law during the relevant time period(s) for which waiver is sought;
  - Documentation demonstrating to the Board’s satisfaction that the applicant is currently the legal spouse of an active duty member of the armed forces whose duty station is in Texas; maintains a current active license to practice law in another state or territory of the United States; is in good standing and has no current or pending discipline in any jurisdiction currently licensed (active or inactive status); is in compliance with Continuing Legal Education, fees and other requirements of licensure in all jurisdictions of active licensure; and has no issues that could result in the Board’s character and fitness director determining that the applicant lacks present good moral character and fitness; and

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<sup>3</sup> Rule IX(a)(3) requires a \$150 late fee for applications filed after the timely due dates in IX(a)(1) and (2)

- Any letters of support from attorneys with whom applicant has practiced law that the applicant considers appropriate for the Board to consider with respect to the waiver request.