

## National Bar Examination Board

*This is an outline of the functions and structure of the examination board*

**T**wo classes of appointees make up the examination board itself. The first category comprises the national convener, four judges and five regional or provincial conveners, of whom four represent each Bar that is an examination centre, namely Johannesburg, Pretoria, Cape Town and Natal, and the fifth represents the interests of all the smaller Bars. There is also a chief examiner who represents the examiners generally. This first group constitutes what might be described as the permanent members of the board and it is this component of the board that has the responsibility of ensuring examination question papers have been properly set, having regard to length, content and the requirements of the syllabus.

The examiners of written papers form the second component of the board. The first portion of a board meeting is devoted to a critical evaluation of the draft examination papers. All the examiners of written papers participate in this debate. The remainder of the board's meeting is devoted to a consideration by the permanent members of the board of the results, and a determination of which pupils should pass and which should fail, as well as decisions on matters of policy or on alterations to the syllabi.

Written examination papers, based upon syllabi in five subjects, are set by the board, namely Legal Writing, Motion Court, Ethics, Criminal Procedure and Civil Trials. The written papers are marked internally by examiners and then moderated by three of the judges of the board. Those pupils who pass well are exempted from an oral examination and those who fail Legal Writing, save in exceptional circumstances, fail the examination without attending an oral examination.

The criteria applied by the judge who decides which pupils should attend the oral examination are:

- 1 All those pupils who obtain less than 50% in Legal Writing (save for exceptional cases) fail without attending the oral examination.
- 2 All those pupils who obtain an aggregate of less than 140 in respect of the other four subjects, even if they pass Legal Writing, fail without attending the oral examination. (An aggregate of less

than 140 would mean that the pupil, on average, obtained marks of 35% or less for each of the other subjects.)

- 3 Those who pass Legal Writing and obtain an aggregate of 60% of the remaining subjects are passed without having to attend an oral.

The exceptional cases who fail Legal Writing marginally are invited to an oral examination if, in the opinion of the judge, having regard to the marks in their remaining subjects, they have not only passed the remaining subjects but appear to have a prospect of obtaining an aggregate of 60% in their remaining subjects when attending the oral examination.

Those who fail, either without being invited to the oral examination or, after the oral examination but have obtained 65% in any one subject, are credited with an exemption in respect of that subject, which does not have to be repeated in any future examination.

An appeal lies to the national convener against the refusal of the judge to permit a pupil to attend an oral examination, provided that the appeal is brought within 48 hours of notice of the refusal.

Oral examinations are run in the four main centres, namely Pretoria, Johannesburg, Cape Town and Durban, and they are carried out by local examiners drawn from the Bars at those centres. The panel in each instance is presided over by the fourth judge on the board who did not moderate written papers and who travels to each centre in turn in order to ensure that the standard is fair and uniform throughout.

The purpose of the oral examination is to afford those pupils who may have failed subjects other than Legal Writing, or may not have done well in examinations, the opportunity of demonstrating that they should pass the examination.

In the case of a pupil who attends the oral examination and who has fared very badly in the four subjects which are to be tested, the judge presiding has a discretion to apply what is known as the "guillotine rule". In the discretion of the judge, the pupil is then examined in the weakest of the four subjects and given a full opportunity to rehabilitate himself or herself. If it is clear to the judge and

examiners that the pupil has not done so but has failed badly, the judge can then, after consulting with the examiners, decide that the oral examination shall not proceed and that the pupil fails at that stage. This rule is resorted to only in very poor cases.

Because of the uncertainty as to the role of provincial conveners, the position is restated below.

The respective roles of the Bar members of the board are as follows:

Each Bar, at a centre where an examination is conducted, appoints a senior Bar representative (almost invariably a silk) who is a member of the board and who has delegated authority to deal with all matters of first instance which may be referred to him or her either by the pupils at that Bar or by the Bar council, such as condonation for late commencement of pupillage, or any other irregularities arising from failure to comply with the rules applicable to the examination system. The present provincial conveners are:

- 1 Advocate N Treurnicht SC of the Cape Bar;
- 2 Advocate A K Kisson Singh SC of the Natal Bar;
- 3 Advocate F Preller SC of the Pretoria Bar;
- 4 Advocate M Brassey SC of the Johannesburg Bar. 

### Extracts from the report of the convener, Archie Findlay SC, at the March 2003 Exco meeting

#### November 2002 Examination

A total of 158 candidates wrote the Bar examination. Ninety one passed (of whom 30 passed with sufficiently high marks as to be exempted from oral examination), including nine who had repeated pupillage. Of those who passed the oral examination, 11 had repeated their pupillage. Of the remaining 67 who failed, 34 failed outright without being invited to an oral examination. Seven of those who failed were candidates who had repeated their pupillage. This represents an overall pass of 57,5% which unfortunately is one of the lower pass rates achieved in recent years.

Three pupils appealed against the decision of the oral moderator not to permit them to attend the oral examination. All three appeals were dismissed.