

**STATE OF FLORIDA  
BOARD OF ACCOUNTANCY**

<b>FILED</b>	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	10/17/2018
File #	2018-08416

**IN RE: PETITION FOR VARIANCE BY  
MARIA ELVIRA RUST**

**VW 2018-177**

**ORDER GRANTING PETITION**

Petitioner, Maria Elvira Rust, filed a petition for a permanent variance from the requirements of Rule 61H1-28.0052(1)(b), Florida Administrative Code (FAC), on August 20, 2018. The Notice of the petition appeared in the Florida Administrative Register on August 27, 2018, in Volume 44 Number 167; no comments by interested persons were received. The petition was heard at a duly-noticed public meeting of the Board of Accountancy on September 20, 2018, in Daytona Beach, Florida. At the hearing on this matter, Petitioner was present; the Board was represented by Edward Tellechea, Chief Assistant Attorney General.

**STATEMENT OF RELEVANT FACTS**

The facts relevant to the petition are as follows:

1. Petitioner is an applicant for licensure as a certified public accountant (CPA).
2. Rule 61H1-28.0052(1)(b), FAC, provides in part, candidates must pass all four test sections of the CPA Examination within a rolling eighteen-month period, which begins on the NASBA grade release date for the first test section(s) passed."
3. Petitioner passed the REG portion of the CPA examination on March 8, 2016, and credit for that portion of the examination expired on September 8, 2017. Petitioner passed the BEC portion of the CPA examination on August 22, 2016, and credit for that portion of the examination expired on February 22, 2018. Petitioner passed the AUD portion of the examination on August 15, 2017, and credit for that portion of the

examination will expire on February 15, 2019. Petitioner passed the FAR portion of the examination on June 25, 2018, and credit for that portion of the examination will expire on December 25, 2019.

4. During the 18-month window, Petitioner states that worked 60-70 hours per week while caring for her infant daughter. Further, the restructured CPA examination (released in April, 2017) delayed the release of examination scores and further delayed Petitioner's moving forward with her studies. Due to Hurricane Irma, testing locations closed. Petitioner seeks a permanent variance from Rule 61H1-28.0052(1)(b), FAC, to allow an extension of nine (9) months and seventeen (17) days beyond the eighteen months provided in the rule to retain the passing score on the REG portion of the examination until June 25, 2018, when she passed the fourth portion of the examination. She also seeks an extension of four (4) months and three (3) days beyond the eighteen months provided in the rule to retain the passing score of the BEC portion of the examination until June 25, 2018, when she passed the fourth portion of the examination.

#### **GROUND FOR APPROVAL**


The Board determined the petition should be granted on the following grounds:

5. Petitioner established that the Board's full application of Rule 61H1-28.0052(1)(b), FAC, to her circumstances would violate principles of fairness and would impose a substantial hardship on her.

6. Petitioner established that, if she were granted the variance, the purpose of the accountancy examination statute would be met as required by Section 473.306, FS.

This Order shall become effective upon filing with the Clerk of the Department of Business and Professional Regulation.

**DONE AND ORDERED** this 15<sup>th</sup> day of October, 2018, by  
the Florida Board of Accountancy.

  
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Veloria A. Kelly, Division Director

**NOTICE TO APPLICANT**

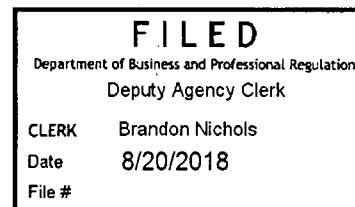
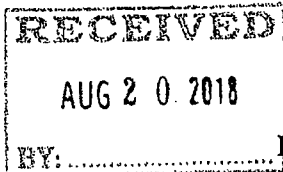
You may seek review of this Order, pursuant to Sections 120.569 and 120.57, FS, by filing a petition with the Division Director of the Board, 240 Northwest 76<sup>th</sup> Drive, Suite A, Gainesville FL 32607, within 21 days of receipt of this Order. If you dispute any material fact upon which the Board's decision is based, you may request a hearing before an administrative law judge pursuant to Section 120.57(1), FS; your petition must contain the information required by Rule 28-106.201, FAC, a copy of which is enclosed, including a statement of the material facts which are in dispute. If you do not dispute any material fact, you may request a hearing before the Board pursuant to Section 120.57(2), FS; your petition must include the information required by Rule 28-106.301, FAC, a copy of which is enclosed. If you request a hearing, you have the right to be represented by an attorney or other qualified representative, to take testimony, to call or cross-examine witnesses, to have subpoena and subpoena duces tecum issued, and to present written evidence or argument.

Pursuant to Section 120.573, FS, you are hereby notified that mediation pursuant to that section is not available.

**Certificate of Service**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Certified mail to Maria Elvira Rust, 6712 Voltaire Drive, Orlando, Florida 32809, and to Kenneth J. Plante, Chief Attorney, Joint Administrative Procedures Committee, 111 W. Madison Street, Pepper Building, Room 680, Tallahassee, Florida 32399-1400, and Edward Tellechea, Chief Assistant Attorney General, PL-01 The Capitol, Tallahassee, Florida 32399-1050 this 17<sup>th</sup> day of October, 2018.

Brandon M. Nichols



**PETITION FOR VARIANCE FROM RULE 61H1-28.0052(1)(b)  
18 Month Rule**

**Petitioner Information:**

Name: Maria Elvira Rust  
Address: 6712 Voltaire Drive  
Orlando, FL 32809  
Phone: (407) 716-7988  
Email: [maria.e.rust@gmail.com](mailto:maria.e.rust@gmail.com)  
Jurisdiction ID: Florida 00846901  
National Candidate ID: 0000000000697842

**Attorney Information:**

Not Applicable

**VW 2018-177**

**Applicable portions of the rules:**

61H1-28.0052(1)(b)

Candidates must pass all four test sections of the CPA Examination within a rolling eighteen-month period, which begins on the NASBA grade release date for the first test section(s) passed. In the event all four test sections of the CPA Examination are not passed within the rolling eighteen-month period, credit for any test section(s) passed outside the eighteen-month period will expire and that test section(s) must be retaken.

**The citation to the statute the rule is implementing:**

Section 473.306 – Examination

**Type of Action Requested:**

The petitioner requests that the Board of Accountancy please waive Rule 61H1-28.0052(1)(b), FAC stated above due to the following circumstances.

**Specific facts that demonstrate a violation of the principles of fairness that would justify a variance for the petitioner:**

With the score release on June 27, 2018, I have passed all four parts of the CPA exam. My first passing section, Regulation (REG), expired on September 8, 2017.

In November 2014, I began working full time as a tax associate at a large public accounting firm that my husband also worked at full time. With busy season workloads that frequently ranged from 60-70+ hours per week, my husband and I put a rigorous schedule in place in an attempt to meet our mutually demanding work obligations, raise our infant daughter (born March 2014), study for our CPA exams, and attend graduate classes.

In addition to a busy work and family schedule, I discovered that I ultimately needed a significant amount of time to successfully prepare for each section of the CPA. While I fully understand the material and concepts, I found that I needed to spend additional time working through the prep materials as English is not my native language. I ultimately had to attempt each section of the CPA exam on more than one occasion before achieving a passing score.

While in the process of studying and sitting for various sections of the CPA exams, I faced numerous additional challenges that further delayed or impacted my ability to complete the four parts of the CPA exam during the 18-month window.

1. In March 2016, my 76 year old widowed father suffered several mini strokes that required he be committed to emergency hospitalization and relocated from his home into a memory care living facility due to the onset of vascular dementia. Since my father lived in a small town that was far from any other family members, I had to take time away from work and studying to travel to my native country of Colombia to manage his care and oversee his affairs. Even after returning from my trip, I still had daily calls with both my father and his various care givers to help ensure he continued to transition well into the memory care living facility.

For reference, I have attached copies of his medical records documenting this event and timeline. Since the medical records were in Spanish, I've hired a translation service to have them translated, summarized and notarized. [See Attachment 1]

2. In June 2016, my husband and I found out we were pregnant with our second child. Due to my advanced maternal age and severe back pain, my OB-GYN considered my pregnancy to be high risk. During the course of my pregnancy, I did my best to limit subjecting myself to additional stress and the extensive work/study hours that I had previously pursued. The severe back pain also meant that I was unable to sit for long periods of time, and limited the amount of studying time I could fit in alongside my work schedule. Our second daughter was born in January 2017, and I immediately resumed studying for the AUD section of the CPA exam during the entirety of my maternity leave.

For reference, I have attached copies of my medical records documenting my diagnosis, as well as a letter from my OB-GYN. [See Attachment 2]

3. I took the AUD section of the CPA exam in April 2017 when the release scores were significantly delayed due to the implementation of the new CPA exam format. Since my first two CPA exam sections required multiple attempts, I was hesitant to shift my studying from the AUD material to FAR while I awaited the results.
4. While I ultimately passed my AUD exam, I didn't find out until the scores were released on August 29, 2017. With only 10 days remaining until my REG section expired, I requested time off from work to study and quickly scheduled my FAR exam to occur the following week.

Unfortunately, that same week is when Hurricane Irma started moving towards Florida, resulting in the closure of testing centers across the state. With the closing of my testing center looming, I was faced with the choice of rescheduling my testing appointment for

earlier in the week during my valuable study time, or postpone it until after my REG section expired. I elected to attempt the exam without the proper time needed to study, and ultimately did not pass this attempt.

5. In order to have the time I needed to study, I planned to retake the FAR section of the exam during the months that followed our normal fall busy season when we were traditionally slower at the office. However, with the IRS issuing an extension of time to file for taxpayers affected by Hurricane Irma, our normal fall busy season ultimately dragged out until the extended deadline of January 31, 2018.

The workloads for my husband and me during this time did not allow us to schedule in a sufficient amount of time for me to prepare for this second attempt at FAR, and I ultimately did not pass.

6. Fearing I would continue to lose all of my CPA exam sections that I had previously passed, my husband and I ultimately made the decision for me to take an unpaid leave of absence from work starting on April 17<sup>th</sup> so that I could fully focus on preparing for my 3<sup>rd</sup> and final attempt at passing FAR.

While this strategy resulted in a passing score for my 3<sup>rd</sup> attempt at the FAR section, the impact this had on my ability to meet my annual billable hours at work and our family's household finances and savings was substantial.

7. In June 2018, my husband and I were blessed to learn we would be expecting our 3<sup>rd</sup> child to be born in January 2019. However, just this week we were notified by my OB-GYN that my recent ultrasound indicated that I have *Placenta Previa*, a medical condition that can result in complications for both myself and the baby. I've attached my recent medical records showing this diagnosis and the related documentation that was provided to me by my OB-GYN on this condition. [See Attachment 3]

My doctor has recommended that I follow the suggested treatment for *Placenta Previa*, which involves avoiding exercise and eliminating all unnecessary stress. If the condition worsens, I could find myself being subjected to bed rest and/or a hospital stay for the remainder of the pregnancy, and early delivery of the baby via C-section. This means that I will be unable to maintain the rigorous work/study schedule that I had previously used when studying for CPA sections in the past.

Additionally, I started a new role as an accounting manager at a different company on July 23, 2018, and I wouldn't have the option to take a leave of absence to study again as I am still within their 90 probationary period for new hires.

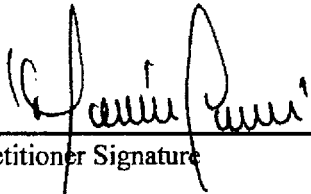
The journey towards my career as a CPA has been challenging at times, but fully worthwhile. After moving to the US as a young adult who didn't know the language, I'm now the only member of my family to have graduated from college. I want my daughters to be inspired by the family and career achievements I've been able to accomplish, even in the face of adversity, and look forward to the opportunity to contribute to our profession and community as a licensed CPA. I appreciate your time and consideration of the above facts and circumstances.

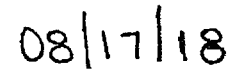
**The reason why the variance requested would serve the purpose of the underlying statute:**

To the petitioner's knowledge, she has met all education requirements and is of good moral character.

**Petitioner Statement:**

The petitioner seeks a permanent variance from Rule 61H1-28.0052(1)(b), FAC.

  
\_\_\_\_\_  
Petitioner Signature

  
\_\_\_\_\_  
Date