

STATE OF FLORIDA  
BOARD OF ACCOUNTANCY

<b>FILED</b>	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	3/6/2019
File #	2019-01969

IN RE: PETITION FOR VARIANCE BY  
JENNI MIDDLEBROOK CASE

ORDER GRANTING PETITION

**VW 2018-247**

Petitioner, Jenni Middlebrook Case, filed a petition for a permanent variance from **Rule 61H1-27.002(4)(a), Florida Administrative Code (F.A.C.)**, on December 5, 2018. The notice of the petition appeared in the Florida Administrative Register on January 4, 2019, in Volume 45 Number 03. No comments by interested persons were received. The petition was heard at a duly-noticed public meeting of the Board of Accountancy ("Board") held on February 1, 2019, in Orlando, Florida. Petitioner was present at the proceeding. The Board was represented by Rachelle Munson, Assistant Attorney General. The petition is attached herein and incorporated by reference.

STATEMENT OF RELEVANT FACTS

The facts relevant to the petition are as follows:

1. Petitioner is an applicant for initial licensure as a certified public accountant (CPA) pursuant to Section 473.308(3), Florida Statutes (FS).

2. **Section 473.308(3), F.S.**, provides:

An applicant for licensure must have at least 150 semester hours of college education, including a baccalaureate or higher degree conferred by an accredited college or university, with a concentration in accounting and business in the total educational program to the extent specified by the board.

3. **Rule 61H1-27.002(4)(a), F.A.C.**, provides:

For purposes of this rule, upper division accounting hours

other than elementary above the minimum requirement may be substituted for general business hours. Elementary accounting subjects shall not be accepted as general business education. Elementary accounting subjects include principles of financial and managerial accounting courses even if they are covered in a three course sequence, are titled "introductory," "fundamentals" or "principles" and even if they are offered at the graduate level. All accounting courses and not less than 21 semester or 32 quarter hours of general business courses must be at the upper division level. For the purpose of paragraph 61H1-27.002(2)(b), F.A.C., all general business courses, including accounting courses in excess of the 36 hours required, must be taken at the upper division level, except for Introductory Macro and Micro Economics, Business Law, Introductory Statistics, Introduction to Computer Information Systems, and any written or oral communication course described in paragraph 61H1-27.002(2)(b), F.A.C. Lower level general business courses, other than those listed above, posted to transcripts after August 31, 1989 will not count. Standardized tests, such as CLEP, are not acceptable for accounting or general business courses; however, advanced placement (AP) courses will be counted if the applicant has been granted college credit for those AP courses by their degree-granting institution.

(a) Upper division, as used in rule 61H1-27.002, F.A.C., means courses offered at the junior level or higher. By definition, any course taken at a community college is not upper division. Courses offered at the freshman and sophomore level at senior institutions are not upper division, regardless of the title or content of the course (e.g., Cost, Intermediate, Tax, etc.)

4. Petitioner's application for licensure was received on August 3, 2018, and on August 9, 2018, Petitioner was noticed for a deficiency of coverage in upper-division cost and financial accounting.

5. Petitioner seeks a permanent variance from Rule 61H1-27.002(4)(a), FAC, to the extent necessary for the Board to find that she has met the educational requirements for licensure as a Certified Public Accountant.

**GROUNDS FOR APPROVAL**

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

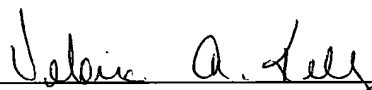
6. Petitioner established that the purpose of the underlying statute, Section 473.308(3), FS, would be met were she to be granted a variance from Rule 61H1-27.002(4)(a), FAC, in acknowledgment of Petitioner's two baccalaureate degrees and one master's degree. Petitioner has further demonstrated that she has also worked in the accounting field for over 10 years and passed the CPA examination and is currently licensed as a CPA in the state of North Carolina.

7. Petitioner further established that the Board's application of 61H1-27.002(4)(a), FAC, to her circumstances would violate principles of fairness and impose a substantial hardship on her.

It is therefore **ORDERED** that the petition be **GRANTED**. The Board granted the variance finding that she had completed the required number of hours for licensure.

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

**DONE AND ORDERED** this 26<sup>th</sup> day of February, 2019, by the Florida Board of Accountancy.

  
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Veloria A. Kelly, Division Director ✓

**NOTICE OF RIGHT TO HEARING**

You may seek review of this Order, pursuant to Sections 120.569 and 120.57, Florida Statutes, 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 **Jenni Middlebrook Case**, 2452 Hassonite Street, Kissimmee, Florida 34744; and to Kenneth Plante, Chief Attorney, Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 W. Madison Street, Tallahassee, Florida 32399-1400, and by electronic delivery to: Rachelle Munson, Assistant Attorney General, at [Rachelle.Munson@myfloridalegal.com](mailto:Rachelle.Munson@myfloridalegal.com) this 6<sup>th</sup> day of March, 2019.

Brandon M. Nichols

<b>FILED</b>	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	12/5/2018
File #	

**Petition for Variance from or Waiver of Rule FAC 61H1-27.002(4)(a)**

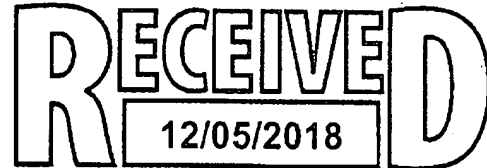
**Petitioner Information**

Name: Jenni K. Middlebrook Case  
Mailing Address: PO BOX 702648  
St. Cloud, FL 34770  
Phone Number: (336) 609-4951  
Email Address: JMC867\_5309@icloud.com  
Application Number: 376517

VW 2018-247

**Attorney Information**

None.



**Applicable Portions of the Rule(s)**

FAC 61H1-27.002(4)(a):

(4) For purposes of this rule, upper division accounting hours other than elementary above the minimum requirement may be substituted for general business hours. Elementary accounting subjects shall not be accepted as general business education. Elementary accounting subjects include principles of financial and managerial accounting courses even if they are covered in a three course sequence, are titled "introductory," "fundamentals" or "principles" and even if they are offered at the graduate level. All accounting courses and not less than 21 semester or 32 quarter hours of general business courses must be at the upper division level. For the purpose of paragraph 61H1-27.002(2)(b), F.A.C., all general business courses, including accounting courses in excess of the 36 hours required, must be taken at the upper division level, except for Introductory Macro and Micro Economics, Business Law, Introductory Statistics, Introduction to Computer Information Systems, and any written or oral communication course described in paragraph 61H1-27.002(2)(b), F.A.C. Lower level general business courses, other than those listed above, posted to transcripts after August 31, 1989 will not count. Standardized tests, such as CLEP, are not acceptable for accounting or general business courses; however, advanced placement (AP) courses will be counted if the applicant has been granted college credit for those AP courses by their degree-granting institution.

(a) Upper division, as used in rule 61H1-27.002, F.A.C., means courses offered at the junior level or higher. By definition, any course taken at a community college is not upper division. Courses offered at the freshman and sophomore level at senior institutions are not upper division, regardless of the title or content of the course (e.g., Cost, Intermediate, Tax, etc.)

**The Citation to the Statute the Rule Is Implementing**

Florida Statute 473.306(2)(a)

(2) An applicant is entitled to take the licensure examination to practice in this state as a certified public accountant if:

(a) The applicant has completed 120 semester hours or 180 quarter hours from an accredited college or university with a concentration in accounting and business courses as specified by the board by rule;

**Type of Action Requested**

The petitioner requests that the Board of Accountancy grant a permanent variance from Rule 61H1-27.002(4)(a), stated above, due to the circumstances described below, in order to be granted licensure by endorsement.

**Specific Facts that Demonstrate a Violation of the Principles of Fairness that Would Justify a Variance for the Petitioner**

The petitioner is the holder of two baccalaureate degrees and one master's degree. The baccalaureate degrees (one Bachelor of Science and one Bachelor of Arts) were conferred in May of 2012 by Salem College, which is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools. The petitioner earned a total of 179 semester hours while completing these degrees. The petitioner's master's degree was conferred in December of 2016 by University of Charleston, which is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools. The petitioner earned a total of 152 semester hours while completing this degree. The petitioner has earned a total of 333 semester hours, including an additional two semester hours earned at Central Carolina Community College, within the last ten years.

The petitioner holds an active CPA license with the state of North Carolina (license number 40460 issued July 25, 2016) and is in good standing. To obtain a CPA license in North Carolina, the applicant must have completed 150 semester hours of education including a concentration in accounting [NCGS 93-12(5)a]. The concentration in accounting is further defined in the North Carolina Administrative Code (NCAC 08A.0309):

(a) A concentration in accounting includes:

(1) At least 30 semester hours, or the equivalent in quarter hours, of undergraduate accountancy courses that shall include no more than six semester hours of accounting principles and no more than three semester hours of business law;

The petitioner has fulfilled all annual continuing professional education (CPE) requirements as set forth by the state of North Carolina. North Carolina Administrative Code (NCAC 08G.0401) requires active licensees to complete 40 hours of CPE annually with at least two (2) hours focused on regulatory or behavioral professional ethics and conduct. In accordance with these requirements, the petitioner has completed a total of 66.5 CPE hours, as of the date of this petition, since her licensure in July of 2016.

The Florida Department of Business and Professional Regulation (DBPR) determined the petitioner's application for licensure by endorsement was incomplete due to "deficient upper-division accounting coverage" in cost accounting and financial accounting. The petitioner was advised via phone that DBPR would not accept three courses within the Salem College transcripts as upper-division coverage because the course numbers begin with a "1" rather than a "2" or "3." DPBR also stated it was not considering any courses associated with the petitioner's master's degree for these specific requirements because the course title did not include the words "financial" or "cost." Neither DBPR nor the Board of Accountancy's Education Committee has reviewed the course syllabi. The petitioner has compiled the following information to support the courses' upper-division qualification:

- The support of Professor Michael Cummings, an adjunct professor and former Accounting Department Chair at Salem College who taught the petitioner's courses. Professor Cummings has stated the courses in question are, in fact, upper-division courses.
  - Professor Cummings can be reached at (336) 721-2602.
- The syllabi for each course (enclosed). Professor Cummings has further assured that these syllabi are representative of the courses the petitioner took. The textbooks used in the petitioner's courses are the same as in the syllabi provided, although in one instance the petitioner used an earlier edition.
- Pages extracted from the 2009–2010 Salem College Academic Catalog (enclosed) which illustrate a deliberate structure of accounting courses by the faculty. Required courses are scheduled (alternating between Spring and Fall semesters) in such a way that students must take them sequentially. This was designed to ensure students had a sufficient academic foundation to succeed in the upper-division courses. Between the accounting major pre-requisites and the bachelor's degree core requirements, a student could not take any of the three courses in question until at least her junior year. One course, which requires the completion of all four financial accounting courses, could not be taken until the senior year.

#### **The Reason Why the Variance Requested Would Serve the Purpose of the Underlying Statute**

It is the petitioner's understanding that Rule 61H1-27.002(4)(a), and the underlying statute 473.306(2)(a), are designed to ensure Florida CPAs have an extensive and well-rounded education. The public places a great deal of trust in CPAs. In order to uphold that trust and reputation, an accountant's knowledge must have a firm foundation, include familiarity with a broad range of accounting and financial specialty topics, and be constantly evolving to meet the needs of an expanding world both economically, and technologically.

The petitioner's education – all of which was earned recently and far exceeds the required amount of 150 hours – meets these purposes exceptionally. The baccalaureate degrees were earned at a well-respected and advanced college that designed its curriculum to not only meet the North Carolina Board of Accountancy's requirements to sit for the CPA exam, but also to earn the license. Most CPAs must continue their education with an advanced degree to meet the 150 semester hour requirements; the petitioner received enough varied and advanced education in her baccalaureate degrees that this was not necessary.

The petitioner passed the CPA exam based on the knowledge earned in her baccalaureate degrees. She went on to obtain a further 152 semester hours of education in her graduate degree. The petitioner's master's degree is in forensic accounting, a specialty topic within the accounting industry. Like many graduate programs, this program had a prerequisite for applicants to have advanced knowledge in the underlying subject matter (in this instance: accounting, finance, or economics) prior to enrollment. The curriculum built upon financial accounting concepts to teach cohorts how to conduct complex financial fraud investigations, how to calculate and complete assessments of economic damages and business valuations, and how to present compiled data as compelling and legally sufficient evidence in court.

#### **Petitioner Statement**

Thank you for considering my petition for a permanent variance or waiver of Rule 61H1-27.002(4)(a). When submitting my application for licensure by endorsement, I never dreamed I would receive a

response stating my education was found deficient. I have worked very hard over the last ten years to earn not only my CPA license, but also my position as a forensic accountant with the state of Florida's Office of Financial Regulation (OFR). In seeking this position, a key part of my resume was my extensive and advanced education in the field of accounting. I take great pride in it, and have proven myself to be an asset to the OFR's Bureau of Investigations where I work. In addition, I am often consulted by the Division of Consumer Finance with regards to technical financial accounting concepts related to petitions submitted by their licensees. It was a true shock both to me and everyone I work with to hear the DBPR considered my education deficient.

I hope this petition has done its job in conveying the details of my academic background. In addition to the principle of fairness, a denial of this petition would result in substantial economic hardship for me. To meet the requirements DBPR is requesting, I would need to return to a local university to complete a minimum of three courses. However, I probably would need to complete more than three due to prerequisite requirements. If that university was unwilling to consider my advanced degree as a sufficient prerequisite, I would probably have to re-take my entire accounting major. Based on the academic catalog of the college I attended, where each course is the prerequisite of the next, I would have to return to college for between 1.5 and 3 years. The financial cost of this type of "re-education" would quickly reach thousands of dollars. I would not qualify for any type of scholarship or Bright Futures program since I would be considered a continuing education or graduate student, and I could not utilize any state paid tuition program because I would not be a degree-seeking student. The debt I would incur would stack up on the \$85,000 in student loan debt I already have from already earning the degrees DBPR is finding deficient.

Furthermore, I would also incur significant opportunity costs. My full-time career and family would suffer greatly should I have to re-focus my efforts on an education I (and they) already sacrificed so much to earn. My current employment with the OFR may be jeopardized. I was hired and promoted quickly within the OFR in part because I have earned a CPA license and intend to maintain that license in Florida. My retirement would be further delayed 1.5 to 3 years both due to lack of career advancement and the fact that I will have spent thousands of dollars that could have been saved for that purpose. My career would not be advanced in the process of re-taking these courses – solely for the purpose of satisfying the literal interpretation of a rule that defines a course's status arbitrarily based on its number rather than its substantive content – as opposed to attending recurrent training or obtaining additional certifications. I would be forced to limit my time with family in exchange for studying, delay all travel opportunities due to financial or academic conflicts, and of course be unable to spend those same thousands of dollars on the myriad of financial obligations incurred by being a homeowner.

The literal application of this Rule 61H1-27.002(4)(a) – meaning college courses must begin with a "2" or "3" to qualify as upper-division – is certainly causing unreasonable, unfair, and unintended results in my particular instance. It is unreasonable for DBPR to request I re-take not just the accounting courses it is finding deficient, but also the pre-requisites for those courses (by default, not intention) especially when I have already paid for them once before. It is unfair that once I successfully passed those courses, *and* the CPA exam, *and* obtained a master's degree, I should be moving backwards in my life instead of forwards. The literal application of this rule would affect me significantly differently from other licensure by endorsement applicants who have earned their degrees. My alma mater arbitrarily chose to number the accounting courses sequentially, rather than by any other system. It is unfair to punish me because of this choice, which is completely outside my control or capability to change. If the purpose of the rule



is indeed to keep out applicants with sub-standard or inadequate education, then denying my application is an unintended result for no one could scrutinize my educational background and find it wanting.

Again, thank you for your time in hearing this petition. I trust that, after this review, you will find my education is sufficient to be granted licensure by endorsement. If you have any further questions, you can feel free to contact me using the information provided at the top of the petition.

Sincerely,



Jenni Middlebrook Case

**Enclosures**

- ACCT 140A, Fall 2015 Syllabus
- ACCT 150 Intermediate Accounting II Syllabus Spring 2011 (WORD 2003) VER 1-31-2011
- ACCT 160 COST ACCT SPRING 2014 Syllabus
- Accounting Major Courses from 2009 Academic Catalog<sup>1</sup>

**CC**

Joint Administrative Procedures Committee  
Florida Board of Accountancy<sup>2</sup>

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<sup>1</sup> The entire catalog was too large an attachment. The file can be viewed at [www.salem.edu/academics/catalog](http://www.salem.edu/academics/catalog).

<sup>2</sup> Submitted both via fax and certified mail.