

**STATE OF FLORIDA
BOARD OF ACCOUNTANCY**

**IN RE: PETITION FOR VARIANCE BY
KATHY B. FORESTER**

NOTICE OF INTENT TO DENY PETITION **VW 2020-097**

Petitioner, Kathy Forester, filed a petition for a permanent variance from the requirements of **Rule 61H1-28.0052(1)(b), Florida Administrative Code (F.A.C.)**, on August 7, 2020. The notice of the petition appeared in the Florida Administrative Register on September 3, 2020, in Volume 46 Number 173. No comments by interested persons were received. The petition was heard at a duly-noticed public meeting of the Board of Accountancy on September 25, 2020, via teleconference and video conference. Petitioner was present for the proceeding and was not represented by counsel. The Board was represented by Rachelle Munson, Assistant Attorney General. The Petition is incorporated by reference herein and attached to this notice.

STATEMENT OF RELEVANT FACTS

The facts relevant to the petition are as follows:

1. **Rule 61H1-28.0052(1)(b), F.A.C.**, provides in pertinent 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.

2. Petitioner passed the FAR portion of the CPA examination on September 18, 2018, and credit for that portion of the examination expired on March 18, 2020. Petitioner passed the AUD portion of the examination on March 7, 2019, and credit for that portion of the examination will expire on December 31, 2020. Petitioner passed the REG portion of the examination on November 4, 2019, and credit for that portion of the examination will expire on May 4, 2021. Petitioner passed the BEC portion of the CPA examination on August 6, 2020, and credit for that portion of the examination will expire on February 6, 2022.

3. Petitioner states that, after her husband abruptly relocated to California in April 2019, she also relocated thereafter with three children to California to accept another job requiring her to work up to 60 hours per week. Petitioner further noted that her mother became ill during that time, requiring her to provide more care for her mother.

4. Petitioner referenced unsuccessful attempts to reschedule the BEC section of the exam due to COVID-19 travel restrictions.

5. Petitioner requests a permanent waiver of the referenced rule, acknowledging that she is four (4) months and nineteen (19) days outside the eighteen (18) month window for the BEC portion of the examination.

GROUND FOR DENIAL

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

6. Petitioner did not provide a sufficiently compelling explanation for not meeting the rule criteria and passing BEC during the available 3.5 months prior to the impact or declaration of COVID-19 restrictions.

7. Petitioner failed to establish that the Board's full application of Rule 61H1-28.0052(1)(b), F.A.C., to her circumstances, would violate principles of fairness and would impose a substantial hardship on her.

8. Petitioner failed to establish that, if she was granted the variance, the purpose of the accountancy examination statute would be met as required by Section 473.306, F.S.

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

DONE AND ORDERED this 30 day of September, 2020, by the Florida Board of Accountancy.


Roger Scarborough, 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 76th 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), Florida Statutes; your petition must contain the information required by Rule 28-106.201, Florida Administrative Code, 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), Florida Statutes; your petition must include the information required by Rule 28-106.301, Florida Administrative Code, 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, Florida Statutes, 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: **Kathy Forester**, 5051 Juneau Court, Rancho Cucamonga, CA 91739, and to Kenneth Plante, Chief Attorney, Joint Administrative Procedures Committee, 111 W. Madison Street, Pepper Building, Room 680, 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 27th day of October, 2020.

Brandon M. Nichols

FILED
Department of Business and Professional Regulation
Senior Deputy Agency Clerk
CLERK Brandon Nichols
Date 8/7/2020
File #

**STATE OF FLORIDA
BOARD OF ACCOUNTANCY**

**PETITION FOR VARIANCE FROM RULE 61H1-28.—521(1)(b)
18 Month Rule**

Petitioner Information:

Name: Kathy B. Forester
Address: 5051 Juneau Court, Rancho Cucamonga, CA 91739
Phone Number: (407) 491-7502
Jurisdiction ID: 0681005
National Candidate ID: 0000000000477043

VW 2020-097

RECEIVED
AUG 07 2020

Attorney Information:

Not Applicable.

**DIVISION OF CERTIFIED
PUBLIC ACCOUNTING**

Applicable Portions of the Rules:

61H1-28.0052(1)(b) Number of Sitzings, and Grants of Credit, Release of Grades and Completion of Examinations, Transition Rules.
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 for 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 of the Statute the Rule is Implementing:

Statute 120.542: Variances and Waivers & 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 fact that demonstrate a violation of the principles of fairness that would justify a variance for the Petitioner:

The Petitioner has been studying and preparing for her CPA Examinations since 2017. Surprisingly, with very short notice, Petitioner's husband had decided to relocate from Florida to California due to work-related circumstances in April 2019, while Petitioner remained in Florida, staying on course to becoming a CPA. She quickly discovered that the absence of her husband posed to be a challenge of raising their three children on her own, taking them to school, attending to their activities, while working full-time, and studying in the evenings. Petitioner's husband settled into a job in California and soon requested Petitioner and their children to join him. On multiple occasions, Petitioner

travelled back and forth from Florida to California, applying for work, attending job interviews, while searching for a suitable home and school district for their children. This transition posed to be very stressful for Petitioner's children, who had a very difficult time with being uprooted from their Florida childhood home. Upon relocating to California, Petitioner's new job as a Controller demanded up to 60 hours per week. Also, during this time, Petitioner's mother became gravely ill, requiring Petitioner to shift much of her attention to the care for her mother, while safeguarding herself and her family from the unprecedented COVID-19 coronavirus epidemic.

All of these demanding factors had a significant impact on the Petitioner's unavailability and minimized her study time for her 4th and final test, Business Environment and Concepts (BEC) section of the CPA examination, which was taken on July 21st 2020 and resulted in a score of 81%. With the 18 Month Rule, Petitioner lost credit to the Financial Accounting and Reporting (FAR) exam, which she previously scored an 82%.

The Reason of Variance Requested Would Serve the Purpose of the Underlying Statute:

The Petitioner is of good moral character and made multiple attempts to reschedule her BEC test to no avail due to COVID-19 travel restrictions and mandated social distancing.

Petitioner Statement:

The Petitioner seeks a permanent variance from Rule 61H1-28.00521(1)(b), F.A.C.