District of Columbia
Court of Appeals

NO. M269-20

BEFORE: Blackburne-Rigsby,* Chief Judge; Glickman,* Thompson,* Beckwith, Easterly, McLeese, and Deahl, Associate Judges.

O R D E R

(FILED – September 24, 2020)

The COVID-19 pandemic has created unprecedented challenges for everyone involved in the bar-admission process in the District of Columbia. It required the court to cancel the scheduled July 2020 bar examination, for public-safety reasons. The court carefully considered the possibility of administering an in-person examination in the Fall of 2020, but determined that conditions continued to make that infeasible. The court has scheduled an online examination for October 5-6, 2020, and court staff and others are working diligently to prepare to administer and grade that examination, to conduct character and fitness reviews, and then to admit qualified applicants. Court staff also are processing numerous applications for admission to the Bar by motion.

The court continues to evaluate the bar-admission process in light of changing and uncertain conditions. In July 2020, a number of applicants petitioned the court to make additional changes to the bar-admission process. The court solicited public comment on the topic and received many hundreds of comments in response. After carefully reviewing those comments, the court has reached the following decisions,

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* Chief Judge Blackburne-Rigsby, Judge Glickman, and Judge Thompson dissent from the second part of the order regarding Emergency Examination Waiver, for the reasons set forth in their separate statement at page 7.

as it balances the interests of applicants, employers, the judicial system, and the public.

First, some commenters urge the court to abandon the bar-examination system. There is an ongoing public debate on that topic, and the court concludes that now is not the time to decide whether to make long-term, sweeping changes to its bar-admission process. Rather, the court has decided to focus narrowly on the most urgent issue before it: what specific changes need to be made to address the particular challenges presented by the COVID-19 pandemic.

Second, some commenters argue that on-line bar examinations are problematic, either in general or under current conditions. Other commenters, however, have asked that the court include an on-line bar examination as one path to admission to the Bar. Although the court recognizes that there are uncertainties and challenges associated with an on-line bar examination, the court concludes that it is on balance better to provide that alternative to those who wish to choose it. In that regard, the court has negotiated a number of reciprocity agreements with other states that are also administering an October bar exam, and applicants may be relying on those agreements.

Third, the court understands that the COVID-19 pandemic has presented substantial obstacles to some applicants. To address that problem, the court has determined to permit certain recent law-school graduates to practice law, temporarily and while under supervision, even though they have not yet taken or passed a bar examination. The court therefore adopts, on an emergency basis, new D.C. App. R. 49(c)(8A) (Emergency Temporary Practice by Recent Law-School Graduates Under Supervision by D.C. Bar Member). The text of that rule is attached to this order.

Fourth, the court acknowledges that temporary practice under supervision will not address all of the difficulties that applicants face in light of the pandemic. The court therefore has determined, on a one-time basis, to permit certain recent law-school graduates to be admitted to the D.C. Bar without taking or passing a bar examination, under a number of conditions intended to safeguard the public's interest in the competence and good character of those who are permitted to practice law in the District of Columbia. The court therefore adopts, on an emergency basis, new D.C. App. R. 46-A (Admission to Bar Based on COVID-19 Emergency Examination Waiver). The text of that rule is attached to this order.

Fifth, many commenters argue that emergency changes to the bar-admission process are needed to increase the number of attorneys who can provide pro bono representation to help people deal with legal problems created or worsened by the COVID-19 pandemic. The court expects those who are permitted to practice law under these emergency rules to make a concerted effort to provide such pro bono assistance.

A number of commenters appear to assume that permitting admission based on an examination waiver will lead to near-instantaneous admission of those who qualify. That is not feasible. As previously noted, the court's limited staff has many time-sensitive obligations, including administering the October on-line examination, which at present has an unprecedented number of applicants; getting that examination graded; conducting character and fitness reviews; and certifying successful applicants for admission. The court's staff is confronting daunting challenges while working almost entirely remotely. Court staff will give priority to handling the applications of those who take the October Bar examination. Although court staff will work diligently to process applications based on an emergency examination waiver, that process includes character and fitness review and can be expected to take a number of months. The court has chosen to permit expanded temporary practice under supervision in part for this reason. As indicated in the emergency rule, applications based on an emergency examination waiver may be submitted beginning at 10 a.m. Eastern time on January 11, 2021, and must be submitted by 5:00 p.m. Eastern time on April 30, 2021.

The court received many sometimes conflicting comments. No approach could satisfy all of the various interests that have been identified. These emergency rules reflect the court's best effort to address the COVID-19 pandemic by balancing the competing interests at stake. The court also recognizes that the COVID-19 pandemic is ongoing and that circumstances may change. The court will continue to monitor the situation and to take additional steps as necessary.

D.C. App. R. 49(c)(8A) (Emergency Temporary Practice by Recent Law-School Graduates Under Supervision by D.C. Bar Member).

(A) Eligibility Requirements. Subject to the time limits in (C), a person may practice law in the District of Columbia, and may hold out as authorized to do so, if the person:

(i) received a J.D. degree in 2019 or 2020 from an ABA-approved law school;

(ii) has or had timely completed an application, including payment of the required fee, to take a bar examination scheduled to be administered in this jurisdiction in 2020 or 2021;

(iii) has not been admitted to a bar in a different jurisdiction, failed a bar examination, or had a bar application denied;

(iv) has passed the Multistate Professional Responsibility Exam, as provided in D.C. App. R. 46(c);

(iv) has been certified by the dean of the law school from which the person graduated as being of good character and competent legal ability;

(vi) has read the District of Columbia Bar Rules and Rules of Professional Conduct, and, within sixty days of beginning practice under this rule, completes the Mandatory Course on the District of Columbia Rules of Professional Conduct and District of Columbia Practice presented by the D.C. Bar;

(vii) is supervised on each client matter by an enrolled, active member of the D.C. Bar who (a) has practiced law in the District of Columbia for at least five years; (b) is in good standing, has never been disbarred or resigned from any bar with disciplinary charges pending, and has no pending disciplinary charges in any jurisdiction or court; (c) is the person's employer, works for the person's employer or law firm, or works for a non-profit organization in the District of Columbia that provides legal services to people of limited means at no charge or for a limited processing fee; and (d) takes responsibility for the quality of the person's work and complaints concerning that work; and

(viii) gives prominent notice in all business documents that the person's practice is supervised by one or more D.C. Bar members and that the person is not a member of the D.C. Bar.

(B) Other requirements.

(i) A person practicing law under this rule accepts the jurisdiction of the courts of the District of Columbia over the person's practice of law and agrees to be bound by the District of Columbia Rules of Professional Conduct.

(ii) A person practicing law under this provision may not ask for or receive any compensation or remuneration of any kind directly from a client and may not negotiate a fee agreement or be a party to a fee agreement. The person's employer or law firm may pay compensation to the person and may charge clients for the person's legal services.

(C) Duration. A person's authorization to practice law under this provision expires

(i) if the person no longer meets the eligibility requirements of (A);

(ii) if the person is admitted to the D.C. Bar;

(iii) after the application deadline for the next in-person bar examination in the District of Columbia, unless the person has submitted a timely application to take that bar examination, in which case until the person is granted or denied admission to the D.C. Bar or the person's application is withdrawn or deemed abandoned;

(iv) if authorization is withdrawn by order of the court for cause, after notice and an opportunity to be heard in writing; or

(v) if the court provides for a different expiration date by subsequent order.

D. Waiver. Upon motion filed with the court showing extraordinary circumstances relating to the COVID-19 pandemic, the court may waive one or more of the eligibility requirements provided in (A)(i), (A)(ii), and (A)(iii).

D.C. App. R. 46-A (Admission to the Bar Based on COVID-19 Emergency Examination Waiver).

(a) Eligibility Requirements. A person may be admitted to the Bar of this jurisdiction if the person:

(1) received a J.D. degree in 2019 or 2020 from an ABA-approved law school);

(2) has or had timely completed an application, including payment of the required fee, to take a bar examination scheduled to be administered in this jurisdiction in 2020;

(3) has not been admitted to a bar in a different jurisdiction, sat for a bar examination in this or another jurisdiction, accessed bar examination materials remotely in this or another jurisdiction, failed a bar examination in this or another jurisdiction, or had a bar application denied;

(4) has passed the Multistate Professional Responsibility Exam, as provided in D.C. App. R. 46(c); and

(5) demonstrates good moral character and general fitness to practice law, as required by D.C. App. R. 46 (g).

(b) Application. A person seeking to be admitted under this Rule shall submit an application to the Director of Admissions, using a separate application form to be developed and to be approved by the Committee on Admissions. Applications may be submitted beginning at 10 a.m. Eastern time on January 11, 2021, and must be submitted by 5 p.m. on April 30, 2021. The application shall be accompanied by (1) a payment to the Clerk, D.C. Court of Appeals, in an amount and form approved by the Committee and specified by the Director, and (2) payment to the National Conference of Bar Examiners (NCBE), or proof of payment to NCBE, in an amount and form specified on the application form.

(c) Procedures. Applications under this Rule will be handled under the procedures established in D.C. App. R. 46(g)-(l).

(d) Additional requirements. A person admitted under this Rule

(1) must complete the Mandatory Course on the District of Columbia Rules of Professional Conduct and District of Columbia Practice presented by the D.C. Bar (see D.C. Bar R. II, § 3) within sixty days of being admitted;

(2) for three years after admission, must practice under the direct supervision of an enrolled, active member of the D.C. Bar who (a) has practiced law in the District of Columbia for at least five years; (b) is in good standing, has never been disbarred or resigned from any bar with disciplinary charges pending, and has no pending disciplinary charges in any jurisdiction or court; (c) is the person's employer, works for the person's employer or law firm, or works for a non-profit organization in the District of Columbia that provides legal services to people of limited means at no charge or for a limited processing fee; and (d) takes responsibility for the quality of the person's work and complaints concerning that work; and

(3) for three years after admission, gives prominent notice in all business documents that the person's practice is supervised by one or more D.C. Bar members and that the person was "admitted to the Bar under D.C. App. R. 46-A (Emergency Examination Waiver)."

(e) Waiver. Upon motion filed with the court showing extraordinary circumstances relating to the COVID-19 pandemic, the court may waive one or more of the eligibility requirements provided in (a)(1), (a)(2), and (a)(3).

SEPARATE STATEMENT of Chief Judge Blackburne-Rigsby, Judge Glickman, and Judge Thompson: We do not believe that the case has been made for a waiver of our bar-examination requirement. We understand that the COVID-19 pandemic has created unprecedented circumstances, but we believe that the other steps the court has taken (offering a remote examination, negotiating reciprocity agreements with twelve other jurisdictions to accept the scores from the remote exam, and expanding the opportunity for temporary supervised practice) are sufficient accommodations. Moreover, if there is to be a waiver, it should be for those applicants who certify that they have experienced significant hardship relating to the pandemic that has made taking the October 2020 remote bar examination infeasible. Such a nexus is important to balance compassion for applicants most adversely affected by the COVID-19 pandemic, with the court's responsibility to protect the public. To that end, in addition to meeting the requirements set out in the new rule, emergency-examination-waiver admittees should be required to attest that they have completed the required period of practice under supervision.