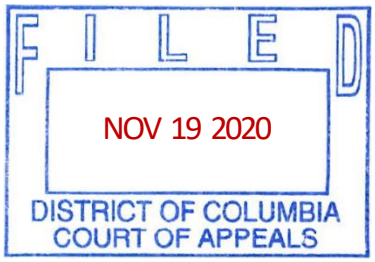
District of Columbia
Court of Appeals



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

O R D E R

(FILED – November 19, 2020)

The court hereby adopts, on an emergency basis, amendments to D.C. App. R. 46, for purposes of the administration of the October 2020 and February 2021 bar examinations. The text of the amended rule is attached to this order. In sum, the amendments: (1) permit the bar exam to be given over more than two days, in case that becomes necessary for a remote Uniform Bar Examination; (2) eliminate the prior specific dates for administering the bar examination; (3) give the Director of Admissions greater flexibility as to manner of payment; (4) eliminate the "mix-and-match" option for obtaining a passing bar-examination score; (5) eliminate language suggesting that post-examination review of examination results will be done in person; (6) clarify language about failing prior bar examinations; and (7) provide for taking of the oath by declaration in addition to by a notary.

The court expects in the relatively near future to issue a separate notice seeking comments on whether (a) to make these emergency amendments permanent and (b) whether to adopt other amendments to D.C. App. R. 46.

PER CURIAM

Rule 46. Admission to the Bar.

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(c) *Admission based on examination in this jurisdiction.*

(1) *Place and Dates of Examination.* Examinations for admission to the Bar ~~shall be~~are held on ~~two~~ successive days in February and July of each year in Washington, D.C., at a place designated by the Committee on dates designated by the National Conference of Bar Examiners (NCBE). The Committee may extend the days for examination for an applicant pursuant to a request for testing accommodations.

(2) *Application to Take the Bar Examination: Format, Time for Filing, Confidentiality, and Fees.*

(A) *Format and Time for Filing*. An application to take the bar examination must be submitted in ~~a~~the format and by the date ~~approved~~required by the Committee.

~~(B) *Time for Filing*. An applicant must file the application with the Director of Admissions (Director) no later than December 15 for the February examination and May 3 for the July examination unless:~~

~~(i) the time is extended by the Committee for exceptional cause shown; or~~

~~(ii) the applicant files the application within 15 days after the deadline and, unless waived under Rule 46(c)(2)(E), pays an additional, non-refundable late fee to the Clerk of the D.C. Court of Appeals in an amount and form approved by the Committee.~~

(B~~C~~) *Confidentiality.* The contents of the application are confidential, but the Committee may disclose the contents of the application:

(i) to the Office of Disciplinary Counsel for good cause;

(ii) to the Committee on Unauthorized Practice of Law for good cause; or

(iii) on order of the court.

(C~~D~~) *Fees*. The application must be accompanied by payment or proof of payment in accordance with instructions provided by the Director of Admissions (Director).~~:~~

~~(i) a payment to the Clerk of the D.C. Court of Appeals in an amount and form approved by the Committee; and~~

~~(ii) payment or proof of payment to NCBE in an amount and form specified on the application.~~

~~(E) *Waiver of Late Fee*. The late fee required by Rule 46(c)(2)(B)(ii) is waived for an applicant who applies within 15 days after the deadline if the applicant sat for and was unsuccessful on the immediately prior examination and the results of that examination were not released to the applicant before the deadline.~~

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(8) *General Considerations Regarding the Examination*.

(A) *In General*. The examination ~~shall be~~is the Uniform Bar Examination (UBE) developed by NCBE. The UBE consists of a written component, consisting of the Multistate Essay Examination (MEE) and the Multistate Performance Test (MPT), and a multiple choice component, which is the Multistate Bar Examination (MBE).

(B) *Transferrable UBE Score*. To earn a transferrable UBE score, an applicant must take both the written and MBE components in a single administration of the examination.

~~(B) An applicant may request the Committee to accept an MBE score from a prior examination administration provided that:~~

~~(i) The prior MBE scaled score is not less than 133; and~~

~~(ii) The prior administration was within 25 months of the present administration.~~

~~(C) An applicant may request the Committee to accept a written component score from a prior examination administration in the District of Columbia provided that:~~

~~(i) The prior written component scaled score is not less than 133; and~~

~~(ii) The prior administration was within 25 months of the present administration.~~

~~(D) An applicant requesting acceptance of a score from a prior administration shall submit with the application to sit for the bar examination a score transfer form. Any score earned in a prior administration may not be used to earn a UBE score that can be transferred to seek admission in another U.S. jurisdiction. To earn a transferrable UBE score, an applicant must take both the written and MBE components in a single administration of the examination.~~

~~(E) Examination booklets shall be furnished by the Committee. Computers or typewriters furnished by the applicants may be used by prearrangement with the Director.~~

~~(F) Except by permission of the Committee's representative, no applicant shall leave the examination room during the examination. Each applicant, upon leaving the examination room, shall turn in the examination materials to the Committee's representative.~~

(9) *Computation of Written Component Scaled Scores*. The raw scores on the written component shall be converted to scaled scores by NCBE in accordance with UBE policies.

(10) *Determining Pass/Fail Status.*

(A) An applicant taking the written and MBE components ~~concurrently~~ must attain a combined UBE scaled score of 266 or greater to pass the examination.

~~(B) If an MBE component score from a prior administration is accepted by the Committee under (c)(8)(B) above, the applicant must attain a scaled score of 133 or higher on the written component in the current administration to pass the examination. If a written component score from a prior administration is accepted by the Committee under (c)(8)(C) above, the applicant must attain a scaled score of 133 or higher on the MBE component in the current administration to pass the examination.~~

(B~~C~~) Before notice and publication of the examination results, the Committee shall review the written component answers of all applicants who have attained a written component scaled score or a combined UBE scaled score within a specified number of points below the passing score, as determined by the Committee.

(11) *Time of Notice and Publication of Results.* Applicants shall be notified in writing of the results of their examination.

(A) The Director shall notify each successful applicant of his or her written component scaled score, MBE scaled score, and combined UBE scaled score.~~, as applicable. An alphabetical list of the successful applicants shall be published with the request that any information tending to affect the eligibility of an applicant on moral grounds be furnished to the Committee. The first publication shall be at least 30 days before the Committee reports to the court. A copy of this list shall be posted in the office of the Clerk for three weeks.~~

(B) The Director shall notify in writing each unsuccessful applicant of the applicant's score. The notification shall contain the applicant's raw score for each question in the written component, the written component scaled score, the MBE scaled score, and the combined UBE scaled score.

(12) *Post-examination Review.* Examination scores will not be adjusted, but ~~E~~each unsuccessful applicant may review his or her graded written component answers by executing and returning the review request form so that it is received by the Director by the 30th day after examination results are published. A review of the MBE is not available. The Director shall advise the unsuccessful applicant regarding how ~~of the date, time, and place at which~~ the written component answers may be reviewed. ~~The review period shall not exceed three hours.~~

(13) *Destruction of the Written Component Answers.* Destruction of the applicant answers in the written examination component may commence 30 days from the date of publication of the examination results, but destruction of the written component answers of an unsuccessful applicant who takes advantage of the post-examination review procedure shall be delayed until at least 15 days after the review.

(14) *Previous Failures.* An applicant who on four separate occasions has taken a bar examination in the District of Columbia or a UBE, and who has ~~has taken the bar examination or a component of the bar examination four times in the District of Columbia and~~ failed to earn a passing score will not be permitted to take a further examination, except upon a showing of extraordinary circumstances. ~~An applicant who has previously taken the bar examination in the District of Columbia four or more times before the effective date of this rule will be permitted to take the bar examination one additional time without a showing of extraordinary circumstances.~~

(15) *Communication with Committee Members and Graders.* No applicant shall communicate with Committee members or graders concerning any applicant's performance in the examination.

(d) *Admission by transfer of a Uniform Bar Examination score attained in another jurisdiction.*

(1) *Application*. An ~~A~~aapplicant~~s~~ seeking admission to this ~~B~~bar on the basis of a UBE score attained in another jurisdiction ~~shall~~must submit ~~to the Director~~ an application in ~~a~~the format ~~approved~~required by the Committee.

(2) *Confidentiality*. The contents of the application ~~shall be~~are confidential, but the Committee may disclose the contents of the application:

(A) to the Office of Disciplinary Counsel for good cause;

(B) to the Committee on Unauthorized Practice of Law for good cause; or

(C) ~~except up~~on order of the court.

(3~~2~~) *Fees*. The application ~~shall~~must be accompanied by payment or proof of payment in accordance with instructions provided by the Director. ~~(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 NCBE, or proof of payment to NCBE, in an amount and form specified on the application form.~~

(4~~3~~) *Admission Requirements*. An applicant may, upon proof of good moral character as it relates to the practice of law, be admitted to the Bar of this court on the basis of a UBE score attained in another jurisdiction provided that:

(A) The combined UBE scaled score, as certified by NCBE, is not less than 266 (the passing combined UBE scaled score);

(B) The passing combined UBE scaled score was attained by taking the UBE not more than five years before the filing of the application;

(C) The passing combined UBE scaled score was attained by taking the UBE no more than 4 times, including any attempts in the District of Columbia;

(D) The applicant has been awarded a J.D. or LL.B. degree by a law school which, at the time of the awarding of the degree, was approved by the ABA; or, if the applicant graduated from a law school not approved by the ABA, the applicant successfully completed at least 26 credit hours of study in a law school that at the time of such study was approved by the ABA, with all such 26 credit hours having been earned in courses of study, each of which is substantially concentrated on a single subject tested on the UBE; and

(E) The applicant has also taken the MPRE written and administered by NCBE and received the minimum required grade as determined by the Committee.

(e) *Admission without Examination of Members of the Bar of Other Jurisdictions.*

(1) *Application.* An ~~application of an~~ applicant seeking admission to this ~~B~~bar from another state or territory ~~shall be~~must submit~~ted~~ an application in ~~a~~the format ~~approved~~required by the Committee ~~and filed with the Director~~.

(2) *Confidentiality*. The contents of the application ~~shall be~~are confidential, but the Committee may disclose the contents of the application:

(A) to the Office of Disciplinary Counsel for good cause;

(B) to the Committee on Unauthorized Practice of Law for good cause; or

(C) ~~except up~~ on order of the court.

(3~~2~~) *Fees*. The application must~~shall~~ be accompanied by payment or proof of payment in accordance with instructions provided by the Director.

~~(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 NCBE, or proof of payment to NCBE, in an amount and form specified on the application form.~~

(4~~3~~) *Admissions Requirements*. An applicant may, upon proof of good moral character as it relates to the practice of law, be admitted to the Bar of this court without examination in this jurisdiction, provided that the applicant:

(A) Has been a member in good standing of a Bar of a court of general jurisdiction in any state or territory of the United States for a period of at least five years immediately preceding the filing of the application; or

(B) (i) Has been awarded a J.D. or LL.B. degree by a law school which, at the time of the awarding of the degree, was approved by the ABA; or, if the applicant graduated from a law school not approved by the ABA, the applicant successfully completed at least 26 credit hours of study in a law school that at the time of such study was approved by the ABA, with all such 26 credit hours

having been earned in courses of study, each of which is substantially concentrated on a single subject tested on the UBE;

(ii) Has been admitted to the practice of law in any state or territory of the United States upon the successful completion of a written bar examination and has received a scaled score of 133 or more on the MBE which the state or territory deems to have been taken as a part of such examination; and

(iii) Has taken and passed, in accordance with paragraph (c)(5), the MPRE.

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(k) *Admission Order*.

(1) The Committee ~~shall~~must file with the court a motion to admit the successful applicants by examination, or a certification of attorneys for admission by transferred UBE score or of attorneys for admission without examination, after successful completion of a character and fitness study. ~~Each candidate shall be notified of the time and place for the taking of the oath~~.

(2) An applicant whose name is on an order of admission entered by the court or who is certified for admission by the Committee without a formal hearing ~~shall~~must complete admission within 150~~90~~ days from the date of the order or the certification by taking the oath as required by Rule 46(l)~~prescribed and by signing the roll of attorneys in the office of the Clerk~~ and submitting to the court a notarized statement or a declaration, which includes the oath.

(3) An applicant who fails to take the oath and submit the required notarized statement or declaration to the court~~sign the roll of attorneys~~ within 150~~90~~ days from the date of the admission order or the certification may file, within one year from the date of the order or certification, an affidavit with the Director explaining the cause of the delay. Upon consideration of the affidavit, the Committee may reapprove the applicant and file a supplemental motion with the court or may deny the applicant's admission and direct the applicant to file a new application for admission.

(l) *Oath.*

(1) *In General*. An applicant admitted to the ~~B~~bar of this court ~~shall~~must take the following oath, either before a notary or as reflected in a declaration in the format required by Rule 46(1)(2) ~~the court or the Clerk of the court or his or her designee, unless granted permission to be admitted in absentia.~~:

"I_____ do solemnly swear (or affirm) that as a member of the Bar of this court, I will demean myself uprightly and according to law; and that I will support the Constitution of the United States of America."

(2) *Notarized Statement or Declaration*. The notarized statement or declaration must include the oath in Rule 46(1)(1). A declaration in the following format may be used in lieu of notarization:

“I declare, under penalty of perjury under the laws of the District of Columbia, that I have taken the oath quoted in this declaration.

Signed on the ___ day of _____, 20___ at _(city)_, (state), (country)_____.

_____

_____ Printed name _____

Signature _____”