

IN THE
DISTRICT OF COLUMBIA COURT OF APPEALS

In re: EMERGENCY EXAM-WAIVER ADMISSION

September 25, 2020

PETITION FOR EMERGENCY AMENDMENT OF
RULE 46-A

On September 24, 2020, this court issued Order Number M2469-20, creating Rule 46-A of the Rules of the District of Columbia Court of Appeals, providing for emergency exam-waiver admission of qualified applicants to the D.C. bar. We respectfully request that the court amend Rule 46-A by striking “three years” from subsections 46-A(d)(2) and 46-A(d)(3) and replacing it with “six months” because a three-year period of supervision unreasonably burdens bar applicants and their future legal employers, rendering emergency exam-waiver admission substantially impracticable, and thus fails to serve the public. We further request that the court make October 2, 2020 the deadline to withdraw from the October exam to seek emergency exam-waiver admission.

Virtually all employers are unable to guarantee that an eligible member of the D.C. bar will be available to supervise an attorney admitted by emergency exam waiver for three full years. Thus, since the promulgation of Rule 46-A yesterday, many employers have directed their incoming employees to avoid accepting emergency exam-waiver admission, many specifically citing the length of the supervised practice period as impracticable. Employees of the federal government are at a unique disadvantage, because the federal government does not require its attorneys to be members of the bar in the jurisdictions in which they practice. Thus, federal agencies—and, in particular, military JAG divisions—are unable to accommodate emergency exam-waiver admission, even if they are based in D.C. However, even D.C.’s most prominent law firms have generally refused to allow their future employees to benefit from emergency exam-waiver admission, reflecting the tremendous burden imposed by the overlong supervised practice period. With a lack of suitable supervisors, applicants have no choice but to take the October exam despite its many faults, wait until future administrations of the exam, or exit the legal profession entirely.

The court can readily confirm the general inability of D.C. bar applicants to benefit from emergency exam-waiver admission by inquiring with its Committee on Admissions as to the proportion of bar applicants who have withdrawn from the October bar exam to seek emergency exam-waiver admission. We believe the proportion will be very small. Although emergency exam-waiver admission can offer remarkable benefits not only for bar applicants, but for equality, access to justice, and the well-being of the legal profession, its benefits will be profoundly curtailed if only a few applicants are practically able to receive it.

The court departs substantially from its sister courts in requiring three years of supervised practice. Of the four state supreme courts to grant diploma privilege, only one—Utah—requires a supervised practice period at all. Moreover, Utah requires only 360 hours of supervised practice, or approximately nine weeks of full-time work. A three-year period is more than 17 times as long as the next longest and only other required supervised practice period.

Employers and supervisors plainly do not require three years to assess the competence of their new hires. In normal years, a bar applicant studies for at most around two months and then takes a two-day exam, sufficient to ensure competence. At most law firms and legal organizations, an attorney in his or her third year is considered mid-level, or even senior. Thurgood Marshall, who never took a bar exam, filed the landmark case of *Murray v. Pearson* in his second year of practice. Our proposal of a six-month supervised practice period is not only practicable for legal employers and bar applicants, but it is several times longer than that of the next longest supervised practice period in Utah and several times longer than ordinarily needed to verify the competence of new lawyers with the bar exam.

For the foregoing reasons, we respectfully request that the court amend Rule 46-A by reducing the required supervised practice period from three years to six months. Although it would be less helpful, even a more modest reduction in the length of the supervised practice period would nevertheless help to further the goals of the supervised practice program.

Finally, we separately request that the court make October 2, 2020 the deadline to opt out of the October exam and opt in to emergency exam-waiver admission. The court's Committee

on Admissions has announced that all applicants who intend to seek emergency exam-waiver admission must withdraw by September 26, 2020. This deadline has left bar applicants with less than three full days—and only two business days—to reach a significant and complex decision that will substantially affect their lives. This artificial deadline also bears no relationship to the September 30, 2020 deadline fixed by the court to withdraw from the October exam or to the January 11, 2021 opening of the emergency exam-waiver application period fixed by the court. Moreover, because the Committee on Admissions lacks the technical means to email all applicants concurrently, some applicants only received notice of the court’s plan to offer emergency exam-waiver admission on September 25, 2020, and the Committee on Admissions only started to provide guidance on the new rules on the afternoon of September 25, leaving some applicants with an even narrower window to reach a decision. As of this filing, the Committee on Admissions has indicated that it will publish a set of frequently asked questions (FAQs) regarding the Order on its website. That publication has not yet occurred, further narrowing the window for applicants to make an informed decision.

Respectfully submitted,

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