21-BG-891

DISTRICT OF COLUMBIA COURT OF APPEALS

In re:
MITCHELL L. MCBRIDE

Original Action for Equitable Relief

VERIFIED MOTION FOR SUSPENSION OF RULE 46(e)(3)(B)(ii) UNDER RULE 2.1 AND WAIVER FOR ADMISSION INTO THE DISTRICT OF COLUMBIA BAR

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INTRODUCTION

For many years, the District of Columbia Court of Appeals has allowed admission without examination of members of the Bars of other jurisdictions. Florida is among these jurisdictions. In normal times, applicants who take and pass the Florida General Bar Examination are able to waive into the District of Columbia Bar, upon the Committee on Admissions verifying proof of good character and fitness.

Mitchell McBride reasonably relied on this established process and submitted an application to take the Florida General Bar Examination with the expectation of waiving into the District of Columbia Bar after passage.

Unfortunately, this reasonable assumption was shattered when the pandemic hit and the Florida Supreme Court unexpectedly entered an order removing the Multi-State Bar Examination ("MBE") segment of its 2020 General Bar Examination.

Desiring to be admitted in Florida and the District of Columbia and aware of the requirement that the MBE be taken, Mr. McBride wrote the Florida Board of Bar Examiners asking if applicants who wanted to take the MBE could do so. The Board replied in the affirmative, permitting applicants who pass the Florida October 2020 General Bar Examination written portion to take the MBE portion in February 2021 so as to accommodate the request to be able to waive into other jurisdictions.

Mr. McBride took and passed the Florida's October 2020 General Bar Examination written portion. Having done so and with Florida finding proof of good character and fitness, he was admitted to the Florida Bar on November 23, 2020.

Looking to be admitted to the District of Columbia, Mitchell McBride then took and passed the full MBE in February 2021, even though the MBE examination was not required for admission to Florida.

After receiving his results, he applied for admission to the District of Columbia Bar.

Six months later, on November 22, 2021, the Committee on Admissions' staff wrote Mr. McBride that he was ineligible for admission based on the last provision of Rule 46(e)(3)(B)(ii) because he did not take Florida's written portion and the MBE portion at the same time and because Florida allowed admission based only on the former.

Devastated after having attempted in good faith to comply with the rules for admission as was possible in the situation and with the Committee staff informing him that his only recourse was suspension of the rules under Rule 2.1, Mr. McBride now moves this Court to exercise its equitable power and suspend Rule 46(e)(3)(B)(ii) for good cause in this particular matter because the essential purpose of Rule 46(e)(3)(B)(ii) has been met and equity compels waiver.

STATEMENT OF FACTS

Before the pandemic hit, it was standard for applicants who desired to be barred in both the District of Columbia and Florida to take Florida's bar examination and then waive into the District of Columbia. Unfortunately, Florida does not allow waiver from other jurisdictions, so this method is the only one that results in bar admittance in both jurisdictions without the added expense, difficulty, time, and mental stress of another full bar examination.

Mr. McBride planned on following this procedure as countless peers had done in the past.

On June 4, 2020, Mr. McBride was awarded a Juris Doctor, *cum laude*, from the ABA-approved Georgetown University Law Center.

Despite the pandemic, the Florida Board of Bar Examiners made repeated statements about its intent to offer its full General Bar Examination with both Part A (the written portion) and Part B (the MBE portion). Mr. McBride relied on these assertions and believed he would not have to pick between admission to the District of Columbia Bar or the Florida Bar – as Florida's promises would remain true and he would eventually be able to waive into the District of Columbia bar.

Then, two days before the planned bar examination that would have offered all portions of Florida's standard General Bar Examination, the Florida Supreme Court unexpectedly issued an order rescheduling the Bar Examination to October and stated that it would not be offering the MBE in the October sitting. The Florida Supreme Court further stated that it would permit passage of Part A (the written portion) alone to suffice as the knowledge component for admission to the Florida Bar.

At that time, it was too late to register for the DC bar examination and Mr. McBride had already dedicated considerable resources, in time and money, in preparing for Florida's examination.[1]

Knowing that the MBE was required in order to waive into the District of Columbia and desiring the admission to the District of Columbia, Mr. McBride inquired with the Florida Board of Bar Examiners about the opportunity to take the MBE in order to be able to waive into the District of Columbia bar. The Board decided that all applicants who passed Part A (the written portion) of the examination would have the opportunity to take Part B (the MBE) of the examination in February. *See* Exhibit A.

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[1] Moreover, Mr. McBride was informed that the National Conference of Bar Examiners ("NCBE") prohibited applicants from taking bar examinations in more than one jurisdiction during the same term.

Assuming this would be sufficient for waiver into the District of Columbia, Mr. McBride continued studying for the Florida General Bar Examination and in October 2020 took Florida's General Bar Examination (written portion). After all his hard work, he passed and, on November 23, 2020, was sworn into the Florida Bar by Hon. Anthony Epstein, D.C. Superior Court (for whom he was clerking).

On that same day, Mr. McBride formally requested to take the MBE offered in February. He paid $450 to reserve his examination spot.

In February 2021, he took the MBE that was offered by Florida under the plan that was laid out by the Florida Board of Bar Examiners.

On April 12, Mr. McBride received notification that he received a scaled score of 165 on the MBE.

On May 25, 2021,[2] Mr. McBride applied for admission to the District of Columbia Bar.

On November 23, 2021, an application processor, acting under the authority of the Committee, stated that Mr. McBride was ineligible for admission under Rule 46(e) waiver from another jurisdiction because Rule 46(e)(3)(B)(ii)'s final clause was not met since Mr. McBride did not take Florida's written examination and the MBE at the same time and because Florida did not weigh both portions in their admission decision. *See* Exhibit B. Because the Committee did not have the authority to grant a waiver, the application processor advised Mr. McBride to file a motion with the court requesting suspension of the rules pursuant to Rule 2.1. The application processor then had his application admission fee refunded.

[2] Due to the Committee on Admissions' website revisions, this was near the first date Mr. McBride could apply for admission based on waiver from another jurisdiction after receiving notice of his passing MBE score.

Mr. McBride now files the present motion with the Court requesting suspension of Rule 46(e)(3)(B)(ii) under Rule 2.1 and waiver because he substantially complied with Rule 46(e)(3)(B)(ii)'s knowledge requirements and the purpose of the rule has been fulfilled. Given the circumstances that were thrust upon Mr. McBride through no fault of his own, equity now demands that Mr. McBride be granted a waiver to avoid the harsh consequence that strict application of Rule 46(e)(3)(B)(ii) would cause.[3]

STANDARD OF REVIEW

It is a "fundamental premise" that "[i]t is, ultimately, for this court to decide whether an applicant shall be admitted to the Bar of the District of Columbia." *In re Baker*, 579 A.2d 676, 680 (D.C. 1990) (quoting *In re Manville,* 494 A.2d 1289, 1292 (D.C. 1985)); *Ex parte Secombe,* 60 U.S. 9, 15 L. Ed. 565, 19 How. 9, 1856 LEXIS 414 (1857) ("[I]t rests exclusively with the court to determine who is qualified to become one of its officers, as an attorney and counsellor"). "[T]he system of rules a state court adopts to govern admission to the bar is a matter of local policy, and not a judgment on the merits in a case or controversy..." *Tears v. Committee on Admissions*, 566 A.2d 23, 28 (D.C. 1989).

D.C. Code § 11-2501(a) provides that "The District of Columbia Court of Appeals shall make such rules as it deems proper respecting the examination, qualification, and admission of persons to membership in its bar, and their censure, suspension, and expulsion."

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[3] In the event there is a violation of a procedural rule, good cause exists to suspend such procedural rule given that the rules are less than clear regarding procedures relating to *ex parte* original equitable motions where the movant is a lawyer proceeding *pro se*. The minimal delay in filing this motion after receiving notice of ineligibility was due to delay waiting for Exhibit A from the Florida Board of Bar Examiners.

This Court has authority to grant waivers of admission rules in deserving cases based on its plenary power regulating the D.C. Bar. *See Harper v. District of Columbia Committee on Admissions*, 375 A.2d 25, 27 (D.C. 1977) (granting individual petitions calling for equity and permitting review of examination results based on the Court's "statutory authority over the admission of attorneys to practice law in the District of Columbia"); *Feldman v. Gardner*, 661, F.2d 1295, 1317-1318 (D.C. Cir. 1981) ("It would seem unreasonable, and indeed counterproductive, to hold that [applicants could not]....seek waivers on grounds of policy. On the contrary...[applicants are] encouraged to take all problems concerning bar admission first to the courts having responsibility for that function...no other entity ha[s] the power to grant an exemption."), *vacated on other grounds*, *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 481 (1983) (assuming that the District of Columbia Court of Appeals had power to grant waivers and, elaborating that in waiver determinations, the Court of Appeals would determine whether an applicant fulfilled the "basic purposes of the rule sufficiently to justify a waiver and, if not, whether equitable considerations compelled a waiver"). Other state high courts have recognized their similar equitable powers to grant waivers of certain rules based on their plenary power regulating the admission of attorneys. *See, e.g., Mitchell v. Bd. of Bar Examiners*, 452 Mass. 582, 586 (Mass. 2008) ("This court has the equitable power to waive a particular requirement of a court rule concerning admission to the bar."); *In re Florida Bd. of Bar Examiners,* 339 So. 2d 637 (Fla. 1976) (waiving requirement based on its plenary power regulating admission of persons to the bar); *Kelly v. Utah State Bar*, 391 P.3d 210 (Utah 2017) (looking to the totality of the circumstances of an applicant's education and granting waiver of educational requirement); *In re Brown*, 270 Neb. 891, 902 (Neb. 2006) (granting waiver and noting that "admission rules are intended to weed out unqualified applicants, not to prevent qualified applicants.") (cleaned up).

The Court of Appeals has a general policy against waivers, but recognizes there are situations where they are warranted. *Tears*, 566 A.2d at 31 n.22 (acknowledging waiver in exceptional circumstances). Particularly, the Court has recognized the hardship that the COVID-19 pandemic has caused and moderated its policy in these times. *See* Rule 46-A. D.C. Court of Appeals Rule 2.1 provides that the Court may suspend any provision of any rule (other than Rule 26(b)) for good cause in a particular matter on a party's motion.[4]

ARGUMENT

I. The Essential Purpose of Rule 46(e)(3)(B)(ii) Has Been Met

In order to be admitted based on waiver from another jurisdiction, in addition to other requirements, Rule 46(e)(3)(B)(ii) requires that an applicant be "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."

In addition to being awarded a J.D. degree by an ABA-approved law school and passing the Multi-State Professional Responsibility Exam, Mr. McBride has substantially complied with Rule 46(e)(3)(B)(ii)'s components. He has (1) been admitted to the practice of law in the State of Florida (2) upon successful completion of a written bar examination, and (3) has received a scaled score of 133 or more on the MBE. The last clause of the Rule is what disqualifies him, as he did

[4] In the event the Court believes this motion would be better suited under Rule 46(j), Mr. McBride moves in the alternative under that rule. However, Mr. McBride notes the Committee on Admissions did not deny him admission, take any action, or hold any proceeding. Instead, an application processor, acting under the authority of the Committee, deemed him ineligible to apply (thus denying him the right to seek Committee review), and thus this is not review of a Committee decision as Rule 46(j) envisions. Indeed, the Committee, as a creature of court rule, has no equitable power to grant the relief sought.

not receive a scaled score of 133 or more on the MBE which the state of Florida deemed to have been taken as a part of its General Bar Examination. The State of Florida did not grant admission based upon the MBE and did not offer the MBE in its October sitting, but only in its February sitting.[5]

Nonetheless, Mr. McBride has complied with all of Rule 46(e)(3)(B)(ii)'s essential knowledge requirements. He has demonstrated that he is sufficiently knowledgeable to be admitted to the District of Columbia Bar.

The purpose of Rule 46(e)(3)(B)(ii) seems to be that an applicant must be admitted to a state bar that gave a credible examination, and that an applicant took and passed similar components to what the District of Columbia requires in its bar examination. Florida gave its full written examination which Mr. McBride took and passed and, additionally, only in order to be admitted to the District of Columbia, Mr. McBride took and passed the MBE. Thus, all of the core components of demonstrating adequate knowledge have been fulfilled. The mere fact that a few months, rather than a few days, separated Mr. McBride taking Florida's standard written examination and taking the full MBE should not be a determining factor in denying him admission. Nor should the fact that the Florida Supreme Court decided passing only the written portion of the Florida examination would be sufficient for admission into the Florida Bar in 2020. This is especially so when Mr. McBride passed all the components which would have entitled applicants in years past to waive into the D.C. bar.

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[5] Mr. McBride initially argued that his application complied with the Rule because the MBE was given as a continuation of Florida's pandemic examination even though Florida fully weighted its October written portion (rather than both October written portion and the February MBE portion) in its admission decision. Upon further review, because of the words "upon" and "such," Mr. McBride no longer believes his initial interpretation is the correct interpretation as the Rule requires that admission be based *upon* a written bar examination, which as part of *such* examination, the MBE must also be given and used as part of the basis for admission.

The rule requiring the MBE be taken as part of the same examination as the written part of the examination may make sense in a situation where an applicant scores below 133 on the MBE but is still granted admission to a state bar, and then the applicant wishes to retake the MBE and waive in to the D.C. Bar. But that situation is far different from the one we find ourselves, where Mr. McBride has passed both the written portion and MBE portion on his first try and has passed well above the minimum passing score on each. Most importantly, he was forced into taking the portions of the examinations at different times by a situation that was thrust upon him through no fault of his own.

As seen, the essential purpose of the Rule has been met in this particular matter. The last provision of Rule 46(e)(2)(B)(ii) serves little, if any, useful purpose as applied to the present situation. No D.C. resident is being protected by forbidding Mr. McBride from practicing law in the District.

II. Equity Compels Waiver

To waive the rule, the Court would be alleviating the harsh consequences of a technicality. As lawyers, we know technicalities are important and often carry the day. However, this is not an adjudication; this "is a matter of local policy," where the Court naturally has more room for equitable adjustments and can modify such policy where doing so would alleviate a harsh result. *Teare*, 566 A.2d at 28.

Equity significantly weighs in favor of granting a waiver in this unique case. Mr. McBride had the good faith intent to rely on the established processes and rules for admission to the bars of Florida and the District of Columbia. He had no intent to skirt any rule. In years prior to 2020, his peers would have followed the process he did and would have waived into DC easily. He was already locked into taking the Florida bar when Florida changed its examination structure. He had

already invested significant time and money including bar application fees and in bar education materials when Florida altered its examination structure and admission rules. Mr. McBride should not be unfairly prejudiced as a result of the pandemic and decisions of Florida's Supreme Court. As a court of equity, Mr. McBride asks that this Court exercise such equity. *Black's Law Dictionary*, 10th Ed. (2014) (defining "equity" as "[t]he recourse to principles of justice to correct or supplement the law as applied to particular circumstances; specif., the judicial prevention of hardship that would otherwise ensue from the literal interpretation of a legal instrument...").

In *Teare*, the Court explained its general hesitancy to grant waivers of educational requirements because of the time it would take in considering all such applications and because of the risk of disparate treatment. 586 A.2d at 30-31. Neither of those concerns are present here. This is a unique case which cannot be replicated because Florida has already reinstated its standard procedures. Administrative burdens on the Court from substantially similar motions will not result from granting this motion. Additionally, concern over disparate treatment weighs in Mr. McBride's favor because past applicants to the Florida and District of Columbia's bars have gone through the application process with no problems. Mr. McBride is the one who would be treated disparately through no fault of his own.

In any event, the District of Columbia Court of Appeals has recognized the hardships that COVID-19 has presented to applicants writ large and has moderated its waiver policy. *See* Order NO. M269-20 (adopting Rule 46-A).[6] The Court has realized that the bar is a time-consuming,

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[6] To be eligible for this waiver under Rule 46-A, among other requirements, an applicant had to have applied to take a bar examination in the District of Columbia. *See* Rule 46-A(a) (Eligibility Requirements). Having already applied to take the Florida examination and being prohibited by the NCBE from taking more than one examination, Mr. McBride was not eligible for the Rule 46-A waiver. In any event, the relief under that rule is distinct from the request sought here. Under Rule 46-A, applicants need not have taken any bar examination and would have been admitted in a restricted capacity. Mr. McBride passed – when combined – a full bar

financially-draining, and mentally-exhausting process. Forcing Mr. McBride to undergo the process again would be unfair when he has already done so much in order to be admitted to the District of Columbia Bar, including paying for and taking the MBE even though that was not required for admission to Florida. Waiting for two more years for admission would be unfair as well as he has completed all of the essential requirements to waive into the D.C. bar and job-prospects and client-prospects depend on admission to the D.C. bar.

Moreover, that the District plans to get rid of Rule 46(e)'s waiver process after March 31, 2022 does not affect justification for this waiver because Mr. McBride reasonably relied on established procedures when he elected to take the Florida Bar and waive into the District. If anything, it shows that granting this waiver will have no future consequences, and will only alleviate unfair prejudice to Mr. McBride.

In this particular matter, it should not be material to admission to the District of Columbia Bar what components of a bar examination Florida gave weight to in *its* admission decision nor should it be material that Mr. McBride completed all the necessary requirements for waiving into the District of Columbia bar a few months apart rather than a few days apart. The bar examination is a lengthy and financially straining process and an applicant who in good faith relied on established procedures that would have been accepted prior to 2020 should not be unfairly prejudiced due to circumstances over which he had no control. Good cause exists to suspend Rule 46(e)(3)(B)(ii) and grant a waiver in this particular matter.

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examination and his admission should not be so restricted. He currently works at a law firm in Florida and thus could not serve under the supervision of a D.C. barred and based attorney.

CONCLUSION

For the reasons set forth above, the Court of Appeals should exercise its discretion under Rule 2.1 to suspend the strict application of Rule 46(e)(3)(B)(ii) in this particular matter because it would be equitable to do so. Mr. McBride has demonstrated that he has the competence required of a member of the bar of the District of Columbia. *See Mitchell*, 452 Mass. at 587 (noting that a bar rule "[i]s not an end in itself, but rather a practical way to ensure generally that prospective attorneys have received an adequate level of appropriate legal education."). The Court should grant Mr. McBride's waiver notwithstanding the fact that he might not technically meet the requirement of Rule 46(e)(3)(B)(ii), order Mr. McBride re-pay his refunded admission fee, and order the Committee on Admissions process Mr. McBride's application, including ensuring he possesses sufficiently good character and fitness.

Date: December 21, 2021

Respectfully submitted,

Mitchell L. McBride
808 N. Franklin St. #3106
Tampa, FL 34223
Tel: (814) 282-1941

VERIFICATION

I, Mitchell L. McBride, being duly sworn, deposes, and verifies: I am the movant in the foregoing action; I have read the action, know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

Mitchell L. McBride

State of Florida
County of Hillsborough

SWORN TO AND SUBSCRIBED before me this 12/21/2021 by Mitchell L. McBride, who ✓ is personally known to me or _____ produced _____ as identification and who took an oath.

(SEAL)

RENEE L. HOGUE
Notary Public-State of Florida
Commission # HH 121730
My Commission Expires
May 13, 2025

Notary Public

Renée L. Hogue
Name

EXHIBIT A

Florida Board of Bar Examiners

ADMINISTRATIVE BOARD OF THE SUPREME COURT OF FLORIDA

TIPPIN-MOORE BUILDING
1891 EIDER COURT
TALLAHASSEE, FL 32399-1750

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MICHELE A. GAVAGNI
EXECUTIVE DIRECTOR

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GENERAL COUNSEL

TARA L. NEWMAN
DIRECTOR OF ADMINISTRATION

September 2, 2020

Mr. Mitchell Lee McBride
5403 Trimmingham Court
Mineral, VA 23117

File No: 65913

Dear Mr. McBride:

The Florida Board of Bar Examiners received your portal correspondence on August 26, 2020.

The board has determined that it will provide applicants who are successful on the October 2020 examination an opportunity to take the MBE in February 2021. Applications will be accepted only after the October 2020 examination results are released. The deadline for the February 2021 examination will be extended for any applicant taking the October 2020 examination who chooses to take the February 2021 examination.

Sincerely yours,

Michele A. Gavagni
Executive Director

MAG:br:ebt

EXHIBIT B

User Home » Messages

Message From Your Processor **Nov 22 2021**

Mitchell McBride, I have reviewed your application. Your MBE score from Florida's remote October 2020 exam is not transferrable to DC. The remote exam that was given in Florida was only one day, 100 multiple choice questions and 3 essays. That exam does not meet the standard for admission via MBE score. Please let me know if you have any additional questions. Best.

Print All Messages

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Message From Your Processor **Nov 23 2021**

Hello again, Rule 46(e)(ii) reads "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." You were admitted in FL based on the October 2020 remote bar exam. Under Rule 46 (e) that would be the transferrable MBE score BUT because of the remote nature, structure and lack of reciprocity agreement, it is not a DC accepted MBE score. As stated before, understanding the hardship, DC enacted a limited window for similarly situated applicants but the provision has since expired. You were NOT admitted to FL based on the February 2021 MBE score. So while your score, reportedly, is sufficient for the threshold of 133, Rule 46(e) does not apply. You are asking the Committee on Admissions for action not granted in the rules - granting admission to the DC Bar based on a MBE score not linked to admission. Only the court can grant your request. You must file a motion with the court requesting suspension of the rules (2.1). I hope that adequately analyzes Rule 46(e) for your factual circumstances. Unless the facts above are incorrect, additional information would not change the outcome.

Print All Messages