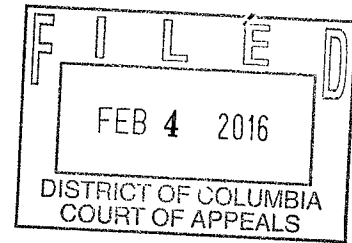


**District of Columbia
Court of Appeals**



No. M-252-15

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

ORDER

(FILED – February 4, 2016)

On consideration of the proposed amendments to Rule 46 of this court's rules, published for notice and comment on October 28, 2015, and the comments received concerning those proposed amendments, it is

ORDERED that, with two exceptions, the proposed amendments are hereby adopted, effective March 1, 2016. The text of the Rule as amended is attached to this order.

It is further ORDERED that the proposal to amend Rule 46 to permit third-year law students to take the Bar Examination in certain circumstances is not adopted at this time. Rather, the notice and comment period with respect to that proposed amendment is hereby reopened. Interested parties may submit written comments concerning that proposed amendment and any suggested modifications to the proposed language. Ten copies of any comments should be addressed to the Clerk, D.C. Court of Appeals, 430 E Street, N.W., Washington, D.C. 20001, by March 31, 2016. All comments submitted pursuant to this notice will be available to the public.

It is further ORDERED that the proposal to amend Rule 46 (c)(4), (d)(3)(D), and (e)(3)(B)(i) to provide that the 26 hours of study required of students who have graduated from a law school not accredited by the American Bar Association be fulfilled by "classroom" courses is not adopted at this time. Rather, the court will consider that issue at a later date, in light of the recommendations of the Global Legal Practice Task Force of the D.C. Bar.

PER CURIAM

Amended Rule 46

Rule 46. Admission to the Bar.

(a) *Committee on Admissions.*

(1) The court shall appoint a standing committee known as the Committee on Admissions (Committee) consisting of at least seven members of the Bar of this court, one of whom shall serve as counsel to the Committee. Each appointment shall be for a term of three years. In case of a vacancy arising before the end of a member's term, the successor appointed shall serve the unexpired term of the predecessor member. When a member holds over after the expiration of the term for which that member was appointed, the time served after the expiration of that term shall be part of a new term. No member shall be appointed to serve longer than two consecutive regular three-year terms, unless an exception is made by the court.

(2) Subject to the approval of the court, the Committee may adopt such rules and regulations as it deems necessary to implement the provisions of this rule. The members of the Committee shall receive such compensation and necessary expenses as the court may approve.

(3) Members of the Committee and their lawfully appointed designees and staff are immune from civil suit for any conduct in the course of their official duties.

(b) *Admission to the Bar of this jurisdiction.* Admission may be based on (1) examination in this jurisdiction; (2) transfer of a Uniform Bar Examination score attained in another jurisdiction; (3) the applicant's qualifying score on the Multistate Bar Examination administered in another jurisdiction and membership in the bar of such other jurisdiction; or (4) membership in good standing in the bar of another jurisdiction for at least five years immediately prior to the application for admission.

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

(1) **Place and Dates of Examination.** Examinations for admission to the Bar shall be held on two successive days in February and July of each year in Washington,

D.C., at a place designated by the Committee and 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) Time to Apply and Fees.

(A) An application to take the bar examination shall be submitted in a format approved by the Committee and filed with the Director of Admissions (Director) not later than December 15 for the February examination and May 3 for the July examination unless, for exceptional cause shown, the time is extended by the Committee. The contents of the application to take the examination shall be confidential except upon order of the court.

(B) The application shall be accompanied by (1) a payment to the Clerk, D.C. Court of Appeals (Clerk), 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.

(C) Late applications may be filed within 15 days from the closing dates specified in subparagraph (i) and must be accompanied by an additional, non-refundable payment to the Clerk, D.C. Court of Appeals, in an amount and form approved by the Committee.

(3) Proof of Legal Education in a Law School Approved by the American Bar Association. An applicant who has graduated from a law school that at the time of graduation was approved by the American Bar Association (ABA) shall be permitted to take the bar examination. Under no circumstances shall such an applicant be admitted to the Bar without first having submitted to the Director a certificate that the applicant has graduated from an ABA-approved law school with a J.D. or LL.B. degree.

(4) Law Study in a Law School Not Approved by the ABA. An applicant who graduated from a law school not approved by the ABA shall be permitted to take the bar examination only after successfully completing at least 26 credit hours of study in a law school that at the time of such study was approved by the ABA. All such 26 credit hours shall be earned in courses of study, each of which is substantially concentrated on a single subject tested on the Uniform Bar Examination.

(5) Multistate Professional Responsibility Examination. An applicant for admission by examination shall not be admitted to the Bar unless that applicant has also taken

the Multistate Professional Responsibility Examination (MPRE) written and administered by NCBE and has received thereon the minimum required grade as determined by the Committee. Arrangements to take the MPRE, including the payment of any fees therefor, shall be made directly with NCBE. The score received on the MPRE shall not be used in connection with the scoring of the bar examination.

(6) Examination of Applications. The Director shall examine each application to determine the applicant's eligibility and to verify the completeness of the application. If eligibility is not demonstrated, the applicant shall be permitted to furnish additional information. If the application is not complete, the needed information shall be provided upon the Director's request.

(7) Examination Identification Number. The Director shall assign an examination number to each accepted applicant. Each applicant shall be notified by the Director of the applicant's examination number and shall be furnished an admission card and a list of instructions. Further disclosure of the examination number of any applicant is prohibited.

(8) General Considerations Regarding the Examination.

(A) The examination shall be 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) 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.

(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. 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 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 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. Applicants seeking admission to this Bar on the basis of a UBE score attained in another jurisdiction shall submit to the Director an application in a

format approved by the Committee. The content of the application shall be confidential except upon order of the court.

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

(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 Bar from another state or territory shall be submitted in a format approved by the Committee and filed with the Director. The contents of the application shall be confidential except upon order of the court.

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

(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.

(f) *Special Legal Consultants.*

(1) Licensing Requirements. In its discretion, the court may license to practice as a Special Legal Consultant, without examination, an applicant who:

(A) Has been admitted to practice (or has obtained the equivalent of admission) in a foreign country, and is in good standing as an attorney or counselor at law (or the equivalent of either) in that country;

(B) Possesses the good moral character and general fitness requisite for a member of the Bar of this court;

(C) Intends to practice as a Special Legal Consultant in the District of Columbia and to maintain an office for such practice in the District of Columbia which, if the applicant is a teacher of law at a law school approved by the American Bar Association, may be the office of the teacher at the law school; and

(D) Is at least twenty-six years of age.

(2) Filings Required.

An applicant for a license to practice as a Special Legal Consultant shall file with the Committee:

(A) An application in the form prescribed by the Committee addressed to the court in executive session, which without further order of the court shall be referred to the Committee;

(B) Payment to the Clerk, D.C. Court of Appeals, in an amount and form approved by the Committee and specified by the Director;

(C) A certificate from the authority in the foreign country having final jurisdiction over professional discipline, certifying to the applicant's admission to practice (or the equivalent of such admission) and the date thereof and to the applicant's good standing as attorney or counselor at law (or the equivalent of either), together with a duly authenticated English translation of such certificate if it is not in English; and

(D) A summary of the law and customs of the foreign country that relate to the opportunity afforded to members of the Bar of this court to establish offices for the giving of legal advice to clients in such foreign country.

(3) Upon a showing that strict compliance with the provisions of subparagraph (2) of this paragraph (f) is impossible or very difficult for reasons beyond the control of the applicant, or upon a showing of exceptional professional qualifications to practice as a Special Legal Consultant, the court may, in its discretion, waive or vary the application of such provisions and permit the applicant to make such other showing as may be satisfactory to the court.

(4) The Committee may investigate the qualifications, moral character, and general fitness of any applicant for a license to practice as a Special Legal Consultant and may in any case require the applicant to submit any additional proof or information as the Committee may deem appropriate. The Committee may also require the applicant to submit a report from the National Conference of Bar Examiners, and to pay the prescribed fee therefor, with respect to the applicant's character and fitness.

(5) Opportunity to Establish Law Office in Applicant's Country of Admission. In considering whether to license an applicant to practice as a Special Legal Consultant, the court may in its discretion take into account whether a member of

the Bar of this court would have a reasonable and practical opportunity to establish an office for the giving of legal advice to clients in the applicant's country of admission. Any member of the Bar who is seeking or has sought to establish an office in that country may request the Court to consider the matter, or the Court may do so sua sponte.

(6) Scope of Practice. A person licensed to practice as a Special Legal Consultant may render legal services in the District of Columbia, notwithstanding the prohibitions of Rule 49(b), subject, however, to the limitations that any person so licensed shall not:

(A) Appear for a person other than himself or herself as attorney in any court, before any magistrate or other judicial officer, or before any administrative agency, in the District of Columbia (other than upon admission pro hac vice in accordance with Rule 49 (b) or any applicable agency rule) or prepare pleadings or any other papers or issue subpoenas in an action or proceeding brought in any such court or agency or before any such judicial officer;

(B) Prepare any deed, mortgage, assignment, discharge, lease, or any other instrument affecting title to real estate located in the United States;

(C) Prepare:

(i) Any will or trust instrument effecting the disposition on death of any property located in the United States and owned, in whole or in part, by a resident thereof, or

(ii) Any instrument relating to the administration of a decedent's estate in the United States;

(D) Prepare any instrument in respect of the marital relations, rights, or duties of a resident of the United States or the custody or care of one or more children of any such resident;

(E) Render professional legal advice on or under the law of the District of Columbia or of the United States or of any state, territory, or possession thereof (whether rendered incident to the preparation of legal instruments or otherwise) except on the basis of advice from a person acting as counsel to such Special Legal Consultant (and not in his or her official capacity as a public employee) duly qualified and entitled (other than by virtue of having been licensed as a Special Legal Consultant under this paragraph (f)) to render professional legal advice in the District of Columbia on such law who has been consulted in the particular matter at hand and has been identified to the client by name;

(F) In any way hold himself or herself out as a member of the Bar of this court; or

(G) Use any title other than one or more of the following, in each case only in conjunction with the name of the person's country of admission:

(i) "Special Legal Consultant";

(ii) Such Special Legal Consultant's authorized title in foreign country of his or her admission to practice;

(iii) The name of such Special Legal Consultant's firm in that country.

(7) Disciplinary Provisions.

Every person licensed to practice as a Special Legal Consultant under this paragraph (f):

(A) Shall be subject to the Rules of Professional Conduct of this jurisdiction to the extent applicable to the legal services authorized under this paragraph (f), and shall be subject to censure, suspension, or revocation of his or her license to practice as a Special Legal Consultant by the court; and

(B) Shall execute and file with the Clerk, in such form and manner as the court may prescribe:

(i) A written commitment to observe the Rules of Professional Conduct;

(ii) An undertaking or appropriate evidence of professional liability insurance, in such amount as the court may prescribe, to assure the Special Legal Consultant's proper professional conduct and responsibility;

(iii) A duly acknowledged instrument in writing setting forth the Special Legal Consultant's address in the District of Columbia and designating the Clerk of the D.C. Court of Appeals as his or her agent upon whom process may be served, with like effect as if served personally upon the Special Legal Consultant, in any action or proceeding thereafter brought against the Special Legal Consultant and arising out of or based upon any legal services rendered or offered to be rendered by the Special Legal Consultant within or to residents of the District of Columbia, whenever after due diligence service cannot be made upon the Special Legal Consultant at such address or at such new address in the District of Columbia as he or she shall have filed in the office of the Clerk by means of a duly acknowledged supplemental instrument in writing; and

(iv) A written commitment to notify the Clerk of the Special Legal Consultant's resignation from practice in the foreign country of his or her admission or of any censure in respect of such admission, or of any suspension or revocation of his or her right to practice in such country.

(C) Service of process on the Clerk pursuant to the designation filed as aforesaid shall be made by personally delivering to and leaving with the Clerk, or with a deputy or assistant authorized by the Clerk to receive service, at the Clerk's office, duplicate copies of such process together with a fee of \$10.00. Service of process shall be complete when the Clerk has been so served. The Clerk shall promptly send one of the copies to the Special Legal Consultant to whom the process is directed, by certified mail, return receipt requested, addressed to the Special Legal Consultant at the address given to the court by the Special Legal Consultant as aforesaid.

(D) In imposing any sanction authorized by subparagraph (7)(A), the court may act sua sponte, on recommendation of the Board on Professional Responsibility, or on complaint of any person. To the extent feasible, the court shall proceed in a manner consistent with its Rules Governing the Bar of the District of Columbia.

(8) Affiliation with the District of Columbia Bar.

(A) A Special Legal Consultant licensed under this paragraph (f) shall not be a member of the District of Columbia Bar, provided, however, that a Special Legal Consultant shall be considered an affiliate of the Bar subject to the same conditions and requirements as are applicable to an active or inactive member of the Bar under the court's Rules Governing the Bar of the District of Columbia, insofar as such conditions and requirements may be consistent with the provisions of this paragraph (f).

(B) A Special Legal Consultant licensed under this paragraph (4) shall, upon being so licensed, take the following oath before this court, unless granted permission to take the oath in absentia:

“I, _____, do solemnly swear (or affirm) that as a Special Legal Consultant with respect to the laws of _____, licensed by this court, I will demean myself uprightly and according to law.”

(g) *Moral Character and General Fitness to Practice Law.* No applicant shall be certified for admission by the Committee until the applicant demonstrates good moral character and general fitness to practice law. The Committee may, in its discretion, give notice of the application by publication in a newspaper or by posting a public notice. For applicants who apply to take the UBE in this jurisdiction, the Committee shall endeavor to complete its character and fitness inquiry so as to be in a position to recommend for or against a successful bar examinee's admission to the practice of law no later than the time the results of the UBE are available. This time limitation is aspirational only, and may be extended when circumstances so require.

(h) *Quantum and Burden of Proof.* The applicant shall have the burden of demonstrating, by clear and convincing evidence, that the applicant possesses good moral character and general fitness to practice law in the District of Columbia.

(i) Hearing by the Committee.

(1) In determining the moral character and general fitness of an applicant for admission to the Bar, the Committee may act without requiring the applicant to appear before it to be sworn and interrogated or may require the applicant to appear for an informal hearing. If the Committee is unwilling to certify an applicant after an informal hearing, it shall notify the applicant of (A) the adverse matters on which the Committee relied in denying certification, and (B) the choice of withdrawing the application or requesting a formal hearing. Notice shall be given by certified mail at the address appearing on the application. Within 30 days from receipt of the notice, the applicant may file with the Committee a written request for a formal hearing. If the applicant fails to file a timely request for a formal hearing, the applicant's application shall be deemed withdrawn. If the applicant requests a formal hearing within the 30-day period, the request shall be granted and the formal hearing shall be conducted by the Committee under the following rules of procedure:

(2) The Director shall give the applicant no less than 10 days' notice of:

(A) The date, time, and place of the formal hearing;

(B) The adverse matters upon which the Committee relied in denying admission;

(C) The applicant's right to review in the office of the Director those matters in the Committee file pertaining to the applicant's character and fitness upon which the Committee may rely at the hearing; and

(D) The applicant's right to be represented by counsel at the hearing, to examine and cross-examine witnesses, to adduce evidence bearing on moral character and general fitness to practice law and, for such purpose, to make reasonable use of the court's subpoena power.

(3) The hearing before the Committee shall be private unless the applicant requests that it be public. The hearing shall be conducted in a formal manner; however, the Committee shall not be bound by the formal rules of evidence. It may, in its discretion, take evidence in other than testimonial form and determine whether evidence to be taken in testimonial form shall be taken in person at the hearing or by deposition. The proceedings shall be recorded and the applicant may order a transcript at the applicant's expense.

(4) If after the hearing the Committee is of the opinion that an adverse report should be made, it shall serve on the applicant a copy of the report of its findings and conclusions and permit the applicant to withdraw an application within 15 days after the date of the notice. The Committee may, in its discretion, extend this time. If the applicant elects not to withdraw, the Committee shall deliver a report of its findings and conclusions to the court with service on the applicant.

(j) Review by the Court.

(1) The Committee shall deliver a report of its findings and conclusions to the court for its approval in the case of any applicant for admission after a formal hearing.

(2) After receipt of a Committee report, if the court proposes to deny admission, the court shall issue an order to the applicant to show cause why the application should not be denied. Proceedings under this Rule shall be heard by the court on the record made by the Committee on Admissions.

(3) Except for the review by the court provided in this paragraph (j), no other review by the court of actions by or proceedings before the Committee shall be had except upon a showing (A) of extraordinary circumstances for instituting such review and (B) that an application for relief has previously been made in the first

instance to the Committee and been denied by the Committee, or that an application to the Committee for the relief is not practicable.

(k) *Admission Order.* (1) The Committee shall 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 complete admission within 90 days from the date of the order or the certification by taking the oath prescribed and by signing the roll of attorneys in the office of the Clerk.

(3) An applicant who fails to take the oath and sign the roll of attorneys within 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.

(1) *Oath.* An applicant admitted to the Bar of this court shall take the following oath before 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.”