

RULE 49(C)(8A) AND RULE 46-A FAQs

May I sit for the October exam and still apply for admission by Emergency Examination Waiver (“EEW”)

No, you may not sit for the October exam if you wish to apply for EEW. (D.C. App. R. 46-A(a)(3))

If an applicant chooses to withdraw from the exam, based on their intent to complete the waiver application in January, do they need to explicitly state that in the withdrawal email?

Applicants are not required to give a reason for withdrawing an application. It is helpful for administrative purposes if applicants use the subject line to indicate the reason for the withdrawal but it is not a requirement. Withdrawal requests should be sent to BarExamWithdrawal@dcappeals.gov. If applicants wish to be refunded fees or have their fees transferred to another application for admission in D.C. they should clearly state their wishes in the withdrawal email.

May I apply for the February 2021 exam even though I withdrew from the October exam because I planned to apply for EEW?

You may apply for the exam, however if you take a bar exam before you are admitted under 46-A you become ineligible for admission by EEW.

May I take the bar exam in D.C. after I am admitted under 46-A?

If you wish to abandon your R.46-A admission in favor of admission by bar examination you may take the exam in D.C. However if you wish to take the exam for the purpose of earning a UBE score for admission in another jurisdiction you may not sit for the exam in D.C. Per Committee on Admissions policy, admitted attorneys are not eligible to take the bar exam in D.C. unless they are barred out of jurisdiction, are seeking admission in D.C. and are not able to apply for admission under any other provision of Rule 46.

Do I need to have a job before I can apply for EEW?

No you do not need a job to apply for EEW. To apply for EEW you need only meet the eligibility requirements (i.e. received a J.D. from an ABA approved law school in 2019 or 2020, paid for and completed an application to take the bar exam in D.C. in 2020, and have not sat for a bar exam or accessed remote bar exam materials) (D.C. App. R. 46-A(a)(1)-(3)) To be admitted you will also need to pass the MPRE and demonstrate character and fitness. (D.C. App. R. 46-A(a)(4)-(5))

If I don't have a job, will my license be revoked if I don't get one immediately after I am admitted by EEW?

No. After being admitted under Rule 46-A you begin accruing the required three years of supervised practice when you begin working.

I live in Florida but I plan to move to D.C. Can I apply for EEW before I move to D.C.?

Yes, however to fill the three year supervised practice requirement you must work under the supervision of a D.C. barred attorney.

Will the Mandatory Course on the District of Columbia Rules of Professional Conduct be online?

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Yes, the course is available online. Please contact the DC Bar if you have additional questions about the mandatory course: memberservices@dcbar.org

How will D.C. App. R. 46-A (Admission to the Bar Based on COVID-19 Emergency Examination Waiver) apply to applicants who are clerking for judges within the three-year period of supervised practice?

Individuals with clerkships may apply for admission under Rule 46-A and be admitted. Because clerking is not the practice of law, the three year supervised practice requirement may be fulfilled after the clerkship is completed.

If I am admitted under Rule 46-A and then take maternity leave after working for a year will I lose my license?

No, the rule requires only that you complete the three years of supervised practice, there is no requirement that the three years be continuous.

I haven't been able to take the MPRE. May I apply for EEW even if I do not have an MPRE score?

Yes, similar to the bar exam application, you may apply for the EEW before obtaining the required minimum MPRE score of 75. However a qualifying MPRE score is required before admission and you must take the MPRE by December 31, 2021.

Will applications be reviewed upon receipt or will they be held until the closing date of April 30, 2021?

The certification of EEW applications will begin in mid-February. Applications will be reviewed on a rolling basis in the order received. Applicants who previously completed the character and fitness application can expect to be certified between February and June.

Once an EEW applicant is certified for admission, is the swearing in ceremony the only barrier left before the attorney can start practicing law (under the additional guidelines)?

The court does not require applicants to be sworn in at a formal swearing in ceremony. Applicants may perform the oath in absentia. Once an individual has completed the swearing in process either at a formal ceremony or in absentia, admission under Rule 46-A is complete, however before commencing work, the admittee must secure work with an appropriate supervisor. Admission under Rule 46-A does not permit solo practice until the admittee completes the three years of supervised practice requirement. For information on the swearing in process in absentia:

[https://www.dccourts.gov/sites/default/files/divisionspdfs/committee%20on%20admissions%20pdf/Instructions For In Absentia Swear Ins.pdf](https://www.dccourts.gov/sites/default/files/divisionspdfs/committee%20on%20admissions%20pdf/Instructions%20For%20In%20Absentia%20Swear%20Ins.pdf)

Does my employer and or supervisor have to be approved by the court?

No. The admittee is responsible for knowing the requirements set forth for a supervisor under the rule and confirming that the requirements are met.

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Must I keep the same job and be supervised by the same D.C. barred attorney to meet the requirements of Rule 46-A?

No. You are not required to work for a single employer while accruing the 3 years of practice required by the rule.

In deciding whether to withdraw, applicants may need to know what meets the definition of "extraordinary circumstances" beforehand. Is that only COVID-related? What if the exam has a major technological failure? Is that extraordinary?

To clarify, "extraordinary circumstances" is not a requirement to apply for EEW unless the applicant does not meet the eligibility requirements. Applicants who meet the eligibility requirements do not need to show "extraordinary circumstances".

The waiver provisions expressly state that the "extraordinary circumstances" permitting waiver of certain eligibility requirements must "relat[e] to the COVID-19 pandemic." R. 46-A(e), 49(c)(8A)(D).

Determinations of "extraordinary circumstances" will be made by the court and the COA is not in a position to provide advance guidance as to how the court might decide such motions.

The court order says withdrawal deadline is 9/26, but the CoA order on 9/15 said that the deadline was extended to 9/30. Can you please clarify the deadline?

The refund deadline and the deadline to request that fees be applied to another type of application for admission is 9/30. The deadline to withdraw from the exam if you have decided to apply for EEW or by exam transfer score from another jurisdiction is 9/26. The COA must finalize the exam roster on 9/26.

We were told that if we were registered to take the exam in another jurisdiction that we would be removed from the exam list. When do I have to withdraw from California if I want to take the exam in D.C.?

The COA has cross referenced applicants who have sat for or registered for a bar exam in another jurisdiction. If you are registered in another jurisdiction you will be removed from the D.C. exam roster unless you notify COA that you have withdrawn from the other jurisdiction by emailing FallBarExam2020@dcappeals.gov

What are the specific supervision requirements under Rule 46-A? Does it just apply to court appearances, or does it apply to other forms of legal practice?

The supervision requirement applies to all forms of legal practice of law, not just practice before courts.

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I'm reaching out because my current job is JD advantage. I don't need to be barred and cannot practice law at the accounting firm I work for. However, we do have a lot of barred attorneys at the firm. If work under the supervision of a D.C. barred attorney will I meet the requirements of the rule?

You may be admitted under Rule 46-A, however only legal practice conducted under the supervision of a D.C. barred attorney will count towards the three years of supervised practice requirement.

My question is whether someone in my shoes -- who is under the supervision of federal judges for two of the first three years required under the rule -- is eligible to apply for the exam waiver admission?

Yes. Although you will not be engaging in legal practice while clerking, you can start the three years of supervised practice after finishing your clerkship.

The judges I will be working for were barred in the District of Columbia. Will that fulfill the requirement for being supervised by D.C. licensed attorneys?

No, because the requirement is "[f]or three years after admission, must *practice* under the direct supervision of an enrolled, active member of the D.C. Bar". (D.C. App. R.46-A(d)(2)) clerking is not the practice of law. The practice of law "[m]eans providing professional legal advice or services where there is a client relationship of trust or reliance." (D.C. App. Rule 49(b)(2))

Would we be considered barred attorneys for the purposes of reciprocity after the three years are up? Would the clock for reciprocity start after the three years pass or once we apply for admission in the spring?

Reciprocity has not been granted for exam waiver admission by any other jurisdiction. You will have to check the rules of other jurisdictions to find out where (if anywhere) you would be eligible to apply without taking the bar exam after being admitted under Rule 46-A.

Can you explain what the Rule 46-A "prominent notice" requirement entails?

You may adapt the guidance from CUPL Opinion 1-98 to the prominent notice requirement in R.46-A:

Guidance on notice to the public: The following legend will be considered by the Committee to meet the requirement of notice to the public: Admitted Only in [the other jurisdiction]; Supervision by [name of D.C. Bar member], a member of the D.C. Bar. Of course, multiple jurisdictions and multiple supervising Bar members should be indicated where appropriate. Such notice must be included on all business documents signed or expressly presented by the practitioner who is not admitted to the D.C. Bar, including without limitation: letterhead or signature blocks (but not necessarily both); business cards; promotional materials; and filings or formal submissions. While it is not necessary that the supervising Bar member sign such documents, it is necessary that he or she directly supervises the preparation, distribution and submission of them in the exercise of direct supervision of the practitioner's work. The

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substance of the notice also must be conveyed orally by the non-admitted practitioner or the supervisor, when necessary to make certain that members of the public are aware of the practitioner's limited authorization to practice law in the District of Columbia. Actions which tend to contradict or override the notice will, to the same degree, tend to eliminate the availability of the exemption. (https://www.dccourts.gov/sites/default/files/matters-docs/rule49_opinion1.pdf)

Can you clarify the meaning of "direct supervision"?

You may refer to CUPL Opinion2-12 for guidance on the meaning of direct supervision: https://www.dccourts.gov/sites/default/files/matters-docs/rule49_opinion12.pdf

I have a JAG appointment. Can you clarify whether I will get a military exemption for the requirement that I be supervised by a D.C. barred attorney?

There is no military exemption in the rule, and the waiver provision in the rule does not apply to the requirement of supervision by a D.C.-barred attorney. An applicant seeking an individual exemption from that requirement would have to file a motion with the court seeking suspension of that requirement under D.C. App. R. 2.1.

**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 28, 2020)

On September 24, 2020, the court issued an emergency order that among other things promulgated D.C. App. R. 46-A, emergency exam waiver admission, which permits certain recent law-school graduates to be admitted to the D.C. Bar without having passed a bar examination. The court has now received an emergency petition to amend the emergency rule, to reduce the required period of practice under supervision from three years to six months. The petition also asks that the deadline for withdrawing from this court's October bar examination be extended from September 26, 2020, to October 2, 2020. Upon consideration, the emergency petition is DENIED.

PER CURIAM

**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,

* 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.