

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@dcbbar.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.