August, 2012

Can I Sit For Your Bar Exam?

Angela R Passaro, Passaro Reid Financial Services Group, Inc.
Introduction

The following cases are but a few of those available which give a picture regarding how federal and state courts view online law school students. They cannot be included in a formal memorandum of law unless they have been updated (Shepardized). These court opinions have value because they inform the reader how the judges considered the online law school issue in the past. Their past thoughts give a good indication regarding how they will consider an online law school graduate’s petition in the future. Federal courts will consider constitutional and federal rules of civil procedure issues. Although state supreme courts prefer to simply utilize the ABA’s expertise because they trust that agency, they do decide which graduates will sit for a bar exam.

Federal Courts

Moore v. Supreme Court of South Carolina, 447 F. Supp 527 (D. SC. 1977)

Facts:… Unfortunately for the plaintiff, he graduated from a law school in Georgia which is not approved by the ABA and, therefore, is ineligible to practice law in South Carolina.

Issues: Plaintiff filed the instant suit seeking an injunction against the enforcement of Rule 5(4) on the ground that the rule is unconstitutional as depriving him of his rights to “equal protection” and “due process.” …The main thrust of plaintiff’s case is based upon his argument that the classification infringes upon his right to travel to South Carolina because he is not allowed to pursue his chosen vocation in this state …He claims that Rule 5(4) imposes upon him an “irrefutable presumption” that he is unqualified to practice law since he is not permitted to prove his competence by taking the bar exam.

Analysis:… Although this Court questions the fairness of Rule 5(4) in light of the fact that a competent attorney may be prevented from practicing in this state, the hardship imposed upon plaintiff by the strict operation of the rule is not a deprivation which reaches constitutional dimensions. The ABA law school requirement, on the other hand, does not draw a distinction between residents and nonresidents or between long term residents and recent migrants. Rule 5(4) applies to residents and nonresidents alike. The classification distinguishes only between those who have graduated from ABA approved law schools and those who have not. … Rule 5(4) clearly discourages plaintiff from traveling to South Carolina for the purpose of establishing a residence since it prevents him from practicing law. However, it does not operate as an absolute bar to plaintiff’s moving to this state. He is free to move to South Carolina if he wishes and engage in business. However, he cannot practice law unless he obtains a degree from an ABA law school.…

Holdings: …Rule 5(4), despite the harshness of its application to the plaintiff, has a rational basis, and therefore, is constitutional under the traditional equal protection test. Accordingly, since no fundamental right is violated by Rule 5(4), it is not required to be supported by a compelling state interest. … The irrefutable presumption established by Rule 5(4) is not the type which can justifiably be subjected to strict scrutiny. Accordingly, the rule is constitutional under the due process clause without the necessity of requiring the state to prove a compelling state interest. Rule 5(4) is clearly rationally related to South Carolina’s interest in ensuring the competence of those who apply for admission to its bar. Plaintiff’s attempt to apply the stricter “compelling state interest” test cannot succeed. No fundamental right is directly infringed by the rules so as to require strict scrutiny under equal protection analysis and the irrefutable presumption created by the rule does not require strict scrutiny under due process analysis.

In Re Application of Bryan M. Hansen to Write the Minnesota Bar Examination, 275 N.W.2d 790 (Minny.)
Facts: … Petitioner, originally a Minnesota resident, is a 1977 graduate of Western State University College of Law (Western State), San Diego, California… petitioner wrote and passed the California Bar Examination and was admitted to practice in California in January, 1978.

Analysis: … The test that emerges from these cases is that, despite the strong interest of the applicant in being able to practice law, the state can regulate admission as long as such regulation is reasonably related to its interest in a competent bar. A procedure is reasonable as long as it is not arbitrary and capricious. Only if the complainant is a member of a suspect class or if the procedure at issue violates a fundamental right must the state demonstrate a compelling state interest for its system of regulation to pass constitutional muster.

…In all the decisions upholding a state’s educational requirements as a valid prerequisite to admission to the bar, courts have required only that there be a rational reason for the imposition of the requirement.

…But, as the ABA responds, we have nothing but the bare assertions of petitioner and his law school that Western State offers a quality education and is in substantial compliance with all relevant factors that go into the quality education formula. Because Western State has refused to apply for provisional accreditation, despite ABA requests that it do so, no ABA personnel have visited its campuses to evaluate its programs [6] Thus, we have no way of knowing whether Western State could have substantially complied with the other ABA requirements for accreditation.

Had the ABA turned down the application of Western State, petitioner could have then approached us with its argument that the ABA standards are arbitrary and capricious. Under existing circumstances, however, there is no record on which we can determine the validity of petitioner’s claim.

The Western Association of Schools and Colleges is a general regional accrediting organization. According to the ABA, Western State is the only law school that it has accredited. Thus, we do not believe that its expertise is comparable to that of the ABA which specializes in evaluating legal education. Western State is also accredited by the California Committee of Bar Examiners. But we refuse to treat California’s decision to accredit Western State as equivalent to our decision to approve only ABA-approved law schools because of the dissimilarity in the way California and Minnesota appear to control admission to the legal profession.

Holdings: Clearly, it is reasonable for Minnesota to require proof that an applicant’s legal education was of a high quality as a general prerequisite to admission to the bar. Similarly, it is neither arbitrary nor capricious for us to measure the quality of legal education with the same standards as those utilized by the ABA… Thus, petitioner’s argument that Rule II(4) is an unconstitutional violation of the due process clause of the Fourteenth Amendment has no merit. [7] … Likewise, we find no violation of the equal protection clause. Under traditional equal protection analysis, classifications will be upheld as long as they are reasonably related to some legitimate governmental purpose. We have already established that the distinction between graduates of accredited and nonaccredited law schools is reasonably related to ensuring a competent bar. Thus, Rule II(4) does not operate to deny petitioner the equal protection of the laws. … We have not delegated our authority to the ABA but, instead, have simply made a rational decision to follow the standards of excellence it has developed…. [I]t does not offend the Constitution for us to decide to utilize instead standards developed by a nongovernmental body with expertise in the area of legal education. It makes more sense for us to utilize the specialized services of our chosen accrediting agency, the ABA…. Finally, we reject the contention that we should accept the decision of some other accrediting organization that Western State offers its students a quality education. …Thus, equity requires no waiver here. Were we to grant the waiver as requested, we would have to consider similar requests by students from other nonaccredited law schools with chaotic results. Each and every case would have to be decided on its own merits. Undoubtedly claims would be made as in his case that the applicants had a quality education but without any foundation for such claims by experts chosen by this court to pass on that issue.

Facts/Procedural History: On September 10, 1977 Plaintiff again applied to the Board for permission to take the Pennsylvania bar examination. The Board, on October 3, 1977, again denied the application because Plaintiff had not graduated from an ABA approved school. Plaintiff’s appeal of the Board’s decision to the Supreme Court of Pennsylvania was again denied on October 5, 1978.

Issue: …since this is the first time a due process claim has been raised, we shall address it on the merits.

Analysis: This court cannot order that plaintiff be allowed to take the Pennsylvania bar examination. To do so would in effect abolish the ABA accreditation rule. … Neither is it proper for this court to inquire further into the relative qualifications of the plaintiff and of Sylk (or any other non-ABA school graduates). It is not for us to ascertain whether plaintiff is entitled to a waiver of the ABA accreditation requirement, or to speculate as to the reasons the Court permitted Sylk, but not plaintiff, to take the bar examination.

Furthermore, we in no way mean to imply that the Court acted improperly in regard to these decisions except to the extent that it failed to issue standards governing the waiver of the requirement.

Holdings: …Applicants for admission to the bar by the way of the waiver procedure are entitled to know the criteria which must be met in order to be granted a waiver … However, because we agree that the ABA accreditation requirement does not violate the equal protection clause, we need not delve into the res judicata issue. The defendants prevail on the merits of that claim. In accordance with this opinion, and in order to comply with the due process clause of the Fourteenth Amendment, defendants are to issue appropriate standards and guidelines to govern the grant of denial of waivers of the ABA accreditation requirement and Pennsylvania Bar Admission Rules 203 and 205


Issue: The plaintiff herein has attacked the Nevada Supreme Court’s administration of the rule requiring graduation from an unaccredited law school as being unconstitutional because waivers are granted or denied arbitrarily and discriminatorily.

Holdings: A state is immune from federal court suits brought by its own citizens, even though the case arises under the Constitution or laws of the United States, [citations omitted]. The immunity of the state from suit is applicable to the supreme court of the state as well. [citations omitted] The Supreme Court of Nevada is an agency of the State of Nevada and immune from suit under the Eleventh Amendment to the U.S. Constitution. [citation omitted] A state bar association is an integral part of the judicial process and, therefore, entitled to immunity from suit under the Civil Rights Act. [citation omitted] Likewise, as an agency of the state, a bar association is not a “person” within the intendment of said Act. Id; [citation omitted]

The State Bar of Nevada is under the exclusive jurisdiction and control of the Nevada Supreme Court, NRS 7.275(1); NRS 2.120. Since said State Bar can only make recommendations to the Supreme Court, no effective order can be entered against the State Bar to afford the plaintiff the relief she seeks. As a result, it is not an appropriate party to this action, and its motion to dismiss must be granted. [citations omitted]

Conclusions: … As an agency of the State of Nevada, the Supreme Court of Nevada is not such a “person.” Therefore, the motion of the Supreme Court of Nevada to dismiss the complaint against it must be granted. The ultimate responsibility on whether to admit an applicant to the practice of law in Nevada lies within the State Supreme Court, and not with the Board of Bar Examiners. [citations omitted] Thus, no effective order can be entered against the Board of Bar Examiners of the State Bar of Nevada, either. It too, is not an appropriate party to this action. Its motion to dismiss, therefore, must be granted. [citation omitted] … It is patently clear that the Nevada Supreme Court justices had subject matter jurisdiction over whether to waive the ABA-approved law school requirement at the petition of the plaintiff herein. Also, the
doctrine of judicial immunity applies to suits under 42 U.S.C. section 1983 [citation omitted].

**District of Columbia Court of Appeals Et Al. v. Feldman Et Al., 460 U.S. 462 (1981)**

**Facts/Procedural History:** Respondent Feldman did not attend law school. Instead, he pursued an alternative path to a legal career provided by the State of Virginia involving a highly structured program of study in the office of a practicing attorney. See Va. Code section 54-62 (1982). In addition to his work and study at a law firm in Charlottesville, Va., Feldman formally audited classes at the University of Virginia School of Law. For the final six months of his alternative course of study, Feldman served as a law clerk to a United States District judge.

Having passed the Virginia bar examination, Feldman was admitted to that State’s Bar in April 1976. In March of that year, he began working as a staff attorney for the Baltimore, Md., Legal Aid Bureau. He continued in that job until January 1977. Like the District of Columbia, Maryland has a rule limiting access to the bar examination to graduates of ABA-approved law schools, but the Maryland Board of Law Examiners waived the rule for Feldman. Feldman passed the Maryland examination and later was admitted to that State’s Bar.

In November 1976, Feldman applied to the Committee on Admissions of the District of Columbia for admission to the District Bar under a rule which, prior to its recent amendment, allowed a member of a bar in another jurisdiction to seek membership in the District Bar without examination. In January 1977, the Committee denied Feldman’s application on the ground that he had not graduated from an approved law school. Initially, the Committee stated that waivers of Rule 461(b)(3), or exceptions to it, were not authorized. Following further contact with the Committee, however, Feldman was granted an informal hearing. After the hearing, the Committee reaffirmed its denial of Feldman’s application and stated that only the District of Columbia Court of Appeals could waive the requirement of graduation from an approved law school.

In June 1977, Feldman submitted to the District of Columbia Court of Appeals a petition for admission to the bar without examination. App. 1a. Alternatively, Feldman requested that he be allowed to sit for the bar examination. Id., at 5a. In his petition, Feldman described his legal training, work experience, and other qualification. He suggested that his professional training and education were “equal to that received by those who have attended an A.B.A approved law school.” Id., at 4a. In view of his training, experience, and success in passing the bar examinations in other jurisdictions, Feldman stated that “the objectives of the District of Columbia’s procedures and requirements for admission to the Bar will not be frustrated by granting this petition.” Ibid.

The District of Columbia Court of Appeals did not act on Feldman’s petition for several months. In March 1978, Feldman’s counsel wrote to the Chief Judge of the District of Columbia Court of Appeals to urge favorable action on Feldman’s petition. The letter stated that Feldman had “abundantly demonstrated his fitness to practice law” and suggested that “it would be a gross injustice to exclude him from the Bar without even considering his individual qualifications.” Id., at 6a. The letter went on to state that “[i]n the unique circumstances of his case, barring Mr. Feldman from the practice of law merely because he has not graduated from an accredited law school would raise important questions under the United States Constitution and the federal antitrust laws--questions that Mr. Feldman is prepared to pursue in the United States District Court if necessary.” Id., at 6a-7a. In support of Feldman’s position, the letter again stressed the strength of his training and the breadth of his experience. While acknowledging that a strict reading of Rule 461(b)(3) prevented Feldman from taking the bar examination, Feldman’s counsel suggested that the court was not precluded from considering Mr. Feldman’s application on its merits.” Id., at 9a.

Respondent Hickey began the study of law in March 1975 at the Potomac School of Law, Washington, D.C., after concluding a distinguished 20-year career as a pilot in the United States Navy. At the time he entered Potomac, Hickey was aware that it had not been accredited by the ABA, but he thought that he could transfer at some later date to any ABA-approved law school.
… In April 1978, Hickey submitted to the District of Columbia Court of Appeals a petition for waiver of Rule 461(b)(3) so that he could sit for the bar examination. Id., at 19a. In his petition, Hickey described his career in the Navy and his law school record. He also submitted affidavits from four law professors attesting to his competence in his legal studies. Hickey went on to suggest that it would be unfair to deny him, or other students currently enrolled at Potomac, a waiver after they had pursued three years of legal education in reliance on the court’s previous policy of granting waivers to international graduates.

…Hickey also suggested that it would be burdensome for him to attempt to comply with Rule 461(b)(4), which permits graduates of unapproved law schools to sit for the bar examination after completing 24 credit hours at an approved law school. [6] Furthermore, Hickey contended that he would be unable to comply with the rule because the ABA had instructed approved law schools in the District of Columbia to deny admission to no degree candidates for completion of the 24-credit-hour requirement. …

The District of Columbia Circuit affirmed the dismissals of Hickey’s and Feldman’s antitrust claims on the ground that they were insubstantial. Feldman v. Gardner, 213 U.S. App. D.C. 119, 122, 661 F.2d 1295, 1298 (1981) [11] The Court, however, concluded that the waiver proceedings in the District of Columbia Court of Appeals “were not judicial in the federal sense, and thus did not foreclose litigation of the constitutional contentions in the District Court.” Ibid. The court, therefore, reversed the dismissals of the constitutional claims and remanded them for consideration on the merits. Ibid.

… The District of Columbia Circuit properly acknowledged that the United States District Court is without authority to review final determinations of the District of Columbia Court of Appeals in judicial proceedings. Review of such determinations can be obtained only in this Court. See 28 U.S.C. section 1257. [citations omitted]

**Issue:** A crucial question in this case, therefore, is whether the proceedings before the District of Columbia Court of Appeals were judicial in nature. [13]

**Holdings:** … These precedents clearly establish that the proceedings in the District of Columbia Court of Appeals surrounding Feldman’s and Hickey’s petitions for waiver were judicial in nature. The proceedings were not legislative, ministerial, or administrative. A determination that the proceedings on Feldman’s and Hickey’s petitions were judicial does not finally dispose of this case. As we have noted, Supra, at 476, a United States District Court has no authority to review final judgments of a state court in judicial proceedings. Review of such judgments may be had only in this Court. Therefore, to the extent that Hickey and Feldman sought review in the District Court of the District of Columbia Court of Appeals’ denial of their petitions for waiver, the District Court lacked subject matter jurisdiction over their complaints. Hickey and Feldman should have sought review of the District of Columbia Court of Appeals’ judgments in this Court. [16] To the extent that Hickey and Feldman mounted a general challenge to the constitutionality of Rule 461(b)(3), however, the District Court did have subject-matter jurisdiction over their complaints.

… In deciding that the District Court has jurisdiction over those elements of the respondents’ complaints that involve a general challenge to the constitutionality of Rule 461(b)(3), we expressly do not reach the question of whether the doctrine of res judicata forecloses litigation on these elements of the complaints. We leave that question to the District Court on remand.

**Conclusion:** The judgment of the District of Columbia Circuit is vacated, and the case is remanded to the District Court for further proceedings consistent with this opinion.

SO ORDERED.

Nordgren v. Hafter, 789 F.2d 334 (5th Cir. 1986)

**Facts/Procedural History:** …Subsequently, Nordgren brought this 42 U.S.C. section 1983 pro se action challenging the constitutionality of that portion of the related Mississippi bar admission rules which exempts
from the ABA accreditation and written exam requirements graduates from non-ABA accredited Mississippi law schools but not graduates from non-ABA accredited out-of-state law schools. In addition to her constitutional claims for which she sought declaratory and injunctive relief plus compensatory and punitive damages, appellant sought recovery under antitrust and state law claims

**Issue:** … Nordgren’s basic argument is that since her California law school program was the equivalent of the statute’s Mississippi law school exception, her right to equal protection under the laws was violated.…

**Analysis:** Were this Court to accept Nordgren’s argument, the Mississippi legislature would be compelled to study and provisionally accredit every non-Mississippi, non-ABA accredited law school which spawns a Mississippi-bound graduate. The Constitution does not demand this much, especially where the challenged provision was of limited duration. [citations omitted] … Subsection c., since 1979, had contained the words stating that the undergraduate requirements were “in addition to” the ABA-accreditation or alternative law requirements. The 1983 amendment only deleted the residency requirement.

**Holdings** … Like the waiver proceedings in *Feldman*, the Board’s actions here may not have been cast in the common mold of judicial proceedings, but they were sufficient for the district court to conclude correctly that the Board acted in a judicial capacity within the meaning of *Feldman* [citations omitted] when it denied Nordgren’s application. Nordgren’s quest for review of the specific action as to her own application, therefore, was beyond the district court’s subject matter jurisdiction. Otherwise we would be undertaking to review a state judicial decision. … We find that the district court correctly concluded that Nordgren’s factual assertion is wrong. The court also properly found that the statute was not unconstitutionally vague. … As to the state supreme court’s Rule V on bar admission, the district court properly concluded that notwithstanding the fact that it lacked the words “in addition to”, the rule in substance repeated section 73-3-2(2)C. The rule was clear enough to inform a reasonable person that at the very least this provision could not authorize an alternative bar admission. As the court noted, Nordgren’s construction of the rule’s requirements is illogical. We do not enumerate other contentions of appellant which we have considered and found unpersuasive.

**Conclusion:** We find that there exists “no genuine issue as to any material fact and [appellees are] entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c) [citations omitted]. We find no error in the judgment of the district court.

**AFFIRMED**

**Conclusion:** The federal courts examine the court transcripts to determine whether or not the district courts have adhered to the Federal Rules of Civil Procedure. They do not determine whether or not a law school graduate is eligible to sit for a particular state’s bar exam. They defer the latter decision to the state supreme courts.

**State Supreme Courts**


**Facts:** Petitioner seeks waiver of SCR 51(3), which requires that an applicant for examination for a license to practice as an attorney in this state “[h]ave received a degree of bachelor of laws, or an equivalent law degree, from a law school approved by the committee on legal education and admissions to the bar of the American Bar Association, and shall present evidence of the same.” The Board of Bar Examiners has opposed the petition.
**Issues:** Petitioner concedes that he has not met the requirements of this rule, but urges the court to grant him a waiver, particularly referring us to Brown v. Supreme Court of Nevada, 476 F. Supp. 86 (D. Nev. 1979), in which the district judge concluded that this court “exercises its discretion arbitrarily and capriciously in deciding petitions for waiver of SCR Rule 51(3)”. ID. At 89. Since we cannot agree with this characterization of our decisions in this regard, we have determined to set forth at some length the history and rationale of our rulings in the matter of waiver of the accreditation rule. … In the instant petition, Nort asks, in effect, that we reconsider that decision.

**Analysis:** … In re Lorring, 75 Nev. 330, 340 P.2d 589, 349 P.2d 156 (1959), petitioner Lorring had graduated in 1925 from a law school which was not accredited until 1941. … Petition denied. … The decision in Lorring regarding petitioners who had attended schools prior to adoption of the rule was reaffirmed in 1967. [citations omitted]

In 1972, however, the court considered the petition of Peter Hawke Burleigh, an applicant with highly impressive academic credentials, who had attended law school in England, and therefore could not meet the technical requirement of ABA accreditation. Mr. Burleigh’s petition was accompanied by a detailed description of the English education system and the legal curriculum which he followed, and an affidavit from his former headmaster. The court granted Mr. Burleigh permission to take the bar examination, deferring its ruling on the merits of his petition to waive the accreditation requirements. After the petitioner had passed the examination, the Board of Examiners informed the court that it had “completed its investigation into petitioner’s character and qualifications” and had “no objection to petitioner’s admission.” [citation omitted] The court accordingly ordered Mr. Burleigh’s admission to the bar.

In 1976, this court received another petition for waiver of the rule. In re Kadans, 93 Nev. 216, 562 P.2d 490, appeal dismissed. [citations omitted]. At that time, the court directed the State Board of Bar Examiners to undertake a full inquiry and report concerning the petitioner’s personal and academic background. The report of the State Bar concluded and the court agreed that the petitioner had only marginal academic credentials for the practice of law, and had made misleading claims which manifested his moral unsuitability for the practice of law in this state. The court concluded that the accreditation requirement did “not operate unfairly as to petitioner,” and Mr. Kadans’ petition for waiver was therefore denied. [citations omitted].

In 1977, this court received three applications for waiver of the accreditation rule. In two of those cases, the Board of Bar Examiners did not oppose the petitions to sit for the 1977 bar examination. [citations omitted] In the third, the Board did object, but did not controvert the allegation that the law school from which he petitioner graduated fully complied with all the criteria for ABA accreditation, except that it was operated for profit. … All three 1977 applicants were allowed to sit for the examination, after which the Board recommended admission of the successful candidates.

In 1978, three applicants for admission to the bar petitioned this court for waiver of the accreditation rule. [citations omitted] Hope and Wassner based their petitions on the fact that they had attended the same school as Mr. Herring, and therefore were equally entitled to waiver of the rule. Mr. Bernard alleged that he had attended a school which also was not accredited solely because it was operated for profit. Each was allowed to sit for the 1978 bar examination. Only after the petitioners had taken the examination did the Board of Bar Examiners seek to challenge the substantive allegations of the petitioners --i.e., that the schools attended were not accredited solely because they were operated for profit. [2] Under these circumstances, when petitioners had expended the considerable time and effort required to prepare for the bar examination, without any indication from the Board of Bar Examiners that opposition would consist of any more than an urging that the court strictly enforce the rule (despite the Board’s withdrawal of opposition to Mr. Herring’s application the previous year), the court determined to proceed with granting waivers of the rule.

Mr. Nort, petitioner herein, along with eight other applicants, petitioned to waive the requirements of SCR 51(3) in 1979. Mr. Nort had attended Western State. His contention was that he had attended the same school as Mr. Herring, and therefore should be allowed to sit for the examination.

**Analysis:** … In common with many other jurisdictions, we have elected to make use of the accreditation resources of the American Bar Association, in order to provide for an effective evaluation of an applicant’s
legal education without imposing an impossible burden on the resources of this court or the Board of Bar Examiners. [citations omitted]

To deny an applicant such as Mr. Burleigh admission to the bar solely on the ground that his legal education was acquired at an institution which was not accredited by the ABA when the Board of Examiners had, after examination, satisfied itself as to his character and qualification, and when that institution’s lack of accreditation was not related to the quality of legal education provided, but rather to the circumstance of its location outside the geographical area encompassed by the accreditation activities of the ABA, would have been to ignore our obligation to ensure that the operation of Rule 51(3) does not exclude qualified applicants on a basis which has no rational connection with his fitness to practice law in this state.

In light of (1) the uncontroversial allegation that but for Rule 202, Western State would be entitled to ABA accreditation; (2) the serious questions raised regarding the connection between Rule 202 and the quality of education offered by a law school; and (3) the eventual recommendation by the Board of Bar Examiners that Mr. Herring be admitted, the waiver was granted.

… As suggested above, neither this court nor the Board of Bar Examiners has the resources to undertake this task in a meaningful manner, particularly given the large number of petitions which would be expected to follow such a decision. [citation omitted] Accordingly, the petitions of Nort, as well as the others who had based their petitions for waiver on similar grounds, were denied.

…Nort, like the other similarly situated petitioners, chose to attend a law school which did not have ABA accreditation, in face of the longstanding provisions of SCR 51(3).

Holdings: We are not persuaded that we were in error, or that petitioner has been deprived of any constitutional right by our denial of his application. As the United States Supreme Court has recently held, there is no constitutional right to admission to the practice of law within a state without compliance with its admissions requirements. Leis v. Flint, supra. Nor, as the Court suggested, is such a right created “merely because a wholly and expressly discretionary state privilege has been granted generously in the past.” id., [citations omitted] The ABA standards have been consistently upheld against constitutional attack. [citations omitted]

This court will continue to exercise its inherent and exclusive power to control admissions to the professional bar of this state, [citation omitted] so as to provide relief from the operation of the rules of admission whenever it can be demonstrated that the rules operate in such a manner as to deny admission to a petitioner arbitrarily and for a reason unrelated to the essential purpose of the rule. Absent such a showing, we will not entertain such petitions. [citation omitted]

Dolan v. State Board of Law Examiners, 483 N.W. 2d 64 (Minny. 1992)

Facts: Dolan’s application for admission to practice law in Minnesota was denied to the Board of Law Examiners (Board) on the basis that he did not receive his law degree from an American Bar Association (ABA) accredited law school.

Analysis: …We almost never grant waiver of the educational requirements. [citations omitted] Reliance upon the ABA accreditation standard is our only practical assurance that the legal education of a prospective attorney has sufficiently prepared the individual applicant for legal service. For reasons set forth in Hansen, we do not undertake substantive evaluation of law schools and we choose to rely instead upon the expertise of the ABA and its accreditation process. … Rule I B(6), however, does provide for a waiver of strict compliance with the rule in case of hardship or other compelling circumstances.

Conclusion: …The Board concluded that Dolan failed to show that there were either hardship reasons or other compelling circumstances upon which to base a Rule II A(3) waiver. Our review of the entire record provides us with no reason to reject the conclusions of the Board of Law Examiners. We deny the petition for waiver.

**Facts:** The plaintiff, Ross Mitchell, is a 2004 graduate of Concord Law School (Concord), a wholly online law school that is authorized by the State of California to grant the degree of juris doctor. Mitchell is also a member of the California bar, having taken and passed the State’s bar examination in 2004. Because Mitchell holds his law degree from a school that, by virtue of its online character, does not qualify for accreditation or approval by the American Bar Association (ABA), Mitchell fails to satisfy the requirement of our rule governing eligibility to take the Massachusetts bar examination.

**Analysis:** …Our review of these materials indicates that Mitchell’s core course of study, and legal research resources, were substantively very similar to the core content offered by ABA-approved law schools. Moreover, and of great importance, the record reveals that Mitchell achieved an exemplary degree of success as a law student. He won “outstanding achievement” awards in three of his first year courses, an award or best oral advocate and best brief in his moot court exercise in the third year, and over-all academic honors in all four of his law school years, graduating with highest honors and as valedictorian of his class in July of 2004…. Mitchell has taken and passed the California general bar examination and did so the first time he took it; (3) Mitchell has taken and passed the multistage professional responsibility examination with a scaled score well above that required by the board (see note 3, supra); (4) he has been admitted to practice both in California and before the United States Court of Appeals for the First Circuit; and (5) Mitchell, who has represented himself throughout this case, filed briefs and gave an oral argument in this court that were of commendable quality, providing us with a concrete and positive illustration of his skills in legal analysis, legal writing, and advocacy. In sum, we are persuaded that in Mitchell’s case, the underlying purpose of our ABA approval requirement -- to insure an appropriate level of legal education -- has been met….But Mitchell’s record of educational achievement is only one of two considerations that we take into account on the issue of waiver. That second consideration, which relates to the current status of the ABA’s approval standards, plays a significant part in our determination….

Our determination that a waiver of S.J.C.Rule 3:01, section 3.3, is appropriate for Mitchell is based wholly on the particular circumstances presented in his individual case. In reaching this result, we are not suggesting that we have decided to accept graduation from an online law school as meeting the educational requirement for taking the Massachusetts bar examination, or indeed to change our ABA-approval requirement set out in rule 3:01, section 3.3, in any respect. Rather, we will await the results of the ABA’s comprehensive review of its law school approval standards and evaluate rule 3:01, section 3.3, in light of any new standards the ABA may adopt as well as of ongoing developments in legal education and its delivery.

**Conclusion:** We refer Mitchell’s application to the board with instructions that he be allowed to sit for the bar examination.

IRELAND, J (dissenting)

I write separately because I disagree with the court’s conclusion that given the American Bar Association’s (ABA’s) pending comprehensive review of schools and programs using online distance learning, equitable considerations weigh in favor of granting the plaintiff a waiver to sit for the Massachusetts bar examination. I would wait the results of the ABA’s review.

**Conclusion:** Historically, the states have preferred to defer to the ABA’s expertise regarding law school accreditation simply because they do not have the resources to evaluate every law school graduate’s fitness to practice law on a case by case basis.