

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 06-0422

FILED

JUN 20 2017

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

ORDER

IN RE LYNDON SCHEVECK'S ADMISSION TO
THE MONTANA BAR,

LYNDON SCHEVECK,

Petitioner.

Lyndon Scheveck has petitioned the Court regarding a disturbance during the testing of the February 2017 Montana Bar Examination, supported by his affidavit. He states that, during the multistate essay examination (MEE) and the multistate performance test (MPT), an IT administrator caused a continuing disturbance during the testing by coughing and moving about "as if he was intentionally trying to disturb the examination." Scheveck and other test applicants complained to the Admissions Administrator, who attempted to address the situation, but the IT administrator apparently resisted cooperation. Scheveck received a total score of 261.7 on the examination. His petition requests that he be awarded credit of an additional 4.3 points on the examination that would give him the necessary total passing score of 266.

We ordered the Board of Bar Examiners (Board) to respond to the petition, and it has filed a response. The Board states that no other formal complaints were made about the disturbance following the testing, although apparently there were additional complaints made during the testing. The Board notes, from a review of the seating chart for the examination, that other examinees who sat in close proximity to Scheveck received passing scores. It states that Scheveck indicated to the Admissions Administrator that he had concentrated his study efforts on the multistate bar examination (MBE), on which he scored higher, and on which Scheveck indicates he scored in the 70-percentile range. The Board

states this may partially explain Scheveck's higher scoring on that portion of the examination, but Scheveck replies that he put substantial effort into the other parts of the examination as well.¹ While acknowledging that the IT administrator presented a distraction, the Board offers that determination of an appropriate test credit based upon an assessment of the significance of the distraction would be extremely difficult and arbitrary, and argues that all scores should remain as calculated from the actual performance on the examination.

Scheveck argues that his case is similar to *Petition of Thompson*, 342 N.W. 2d 393 (N.D. 1983). There, the North Dakota Supreme Court, in a plurality opinion, granted admission to applicant Thompson, who had failed to obtain a passing score on a bar examination, citing disturbances during the testing process. We first note that North Dakota had legislatively enacted a process that authorized the Supreme Court to grant admission, after testing, to applicants who the court "considers entitled thereto." *Petition of Thompson*, 342 N.W. 2d at 395. Upon receipt of Thompson's complaint, the North Dakota State Bar Board appointed a hearing officer, who conducted a hearing and entered findings and conclusions, with a recommendation that Thompson be admitted. *Petition of Thompson*, 342 N.W. 2d at 394. The hearing officer found that multiple testing irregularities had occurred during the examination, as follows:

- a. A last-minute change in location of the examination that was not communicated to the petitioner until he arrived at the original location set for the test;
- b. Loud, continuous noises in the testing room, including loud voices, music, clapping, and other disturbances caused by a sales meeting being held in the same room as the testing room, on the other side of a movable room divider;
- c. Significant distracting movement in the testing room caused by applicants and test administrators moving about in response to the noise disturbance; and
- d. Inadequate lighting in the testing room.

¹ Scheveck has filed a motion for leave to reply to the Board's response, which we grant herein.

Petition of Thompson, 342 N.W. 2d at 399. The facts related to the disturbances were alternatively described in the five opinions issued by the justices as “very adverse conditions,” “unique circumstances,” and “most unusual.”

We are concerned about the distraction that occurred during the February 2017 bar examination testing, and urge the Board to review its rules and procedures to ensure that it is adequately authorized and prepared to address incidents that cause a distraction during an examination. We note that, in *Petition of Thompson*, testing administrators granted applicants an additional 27 minutes of testing time to counter the irregularities. *Petition of Thompson*, 342 N.W. 2d at 394. However, after review of the matter and of the parties’ pleadings, we cannot conclude that Scheveck’s petition establishes that the Board acted arbitrarily or otherwise abused its discretion in denying his request to be awarded an additional 4.3 points on his bar examination. The disturbance here clearly does not rise to the level of the multiple irregularities that occurred in *Petition of Thompson*, and we do not believe it necessitates a departure from the usual course of grading the examination on the basis of each applicant’s performance. Therefore,

IT IS ORDERED that Lyndon Scheveck’s motion for leave to file a reply to the Board’s response is GRANTED.

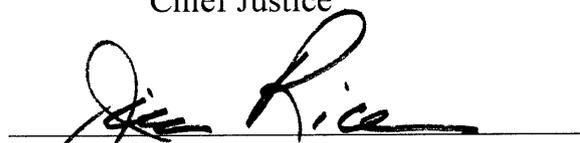
IT IS FURTHER ORDERED that the petition is DENIED.

The Clerk is directed to provide a copy hereof to the Petitioner and to the Board of Bar Examiners.

DATED this 20th day of June, 2017.



Chief Justice





Peter from

James Jeremiah Green

Michael E. Wheeler

John M. Sullivan

Justices