

## IN THE SUPREME COURT OF THE STATE OF MONTANA

PR 06-0422

**FILED**

JUN 27 2017

ORDER

IN RE CAITLIN T. PABST,

Petitioner.

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Caitlin T. Pabst has petitioned the Court to have the essay portion of her February 2017 Montana Bar Examination reviewed and regraded. Pabst failed the exam by one point, and asserts that her essay answers “were given unfair, inadequate, and inconsistent reviews by examiners which resulted in grading errors.”

We granted the Board of Bar Examiners twenty days to respond, and it has filed a short response indicating that the Rules for Admission provide the Board’s grading decisions “are final and not subject to additional substantive review. . .” Rule III(H), Rules of Admission to the Bar of Montana. Pabst cites Rule 106(E), Board of Bar Examiners Rules, for the proposition that an applicant may file a petition for review with the Montana Supreme Court “within thirty days following service upon the applicant of the decision,” but that rule expressly applies to Board investigations of applicant misconduct. Thus, the Board is correct that the Rules do not provide for an appeal to the Court from grading decisions by the Board. Any relief would necessarily be premised upon the Court’s constitutional authority to waive the Rules of Admission, and to order a regrading.

Pabst notes that the Board’s published Grading Scale advises applicants that “the grading of essay examinations necessarily involves the exercise of subjective judgment by those grading” and, consistent therewith, Pabst’s objections are premised upon subjective disagreements with the grading of her examination. She argues that, because some of her essay answers contain markings and comments by the graders, while others do not, “a clear error of inconsistency in how they were graded” is demonstrated, which “likely resulted in

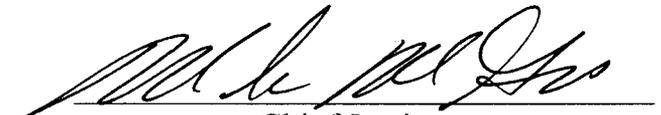
an improper and unfair exam score.” She objects to the amount of partial credit that was given for some of her answers, reasoning on one question that, although her analysis “was not a perfect replication of the model answer provided, the answer itself deserved more than the half-credit given by the examiners.” For another question, Pabst argues that “it appears that the only issue Petitioner failed to spot was the putative-spouse doctrine. . . . Accordingly, Petitioner should have received a higher score than what was assigned.”

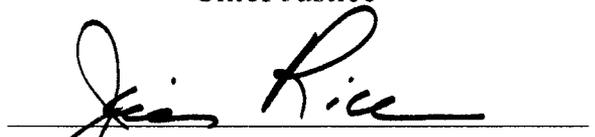
We recognize it is difficult to demonstrate that an admittedly subjective process is sufficiently flawed to be deemed unfair, and that failing the examination by a small margin is a terrible frustration. However, we are not persuaded that the petition demonstrates the necessity of overriding the Rules of Admission prohibiting “additional substantive review” of examination grading. To be sure, all applicants who fail the examination by a small margin would be greatly interested in having their answers “regraded” in the hope that a second look might change the outcome. However, if the Rules or this Court permitted such a review, “regrading” would quickly become commonplace and could greatly complicate the examination process. There is an important purpose behind the Rule. Therefore,

IT IS ORDERED that the petition for review and regrading is DENIED.

The Clerk will provide a copy of this order to the Petitioner and to the Board.

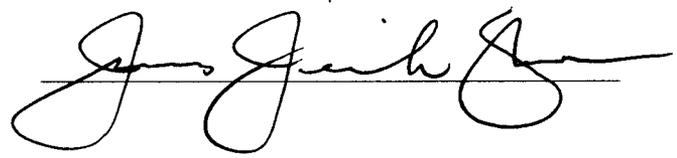
DATED this 27<sup>th</sup> day of June, 2017.

  
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Chief Justice

  
\_\_\_\_\_  
Jean Rice

  
\_\_\_\_\_  
Anne Robinson

  
\_\_\_\_\_  
Michael Wheeler

  
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James J. G. [unclear]

*John F. Bollen*  
*John M. DeLoach*

Justices