Not for Publication.

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

IN THE MATTER OF THE APPLICATION OF LESLIE L. PAYTON TO THE VIRGIN ISLANDS BAR.	)	**S. Ct. BA No. 2007-146**

On Application to the Virgin Islands Bar
Considered and Filed: March 20, 2009

BEFORE: **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and **IVE ARLINGTON SWAN**, Associate Justice.

APPEARANCES:

Leslie L. Payton, Esq.
St. Thomas, U.S.V.I.
Pro Se

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Attorney for Respondent Committee of Bar Examiners

OPINION OF THE COURT

Leslie L. Payton (hereafter "Payton") requests that this Court exercise its equitable powers to grant him regular admission to Virgin Islands Bar or, in the alternative, allow him to only take and pass the Multistate Professional Responsibility Exam (hereafter "MPRE") and the character and fitness review as a condition for admission. For the following reasons, we shall grant in part and deny in part Payton's motion.

I. FACTUAL AND PROCEDURAL BACKGROUND

Between 1976 and 2006, Payton, an attorney admitted to the Pennsylvania and New York state bars, had practiced before Virgin Islands local courts pursuant to former District Court Rule

51 and former Superior Court Rule 302, which authorized those courts to, at their discretion, specially admit into the Virgin Islands Bar employees of federal and territorial governmental agencies who are attorneys in good standing of the bar of another United States jurisdiction.[1] Although Payton has sat for the Virgin Islands Bar Examination numerous times since 1976 in order to obtain regular admission to the Virgin Islands Bar pursuant to the former District Court Rule 56, former Superior Court Rule 304, and the present Supreme Court Rule 204, he has been unsuccessful each time.

After failing the February 2004 and July 2004 examinations, Payton filed an appeal with the Virgin Islands Committee of Bar Examiners (hereafter "Committee") challenging its determination that he did not achieve the minimum passing score on the Multistate Bar Examination (hereafter "MBE") and requesting that it waive the requirements for regular admission. In these proceedings before the Committee, Payton argued that the Committee had the discretion to "upgrade" his MBE score due to his years of experience as a specially admitted government attorney. On February 16, 2005, the Committee unanimously denied Payton's request, concluding "that under VI law there is no right to an upgrade on a bar examination score based upon experience or even long-term practice in the Virgin Islands under a special admission, and that the Committee lacks the authority to waive the rules on the requirement for examination prior to regular admission." (Report and Recommendations, Feb. 16, 2005, at 2-3.)

Payton appealed the Committee's decision to the Superior Court. In a June 23, 2006 opinion, the Superior Court rejected Payton's argument and declined to exercise its equitable

[1] Before 1991, the District Court presumptively retained exclusive jurisdiction over matters pertaining to the Virgin Islands Bar. *See Application of Saunders*, 295 F.Supp. 263, 263 (D.V.I. 1969). After 1991, but prior to establishment of the Supreme Court in 2007, the Superior Court, as the highest non-federal local court of the Virgin Islands, governed admissions to the Virgin Islands Bar. *See Application of Moorhead*, 27 V.I. 74, 93 (V.I. Super. Ct. 1992). This Court assumed jurisdiction over bar admissions matters in 2007. *See Application of Coggin*, 49 V.I. 432, 436 (V.I. 2008).

powers to admit him to the Virgin Islands Bar through a means other than the process articulated in former Rule 304. *See In re Applicant No. 00017*, Super. Ct. Misc. No. 34/1994 (V.I. Super. Ct. June 23, 2006). The Appellate Division of the District Court subsequently affirmed the Superior Court's decision, *see In re Application No. 00017*, D.C. Civ. App. No. 2006-154, 2008 WL 3874283, at *5 (D.V.I. App. Div. Aug. 11, 2008), and the United States Court of Appeals for the Third Circuit dismissed Payton's appeal of the Appellate Division's judgment for failure to prosecute. *See Applicant 00017 v. V.I. Comm. of Bar Exam'rs*, No. 08-3612, slip op. at 1 (3d Cir. Jan. 20, 2009).

After failing the February 2008 administration of the Virgin Islands Bar Examination, Payton filed with this Court a May 13, 2008 "Motion for Admission to the Supreme Court of the Virgin Islands as a Regular Member of the Virgin Islands Bar or in the Alternative Declaratory Relief." In his motion, Payton argues that this Court should exercise its equitable powers to grant him regular admission to the Virgin Islands Bar or, alternatively, hold that he may receive regular admission upon passing the MPRE and the Committee's character and fitness review. The Committee, after being directed to respond to Payton's motion pursuant to this Court's March 4, 2009 order, filed a March 5, 2009 opposition in which it argues that the proceedings in the Superior Court, Appellate Division, and the Third Circuit deprive this Court of subject matter jurisdiction over the dispute pursuant to the doctrine of *res judicata* and, in the alternative, that this Court is without power to equitably waive a requirement imposed by its own rules.[2]

[2] In his March 9, 2009 reply to the Committee's opposition, Payton requests that this Court reject the Committee's March 5, 2009 opposition as untimely and treat his May 13, 2008 motion as uncontested because the Committee did not respond within ten days as required by Supreme Court Rule 11(a). However, this Court's rules pertaining to uncontested motions state that "the Court *may* treat a motion . . . as uncontested," but do not compel the Court to do so. V.I.S.CT.R. 11(g) (emphasis added). Likewise, while Rule 11(a) prohibits a *party* from filing an opposition to a motion after ten days, it does not prevent this Court from granting a party leave to file an opposition out of time, or from compelling a party to submit a response. Accordingly, we decline to reject the Committee's opposition.

II. JURISDICTION

Prior to considering the merits of an action, this Court must determine whether it has jurisdiction over the matter. *V.I. Gov't Hosp. and Health Facilities Corp. v. Gov't of the V.I.*, Civ. No. 2007-125, 2008 WL 4560751, at *1 (V.I. 2008). "The Supreme Court has exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted to the practice of law." V.I. CODE. ANN. tit. 4, § 32(e). The Committee, however, argues that the doctrine of *res judicata* prohibits this Court from considering Payton's arguments because the same issues were adjudicated during earlier proceedings in the Superior Court, the Appellate Division, and the Third Circuit before this Court obtained exclusive jurisdiction over the Virgin Islands Bar.

Courts have generally held that *res judicata* prohibits a second court from reviewing, in a collateral proceeding, a bar admissions matter involving the same applicant and the same issue that has already been adjudicated in a court that had subject matter jurisdiction over the dispute. *See, e.g., Hale v. Comm. on Character and Fitness*, 335 F.3d 678, 684 (7th Cir. 2003) (holding that *res judicata* prevented federal courts from reviewing Illinois Supreme Court's order denying bar admission based on same argument rejected by that court); *Dean v. Mozingo*, 521 F.Supp.2d 541, 548 (S.D. Miss. 2007). However, privity of both parties and issues is necessary for *res judicata* to foreclose such proceedings. *See Federal Deposit Ins. Corp. v. Eckhardt*, 691 F.2d 245, 247-48 (6th Cir. 1982) (holding that *res judicata* does not ban subsequent action, even if it involves the same parties and subject matter, when the issue is different).

The procedural posture of this case is similar to *Julien v. Comm. of Bar Exam'rs*, 923 F.Supp. 707 (D.V.I. 1996). In *Julien*, the bar applicant plaintiff was informed by the Committee that he failed the July 1991 Virgin Islands Bar Examination, had his score reviewed by the

Committee, and then sought review of the Committee's unfavorable decision in the Superior Court in June 1992. *Id.* at 711. After initiating his Superior Court complaint, Julien sat for the July 1992 and February 1994 administrations of the bar exam, failed to pass on both occasions, and filed suit against the Committee in the District Court to challenge the administration of all three examinations. *Id.* at 712. Julien, after subsequently failing the examination in July 1994, filed a second complaint in the District Court. *Id.* at 713. The District Court, upon considering the Committee's motion to dismiss, observed that while *res judicata* barred Julien from challenging the July 1991 administration after the Superior Court adjudicated that case on the merits, it did not prevent Julien from pursuing his claims with respect to the July 1992, February 1994, and July 1994 administrations because he could not have brought those claims in the Superior Court when he filed that suit in June 1992. *Id.* at 717.

Here, the record clearly reflects that although Payton challenged the results of the February 2004 and July 2004 examinations in the Superior Court proceedings, in this Court he only seeks review of the Committee's failure to upgrade his score with respect to the February 2008 examination, which neither the Superior Court, the Appellate Division, nor the Third Circuit could have reviewed as part of Payton's prior lawsuit. Furthermore, Payton premises his challenge, in part, on differences between the Superior Court's former rules governing the bar and the rules this Court promulgated when it assumed jurisdiction over bar admissions matters in 2007. Accordingly, Payton's present action, while certainly similar and related to prior litigation between the parties, does not raise the same issues, and is thus not prohibited by *res judicata*.

III. DISCUSSION

In his motion, Payton primarily argues (1) that this Court has the equitable power to waive a written requirement contained in our rules and that we should exercise this power to

grant Payton regular admission into the Virgin Islands Bar; and (2) that Supreme Court Rule 202(e)(2) permits Payton to obtain regular admission only by passing the essay portion of the Virgin Islands Bar Examination, the MPRE, and the character and fitness review.[3] We shall address these issues in turn.

A. Equitable Waiver of Supreme Court Rule 204 is Not Warranted in this Case

The Committee argues that "[n]o authority from any Virgin Islands court, and none from any other jurisdiction, is cited to demonstrate that the Virgin Islands Bar Examiners may disregard the written rules of the court, or invoke a power of waiver of those rules that is not conferred by any provision in their text." (Respondent's Br. at 6.) Since neither party disputes that Payton has not met the requirements for regular admission pursuant to Supreme Court Rule 204, the Committee contends that this Court's failure to authorize it to waive Rule 204's

[3] In the memorandum of law accompanying his initial motion, Payton implicitly argues that Supreme Court Rule 202(e)(3)—which allows those who have served as specially admitted attorneys for not less than five years as of September 1, 2007 to sit for the Virgin Islands Bar Examination despite not having graduated from a law school approved by the American Bar Association—is not valid because Payton "is at a loss of any legal reasoning or equitable basis upon which an applicant can take the Virgin Islands Bar Examination without graduating from an ABA[] approved law school" and that "the plain reading of . . . Rule 202[(e)](3)[]" would purportedly "subject [an] applicant that did not graduate from an accredited ABA approved law school to possible criminal prosecution" under proposed legislation. (Applicant's Br. at 3-4.) However, we decline to entertain this argument because Payton lacks standing to challenge the validity of Rule 202(e)(3). *See Arlington Funding Services, Inc. v. Geigel*, S.Ct. Civ. No. 2008-007, 2009 WL 357944, at *2 (V.I. Feb. 9, 2009).

Furthermore, Payton raises, for the first time in his March 9, 2009 reply to the Committee's opposition, numerous other arguments and issues, including (1) that the Committee's counsel should withdraw her representation because her firm had allegedly previously accused Payton of unauthorized practice of law; (2) that the Chairman of the Board of the Office of the Territorial Public Defender, who Payton alleges wrongfully placed him on administrative leave without pay and erroneously informed the Presiding Judge of the Superior Court that he had been terminated, should refrain from grading his examination; (3) that this Court should appoint a "neutral" Committee to score Payton's examination because the Committee and its counsel are biased against him; (4) that the Committee acted vindictively when it purportedly refused to provide Payton with his examination number so that he may proceed anonymously; (5) that this Court should order an audit to determine whether the Committee has granted score "upgrades" to other applicants and for what reasons; (6) that an unnamed retired judge told Payton that he had passed the bar examination "years ago" but was denied admission because of his "advocacy for the rights of indigent and unspoken Virgin Islanders;" and (7) that numerous unnamed "legal scholars, judges within the Third Circuit, former [Superior] Court judges and laypersons" that Payton has corresponded with have all agreed that Payton "might as well be living in another country because the Rule of Law apparently does not apply. . . ." It is well established that a court should not entertain arguments raised for the first time in a reply brief. *See United States v. Boggi*, 74 F.3d 470, 478 (3d Cir. 1996). Accordingly, these issues are not properly before this Court.

requirements prohibits it from granting Payton a waiver. We agree that the powers of the Committee—an arm of this Court—"are strictly limited to those plainly granted by the [C]ourt" and "cannot be broadened by implication." *Stone v. St. Louis Union Trust Co.*, 166 S.W. 1091, 1094 (Mo. Ct. App. 1914); *see also Oklahoma Bar Ass'n v. Downes*, 121 P.3d 1058, 1065 (Okla. 2005) (explaining that bar association is "an official arm of th[e] [c]ourt," has "limited duties," and that association's general counsel, as well as state or county grievance committees, are not authorized to exceed the scope of their "limited" authority.). Consequently, the Committee cannot waive any of the requirements for admission to the Virgin Islands Bar with respect to any applicant when this Court's rules do not authorize such a waiver.

Nevertheless, the Legislature has conferred upon this Court "exclusive jurisdiction to regulate the admission of persons to the practice of law," 4 V.I.C. § 32(e), as well as the right to "adopt . . . the rules for admissions to and governance of the Virgin Islands Bar." 4 V.I.C. § 32(f(2). Courts vested with this same power in other jurisdictions have generally held that "the power to waive rules governing admission to the bar can be implied from [the] authority to promulgate such rules. . . ." *Application of Urie*, 617 P.2d 505, 510 (Alaska 1980). *See also Mitchell v. Board of Bar Exam'rs*, 897 N.E.2d 7, 10 (Mass. 2008) ("This court has the equitable power to waive a particular requirement of a court rule concerning admission to the bar.") (citing *Matter of Tocci*, 600 N.E.2d 577 (Mass. 1992)); *Application of Collins-Bazant*, 578 N.W.2d 38, 42 (Neb. 1998) ("This Court has the power to waive the application of its own rules regarding the admission of attorneys to the Nebraska bar."); *Matter of Schmidt*, 604 P.2d 1208, 1209 (Idaho 1980) ("[T]here can be little doubt that this court possesses jurisdiction on petitioner's request [for waiver] by way of its inherent power to regulate the practice of law in the State of Idaho."). Thus, this Court possesses the power to equitably waive Rule 204's requirements with

respect to Payton even if the Committee cannot independently exercise such discretion. *See In re Siders*, 199 S.W.3d 730, 731 (Ky. 2006) (waiving, due to applicant's unique circumstances, requirement that MBE score could not be transferred after three years even though Office of Bar Admissions could not waive rule's applicability).

However, while this Court may grant a waiver of its own rules, it is inappropriate to exercise this power unless a "valid and extraordinary reason exists" that justifies "dispens[ing] with [the rule] in this particular case." *In re McGinniss*, 173 N.Y.S. 209, 209 (N.Y. App. Div. 1918). As other courts have observed, "[i]ndividualized waiver determinations would be extremely time consuming, financially burdensome, and would result in a heavy administrative burden being placed on . . . this court." *Urie*, 617 P.2d at 510. Furthermore, liberal "case by case consideration of waivers invites the risk of disparate treatment of similar cases, and thus carries its own potential for unfairness." *Teare v. Comm. on Admissions*, 566 A.2d 23, 31 (D.C. 1989). Thus, the "decision to grant a waiver . . . will not be lightly made and must depend on, among other things, the demonstrated competence of the applicant. . . ." *Petition of Dolan*, 445 N.W.2d 553, 557 (Minn. 1989). We therefore hold that for an applicant to meet this heavy burden, it must "demonstrate[] 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." *Bennett v. State Bar*, 746 P.2d 143, 145 (Nev. 1987), and "that the granting of such a waiver would not be detrimental to the public interest." *In re Costello*, 401 A.2d 447, 448 (R.I. 1979). *See also Petition of Applicant No. 5*, 658 A.2d 609, 613 (Del. 1995) (refusing to grant regular admission to applicant who failed bar examination "in the absence of unique or unusual circumstances.").

We find that Payton has not met this burden. As both the Superior Court and the Appellate Division recognized, the Virgin Islands Bar Examination "supplies an objective

standard for testing the minimum legal competence required for the regular practice of law in the Virgin Islands," and "[t]o make an exception to this standard based on a subjective determination of legal competence would set a dangerous precedent." *Application No. 00017*, 2008 WL 3874283, at *4 (quoting *Applicant No. 00017*, slip op. at 9). Although we recognize that Payton has been admitted to the Pennsylvania and New York bars, admission to the bar of another jurisdiction does not, in and of itself, constitute the "unique or unusual circumstances" necessary to receive a waiver. *Applicant No. 5*, 658 A.2d at 612-13. Furthermore, while Payton contends that his years as a specially admitted attorney demonstrate that he has achieved the minimum competence necessary to practice law in this jurisdiction, both the current Supreme Court Rule 202(c) and the former Superior Court Rule 304(c) expressly state that "[a]n attorney specially admitted under this rule shall at all times be subject to the direction and control" of the sponsoring agency. In other words, "unlike regularly admitted attorneys, 'specially admitted attorneys are sponsored by and work *under the supervision* of regularly admitted members of the Virgin Islands Bar.'" *Application No. 00017*, 2008 WL 3874283, at *4 (quoting *Applicant No. 00017*, slip op. at 9) (emphasis in original). Accordingly, service as a specially admitted attorney, even if for a substantial length of time, is—without more—insufficient for a showing that an applicant has the minimum legal competence to work independently without supervision.

B. Supreme Court Rule 202(e)(2) Does Not Apply to Payton

Payton further argues that Supreme Court Rule 202(e)(2) authorizes him to fulfill the requirements for regular admission to the bar by passing the essay portion of the Virgin Islands Bar Examination, obtaining a passing score on the MPRE, and successfully undergoing the character and fitness review. Rule 202 reads, in pertinent part:

> (e) An attorney serving as a specially admitted attorney *on the effective date of this rule*, who was specifically admitted under prior versions of this rule, or under any previous provision of Virgin Islands law allowing the special admission of government attorneys, shall:
>
> . . . .
>
> (2) if specially admitted for not less than five years as of the effective date of this rule, be permitted to take and pass only the essay portion of the Virgin Islands Bar Examination in satisfaction of the bar examination requirements for regular admission to the Virgin Islands bar. The special admittee must also satisfy all other regular admission requirements including character [and] fitness and the . . . MPRE[];
>
> . . . .
>
> (f) For purposes of the time limits established in subsection[] . . . (e), the effective date of this rule shall be *September 1, 2007*.

V.I.S.CT.R. 202(e)(2), (f) (emphases added). Thus, Rule 202(e), by its own terms, only applies to attorneys who were specially admitted members of the Virgin Islands Bar for five or more continuous years as of September 1, 2007. Payton's special admission, however, terminated prior to this date. Consequently, Payton is not among the class of individuals who may obtain regular admission to the Virgin Islands Bar pursuant to the relaxed admissions requirements codified in Rule 202(e)(2).

C. Equitable Waiver of Supreme Court Rule 202 is Warranted

Finally, Payton argues that this Court should equitably waive Supreme Court Rule 202's requirements and "grandfather" him into the class eligible for regular admission pursuant to Rule 202(e)(2) so that he may obtain regular admission to the Virgin Islands Bar upon passing the essay portion of the exam, the MPRE, and the character and fitness review.[4] We agree.

Although a jurisdiction may set high standards for admission to the bar, it is well established that "any qualification must have a rational connection with the applicant's fitness or

[4] We note that although Payton states in his brief that "Rule 202[] does not have a 'Grandfather clause,'" (Applicant's Br. at 7), Rule 202(e)(4) grandfathers attorneys who have been "specially admitted for not less than ten years as of the effective date of this rule" by "permit[ing] [them] to practice as a special admittee indefinitely, provided that the employment continues with the moving department or agency or a substitute department or agency if accomplished within ninety days of termination of employment with the prior moving department or agency."

capacity to practice law." *Schware v. Bd. of Bar Exam'rs*, 353 U.S. 232, 239, 77 S.Ct. 752, 756, 1 L.Ed.2d 796 (1956). The purpose of the bar examination "is to determine the applicant's qualification to practice law in this [territory]," and not "merely to adhere to some previously stated standard irrespective of the consequences, without variance for circumstances beyond both the applicant's and the [Committee]'s control." *Petition of Thompson*, 342 N.W.2d 393, 401 (N.D. 1983). Accordingly, "it is our responsibility to determine solely for ourselves what is reasonable, applying common sense and fairness. . . ." *Id.* at 401-02.

Unlike his request to waive all of Rule 204's requirements, Payton is not required to meet the heavy burden of proving that he possesses the minimum legal competence necessary to practice law in this jurisdiction. Rather, Payton must demonstrate that "unique and unusual circumstances" exist that justify dispensing—in his particular case—with Rule 202's requirement that only applicants who were specially admitted for five or more years on September 1, 2007 may seek regular admission without taking the MBE. *Applicant No. 5*, 658 A.2d at 612-13.

We hold that Payton has met this burden. The clear purpose of Rule 202's effective date requirement was to prevent attorneys who at some point had been specially admitted for five or more years but had long since left the jurisdiction—and thus may no longer possess the level of knowledge a presently-employed specially-admitted attorney with equivalent years of experience would presumably have—from obtaining regular admission without fully demonstrating their present competence to practice law in the Virgin Islands. In other words, while substantial experience as a specially-admitted attorney is not equivalent to experience as a regularly-admitted attorney, it is also not meaningless. Thus, in adopting Rule 202, this Court implicitly, for the purposes of the rule, found that five or more years of current experience as a specially-

admitted attorney is—for purposes of determining minimum competence to practice in this jurisdiction—the functional equivalent of a passing MBE score.

Here, the record indicates that Payton had practiced as a specially-admitted attorney since 1976, and was continuously employed by the Office of the Territorial Defender between 1991 and 2006. The record also demonstrates that Payton has continued to practice in Virgin Islands courts after his retirement from government service after obtaining *pro hac vice* admissions from this Court. (App. at 25.) Thus, there is substantial evidence that Payton's knowledge of Virgin Islands practice has not become stale and that he presently possesses skills that are equivalent to a specially-admitted attorney with the level of experience contemplated by Rule 202(e)(2) even though he was not a specially-admitted member of the Virgin Islands Bar on September 1, 2007.[5]

Furthermore, we find that this Court's assumption of jurisdiction over bar admissions matters and our promulgation of Supreme Court Rule 202 constitute circumstances that were beyond Payton's control. Payton could not have foreseen, at the time of his retirement from the Office of the Territorial Defender on September 30, 2006, that less than a year later this Court would substantially alter the former Superior Court Rule 304 and exempt attorneys who have been specially admitted for five or more years from the MBE requirement. Had Payton known at the time of his retirement that this Court would shortly create an alternate method of obtaining regular admission for specially-admitted attorneys with Payon's level of experience, it is likely that Payton would have delayed his retirement or sought employment with another agency until Supreme Court Rule 202 came into effect. Therefore, this Court holds that Payton has met the

[5] Although not directly relevant to this analysis, we note that Payton has in the past obtained an MBE score as high as 132—one point below the minimum MBE score required by Supreme Court Rule 204(f). Other courts have held that even larger gaps between an applicant's MBE score and the minimum passing MBE score required by the jurisdiction may be excused when other unique circumstances are present. *See, e.g.*, *Thompson*, 342 N.W.2d at 401.

high burden necessary to obtain an equitable waiver of Rule 202(e)(2)[6] and authorizes the Committee to allow Payton to obtain regular admission in the event that he passes the essay portion of the Virgin Islands Bar,[7] the MPRE, and the Committee's character and fitness review.

IV. CONCLUSION

Although this Court finds that it has jurisdiction over the matter and agrees that it possesses the power to equitably waive the requirements for regular admission to the Virgin Islands Bar, Payton has failed to establish that waiver of Supreme Court Rule 204 is appropriate in this case. In addition, Payton does not qualify for the alternative method of obtaining regular admission provided for in Supreme Court Rule 202(e)(2). However, Payton has met the heavy burden of establishing that an equitable waiver of Supreme Court Rule 202(e)(2) is warranted due to the unique circumstances of his case. Accordingly, this Court shall grant in part and deny in part Payton's motion.

ATTEST:
VERONICA HANDY, ESQ.
Clerk of the Court

[6] Because this Court has only determined that Payton has met the high burden of qualifying for an equitable waiver, this Court's opinion should not be construed as a general holding that Rule 202(e)(2)'s effective date requirement has been or will be waived with respect to any other applicant. Specifically, we note that one of the goals beyond Rule 202 was to treat attorneys who had been specially-admitted for a substantial period of time prior to the rule's promulgation differently from new special-admittees.

[7] Although Payton states in his motion that he had passed the essay portion of the Virgin Islands Bar Examination in the past but was denied admission on the basis of his MBE score, this Court does not intend for its equitable waiver of Rule 202(e)(2) to apply retroactively to administrations prior to the date Rule 202(e)(2) was adopted. Accordingly, Payton may not use a passing score on the essay portion of the Virgin Islands Bar Examination obtained prior to the date this Court promulgated Rule 202(e)(2).