APPENDIX

ATTACHMENT 1
Order of Judge Michael Loney
July 13, 2006

IN THE CIRCUIT COURT OF ANNE ARUNDEL COUNTY

STEPHEN N. ABRAMS, *
Plaintiff, *
v. * Case No. C-06-115383
LINDA H. LAMONE, et al. *
Defendants. *
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ORDER

Upon consideration of Plaintiff Stephen N. Abrams's Motion for Temporary Restraining Order, it is this 13th day of July, 2006, ~~at ___ p.m.~~ ORDERED, as follows

1. Plaintiff's Motion for a Temporary Restraining Order is hereby DENIED. The Court finds that this Plaintiff will not suffer immediate, substantial, and irreparable harm from the denial of a Temporary Restraining Order.

2. Despite the Court's denial of Plaintiff's Motion for a Temporary Restraining Order, the Court believes that the Complaint raises substantial and important issues on the merits that warrant a full adversary hearing.

3. Accordingly, the Court ORDERS that the time for Defendants to respond to the Complaint is shortened until five (5) days from service of this Order on the Defendants.

Judge
Circuit Court for Anne Arundel County

ATTACHMENT 2
Ruling of Judge Paul A. Hackner
Issued from the bench
July 31, 2006

practice to look at those issues. As I said before, it looks at a very narrow category of issues. The predecessor version of Section 5-301 in -- I think it was Article 33, Section 4(a)-1 and another provision, which escapes me, make it clear that the enumeration in 25-301(b)1 and 2 really is meant to be --- but very --- category of things that the State Board can look at.

I think that is all I have unless Your Honor has any questions.

THE COURT: Thank you very much.

MR. BROCKMAN: Thank you.

THE COURT: I know that we have already gone back and forth, but if anybody has anything that they forgot to mention I will certainly give you the opportunity. Mr. Abrams, anything else?

(No audible response.)

THE COURT: Well, thank you very much, counsel. I appreciate the effort. I appreciate your arguments and on the self-congratulatory aspect of this proceeding I will also join in saying that from what I could tell of the file -- I haven't actually had any physical contact with any of you, but you certainly seemed to have worked with each other in a collegial manner and professional manner and it makes a difficult situation easier to have that happen rather than to put the Court into the initial trouble I guess of having to

deal with antagonistic forces and trying to schedule something on an expedited basis.

And recognizing that timing is a critical issue in this case and not being naive enough to think my decision is going to be the last word on the subject, I suspect that perhaps you would as soon I be wrong, but quick about it than to be right and give you a brilliant opinion six weeks from now.

I am going to venture into that and I am going to give you my oral opinion today. And I will look forward to reading in the papers whether I was right or wrong.

We have several issues I guess and I want to address them in some manner of order. The first question I suppose from both perspectives, both the Defendants' perspectives, is whether or not the action filed by Mr. Abrams was timely under 12-202 of the Election Law Article.

And that provision, as I think everybody understands quite well, says that a quest for a judicial challenge must be filed within 10 days after the act or omission, or the act or omission became known to the petitioner. And those two alternatives are all part of one of the two options. And then the other option, which doesn't really apply here, is seven days after the election results are certified. So it is the earlier of the first two versus

the latter, which is the seven days.

And as I think I hinted in some of my questions, it is not completely clear to me what the triggering event is in this case; whether it is the filing by Mr. Perez of his certificate of candidacy; whether it is the deadline by which, as I suggested earlier, things are sort of crystal clear as to who is in the running and who isn't; or whether it is some event that might have happened even after that between the 3rd of July and the 13th, which is the period within which the candidacy could be withdrawn.

Now Mr. Abrams has suggested certainly in his briefs and his arguments that it is incumbent upon the Board to do more than it did in this case to review the application of Mr. Perez and other candidates and determine the qualifications.

The Board has indicated that for practical reasons and also for reasons having to do with the manner in which certain issues have to be adjudicated that the Board is not able to make certain decisions.

They can look at the more ministerial things. They can look at whether somebody is listed as a registered voter and some of the other kind of more obvious qualifications. But when it comes down to the concepts of domicile, for instance, residence, if you will or a question of whether somebody is "practicing law" that those are, as the Board has

mentioned in its brief, fact intensive and they are not as susceptible to a quick yes or no answer.

I don't think anybody would question that if the Constitution of Maryland said that in order to be eligible to be Attorney General you have to be a member of the Maryland Bar for at least 10 years, we wouldn't be here. And the Board could have checked on that in about, you know, five minutes online or calling the Court of Appeals or any other way.

So I am not convinced that the clock in this case, for purposes of 12-202, begins to run at any time prior to the deadline for filing, which is July the 3rd.

I think that to the extent that there may have been errors -- and I am using this in sort of a hypothetical sense, if an error is committed and someone files a petition that perhaps is inaccurate or wrong that until -- that is sort of the closing bell, if you will, there are opportunities for that to be repaired.

In theory, if Mr. Abrams' position were to hold true, the Board could say Mr. Perez, you don't qualify because you haven't been a member of the Bar for 10 years. You have got to withdraw or we won't accept it. Or if there are other methods by which that defect -- alleged defect could be rectified.

So I am really not certain at all or certainly not

enough to grant a motion to dismiss. To say that the triggering date for 12-202 is the filing, which as we recognize could be done any time up to July the 3rd.

Therefore, I believe that 12-203 -- I am sorry, 12-202 has been complied with in that the request for judicial review or whatever we are calling this particular proceeding -- judicial challenge has been filed within the statutory 10-day period.

The next question is a matter of laches. Now laches, as all of us who suffered through equity in law school know, is a doctrine that is employed by an equity court which would bar an action even though it might be filed in a timely manner by statute, but it would be barred because the claimant neglected to prosecute the matter in such a way that it causes -- as a result of passage of time, it causes the adversary to be prejudiced.

Now I certainly understand that, as Mr. Brockman spelled out, that everything involving the electoral process is on a very, very tight time line. And I recognize that every day that passes creates the potential for greater problems and greater expense to the State Board.

However, in large part those timing issues are not triggered by anything that Mr. Abrams did or didn't do in this case. I mean the fact of the matter is that there is just a whole lot of stuff that needs to get done and a

relatively short period of time to do it.

So I can't really say that the Board has been prejudiced at this point by anything that has happened in this case other than the obvious inconvenience and heartburn that is associated with having pending litigation.

And on the other prong of the analysis I am certainly not convinced and I really don't find that Mr. Abrams has in any way been dilatory in this case. Sure, one could debate whether he could have served or had the Defendant served in fewer than five days.

He in turn could have I guess, as he did, debated whether the responses would have been filed any sooner and so forth. But I think within the context of this case and given the complicated nature of the issues and so forth, what he did was certainly within reason. I don't think that there was any dilatory conduct on his part.

I suppose -- although he didn't say it, I certainly thought it as I was reading the pleadings, that if the Defendants in this case were more anxious than they apparently are to get this matter litigated quickly they could easily have filed a response without waiting to be formally served.

I mean the Defendants were aware of the pendency of this matter and a quick line of entry of an appearance would have sufficed and wouldn't have required that five-day

period. But I am quite certain, judging from the well-drafted briefs in this case that those five days or so plus the additional five days to file a response were very well received -- I mean, you know, well utilized is what I meant to say. And so I don't anybody has acted diligently at all.

And with the respect to the doctrine of laches I likewise find that that does not apply in this case. And for that reason, with respect to the motion to dismiss filed by the State Board of Elections, and on behalf of the Administrator, Ms. Lamone, the Court is going to deny that motion to dismiss.

Which then brings me to the more difficult question, at least in my mind, which is on the merits of the action. The question -- and I think we need to be very clear on the precise question that the Court is dealing with. The question is not -- although we have sort of waltzed around it, is not whether or not at this moment in time Mr. Perez needs to be a member of the Maryland Bar. One could debate that point.

You know, his counsel would say that Article 5, Section 3 says that the AG is always entitled to come into Court by statutory fiat or by constitutional fiat and that all of the other lesser laws must step aside. But that is an academic argument that I don't think there is any point in engaging in because we know that he is a member of the

Maryland Bar at the moment and has been for approximately five years.

So the real question and really I think the only question in this case is whether under Article 5, Section 4, the constitutional requirement that a candidate for Attorney General have been both a resident for 10 years, which is not a -- I mean, citizen I guess it says, and qualified voter which is not an issue. Residency is also not an issue.

But the question is whether he has practiced law in this State for at least 10 years. Now I don't know to what extent it is or isn't contested. I suspect it really isn't a matter of great controversy that Mr. Perez has practiced law, as that term I think would be defined by courts in just about every state and particularly Maryland, in that he has been engaged in day-to-day activities that involve the giving of legal advice, involved in either he, personally, or his associates or delegates appearing in court, and his being involved the daily interpretation of the law.

The question I really guess is whether that is in Maryland or somewhere else? And so to I guess digress a moment, I do think that as far as how the Court is handling this matter, I am going outside the pleadings and I am going to take into consideration -- just as I have Mr. Abrams' affidavit, I am taking into consideration Mr. Perez' affidavit so that I don't feel that if I read -- strictly

read the complaint that I would be in a position to grant relief in this case simply on the pleadings.

So the question is do you have to be a Maryland Bar member for at least 10 years because only a Maryland Bar member can practice law in the State of Maryland?

And the answer -- the quick answer to that is no. The quick answer is that you can practice law in the State of Maryland without being a member of the Maryland Bar. And the Court of Appeals, the Maryland Court of Appeals, I think has made that clear in a somewhat different context no doubt, but the proposition is still the same.

In the Kennedy case which has been cited in the briefs. And the other case, which escapes me for the moment, Bridges, the Attorney Grievance Commission and Bridges.

The Kennedy case stands for a proposition that you can have essentially a federal practice in the State of Maryland even if you are not a member of the Maryland Bar.

And the Bridges case involves a situation where an attorney was admitted to the Maryland Federal Bar; in other words, he was admitted to the United States District Court for the District of Maryland. And he was deemed to have "practiced law" in this State by handling approximately five federal cases per year in Maryland.

The Court of Appeals in the Bridges case cited with approval the Sparry vs Florida case, which is the Supreme

Court case that we have all been discussing and saying that the Supreme Court in that case recognized "an attorney's right to maintain a legal practice restricted to the federal courts prior to admission to that state's bar."

Another case that surfaced in the pleadings is the matter of RGS, which is again a Maryland Court of Appeals case, which I think has some significance because Mr. Abrams argues that you can't practice law in the State of Maryland without being a member of the Maryland Bar because to do so you would be engaged in the unauthorized practice of law.

The case of RGS, which parenthetically I am one of perhaps few people in this room who know who RGS is because he was a former law partner. But in the matter of RGS, the Court found that a variety of activities that Mr. S was involved in, which were clearly, in the Court's opinion, the practice of law, were not unlawful practice of law because the Court made a distinction between the definition of "practice of law" as it pertains to the rules of professional conduct versus the rule of admission to the bar, which is what was involved in the RGS case.

In the RGS case, Mr. S was attempting to obtain membership in the Maryland Bar without taking a full bar exam. He wanted to take the attorney bar and in order to do so you had to be "practicing law" for some period of time. I don't recall precisely what it was.

And so the argument was well, the same sort of circuitous argument. You can't practice law because it would be unlawful and if it is unlawful it doesn't count and therefore you haven't been practicing law. And the Court -- in that case the Court of Appeals says that -- the same words, but they are distinct concepts.

And I think that -- what I thought was very meaningful is that in that case the Court of Appeals said that words may be given one meaning in one statute and an entirely different meaning in a different statute determined by the character in and the purpose of the legislation.

I also find it significant that the Court of Appeals in that case cited with approval an Attorney General's opinion, '68 opinion. And cited among other things the provision of that opinion that recognized that the phrase such as "practice of law" may mean different things in different contexts and specifically as used in Article 5, Section 4 of the Constitution relating to the qualifications for the Office of AG, the phrase means -- this is quoting the Court of Appeals.

The phrase "Means something quite different from and much less restricted than the meaning of "practice of law" for the purpose of Rule 14 or any unauthorized practice."

So the argument that Mr. Perez could not have been

practicing in Maryland because by having done so he would be engaged in unlawful practice I think is unavailing.

The other argument, which I must say was certainly tempting and was one that gave me pause. And without asking anybody to feel sorry for me, but I have spent the better part of the weekend trying to figure out the answer to this. Was how could the drafters or the framers of the Constitution have imagined that someone appointed as Attorney -- or someone elected as Attorney General would not be a member of the Maryland Bar?

And obviously and certainly very interesting historical tidbits that at the time when the Constitution was drafted in 1864 and then again in 1867, the AG could not hire or deputies could not hire assistants and so therefore, you know, there was this very appealing logic that you wouldn't have an Attorney General that couldn't go to court.

Well I took a read of the Maryland Law Review article that was written by William H. Adkins the 2nd. And I don't know where in the dynasty of Adkins he fits in, but certainly a name that we all know in Maryland. That is a --- Maryland Law Review.

And what I learned by reading that is that back in that time we didn't have anything near what we have now by way of a statewide uniform bar exam. And that it wasn't until 1831 that any effort was made to establish uniformity

through the State. But that effort basically took place in the form of each individual court admitting attorneys to practice before it.

And that is why when I read Mr. Abrams' brief I had noted that the words were used somewhere in his brief that the courts of the state weren't in charge of admissions. I don't remember the exact language, but I particularly noted that it was a plural, which is clearly different than what we know, which is that only one court is in charge of admissions and that is the Court of Appeals.

And the reason for that -- and that quote was certainly accurate, but I understand now the reason for it. Is that in that day, well before the constitutional provision that we are talking about and at the time of the constitutional provision, anyone who wished to appear in a court would have to gain admission to that court.

So if you wanted to go to Garrett County's Circuit Court or whatever they called it at the time, you had to make sure that the judge in Garrett County admitted you to practice. And he or she -- well at the time it would have been a he, no she -- no shes allowed at that time. But he would have then been involved in the process of determining whether you had the basic qualifications and the basic integrity and ethics to participate in the proceeding in that court.

And it wasn't until 1898 that there was a statewide admitting process, which is the result of an evolution because in the earlier days it was becoming burdensome, that the Circuit judges simply didn't want to be involved in the process of, you know, having an attorney come in and be admitted.

And it wasn't until 1898, which is well after the constitutional provision was initially launched in this case that it became sort of a statewide precursor to their modern bar exam. There was a three-lawyer board that was in charge of an examination.

So that answered, at least in my mind, the issue of, you know, how would these framers have envisioned an Attorney General not being a member of the bar. Well it would have meant simply that the Attorney General when he had a case in one particular county or another would have gone to the court and would have said I'm here, I have a case and I would like to be admitted.

And as the article in the Law Review article says "Upon application the courts were required to examine the applicant upon the same day during a regular session thereof. So it wasn't a diploma you put on your wall that you could count on for the rest of your career, but you have to be admitted presumably not more than once, but at least once on the day that you went to court.

So that then eliminated the question that I have in my mind as to whether there is some internal inconsistency or whether there is an implicit requirement that the framers of the Constitution meant when they worded the constitutional provision the way they did.

And if we then sort of roll back to the basic concept, that you look at a constitutional provision or any statute for that matter, according to its plain language, the plain language says absolutely nothing about being a member of the bar because frankly that had a whole different import back in that day than it may have now.

Unquestionably in the normal parlance, when we talk about somebody practices law, we probably, as lay people, would assume that means that he or she is admitted to that state's bar.

But then in the same conversation that individual could say well, I practice law, but only in the federal courts. Or I practice law only in the patent office or in some of the other special tribunal that exists.

And we recognize that saying practicing law and being admitted to the bar are not the same. They are actually separate concepts.

The argument that we should look at a statutory provision consistently throughout the statute is certainly a good one; although I would perhaps come to a different result

than Mr. Abrams, which is the framers in Section 4 say nothing about being a member of the bar and then in the same Constitution in the other section, which pertains to the assistants -- I am sorry, the State's Attorney and then also the provision having to do with circuit judges, specifically say you have to be a member of the bar.

So I don't think that I am allowed to assume that they didn't use that expression in Section 4 because they assumed it meant the same thing. I think I have to come to the opposite conclusion, which is if it meant the same thing, they wouldn't have found it any more necessary to mention in conjunction with a circuit judge or in conjunction with a State's Attorney.

So the plain language I think leads me to the inescapable conclusion that it simply requires that someone have practiced for at least 10 years in the State of Maryland, but that does not tantamount to being a member of the Maryland Bar.

As I said, I think I already covered this, but just to make sure I didn't forget, that I am not passing on the question of whether you need to be a member of a bar at the moment. I think that is somewhat of a point. The other -- I guess somewhat more of an editorial comment than anything else, is the question of do you interpret the statute according to the passage of time, according to our current

understanding? And I think we certainly have to.

I think -- in my reading of some of the pleadings or something I read that the Department of Justice didn't even come into existence until some time after the Constitution. I think it was 1870 that the Department of Justice came into effect. And obviously the framers might not have been aware of that in 1864.

But if we go back to a notion of reading that statute the way the framers might have been reading it in 1864, I can't help but comment that you would have to be a member of the bar. You would have to be a white male over the age of 21.

And we certainly recognize that that is not the requirement at the moment and we know why. But it doesn't allow us I think to come to the conclusion that they were -- they meant to say something that they didn't say.

So I find that without going into the specific facts, which I think are well laid out in Mr. Perez' affidavit, that as a factual matter he has practiced law. That as a legal matter that practice occurred in Maryland. And accordingly that under Section 4 of Article 5 of the Maryland Constitution he is eligible to stand for election as Attorney General.

And accordingly I am going to grant Mr. Perez' motion for summary judgment, deny Mr. Abrams' cross-motion

for summary judgment. And having denied the Board's motion to dismiss I believe this makes this a final judgment, which should be ready for the folks down on Rowe Boulevard. And I will enter a final judgment.

Thank you very much. And I will see something in the papers soon, I am sure. Good luck.

MR. BROCKMAN: Thank you, Your Honor.

MR. DANSICKER: Thank you, Your Honor.

MR. ABRAMS: Thank you, Your Honor.

THE CLERK: All rise.

(Whereupon, the hearing was concluded.)