

NEBRASKA SUPREME COURT

In re Application of Mark R. O’Siochain for Admission to the  
Nebraska State Bar

287 Neb. 445 (2014) · No. S-13-539 · Decided February 14, 2014

SUMMARY

The Nebraska Supreme Court reviewed de novo the denial of Mark R. O’Siochain’s application for admission to the Nebraska bar without examination. The court held that his foreign legal education, bar-preparation study, professional experience, New York bar admission, and examination results were functionally equivalent to the education required by an American Bar Association-approved law school. The court waived the applicable educational requirement and granted his application.

CASE DETAILS

|                       |                                                                                                                                                                                        |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Nebraska Supreme Court                                                                                                                                                                 |
| WRITING FOR THE COURT | Heavican, C.J.; Wright, J.; Connolly, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.; Cassel, J.                                                                                    |
| JURISDICTION          | Nebraska                                                                                                                                                                               |
| DECIDED               | February 14, 2014                                                                                                                                                                      |
| DOCKET                | S-13-539                                                                                                                                                                               |
| DISPOSITION           | approved                                                                                                                                                                               |
| PROCEDURAL POSTURE    | Original action and appeal from the Nebraska State Bar Commission’s denial of O’Siochain’s application for admission to the Nebraska bar without examination as a Class I-A applicant. |
| STANDARD OF REVIEW    | De novo review on the record made at the hearing before the Nebraska State Bar Commission.                                                                                             |
| PRECEDENTIAL VALUE    | Published Nebraska Supreme Court opinion; precedential.                                                                                                                                |
| PARTIES               | Mark R. O’Siochain v. Nebraska State Bar Commission                                                                                                                                    |

TOPICS

- appellate procedure
- standard of review
- administrative law
- judicial review of agency action

PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether the Nebraska Supreme Court should waive the educational requirement in Neb. Ct. R. § 3-105(A)(1)(b) for a foreign-educated applicant seeking admission without examination as a Class I-A applicant.
2. Whether the applicant's education, bar-preparation study, examination performance, professional experience, and New York bar admission demonstrated functional equivalence to the education provided by an ABA-approved law school despite his not having taken courses in trusts and estates, family law, and civil procedure.
3. Whether the core courses identified in prior Nebraska admission cases are mandatory prerequisites or evidence to be considered in determining functional equivalence.

## HOLDINGS

1. The Nebraska Supreme Court reviews an applicant's appeal from a final adverse ruling of the Nebraska State Bar Commission de novo on the record made before the Commission.
2. The court may waive Neb. Ct. R. § 3-105(A)(1)(b) for a graduate of a foreign law school based on English common law when the applicant affirmatively demonstrates that the applicant's education is functionally equivalent to the education required for a juris doctor degree from an ABA-approved law school.
3. The core courses identified in *In re Appeal of Dundee* and subsequent cases are evidence of functional equivalence, not bright-line requirements or a checklist that every applicant must satisfy.

## KEY QUOTATIONS

*"Thus, in determining whether an applicant's education is functionally equivalent to that received at an ABA-approved law school, the core courses are evidence of equivalency but not bright-line requirements."* (452-453)

*"Admission rules are "intended to weed out unqualified applicants," not "to prevent qualified applicants from taking the bar.""* (454)

*"Based on a de novo review, we conclude that O'Siochain has met his burden of proving his law school education and experience were functionally equivalent to the education received at an ABA-approved law school and that as a result, a waiver of the educational qualifications requirement of § 3-105(A)(1)(b) is appropriate."* (455)

## FACTUAL BACKGROUND

O'Siochain graduated from University College Dublin in Ireland in 2004 with a four-year business and legal studies degree from an English-speaking common-law school that was not ABA-approved. He completed a Barbri course covering, among other subjects, trusts and estates, family law, and civil procedure; passed the New York bar examination and the MPRE; and was admitted to the New York bar in 2006, where he remained in

good standing. He practiced transactional law in New York and later worked as a corporate attorney in Nebraska. Although he had not taken certain core courses at UCD, the Nebraska State Bar Commission found that his education was functionally equivalent to that provided by an ABA-approved law school but denied the application based on the missing courses.

#### **PROCEDURAL HISTORY**

O'Siochain applied for admission without examination under Neb. Ct. R. § 3-105(A)(1). The Nebraska State Bar Commission denied the application because he lacked a first professional degree from an ABA-approved law school. After a hearing and additional evidence, the Commission again denied the application and declined to recommend a waiver of the educational requirement. O'Siochain appealed to the Nebraska Supreme Court, which reviewed the record de novo.

#### **DISPOSITION**

approved

#### **CASES CITED**

- In re Application of Brown, 270 Neb. 891, 708 N.W.2d 251 (2006)
- In re Application of Budman, 272 Neb. 829, 724 N.W.2d 819 (2006)
- In re Appeal of Dundee, 249 Neb. 807, 545 N.W.2d 756 (1996)
- In re Application of Collins-Bazant, 254 Neb. 614, 578 N.W.2d 38 (1998)