A.G. must be 10-year member of Maryland bar, says Md. Court of Appeals.
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Byline: Caryn Tamber

A candidate for attorney general in Maryland must have been a member of the state bar for at least 10 years, the Court of Appeals declared Monday in explaining why it removed Thomas E. Perez from the ballot last summer. While all seven judges agreed that Perez was ineligible to run, the case produced four opinions: a three-judge plurality and three concurrences. The plurality said that to qualify, a candidate must also have practiced law in the state for 10 years. Perez could not count his years as a lawyer for the U.S. Department of Justice, where his duties included representing the federal government in state courts, the judges said. The plurality's strict rules raised questions about whether the state's current attorney general, Douglas F. Gansler, was qualified at the time he ran, attorneys for both sides said. Aside from pro bono work, Gansler's practice in Maryland was limited to the eight years he spent as state's attorney in Montgomery County.

Different interpretations The court knocked Perez, a Democrat, out of the attorney general's race with a brief order last summer, two and a half weeks before the party's primary election. Gansler, also a Democrat, won the party's nomination and went on to win the 2006 election. Monday's 100-page opinion explained the court's earlier decision. But in concurring opinions, the judges differed on what the Constitution means when it says that an attorney general must also have "practiced law" in Maryland for 10 years. "The problem for Mr. Perez, first, is that he was not admitted by this Court to practice in Maryland for ten years," Chief Judge Robert M. Bell wrote for the plurality -- himself, retired Judge Alan M. Wilner and Judge Dale R. Cathell. "Second, and equally significant, his work, in Washington, for the Department of Justice from 1989 to 1999 and, on a part-time basis, for the Senate Judiciary Committee, though it included an occasional involvement over that 10-year period with an unquantified but apparently small number of cases in Maryland, does not qualify as practicing law in this State for that period," Bell wrote. Gansler's qualifications were challenged late in the election season last year by people arguing that, although he had been a member of the Maryland bar for 17 years, he had spent nine of those years in private practice in Washington and working as a federal prosecutor. The Court of Appeals refused even to consider tossing Gansler from the race, holding that the challenge had been filed too late. "My reading of Bell's ruling is had Gansler been challenged by July 13, the burden would have been on Gansler to demonstrate that he had ... sufficient state practice to qualify," said Stephen N. Abrams, the Rockville lawyer and former Republican candidate for comptroller who challenged Perez's qualifications. Andrew M. Dansicker, who argued the case for Perez, went even further. "If you read the decision of the plurality, it was very obvious that Attorney General Gansler is not qualified to be attorney general," he

said. Gansler, through his attorney Dan Friedman, declined to comment on the ruling.

The concurrences The other four judges who heard the Perez case agreed with Bell on the Maryland Bar requirement but disagreed that there is a practice requirement as well. Perez was admitted to the state bar in 2001. He is now Gov. Martin O'Malley's Secretary of Labor, Licensing and Regulation. In a concurring opinion, retired Judge John C. Eldridge -- joined in full by Judge Irma S. Raker and in part by Judges Clayton Greene Jr. and Glenn T. Harrell Jr. -- wrote that since the Maryland Bar requirement was enough to disqualify Perez , there was no need to consider whether there is a practice requirement. "Exploring all aspects of a constitutional phrase may be appropriate for a treatise or law review article," wrote Eldridge, who sat on the panel in place of Judge Lynne A. Battaglia. "It does not, however, reflect the type of judicial restraint which should characterize appellate opinions." Eldridge and Raker went on to hold that even if it was proper to decide whether there is a practice requirement, the plurality got it wrong. Bell's opinion could put the Court of Appeals in the position of deciding whether future candidates' legal experience counts as practicing in Maryland, something the framers of the Constitution could not have intended, Eldridge wrote. That decision should be left to the voters, the concurrence said. Greene and Harrell, meanwhile, agreed with Eldridge and Raker that the other judges should not have gone into the practice requirement issue, but they did not join in condemning Bell's holding on that issue as incorrect. They penned a short concurrence. In a third concurring opinion, Wilner defended the plurality's position. "Under Judge Eldridge's view, a person could pass the Bar Examination, be admitted to practice, open a liquor store, never do anything that could conceivably, under any definition, constitute the practice of law, become politically active, and ten years later be elected as Attorney General of Maryland," Wilner wrote.

'Parochial' Abrams said he was gratified that all seven judges agreed with his argument that Perez was unqualified because he had not been a bar member for long enough. However, he said he thinks the position of Bell, Wilner and Cathell on the practice requirement was overly narrow. "[Bell's] view is a much more parochial view of the difference between state and federal law and of a much more parochial view as to the primacy of the Maryland Bar," Abrams said. Dansicker called the decision "philosophically tortured" and "logically indefensible." He said the court read into the Constitution a bar membership requirement that was not explicitly stated, a technique it declined to use in other cases decided around the same time. "They wanted to get to a resolution and they got to it and this was the easiest way to get to it," he said. Of the multiple positions taken by the judges, the one taken by Bell, Wilner and Cathell made more sense than the concurrences, he said. He called the idea of taking into account bar membership but not practice "bizarre."

WHAT THE COURT HELD Case: Abrams v. Lamone et al., CA No. 142, Sept. Term 2005. Reported. Opinion by Bell, C.J. (plurality); concurrences by Eldridge, Wilner and, together, Harrell and Greene, J.J. Filed March 26, 2007. Issue: Does the

Maryland Constitution require that a candidate for attorney general be admitted to practice law before all state courts of Maryland for at least 10 years prior to commencing a term as attorney general? Holding: Yes; Perez removed from ballot. The Maryland Constitution requires that the attorney general have been admitted to the Maryland Bar for at least 10 years. Counsel: Stephen N. Abrams for appellant; Andrew M. Dansicker and Asst. A.G. William F. Brockman for appellees.