

**Scharf-Norton Center for Constitutional Litigation
at the GOLDWATER INSTITUTE**

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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

PETITION TO AMEND SUPREME
COURT RULE 34(f)

Supreme Court
No. R-24-0028

**REPLY IN SUPPORT OF THE
PETITION TO AMEND RULE
34(f), RULES OF THE
SUPREME COURT**

Pursuant to Ariz. S. Ct. R. 28, Jonathan Riches, Timothy Sandefur, and Adam Shelton, individually and on behalf of the Goldwater Institute, respectfully petitioned the Arizona Supreme Court to amend Rule 34(f), governing the methods of admission for attorneys who are already licensed in other jurisdictions to be authorized to practice law in Arizona. The undersigned filed this Petition on January 10, 2024. The Court ordered the Petition open for public comments on January 17, 2024. Petitioners, in support of that Petition, now reply to public comments.

DISCUSSION

Petitioners propose four amendments to this Court's rules on Admission on Motion. **First**, Petitioners propose to remove the provision requiring as a condition of admission by motion that the other state in which the attorney is licensed offer an admission on motion option to Arizona attorneys ("reciprocity requirement"). **Second**, Petitioners propose to eliminate the requirement that a foreign-admitted attorney have been engaged in the "active practice of law" for three of the past five years ("active practice requirement"). **Third**, Petitioners propose that the juris doctor requirement for admission be deemed satisfied with respect to certain foreign-educated lawyers ("foreign education provision"). **Fourth**, Petitioners propose eliminating the requirement that an applicant undergo an Arizona-specific character and fitness examination if the applicant has successfully completed a character and fitness examination in another jurisdiction, unless good cause exists to further examine that applicant's character and fitness ("character and fitness presumption").

All four of these proposals share a common goal: to lessen the burdens on attorneys licensed in other jurisdictions and thereby to increase the availability of legal services to Arizonans.

Eight comments were filed in response to the Petition. Six of these urged the Court to adopt the Petition as submitted. Two comments, one from the State Bar of Arizona (State Bar) and one from the Committee on Character and Fitness

(Committee), take no position on parts of the Petition, and argue, in part, against other portions of the Petition. Specifically, both the Committee and the State Bar urge the Court to reject the character and fitness presumption. The Committee, however, supports, in part, eliminating the active practice requirement. (The State Bar opposes this.) Neither the Committee nor the State Bar take any position on eliminating the reciprocity requirement or the new foreign education provision.

As there is no opposition to the foreign education provision, this reply will not address that proposal further, and Petitioners urge the Court to adopt that provision as submitted. The comments opposing the active practice requirement and the character and fitness presumption are addressed below.

I. Active Practice Requirement

The Petition proposes that the Court eliminate the requirement that attorneys seeking Admission on Motion in Arizona show they have been engaged in the active practice of law for three of the past five years. As explained in the Petition, this requirement discourages new attorneys, recent retirees, and those seeking to resume their legal practice after having exited for a time (for, e.g., family reasons, such as child-rearing or caring for an elderly family member) from offering legal services to Arizonans. This, of course, makes legal services harder to get and more expensive for those who need them.

The Committee recognizes the potential harm of the active practice requirement when it says that the “requirement may adversely impact new parents who leave the practice of law to raise young children.” The Committee proposes an alternative: an attorney must still be engaged in the active practice of law for three years to be eligible for Admission on Motion, but those three years of practice need not be within the preceding five years. (The State Bar opposes any changes to the requirements.)

Importantly, neither the Committee nor the State Bar address the incongruity in the admission rules related to active practice requirements. Currently, an individual can become licensed under Rule 34(h) with the transfer of a Uniform Bar Examination (UBE) score taken within the last five years. Under that rule, there is **no requirement under that provision that the applicant have *any* years of active practice** to be eligible for admission.

It makes no sense to permit an applicant with *zero* years of *any* active practice to transfer his or her UBE score, and gain admission immediately after the score notification—while requiring an attorney licensed by a competent jurisdiction and in good standing in that jurisdiction, and who has actual experience practicing law, to satisfy a three-year requirement before being admitted on motion. The Committee says that “demonstrating at least three years of active legal practice helps to demonstrate the fitness to practice law in Arizona,” but it is already the rule that an

individual with a passing UBE score may practice law in Arizona without satisfying any active practice requirement. And there is no reason to believe that individuals with less than 3 years of active practice are as a general rule less competent or trustworthy than those who apply under the UBE transfer procedure which has no active practice requirement.

The Court should eliminate the active practice requirement.

II. Character and Fitness Presumption

The Petition proposes that an applicant's successful completion of a character and fitness examination in a jurisdiction where the applicant is currently licensed would preemptively establish that the applicant possesses the character and fitness necessary to practice law in Arizona. Under this proposal, an applicant would not have to go through an additional character and fitness evaluation in Arizona absent sufficient cause to believe that the previous evaluation and investigation was deficient.

This proposal is aimed at easing the burdens on licensed attorneys becoming authorized to practice law in Arizona and serving the legal needs of Arizonans. The character and fitness examination takes a minimum of four months to be completed.¹

¹ <https://www.azbaradmissions.org/appinfo.action?id=241>

This takes time and imposes costs that ultimately come from the pockets of Arizonans who need legal services.

Both the State Bar and the Committee oppose Petitioners' proposal. The State Bar gives no reasons for their opposition, therefore, and consequently their opposition should be disregarded. The Committee, however, asserts that "an applicant's membership in another jurisdiction's bar is not sufficient to establish, by clear and convincing evidence, that the applicant has 'good moral character' and the relevant traits and characteristics required under Arizona Supreme Court Rule 36(b)." In support of this contention, the Committee presents eight instances between 2017 and 2022 of individuals who were licensed and in good standing in other jurisdictions, but nevertheless had character issues that prevented seven of the eight from eventually receiving Committee approval.

Without denying the importance of these examples and the role the Committee plays in ensuring that those who apply to practice law in Arizona have good moral character, these examples are insufficient to deny the character and fitness provision of the Petition.

Between 2017 and 2022, 1,115² attorneys were admitted under the Admission on Motion rule.³ The Committee identified *eight* applicants (seven of whom were denied admission or permission to sit for the bar) whose investigations turned up character and fitness issues despite their already being licensed in another jurisdiction. That makes up **just a fraction of a percent** of those who were successfully admitted under the Admission on Motion process. Even allowing for the possibility of individuals applying for Admission on Motion and being denied for other reasons not flagged by the Committee in their opposition, it seems unlikely to raise the percentage in any significant way.

In other words, that the Committee is arguing the over 99% of applicants seeking Admission on Motion should be required to undergo the burdensome, time-

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2017	158	ARC Annual Report (04/26/18), https://tinyurl.com/535ufsvf
2018	185	ARC Annual Report (04/30/19), https://tinyurl.com/bddy4pcu
2019	197	ARC Annual Report (04/30/20), https://tinyurl.com/yhfath4a
2020	170	ARC Annual Report (04/14/21), https://tinyurl.com/ynjwstfx
2021	249	ARC Annual Report (04/30/22), https://tinyurl.com/h7dtyaah
2022	156	ARC Annual Report (04/2023), https://tinyurl.com/4vs7k6x2
Total Between 2017-2022	1,115	

³ These numbers are the best available as there is no report of the number of individuals who applied under the admission on motion process and were denied admission.

consuming, and costly character and fitness process to stop the fraction of a percent of applicants that the Committee identified over a six-year period (none of them within the last two years). This is an unfair and unnecessary burden on the vast majority of applicants, and will continue to create unnecessary barriers to those who can effectively provide legal services to Arizonans who need them.

The proposed Petition does not suggest lowering the character and fitness standards. Nor does it suggest limiting the Committee's capacity to evaluate an applicant's character and fitness if it has cause to do so. It simply suggests that when a practicing attorney's character and fitness has been approved by a sister state, this be considered presumptive approval here. But the proposed rule would allow the Committee to implement additional inquiries as part of the Admission on Motion process regarding matters that raise questions regarding an applicant's character and fitness. For example, the Committee may ask questions such as the following:

- Have you been convicted of, or pled guilty, to a felony?
- Have you been found by a court to have engaged in fraud?
- Have you been disciplined by an educational institution which you attended?
- Have you been disciplined by the lawyer regulation body of any jurisdiction?
- Have you filed for bankruptcy?
- Have you failed a previous character and fitness evaluation?

If the applicant supplies answers that warrant further investigation, the Committee would still be free to investigate.

Thus, the approach Petitioners suggest will balance the needs of Arizonans for legal services with the needs of the bar to ensure fitness and character. The proposal would enable the Committee to identify character and fitness issues of applicants while simultaneously removing burdensome obstacles from those who have already undergone and passed a similar investigation in another jurisdiction.

CONCLUSION

The Petition should be granted.

Respectfully submitted May 31, 2024, by:

/s/ Adam Shelton _____

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