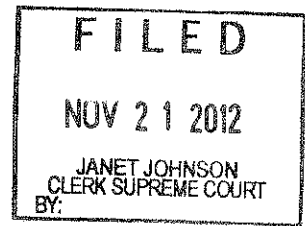


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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

PETITION TO AMEND RULE
34(f)(1)(A), RULES OF THE
ARIZONA SUPREME COURT

Supreme Court No. R-12-0005

**Reply to Second Comment of the
Attorney Regulation Advisory
Committee on Petition to Amend
Rule 34(f)(1)(A), Rules of the
Arizona Supreme Court**

Pursuant to Rule 28(D)(2), Ariz. R. Sup. Ct., Petitioners hereby reply to the Comment of the Honorable William J. O'Neil, writing as Chair of the Attorney Regulation Advisory Committee ("ARC"), dated November 9, 2012.

Petitioners filed their "Petition to Amend Rule 38(h)(1)(A)" on January 6, 2012. On March 26, 2012, Petitioners filed a supplement, renaming the Petition to reflect the Court's reorganization of its rules and proposing final rule language for the Court's consideration. The language, which was crafted with input from multiple practitioners in the Arizona legal community and which received a

favorable comment from the State Bar of Arizona, is again attached to this Reply as Exhibit A.

Having read ARC's latest Comment with care, Petitioners remain respectfully uncertain of the source of the concerns, which again appear to result from a misapprehension of the proposed amendment's language. Petitioners respond to each of ARC's comments in turn below.

ARC Comment: *"The Attorney Regulation Advisory Committee (ARC) opposes the dramatic change in the Admission on Motion (AOM) program this petition would bring."*¹

Reply: Petitioners respectfully submit that the change proposed by their suggested amendment would not cause any dramatic change in the "Admission on Motion (AOM) program." Rather, Petitioners' proposed amendment retains the identical pathway to admission on motion in Arizona that this Court adopted on January 1, 2010. Petitioners' proposed change merely seeks to remedy the irrational distinction negatively affecting a small, well-qualified, potential subset of applicants for admission on motion in Arizona: Those attorneys who passed a bar examination in a non-reciprocal jurisdiction and then accumulated a qualifying record of practice over at least five years in a reciprocal jurisdiction or jurisdictions. Arizona now has 32 reciprocal jurisdictions—it makes little sense to

¹ In its November 9, 2012, comment ARC references and attaches its May 8, 2012, comment, which was not served on Petitioners when it was filed. Petitioners replied to that earlier comment in full on June 29, 2012, after it was filed in the online Court rules forum on June 19, 2012.

deny admission on motion to qualified lawyers from those jurisdictions simply because they passed a bar examination somewhere else. Arizona's recent adoption of the Uniform Bar Examination is part of a national trend and a common-sense recognition of the principles behind Petitioners' proposed change. The proposed amendment is a similarly common-sense, non-dramatic recognition of the qualifications of applicants from reciprocal jurisdictions who happened to pass their bar examination(s) somewhere else. *See* Exhibit A. Most of Arizona's reciprocal jurisdictions already recognize those qualifications.

ARC Comment: *"The motion waiver rule created at adoption of Admission on Motion by this Court in 2009 was based on ABA Model Rules[.]"*

Reply: Though Timothy P. Burr, the original petitioner of the admission on motion rule in Arizona, based his petition² on the American Bar Association ("ABA") Model Rule, neither Mr. Burr's petition nor the ABA Model Rule on Admission on Motion contained any provisions that restricted applicants based on place of bar examination. The ABA Model Rule does not contain any provisions regarding reciprocity. *See* Exhibit B, ABA Model Rules on Admission by Motion, in effect in 2012, and in 2009,³ when Mr. Burr's petition was under consideration. The current ABA Model Rule on Admission by Motion, as adopted August 6,

² *See* Petition R-06-0017 and attachments, *available at* <http://azdnn.dnnmax.com/AZSupremeCourtMain/AZCourtRulesMain/CourtRulesForumMain/CourtRulesForum/tabid/91/forumid/7/postid/204/view/topic/Default.aspx>.

³ The ABA Model Rule on Admission by Motion in effect in 2009 was adopted in August 2002.

2012, contains the ABA's resolution "urg[ing] jurisdictions that have adopted admission by motion procedures *to eliminate any restrictions that do not appear in the Model Rule on Admission by Motion.*" See Exhibit B (emphasis added). This Court's decision to implement a reciprocity system despite the ABA's recommendations is a rational choice, but such a system must not irrationally discriminate against well-qualified applicants based on where they passed a bar examination years ago, before they had any active record of practice.

ARC Comment: "*Petition R-12-0005 would eliminate the reciprocal link to state of bar passage, as included in the ABA Model Rule and substitute a link to any state where an attorney has practiced or been admitted by any means.*"

Reply: Petitioners originally addressed the inaccuracy of this statement in their reply to ARC's May 8, 2012, comment. All assertions in the above statement are flatly incorrect. Even a brief look at Petitioners' proposed rule language and the ABA Model Rule reveals this. See Exhibits A, B. Simply put, Petitioners' proposed change would *not* eliminate the reciprocal link to state of bar passage and would *not* "substitute a link to any state where an attorney has practiced or been admitted by any means." Instead, Petitioners' proposed change would remedy the discrimination faced by those well-qualified applicants from Arizona's reciprocal jurisdictions who happened to pass their bar examination somewhere else. Petitioners' rule language retains this Court's original pathway to admission on

motion and remedies irrational discrimination by adding a small, alternative pathway for experienced attorneys from reciprocal jurisdictions who happened to pass their bar examinations in non-reciprocal jurisdictions. The ABA Model Rule contains no “reciprocal link to state of bar passage;” it contains no provisions regarding reciprocity. Exhibit B.

ARC Comment: *“This would open Arizona membership by AOM to anyone admitted by diploma privilege, which is not currently allowed.”*

Reply: As Petitioners stated in their response to ARC’s initial comment on this Petition and in live testimony before ARC on November 1, 2012, the proposed amendment does *not* eliminate the requirement that attorneys applying for admission on motion have passed a bar examination. The final proposed language submitted to this Court on March 26, 2012 (Exhibit A), requires that a person applying for admission on motion on the basis of an active practice of law in a reciprocal jurisdiction “have been admitted by bar examination to practice law in one or more states, territories, or the District of Columbia.” Exhibit A. This language eliminates any concern that graduates of law schools in “diploma privilege” jurisdictions, e.g., New Hampshire and Wisconsin, could be admitted on motion in Arizona without ever passing a bar examination in any state.

ARC Comment: *“At least one jurisdiction, Georgia, has indicted (sic) this change would cause them to cease recognition of Arizona as a reciprocal jurisdiction.”*

Reply: Attached as Exhibit C to this Reply is a letter from Leigh Burgess, Assistant Director of the Office of Bar Admissions for the Supreme Court of Georgia. Ms. Burgess’ letter confirms that Petitioners’ proposed change, as detailed in Exhibit A, would not cause Georgia to drop recognition of Arizona as a reciprocal jurisdiction. Exhibit C. Respectfully, and based on information from Georgia’s admissions authority itself, ARC is incorrect that Petitioners’ proposed change threatens Arizona’s reciprocal relationship with Georgia in any way.

ARC Comment: *“The change would also result in AOM admission of attorney (sic) who passed the bar exam in California, Virginia, Mary land (sic) and other states which currently have no admission on motion and who would never admit Arizona attorneys without examination.”*

Reply: ARC is incorrect: Virginia currently has admission on motion. See Exhibit D, pertinent portions of National Conference of Bar Examiners and American Bar Association’s *Comprehensive Guide to Bar Admission Requirements 2012*. While ARC is correct that California and Maryland do not have admission on motion, ARC currently supports a rule petition pending before this Court that would allow admission of attorneys who passed the bar exam in

California, Virginia, and Maryland, which states do not admit Arizona attorneys without examination. Under the change proffered by Petition R-12-0020, attorneys who passed the bar exam in California, Virginia, and Maryland, would be admitted in Arizona upon motion, even though those states never admit Arizona attorneys without examination and do not even admit Arizona military spouse attorneys without examination. Though those applicants would need to prove military spouse status, this does not change the fact that applicants licensed by California, Virginia, and Maryland would be admitted on motion in Arizona, under the change proposed by Petition R-12-0020 (which ARC supports), when Arizona attorneys are unable to be admitted under the same circumstances in those states. Yet, ARC supports R-12-0020 and worked with its Petitioner to craft language that ARC could accept. At no point has ARC or any of its members ever suggested any revisions to Petitioners' language in Exhibit A. Petitioners can only interpret ARC's continued opposition to the Petition as belated or latent opposition to admission on motion itself, which was adopted by this Court nearly three years ago.

ARC Comment: *“ARC requests that the petition be referred to the Attorney Regulation advisory Committee as part of its holistic review of attorney admission and regulation, which begins in January, 2012 (sic) or otherwise denied.”*

Reply: Petitioners respect ARC's desire to conduct a “holistic review of attorney admission and regulation” at some point, but there is no reason to simply

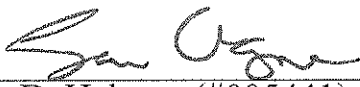
delay. This proposed change would bring Arizona *more in line* with the vast majority of its 32 reciprocal jurisdictions—more than 90 percent of which do *not* discriminate among applicants based on place of bar examination. What better way to provide additional data for ARC’s review and consideration in its “holistic” review of attorney admission and regulation than to adopt Petitioners’ rule language, bring Arizona in line with its reciprocal jurisdictions, and end discrimination against well-qualified applications from those reciprocal jurisdictions? This Court should adopt the language that Petitioners proposed in Exhibit A. When so many of Arizona’s own reciprocal jurisdictions already operate this way and when Arizona itself has already recognized the illusory value of place-of-bar-examination discrimination,⁴ there is simply no reason to wait or to defer the Petition for further review by ARC, which thus far has not been inclined to consider its actual language—language that has received support from both practitioners in the community and the State Bar of Arizona. *See* Exhibit A.

⁴ By adopting the Uniform Bar Examination, along with states that are both reciprocal and non-reciprocal with Arizona.

Consistent with the above Reply, Petitioners respectfully request that the Court adopt the proposed rule change set forth in Exhibit A and amend Arizona Supreme Court Rule 34(f)(1)(A) accordingly.

RESPECTFULLY SUBMITTED this 21st day of November, 2012.

SNELL & WILMER L.L.P.

By 

Barry D. Halpern (#005441)
Sara J. Agne (#026950)
Andrea C. Dieterle (#028167)

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EXHIBIT A

EXHIBIT A

Arizona Supreme Court Rule 34

(f) Admission on motion.

1. An applicant who meets the requirements of (A) through (H) of this paragraph (f)(1) may, upon motion, be admitted to the practice of law in this jurisdiction.

The applicant shall:

A. either (i) have been admitted by bar examination to practice law in another jurisdiction allowing for admission of licensed Arizona lawyers on a basis equivalent to this rule or (ii) have been admitted by bar examination to practice law in one or more states, territories, or the District of Columbia, and have been admitted to and engaged in the active practice of law for at least five years in another jurisdiction or jurisdictions allowing for admission of licensed Arizona lawyers on a basis equivalent to this rule;

B. hold a juris doctor degree from a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association at the time of graduation;

C. have been primarily engaged in the active practice of law in one or more states, territories, or the District of Columbia for five of the seven years immediately preceding the date upon which the application is filed;

D. submit evidence of a passing score on the Multistate Professional Responsibility Examination as it is established in this jurisdiction;

E. establish that the applicant is currently a member in good standing in all jurisdictions where admitted;

F. establish that the applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any other jurisdiction;

G. establish that the applicant possesses the character and fitness to practice law in this jurisdiction; and

H. submit evidence of successful completion of the course on Arizona law described in paragraph (j) of this rule.

2. For the purposes of this rule, the “active practice of law” shall include the following activities, if performed in a jurisdiction in which the applicant is admitted, or if performed in a jurisdiction that permits such activity by a lawyer not admitted to practice; however, in no event shall any activities that were performed in advance of bar admission in some state, territory or the District of Columbia be accepted toward the durational requirement:

A. representation of one or more clients in the practice of law;

B. service as a lawyer with a local, state, or federal agency, including military service;

C. teaching law full-time at a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association;

D. service as a judge in a federal, state, territorial, or local court of record;

E. service as a judicial law clerk;

F. service as corporate counsel; or

G. service as corporate counsel in Arizona before January 1, 2009 or while registered pursuant to Rule 38(h).

3. For purposes of this rule, the active practice of law shall not include work that, as undertaken, constituted the unauthorized practice of law in the jurisdiction in which it was performed or in the jurisdiction in which the clients receiving the unauthorized services were located. The “active practice of law” is further defined to require that at all times in the durational period the applicant has:

A. held a law license in “active” status;

B. spent one thousand (1,000) hours or more per year engaged in the practice of law, for each of the required five years in the durational period; and

C. derived at least fifty percent (50%) of non-investment income from the practice of law.

4. An applicant who has failed a bar examination administered in this jurisdiction within five years of the date of filing an application under this rule shall not be eligible for admission on motion.

5. The Court shall approve jurisdictions considered “reciprocal” to Arizona, and the Committee shall publish and make available a list of reciprocal jurisdictions.

EXHIBIT B

AMERICAN BAR ASSOCIATION
ADOPTED BY THE HOUSE OF DELEGATES
AUGUST 6-7, 2012

RESOLUTION

RESOLVED, That the American Bar Association amends the *ABA Model Rule for Admission by Motion*, dated August 2012, as follows (additions underlined, deletions ~~struck-through~~):

ABA Model Rule on Admission by Motion

1. An applicant who meets the requirements of (a) through (g) of this Rule may, upon motion, be admitted to the practice of law in this jurisdiction. The applicant shall:
 - (a) have been admitted to practice law in another state, territory, or the District of Columbia;
 - (b) hold a J.D. or LL.B. degree from a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association at the time the applicant matriculated or graduated;
 - (c) have been primarily engaged in the active practice of law in one or more states, territories or the District of Columbia for ~~five~~ three of the ~~seven~~ five years immediately preceding the date upon which the application is filed;
 - (d) establish that the applicant is currently a member in good standing in all jurisdictions where admitted;
 - (e) establish that the applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any jurisdiction;
 - (f) establish that the applicant possesses the character and fitness to practice law in this jurisdiction; and
 - (g) designate the Clerk of the jurisdiction's highest court for service of process.
2. For purposes of this ~~Rule~~, the "active practice of law" shall include the following activities, if performed in a jurisdiction in which the applicant is admitted and authorized to practice, or if performed in a jurisdiction that affirmatively permits such activity by a lawyer not admitted in that jurisdiction; however, in no event shall any activities that were performed

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pursuant to the Model Rule on Practice Pending Admission or in advance of bar admission in some state, territory, or the District of Columbia be accepted toward the durational requirement:

- (a) Representation of one or more clients in the private practice of law;
 - (b) Service as a lawyer with a local, state, territorial or federal agency, including military service;
 - (c) Teaching law at a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association;
 - (d) Service as a judge in a federal, state, territorial or local court of record;
 - (e) Service as a judicial law clerk; or
 - (f) Service as in-house counsel provided to the lawyer's employer or its organizational affiliates.
3. For purposes of this Rule, the active practice of law shall not include work that, as undertaken, constituted the unauthorized practice of law in the jurisdiction in which it was performed or in the jurisdiction in which the clients receiving the unauthorized services were located.
4. An applicant who has failed a bar examination administered in this jurisdiction within five years of the date of filing an application under this Rule shall not be eligible for admission on motion.

FURTHER RESOLVED: That the American Bar Association urges jurisdictions that have not adopted the Model Rule on Admission by Motion to do so, and urges jurisdictions that have adopted admission by motion procedures to eliminate any restrictions that do not appear in the Model Rule on Admission by Motion.

REPORT

The ABA Commission on Ethics 20/20 has examined how globalization and technology are transforming the legal marketplace and fueling cross-border practice. In studying these developments, the Commission has reviewed the existing regulatory framework governing multijurisdictional practice and lawyer mobility and produced several Resolutions and Reports.¹

The Resolution accompanying this Report proposes an amendment to the ABA Model Rule on Admission by Motion that, if adopted, would allow lawyers to qualify for admission by motion at an earlier point in their careers than the current Rule allows (i.e., after three, instead of five, years of practice). The Commission is also asking that the ABA adopt a resolution urging jurisdictions that have not adopted the Model Rule to do so and encouraging jurisdictions that already have admission by motion procedures to eliminate additional restrictions, such as reciprocity requirements, that do not appear in the Model Rule.

The Commission's work in this area was informed by the efforts of the ABA Commission on Multijurisdictional Practice ("MJP Commission"), which completed its work a decade ago. In August 2002, the ABA House of Delegates adopted as Association policy all nine of the MJP Commission's recommendations,² which reflect a more permissive regulatory framework. This framework allows lawyers, subject to certain limitations, to practice law on a temporary basis in jurisdictions in which they are not otherwise authorized to practice law.³ The framework also permits lawyers, sometimes with limitations, to establish an ongoing practice in a jurisdiction in which they are not otherwise authorized and without the necessity of sitting for a written bar examination.⁴

The Commission found that this framework has been widely adopted⁵ and produced many benefits for clients and their lawyers. It has enabled lawyers to represent their clients more

¹ In one Resolution, the Commission is recommending the creation of a Model Rule on Practice Pending Admission that would allow lawyers to establish a systematic and continuous presence in another jurisdiction while diligently pursuing admission in that jurisdiction. The Commission is also recommending changes to Model Rule 1.6 that would identify the information that lawyers can disclose in order to detect possible conflicts of interest that might arise when lawyers change firms or when two or more firms associate with each other or merge.

² See *Client Representation in the 21st Century*, Report of the Commission on Multijurisdictional Practice (2002), http://www.americanbar.org/groups/professional_responsibility/committees_commissions/commission_on_multijurisdictional_practice.html.

³ See, e.g., ABA MODEL RULES OF PROF'L CONDUCT R. [hereinafter MODEL RULE] 5.5(c); ABA MODEL RULE FOR PRO HAC VICE ADMISSION.

⁴ See, e.g., MODEL RULE 5.5(d); ABA MODEL RULE FOR ADMISSION BY MOTION.

⁵ Since August 2002, forty-four jurisdictions have adopted some form of multijurisdictional practice that is similar to Model Rule 5.5. Chart, *State Implementation of ABA Model Rule 5.5* (2010),

http://www.americanbar.org/content/dam/aba/migrated/cpr/mjp/quick_guide_5_5.authcheckdam.pdf. Every jurisdiction now has a rule allowing for pro hac vice admission. Chart, *Comparison of ABA Model Rule For Pro Hac Vice Admission With State Versions and Amendments Since August 2002* (2011),

http://www.americanbar.org/content/dam/aba/migrated/cpr/mjp/prohac_admin_comp.authcheckdam.pdf. Seven jurisdictions have adopted a version of the ABA Model Rule for Temporary Practice by Foreign Lawyers. *Summary of State Action on ABA MJP Recommendations 8 & 9* (2010),

http://www.americanbar.org/content/dam/aba/migrated/cpr/mjp/8_and_9_status_chart.authcheckdam.pdf. Forty jurisdictions have adopted a version of the ABA Model Rule on Admission by Motion. Chart, *Comparison of ABA Model Rule on Admission by Motion With State Versions* (2011),

http://www.americanbar.org/content/dam/aba/migrated/cpr/mjp/admission_motion_comp.authcheckdam.pdf.

effectively and efficiently, provided clients with more freedom regarding their choice of counsel, and afforded lawyers more personal and professional flexibility.

The Commission concluded that, in light of these successes and the still growing need to engage in cross-border practice, the ABA should once again consider carefully crafted changes to the framework governing multijurisdictional practice. The Resolutions accompanying this Report address the ABA Model Rule on Admission by Motion.

I. History of the ABA Model Rule on Admission by Motion

In August 2002, the ABA House of Delegates adopted the Model Rule on Admission by Motion. The Model Rule permits a lawyer admitted in one U.S. jurisdiction to gain full admission in another U.S. jurisdiction without having to pass that jurisdiction's bar examination. The lawyer, however, must satisfy several requirements, one of which is to have engaged in the active practice of law for five of the last seven years.⁶

Admission by motion procedures now exist in forty jurisdictions. The Commission's research revealed that more than 65,000 lawyers have used the procedure in the last ten years.⁷ Approximately half of these lawyers were admitted in the District of Columbia. The Commission found that there is no evidence that lawyers admitted by motion – either in the District of Columbia or elsewhere – are more likely to be subject to discipline, disciplinary complaints, or malpractice suits than lawyers admitted through more traditional procedures. The Commission sought information in this regard from lawyer disciplinary counsel, and responses revealed that the admission by motion process has produced no discernible risks to clients or the public. To the contrary, it has enabled lawyers to relocate with greater ease and given clients more freedom to select their lawyers.

II. Proposal to Amend the Model Rule on Admission by Motion

In light of the Commission's findings and changes in the practice of law during the last decade, the Commission proposes to reduce the time-in-practice requirement in the Model Rule for Admission by Motion. The current Model Rule requires an applicant for admission by motion to have actively practiced in another jurisdiction for five out of the past seven years, and the Commission is proposing to allow lawyers to qualify for admission by motion after practicing in another jurisdiction for three out of the past five years.

Finally, thirty-one jurisdictions have adopted a version of the Model Rule for the Licensing and Practice of Foreign Legal Consultants. Chart, *Foreign Legal Consultant Rules* (2010), http://www.americanbar.org/content/dam/aba/migrated/cpr/mjp/for_legal_consultants.authcheckdam.pdf.

⁶ The Model Rule has remained unchanged except for one amendment in 2011. In February 2011, the Section of Legal Education and Admissions to the Bar filed a Resolution with the House of Delegates recommending that the Model Rule be amended to eliminate a provision that prohibited a lawyer's work as in-house counsel or as a judicial law clerk from being counted as part of the necessary practice experience to qualify for admission by motion. The House agreed that the Model Rule had created "an unfair and unnecessary distinction" between in-house counsel and judicial clerks, on the one hand, and the other categories of lawyers listed in paragraph 2 of the Model Rule on the other, and thus adopted the proposed amendment.

⁷ National Conference of Bar Examiners, *Bar Examination and Admission Statistics, 2011 Statistics*, at 28 (2011), http://www.ncbex.org/assets/media_files/Statistics/2010Stats110111.pdf & *2005 Statistics*, at 35 (2005) http://www.ncbex.org/assets/media_files/Statistics/2005_Statistics.pdf.

The Commission believes this change responds to client needs and market demands in an increasingly borderless world, where lawyers frequently need to gain admission in other U.S. jurisdictions. For example, lawyers regularly need to move to, or establish a regular practice in, another jurisdiction in order to serve clients who are relocating or who regularly do business in the jurisdiction in which motion admission is sought. The Commission's proposal would address this need, thus benefitting both lawyers and their clients.

The proposal also recognizes that lawyers often need to move to new jurisdictions for a wide range of personal reasons, including the need to find employment. The Commission determined that a reduction of the active practice requirement from five to three years would have particularly salutary effects for less senior lawyers, who are most likely to need to move from one jurisdiction to another. The challenging legal employment marketplace only increases the likelihood that relatively junior lawyers will need to move to a new jurisdiction in search of employment.

The Commission seriously considered several possible arguments against reducing the time-in-practice requirement of the Model Rule. First, the Commission considered the concern that a lawyer who has practiced for only three years may not be sufficiently competent to practice law in a new jurisdiction. The Commission, however, found no reason to believe that lawyers who have been engaged in the active practice of law for three of the last five years will be any less able to practice law in a new jurisdiction than a law school graduate who recently passed the bar examination in that jurisdiction. In fact, five jurisdictions already have a reduced duration-of-practice requirement of three years,⁸ and none of those jurisdictions have reported any resulting problems.

The Commission also found unpersuasive the concern that passage of the bar examination is necessary to demonstrate knowledge of the law of the jurisdiction in which the lawyer is seeking admission. As explained above, more than 65,000 lawyers have obtained admission by motion in the last ten years, and there is no evidence from disciplinary counsel or any other source that these lawyers have been unable to practice competently in the new jurisdiction or have been unable to identify and understand aspects of the new jurisdiction's law that differ from the law of the jurisdiction where those lawyers were originally admitted.

The Commission also concluded that the "local law" concern rests on the incorrect assumption that passage of the bar examination demonstrates competence in local law. In fact, an increasing number of jurisdictions use the Uniform Bar Examination,⁹ which typically does not require any knowledge of local law. And in jurisdictions that do test local law, the local law portion of the test is usually sufficiently small that bar passage does not turn on it. Thus, a significant percentage of bar examinations require either limited knowledge of local law or none at all, suggesting that passage of the bar examination does not offer better evidence of a lawyer's understanding of local law than three years of practice in another jurisdiction. To the contrary,

⁸ Chart, *Comparison of ABA Model Rule on Admission by Motion With State Versions* (2010), http://www.americanbar.org/content/dam/aba/migrated/cpr/mjp/admission_motion_comp.authcheckdam.pdf.

⁹ Nat'l Conference of Bar Exam'rs & Am. Bar Ass'n Section of Legal Education & Admissions to the Bar, *Comprehensive Guide to Bar Admission Requirements 2012*, at 23 (2012) (available at http://www.ncbex.org/assets/media_files/Comp-Guide/CompGuide.pdf).

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the Commission concluded that three years of practice in another jurisdiction may actually enable a lawyer to identify and understand variations in the law more easily than a recent law school graduate who has never practiced at all but has passed the jurisdiction's bar examination.

Another possible concern that the Commission considered is that lawyers might take and pass the bar examination in a jurisdiction with a relatively high passage rate and then seek admission by motion in a jurisdiction that has more demanding examination requirements. The Commission concluded, however, that the three year waiting period is sufficiently long that lawyers would not have an incentive to circumvent the bar examination requirements of a jurisdiction with a relatively low bar pass rate.

Additionally, the Commission considered whether to retain the existing seven year period within which a lawyer must fulfill the new three year practice requirement. One argument for doing so is that the career tracks of modern lawyers are not always linear and that lawyers, both male and female, frequently need to take time away from the practice of law due to changes in personal circumstances, including changes in substantive employment, military service, returning to school for another degree or, an issue that continues to disproportionately affect women, family care. At the same time, however, the Commission heard concerns that a four year gap in practice would be too substantial to offer adequate assurance to bar admission authorities that a lawyer has the requisite competence to practice law in the new jurisdiction. To reconcile these competing interests, the Commission determined that a lawyer seeking admission by motion should have to satisfy the three year practice requirement within a five year time period. This approach permits lawyers to take two years off from the active practice of law, while recognizing the concerns that bar admissions authorities would have about an extended period of time away from practice.

Finally, the Commission concluded that Section 2 of the Model Rule on Admission by Motion should state that the time spent practicing pursuant to the proposed new Model Rule on Practice Pending Admission should not count toward the period of time necessary to qualify for admission by motion. (The proposed new Model Rule on Practice Pending Admission would allow lawyers to establish a law practice in another jurisdiction while diligently pursuing admission in that jurisdiction through one of the recognized forms of admission, such as through admission by motion.) The Commission determined that this restriction in Section 2 is a necessary additional client protection as it will prevent lawyers from establishing a practice in a new jurisdiction in fewer than three years and prevent lawyers from serially relocating to new jurisdictions under the Model Rule on Practice Pending Admission in order to accumulate the necessary practice experience to qualify for admission by motion.

In sum, the Commission determined that, in most jurisdictions, a lengthy practice requirement unnecessarily hinders the lawyer mobility that clients and legal employers increasingly demand. Although the Commission recognizes that some jurisdictions may have particular needs that warrant a longer or shorter durational requirement, the Commission concluded that the vast majority of jurisdictions would benefit from the proposed approach.

III. Implementation of ABA Model Rule on Admission by Motion Rule

The Commission concluded that the widespread adoption of admission by motion procedures is a positive development, but also found that a number of jurisdictions have not yet adopted an admission by motion process or have adopted a process that imposes unnecessary restrictions and requirements. Thus, in addition to proposing the amendments described above, the Commission also urges the eleven jurisdictions that have not adopted the Model Rule to do so and urges jurisdictions with admission by motion procedures to eliminate any restrictions, such as reciprocity requirements, that do not appear in the Model Rule.

With regard to the eleven jurisdictions that have not adopted any admission by motion procedure, those jurisdictions require lawyers to take at least some portion of the jurisdiction's bar examination (or a special lawyers' examination) in order to gain admission. The Commission concluded that such a requirement is unnecessary for lawyers who have three years of experience and that these jurisdictions should adopt an admission by motion procedure.

With regard to the forty jurisdictions that have adopted an admission by motion procedure, ten have an admission by motion procedure that is nearly identical to the Model Rule.¹⁰ The other thirty jurisdictions, however, have procedures that impose restrictions beyond those contained in the Model Rule. More than half of these jurisdictions have some type of reciprocity requirement, which makes admission by motion possible only for lawyers from states that also offer admission by motion on a reciprocal basis.¹¹ Moreover, some jurisdictions define law practice in a manner that is narrower than the Model Rule definition.¹² Other jurisdictions require lawyers to certify that they intend to practice actively and maintain an office in the state where admission by motion is being sought.¹³

The Commission found no evidence that these more restrictive approaches are related in any way to the competence of the applicants or the protection of the public. Indeed, jurisdictions that have adopted the Model Rule without any additional restrictions have reported no problems. The Commission believes that such varied additional restrictions only serve to sustain outdated and parochial purposes at a time when the relevance of borders to the competent practice of law has and will continue to erode. The Commission believes that the Model Rule on Admission by Motion ensures competent representation and amply protects the integrity of the bar.

Conclusion

Continually evolving technology, client demands and a national (as well as global) legal services marketplace have fueled an increase in cross-border practice as well as a related need for lawyers to relocate to new jurisdictions. The Resolutions accompanying this Report are intended to permit lawyers to respond to these developments to the benefit of their clients, while providing adequate regulatory safeguards. Accordingly, the Commission respectfully requests that the House of Delegates adopt those Resolutions.

¹⁰ See Comparison Chart, *supra* note 8.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

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Respectfully submitted,

Jamie S. Gorelick and Michael Traynor, Co-Chairs
ABA Commission on Ethics 20/20

August 2012

GENERAL INFORMATION FORM

Submitting Entity: ABA Commission on Ethics 20/20

Submitted By: Jamie S. Gorelick and Michael Traynor, Co-Chairs

1. Summary of Resolution(s).

Resolution 105e: Admission by Motion

- The ABA Model Rule on Admission by Motion, which was adopted in 2002, allows a lawyer licensed in one U.S. jurisdiction to seek admission in another U.S. jurisdiction without sitting for that jurisdiction's bar examination. In order to qualify for admission by motion, the Model Rule currently requires a lawyer to have engaged in the active practice of law for 5 of the last 7 years. The Commission proposes to reduce this "time in practice" requirement so that a lawyer can qualify for admission by motion after practicing for 3 of the last 5 years.
- The Commission also proposes to amend the Model Rule on Admission by Motion to ensure that the definition of the "active practice of law" does not include time spent practicing pursuant to the proposed Model Rule on Practice Pending Admission (Resolution 105d). The Commission determined that this restriction is necessary to prevent lawyers from qualifying for admission by motion after fewer than three years of active practice in a jurisdiction where the lawyer is actually licensed. The restriction also will prevent lawyers from serially relocating to new jurisdictions under the Model Rule on Practice Pending Admission in order to accumulate the necessary practice experience to qualify for admission by motion.
- Finally, a number of jurisdictions have not yet adopted an admission by motion process or have processes with unnecessary restrictions and requirements. The Commission's Resolution encourages the eleven jurisdictions that have not adopted the Model Rule to do so and urges jurisdictions that have admission by motion procedures to eliminate restrictions that do not appear in the Model Rule.

2. Approval by Submitting Entity.

The Commission approved five of these Resolutions and Reports at its April 12 - 13, 2012 meeting.

3. Has this or a similar resolution been submitted to the House or Board previously?

No.

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4. What existing Association policies are relevant to this resolution and how would they be affected by its adoption?

The adoption of this proposal would result in amendments to the ABA Model Rule on Admission by Motion.

5. What urgency exists which requires action at this meeting of the House?

The ABA is the national leader in developing and interpreting standards of legal ethics and professional regulation and has the responsibility to ensure that its Model Rules of Professional Conduct and related policies keep pace with social change and the evolution of law practice. The ABA's last "global" review of the Model Rules and related policies concluded in 2002, with the adoption of the recommendations of the ABA Commission on Evaluation of the Rules of Professional Conduct ("Ethics 2000 Commission") and the ABA Commission on Multijurisdictional Practice ("MJP Commission"). The Commission on Ethics 20/20 was appointed in August 2009 to conduct the next overarching review of these policies.

Technology and globalization are transforming the practice of law in ways the profession could not anticipate in 2002. One aspect of this transformation has been the extent to which lawyers now need to relocate to new jurisdictions during their careers. The proposed amendments to the Model Rule on Admission by Motion respond to this increased need for mobility while providing adequate safeguards for clients and the public.

6. Status of Legislation. (If applicable)

N/A

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

The Center for Professional Responsibility will publish any updates to the ABA Model Rules of Professional Conduct and Comments, and also will publish electronically amendments to the ABA Model Rule on Admission by Motion. The Policy Implementation Committee of the Center for Professional Responsibility has in place the procedures and infrastructure to implement any policies proposed by the Ethics 20/20 Commission that are adopted by the House of Delegates. The Policy Implementation Committee and Ethics 20/20 Commission have been in communication in anticipation of the implementation effort. The Policy Implementation Committee has been responsible for the successful implementation of the recommendations of the ABA Ethics 2000 Commission, the Commission on Multijurisdictional Practice and the Commission to Evaluate the Model Code of Judicial Conduct.

8. Cost to the Association. (Both direct and indirect costs)

None

9. Disclosure of Interest. (If applicable)10. Referrals.

From the outset, the Ethics 20/20 Commission concluded that transparency, broad outreach and frequent opportunities for input into its work would be crucial. Over the last three years the Commission routinely released for comment to all ABA entities (including the Conference of Section and Division Delegates), state, local, specialty and international bar associations, courts and the public a wide range of documents, including issues papers, draft proposals, discussion drafts, and draft informational reports. The Commission held eleven open meetings where audience members participated; conducted numerous public hearings and roundtables, domestically and abroad; created webinars and podcasts; made CLE presentations; and received and reviewed hundreds of written and oral comments from the bar and the public. To date, the Commission has made more than 100 presentations about its work, including presentations to the Conference of Chief Justices, the ABA House of Delegates, the ABA Board of Governors, the National Conference of Bar Presidents, numerous ABA entities, as well as local, state, and international bar associations.

All materials were posted on the Commission's website. The Commission created and maintained a listserv for interested persons to keep them apprised of the Commission's activities. There are currently 725 people on that list.

The Commission's process was collaborative. It created seven substantive Working Groups with participants from relevant ABA and outside entities. Included on these Working Groups were representatives of the ABA Standing Committee on Ethics and Professional Responsibility, ABA Standing Committee on Professional Discipline, ABA Standing Committee on Client Protection, ABA Standing Committee on Delivery of Legal Services, ABA Section of International Law, ABA Litigation Section, ABA Section of Legal Education and Admissions to the Bar, ABA Section of Real Property, Trust and Estate Law, ABA Task Force on International Trade in Legal Services, ABA General Practice, Solo and Small Firm Division, ABA Young Lawyers Division, ABA Standing Committee on Specialization, ABA Law Practice Management Section, and the National Organization of Bar Counsel.

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11. Contact Name and Address Information. (Prior to the meeting)

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Regulation Counsel
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Phone: 312/988-5311
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Ellyn.Rosen@americanbar.org
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12. Contact Name and Address Information. (Who will present the report to the House?)

Jamie S. Gorelick, Co-Chair
WilmerHale
1875 Pennsylvania Ave., N.W.
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Berkeley, CA 94705
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mtraynor@traynorgroup.com

EXECUTIVE SUMMARY1. Summary of the Resolution(s)**Resolution 105e: Admission by Motion**

- The ABA Model Rule on Admission by Motion, which was adopted in 2002, allows a lawyer licensed in one U.S. jurisdiction to seek admission in another U.S. jurisdiction without sitting for that jurisdiction's bar examination. In order to qualify for admission by motion, the Model Rule currently requires a lawyer to have engaged in the active practice of law for 5 of the last 7 years. The Commission proposes to reduce this "time in practice" requirement so that a lawyer can qualify for admission by motion after practicing for 3 of the last 5 years.
- The Commission also proposes to amend the Model Rule on Admission by Motion to ensure that the definition of the "active practice of law" does not include time spent practicing pursuant to the proposed Model Rule on Practice Pending Admission (Resolution 105d). The Commission determined that this restriction is necessary to prevent lawyers from qualifying for admission by motion after fewer than three years of active practice in a jurisdiction where the lawyer is actually licensed. The restriction also will prevent lawyers from serially relocating to new jurisdictions under the Model Rule on Practice Pending Admission in order to accumulate the necessary practice experience to qualify for admission by motion.
- Finally, a number of jurisdictions have not yet adopted an admission by motion process or have processes with unnecessary restrictions and requirements. The Commission's Resolution encourages the eleven jurisdictions that have not adopted the Model Rule to do so and urges jurisdictions with admission by motion procedures to eliminate restrictions that do not appear in the Model Rule.

2. Summary of the Issue that the Resolution Addresses

The ABA's last "global" review of the Model Rules of Professional Conduct and related policies concluded in 2002, with the adoption of the recommendations of the ABA Commission on Evaluation of the Rules of Professional Conduct ("Ethics 2000 Commission") and the ABA Commission on Multijurisdictional Practice ("MJP Commission"). As the national leader in developing and interpreting standards of legal ethics and professional regulation, the ABA has the responsibility to ensure that its Model Rules of Professional Conduct and related policies keep pace with social change and the evolution of law practice. To this end, in August 2009, then-ABA President Carolyn B. Lamm created the Commission on Ethics 20/20 to study the ethical and regulatory implications of

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globalization and technology on the legal profession and propose changes to ABA policies.

The ABA Model Rule on Admission by Motion was adopted in 2002, as part of the package of resolutions unanimously adopted by the House of Delegates to address increased cross-border practice. At the time of its adoption, the Model Rule required that lawyers could qualify for admission by motion only if they had been engaged in the active practice of law for 5 of the last 7 years.

Much has changed in the last decade, resulting in increased lawyer mobility. For example, lawyers regularly need to move to, or establish a regular practice in, another jurisdiction in order to serve clients who are relocating there or who regularly do business in that jurisdiction. Resolution 105e responds to this need, thus benefitting both lawyers and their clients, by reducing the time in practice requirement in the Model Rule for Admission by Motion to 3 of the last 5 years. The Commission's research revealed that the Model Rule has produced no problems in the jurisdictions that have adopted it and no problems in the jurisdictions that already allow admission by motion after only three years of practice.

3. Please Explain How the Proposed Policy Position will address the issue

A reduction of the time in practice requirement in the ABA Model Rule on Admission by Motion will facilitate the cross-border practice that clients demand in a 21st century legal marketplace.

The Commission's research revealed that there is no reason to believe that lawyers who have spent 3 of the last 5 years engaged in law practice will be any less able to practice law responsibly and competently in a new jurisdiction. The Commission found no evidence that lawyers admitted by motion are more likely to be subject to discipline, disciplinary complaints, or malpractice suits than lawyers admitted by examination. The Commission also found no evidence that the admission by motion process has produced any risks to clients or the public. To the contrary, it has enabled lawyers to relocate with greater ease and given clients more freedom to select their lawyers. Finally, the Commission found that the five jurisdictions that already have a duration-of-practice requirement of three years have not encountered any problems.

Resolution 105e also adds language to make clear that time spent practicing pursuant to the proposed ABA Model Rule on Practice Pending Admission does not count toward the Model Rule of Admission by Motion's active practice requirement.

Additionally, given the increasing importance of lawyer mobility and the success of the Model Rule on Admission by Motion, the ABA should encourage the adoption of the Model Rule for Admission by Motion in the eleven jurisdictions

that have not yet adopted such a process. The ABA also should encourage jurisdictions that have an admission by motion process to eliminate restrictions that do not appear in the Model Rule and that pose unnecessary obstacles to using the process.

The Commission has concluded that these changes will facilitate lawyer mobility in a manner that is consistent with the principles that have guided the Commission's work: protecting the public; preserving the core professional values of the American legal profession; and maintaining a strong, independent, and self-regulated profession.

4. Summary of Minority Views

The Commission is not aware of any organized or formal minority views or opposition to Resolution 105e as of June 1, 2012.

As of June 1, 2012, the following entities have agreed to co-sponsor Resolution 105e relating to Admission by Motion: The ABA Standing Committee on Client Protection, the ABA Standing Committee on Ethics and Professional Responsibility, the ABA Standing Committee on Professionalism, the ABA Standing Committee on Specialization, and the New York State Bar Association.

From the outset, the Commission on Ethics 20/20 implemented a process that was transparent and open and that allowed for broad outreach and frequent opportunities for feedback. Over the last three years, the Commission routinely released for comment to all ABA entities (including the Conference of Section and Division Delegates), state, local, specialty and international bar associations, courts, regulatory authorities, and the public a wide range of documents, including issues papers, draft proposals, discussion drafts, and draft informational reports. The Commission held eleven open meetings where audience members participated; conducted numerous public hearings and roundtables, domestically and abroad; presented webinars and podcasts; made CLE presentations; received and reviewed more than 350 written and oral comments from the bar, the judiciary, and the public. To date, the Commission has made more than 100 presentations about its work, including presentations to the Conference of Chief Justices, the ABA House of Delegates, the National Conference of Bar Presidents, numerous ABA entities, as well as local, state, and international bar associations. All materials, including all comments received, have been posted on the Commission's website ([click here](#)). Moreover, the Commission created and maintained a listserve for interested persons to keep them apprised of the Commission's activities. Currently there are 725 participants on the list.

Further, as noted in the General Information Form accompanying this Resolution, the Commission's process was collaborative. It created seven substantive Working Groups with participants from relevant ABA and outside entities.

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The Commission is grateful for and took seriously all submissions. The Commission routinely extended deadlines to ensure that the feedback was as complete as possible and that no one was precluded from providing input. The Commission reviewed this input, as well as the written and oral testimony received at public hearings, and made numerous changes in light of this feedback.

Throughout the last three years, the Commission received many supportive submissions as well as submissions that offered constructive comments or raised legitimate concerns. The Commission made every effort to resolve constructive concerns raised, and in many instances made changes based upon them. The Commission's final proposals were shaped by those who participated in this feedback process.

American Bar Association

ADOPTED BY THE HOUSE OF DELEGATES

August 12-13, 2002

Multijurisdictional Practice (Report Nos.201G)

RESOLVED, That the American Bar Association adopts the proposed *Model Rule on Admission by Motion*, dated August 2002:

Model Rule on Admission by Motion

1. An applicant who meets the requirements of (a) through (h) of this Rule may, upon motion, be admitted to the practice of law in this jurisdiction.

The applicant shall:

- (a) have been admitted to practice law in another state, territory, or the District of Columbia;
- (b) hold a first professional degree in law (J.D. or LL.B.) from a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association at the time the graduate matriculated;
- (c) have been primarily engaged in the active practice of law in one or more states, territories or the District of Columbia for five of the seven years immediately preceding the date upon which the application is filed;
- (d) establish that the applicant is currently a member in good standing in all jurisdictions where admitted;
- (e) establish that the applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any other jurisdiction;
- (f) establish that the applicant possesses the character and fitness to practice law in this jurisdiction; and
- (g) designate the Clerk of the jurisdiction's highest court

for service of process.

2. For the purposes of this rule, the "active practice of law" shall include the following activities, if performed in a jurisdiction in which the applicant is admitted, or if performed in a jurisdiction that affirmatively permits such activity by a lawyer not admitted to practice; however, in no event shall activities listed under (2)(e) and (f) that were performed in advance of bar admission in the jurisdiction to which application is being made be accepted toward the durational requirement:
 - (a) Representation of one or more clients in the practice of law;
 - (b) Service as a lawyer with a local, state, territorial or federal agency, including military service;
 - (c) Teaching law at a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association;
 - (d) Service as a judge in a federal, state, territorial or local court of record;
 - (e) Service as a judicial law clerk; or
 - (f) Service as corporate counsel.
3. For the purposes of this Rule, the active practice of law shall not include work that, as undertaken, constituted the unauthorized practice of law in the jurisdiction in which it was performed or in the jurisdiction in which the clients receiving the unauthorized services were located.
4. An applicant who has failed a bar examination administered in this jurisdiction within five years of the date of filing an application under this rule shall not be eligible for admission on motion.

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August 12-13, 2002

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REPORT

At one time, lawyers tended to maintain their law offices in a single jurisdiction over the course of their entire legal careers because of the local nature of law practice. Today, in contrast, geographic mobility is unexceptional. Lawyers move from one state to another in order to continue to serve clients who are relocating or to better serve clients that function outside the state, for personal reasons, for career advancement, or for a host of other reasons. Lawyers change law firms or employers, or simply reestablish their individual practices in different jurisdictions. Lawyers in large law firms move from one office of their firm to another. Lawyers employed by corporations move from one corporate office to another.

Jurisdictional restrictions impede national mobility, because in many cases the process for admitting lawyers to practice law in a new jurisdiction is lengthy, expensive, and burdensome. Some states subject a lawyer who is already licensed and experienced in legal practice to the process designed for admitting new law school graduates. The practicing lawyer is required to take the state bar examination and, upon receiving a passing grade, to undergo character and fitness review.

Although the primary concern in the submissions to the Commission has been the application of UPL restrictions to United States lawyers' occasional practice in jurisdictions in which they do not maintain an office, the Commission has also received submissions focusing on the difficulty of establishing a law practice in a new jurisdiction.¹

A number of states facilitate the admission of experienced lawyers who are moving their law practice by allowing them to gain admission to the bar without sitting for the bar examination, if they demonstrate that they have been in active law practice in another jurisdiction for a specified period of time and are members in good standing of the other jurisdiction's bar.² The admission on motion processes in these states recognize the reality that

¹See, e.g., J. Eric Schaal, Associate General Counsel, USG Corporation, letter dated January 8, 2002 to the ABA Commission on Multijurisdictional Practice, www.abanet.org/cpr/njpc/comm2_usg.html.

²See, e.g., Alaska Bar Rule 2, Section 2 (applicant must have passed bar in at least one jurisdiction and have engaged in active practice of law five of seven years preceding date of application in state that offers reciprocal admission to Alaska lawyers, provided conditions are not more demanding than those in Alaska, and pay a non-refundable fee); Colorado Admission Rule 201.3(1) (admits applicants actively and substantially engaged in the practice of law for five of seven years preceding application in state providing reciprocal admission without exam to members of the Colorado Bar); Connecticut Rules of the Superior Court Regulation Admission to the Bar, Sec. 2-13 (applicant must have practiced law in a reciprocal jurisdiction for at least five of seven years preceding date of application, be in good standing, have good moral character and have passed an examination in professional responsibility or completed a course in professional responsibility, intend to practice law on a continuing basis and devote a major portion of work time to practicing law in Connecticut, and file a fee and affidavits regarding character, education and disciplinary record); Illinois Admission Rule 705 (applicant must meet educational, character and fitness requirements for Illinois attorneys, pass the Multistate

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Professional Responsibility Examination, practice continuously five of seven years in jurisdiction offering reciprocity, and pay fee for admission on foreign license); Missouri Supreme Court Rules Governing the Missouri Bar, Rule 8.10 (applicant must have graduated from an ABA approved law school and be licensed and actively practicing five of preceding ten years in at least one jurisdiction offering mutuality of admission without examination; applicant must also meet continuing education requirements, pay a non-refundable fee, file a form for a character and fitness report and file various affidavits regarding work experience and good moral character); New York, Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law, Section 520.10 (applicant must have been admitted to practice in highest law court in a state or territory of the United States or in another country whose jurisprudence is based upon the principles of the English Common Law and be admitted to the bar of a jurisdiction that would similarly admit New York lawyers without examination; in addition, the applicant must be over 26 years of age, possess a first degree from approved law school, have practiced five of preceding seven years, pay a fee and submit to other tests of character and fitness at discretion of Appellate Division); North Carolina Supreme Court Rules Governing Admission to the Practice of Law Section .0502 (applicant must be in good standing in every state in which applicant is licensed, have active practice four of preceding six years in a state providing comity admission for North Carolina lawyers, supply complete background information, pay nonrefundable fee of \$1500, establish good moral character, pass the Multistate Professional Responsibility Examination, and supply various types of documentation including certificates of moral character, a recent photograph and fingerprints; applications are not considered until at least six months after the date of filing); Oklahoma Rules Governing Admission to the Practice of Law, Rule 2 (applicant must have graduated from an ABA-approved law school, show good moral character, have practiced five of seven preceding years and be in good standing in a reciprocal jurisdiction, and provide at applicant's expense a report by the National Conference of Bar Examiners; if rules of reciprocal admission and fees in applicant's former jurisdiction are more stringent for admitting Oklahoma lawyers, applicant shall be governed by the more stringent standards); Pennsylvania Bar Admission Rule 204 (applicants must have graduated from an ABA-approved law school, practiced for five of preceding seven years in a reciprocal jurisdiction, passed the Multistate Professional Responsibility Examination and meet various other conditions); Virginia Supreme Court Rule 1A.1 (application must be filed under oath with a certificate saying lawyer has been licensed for at least five years; applicant must also complete character and fitness questionnaire, furnish report of the National Conference of Bar Examiners upon request, and pay \$500 filing fee; thereafter, the Board will determine whether applicant has established an intention to practice full time as a member of the Virginia Bar and whether applicant "has made such progress in the practice of law that it would be unreasonable to require the applicant to take an examination"); Washington Admission to Practice Rule 18 (admission of lawyers from jurisdictions with substantially similar conditions for admitting Washington lawyers, upon proof of admission to practice, current good standing, active legal practice, moral character and fitness, and payment of a filing fee; if the jurisdiction that licensed the applicant requires Washington lawyers to meet other conditions, the applicant must meet a substantially similar requirement); West Virginia Supreme Court of Appeals Rules for Admission, Rule 4.0-4.5 (applicant must demonstrate intention to practice in West Virginia on at least a minimal basis, have practiced five of last seven years, hold valid license from state in which admissions standards are substantially equivalent to standards in West Virginia, show proof of good moral character and submit

lawyers who have been admitted to another state's bar and have practiced actively for a significant period of time without disciplinary sanction are qualified to establish a law practice in the new state, and that, for experienced lawyers, the bar examination therefore serves as an unnecessary obstacle to establishing a practice in the new state. This is particularly true because, with the advent of multi-state bar examinations, most bar examinations have become increasingly less distinctive and less focused on the idiosyncrasies of individual states' law. There is nothing to suggest that in states with admission on motion, particular regulatory problems are disproportionately presented by lawyers who gain admission by this process.

Further, as urged by the ABA Section of Legal Education and Admissions to the Bar, it is worthwhile to attempt to distill and standardize the criteria used by states that employ streamlined admissions processes.³ Accordingly, the Commission recommends that the ABA adopt the *Model Rule on Admission by Motion* developed by the ABA Section of Legal Education and Admissions to the Bar. It should be understood that admission on motion is not an alternative to the multijurisdictional practice standards in proposed Rule 5.5 of the *Model Rules of Professional Conduct*, since no lawyer can realistically be admitted to every state bar, even on motion. The motion rules are directed at those lawyers who expect to relocate their practices or to practice regularly in two or more jurisdictions.

affidavits of good character from at least two lawyers, pass the MPRE, provide records of criminal, disciplinary and civil proceedings, and pay application fee); Wisconsin Supreme Court Rule 40.05 (reciprocity for applicants admitted in jurisdictions that grant similar admission to Wisconsin lawyers and recognize Wisconsin's diploma privilege and applicant must have practiced for three of preceding five years); Wyoming Statute 33-5-110 (admits foreign attorneys who have been awarded a J.D. or LL.B. from an ABA-approved law school, engaged in practice five of prior seven years in a reciprocal jurisdiction, upon presentation of certificate of admission to that state and upon a showing of qualification, character and fitness to practice law). *cf.* Maryland Code Sec.10-210 and Rule 13, Maryland Rules Governing Admission to Bar.

³See Counsel of the Section of Legal Education and Admissions to the Bar, Memorandum to the ABA Commission on Multijurisdictional Practice (Feb. 14, 2001), http://www.abanet.org/cpr/mjp/comm2_leab.html.

EXHIBIT C

SUPREME COURT OF GEORGIA
OFFICE OF BAR ADMISSIONS

BOARD TO DETERMINE FITNESS
OF BAR APPLICANTS

November 20, 2012

SALLY EVANS LOCKWOOD
DIRECTOR OF ADMISSIONS

BOARD OF BAR EXAMINERS

Arizona Supreme Court
Attorney Regulation Advisory Committee
1501 West Washington Street
Phoenix, AZ 85007

Members of the Court and Committee:

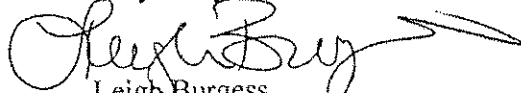
I have had the opportunity to speak with Andrea Dieterle, an attorney at Snell & Wilmer, regarding the pending petition for an addition to Arizona's rule on admission on motion.

Georgia allows attorneys to apply for Admission on Motion Without Examination if they meet certain eligibility requirements stated in the Rules Governing Admission to the Practice of Law in Georgia; Part C; Section 2. In order to be eligible the attorney must be admitted "by examination" in a state "which has reciprocity for bar admissions purposes with the State of Georgia." However, if the other jurisdiction's rules are more stringent, then the "admission of the applicant from that jurisdiction shall be governed by the same rules."

Section (e) states that to be admitted the attorney must have "been primarily engaged in the active practice of law for five of the seven years immediately preceding the date upon which the application is filed." As long as the attorney meets these and the other requirements stated in this Section, there is no requirement that the attorney must be actively practicing in the state in which they were admitted by examination. As an illustration, if an attorney is admitted by examination Kansas but motioned into D.C. and has been practicing in D.C. for the past 5 years, that would satisfy our requirement. We would count the admission by exam in Kansas as satisfying Section 2(b) of Part C and the practice in D.C. as satisfying Section 2(e) of Part C.

It appears that Arizona is considering adoption of a rule allowing for the admission of an applicant on motion who has been admitted by examination to a state without reciprocity as long as the applicant has practiced the requisite time in a state with reciprocity. As Georgia's rule appears to be more restrictive in that an applicant must be admitted through a state with reciprocity in which they have taken an exam, it does not appear that Arizona's rule would have an effect on Georgia's. Therefore, it does not appear that the adoption of this rule would impact the admission on motion of applicants admitted in Arizona who apply in Georgia. Those applicants will still have to be admitted in a state with reciprocity and have taken an exam in a state with reciprocity and have practiced 5 out of 7 years in a state where they have been admitted (whether reciprocal or not).

Very Truly Yours,



Leigh Burgess
Assistant Director

EXHIBIT D

Comprehensive Guide to

Bar Admission Requirements

2012

NATIONAL CONFERENCE OF
BAR EXAMINERS
AND
AMERICAN BAR ASSOCIATION
SECTION OF LEGAL EDUCATION
AND ADMISSIONS TO THE BAR



National Conference
of Bar Examiners



AMERICAN BAR ASSOCIATION
Section of Legal Education
and Admissions to the Bar

CHART 11: Admission on Motion/Fees

Note: As used in this chart, "on motion" denotes admission without any additional testing except, where required, the MPRE.

Jurisdiction	Do your rules provide for admission on motion?		What is the number of years of practice required for admission on motion?	Your definition of practice for purposes of admission on motion includes:					Must an applicant for admission on motion be a graduate of an ABA-approved law school?		Admission on motion fee
	Yes	No		Law teaching	Gov't agency	Military	In-house corporate	Judicial court of record	Yes	No	
Alabama	X		5 of past 6	X	X	X	X	X	X		\$1,300
Alaska	X		5 of past 7	X	X	X	X	X	X		\$1,500
Arizona	X		5 of past 7	X	X	X	X		X		\$1,800
Arkansas	X		5 of past 7	X	X	X	X	X	X		\$1,500
California		X									
Colorado	X		5 of past 7	X	X	X	X	X	X		\$800
Connecticut	X		5 of past 10	X	X	X	X	X		X	\$1,800
Delaware		X									
Dist. of Columbia	X		None							X	\$400**
Florida		X									
Georgia	X		5 of past 7	X	X	X	X	X	X		\$600†
Hawaii		X*		X					X		
Idaho	X		Varies	X	X	X	X	X	X		\$800
Illinois	X		5 of past 7	X	X	X	X	X	X		\$1,250
Indiana	X		5 of past 7	X	X	X	X	X		X	\$800†
Iowa	X		5 of past 7	X	X	X	X	X		X	\$625
Kansas	X		5 of past 7	X	X	X	X	X	X		\$1,250
Kentucky	X		5 of past 7	X	X	X	X	X	X		\$1,200
Louisiana		X									
Maine	X		5 of past 7	X	X	X	X	X	X		\$600**
Maryland		X									
Massachusetts	X		5 of past 7	X	X	X	X	X		X	\$1,015**
Michigan	X		3 of past 5	X	X	X	X	X	X		\$600**
Minnesota	X		5 of past 7	X	X	X	X	X	X		\$950
Mississippi	X		5	X	X	X	X	X	X		\$1,500**
Missouri	X		5 of past 10	X	X	X	X	X	X		\$1,240
Montana		X									
Nebraska	X		Varies	X	X	X	X		X		\$700 / \$950
Nevada		X									
New Hampshire	X		5 of past 7	X	X	X	X	X		X	\$1,000
New Jersey		X*		X			X		X		
New Mexico		X									
New York	X		5 of past 7	X	X	X	X	X	X		\$400
North Carolina	X		4 of past 6	X	X	X	X	X	X		\$2,000
North Dakota	X		4 of past 5	X	X	X	X	X	X		\$400**
Ohio	X		5 of past 10	X	X	X	X	X	X		\$1,250**
Oklahoma	X		5 of past 7	X	X	X	X	X	X		\$1,500**
Oregon	X		5 of past 7	X	X	X	X	X		X	\$625†
Pennsylvania	X		5 of past 7	X	X	X	X	X	X		\$1,000
Rhode Island		X									
South Carolina		X*		X					X		\$400
South Dakota	X		Past 5		X	X	X	X	X		\$450†
Tennessee	X		5 of past 7	X	X	X	X	X	X		\$800†
Texas	X		5 of past 7	X	X	X	X	X	X		\$890
Utah	X		Varies	X	X	X	X	X	X		\$850
Vermont	X		5 of past 10		X	X	X			X	\$600**
Virginia	X		5 of past 7		X	X	X	X	X		\$1,500
Washington	X		Varies	X	X	X	X	X		X	\$920†
West Virginia	X		5 of past 7	X	X	X		X		X	\$1,000**
Wisconsin	X		3 of past 5	X	X	X	X	X		X	\$850
Wyoming	X		5 of past 7	X	X	X	X	X	X		\$600**
Guam		X*			X				X		\$325†
Northern Mariana Islands		X									
Palau		X*			X						
Puerto Rico		X									
Virgin Islands		X*			X					X	none

*Although admission on motion is generally unavailable, it is permitted on a limited basis.

**Plus NCBE report fee † Includes NCBE report fee

‡ Plus other fees (such as for separate character and fitness applications and/or investigations)

See supplemental remarks.