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8 IN THE SUPREME COURT OF THE STATE OF ARIZONA
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10 In the Matter of PETITION TO
11 AMEND RULES FOR ADMISSION
12 TO THE BAR OF ARIZONA
13

R-06-0017

**COMMENT IN OPPOSITION TO
PETITION**

14 We oppose the present Petition, which would introduce a system under which
15 lawyers from many other states could be admitted to practice in Arizona solely on motion,
16 and without successfully passing the Arizona bar examination. Arizona citizens have a
17 right to expect that lawyers authorized to practice here are competent in matters of
18 Arizona law. This Court has the constitutional responsibility to ensure that expectation is
19 satisfied. *See* Ariz. Const. art. VI, § 1; *cf. In re Hamm*, 211 Ariz. 458, 462, 123 P.3d 652,
20 656 (2005) (noting Court's ultimate responsibility to decide whether applicant established
21 good moral character as required for admission to Bar). Currently it does so through
22 administration of the Arizona bar exam, which all lawyers seeking a license to practice
23 here must pass. The Petition would grant a selective exemption from that requirement to
24 lawyers already admitted in other states that grant Arizona lawyers similar preferential
25 rights to secure admission there.

26 The Petition argues that those lawyers will have sufficient indicia of competence
27 that subjecting them to a bar exam is unnecessary or worse. But the Arizona bar exam
28 provides unique, material assurance that those admitted to practice in Arizona know

1 Arizona law. None of the substitutes offered by the Petition does so.

2 **I. OTHER STATES' BAR EXAMS CANNOT SUBSTITUTE FOR THE**
3 **ARIZONA BAR EXAM.**

4 Were the law of Arizona the same as that of other states, it might be possible to
5 argue that a test of one would suffice as a test of the other. But Arizona law isn't the same
6 as that of other states. The fact that an applicant has taken and passed another state's bar
7 exam provides no assurance that the applicant knows of such Arizona law nuances as
8 Rule 26.1 disclosure, community property law, continuing adherence to the
9 *Frye/Logerquist* test for admissibility of expert testimony, and others. Moreover, as the
10 Petition concedes, not all applicants under the proposed rule would have passed a bar
11 exam. Wisconsin, for example, recognizes a "diploma privilege" by which the graduate
12 of a fully-accredited Wisconsin law school can, by certifying that he or she took the
13 required law school courses, satisfy that bar's "legal competence requirement" without
14 taking a bar exam.¹ Under the rule proposed by the Petition, any such graduate would be
15 deemed competent to practice Arizona law as well.

16 In essence, what the Petition proposes is that this Court defer to the bar
17 examinations administered by other states as adequate measures of the competence and
18 skill it wishes to require of Arizona lawyers. If the fact that a lawyer had passed a bar
19 exam administered by another state did in fact serve that function, then admission by
20 motion should logically be made available to lawyers who have been admitted through
21 examination in any other state. That is not, however, what the Petition proposes. An
22 exam administered by another state is to be deemed an adequate substitute for the Arizona
23 bar exam only if that other state allows Arizona lawyers to be admitted there on motion.
24 That is hardly a justifiable criterion for gauging how well that other state's exam tests
25 legal knowledge and ability.

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27 ¹ See Wisc. Sup. Ct. R. 40.02-03 (available at
28 <http://www.wicourts.gov/sc/scrule/DisplayDocument.html?content=html&seqNo=19684>).
New Hampshire will embark on a similar, though more limited, program beginning in
2008. See <http://www.piercelaw.edu/websterscholar/>.

1 **II. THE PROPOSED (UNTESTED) ARIZONA BAR COURSE CANNOT**
2 **SUBSTITUTE FOR THE BAR EXAM.**

3 The Petition’s reliance on a proposed bar course on Arizona law actually proves
4 the inadvisability of the proposed rule change. It amounts to a concession that instructing
5 would-be Arizona practitioners on Arizona law is a prudent thing to do. This is no
6 assurance, however, that what the Petition proposes is even remotely adequate for that
7 purpose. It is impossible for this Court to make a grounded determination that this “state
8 bar course on Arizona law” (Pet. 7:1) is an adequate substitute for requiring applicants to
9 prepare for and pass the Arizona bar exam, because no such course exists. The rule
10 proposed by the Petition is also conspicuously silent, as is the Petition itself, concerning
11 the required structure and content of such a course. Decisions concerning what subjects
12 are to be covered, how much time is to be devoted to each and the like are apparently left
13 to the CLE Department of the State Bar or some other CLE provider. There is not even a
14 requirement that the now admitted applicant demonstrate absorption of what this proposed
15 course seeks to impart. The proposed rule requires only that the applicant “complete
16 successfully” this yet-to-be developed course. (Pet. 10:17) That may require nothing
17 more than faithful attendance.

18 **III. LACK OF DISCIPLINE IN ANOTHER JURISDICTION CANNOT**
19 **SUBSTITUTE FOR THE ARIZONA BAR EXAM.**

20 The Petition posits that a “clean” disciplinary record in the applicant’s home state
21 is a “clear sign that the attorney is actually practicing with skill.” (Pet. 6:23-26.)

22 If that premise is true, then the argument sweeps too far, for it counsels against
23 requiring a bar exam of anyone. But the premise is false. At least so far as Arizona’s
24 experience is indicative, a client’s dissatisfaction with his or her attorney’s performance
25 may well be more likely to manifest itself in a malpractice claim than a (non-
26 remunerative) disciplinary complaint. Moreover, the standard of proof in disciplinary
27 matters is clear and convincing evidence.² A clean disciplinary record may mean only
28 that any complainants against the applicant could not satisfy that standard, or that the

² See ABA Model Rule of Lawyer Disciplinary Enforcement 18(C); Ariz. Sup. Ct. R. 48(d).

1 home state's bar counsel so determined short of a formal hearing. In Arizona, at least,
2 ER 1.1 violations — standing alone — are rarely prosecuted.

3 Nor is sufficient assurance of competence provided by the requirement that
4 applicants for admission on motion “have been primarily engaged in the active practice of
5 law” for five of the seven preceding years. (Pet. 8:25.) In practice, that will simply mean
6 that the applicant has paid whatever dues are required to maintain “active membership” in
7 the applicant's home jurisdiction's bar organization. The State Bar has many “active
8 members” on its rolls who do not in fact practice law. Neither this Court nor the State Bar
9 has the resources to verify an applicant's avowal that the applicant has in fact been
10 actively practicing law for the requisite duration.

11 **IV. OTHER CONSIDERATIONS.**

12 We respectfully submit that neither protectionist sentiment (*see* Pet. 7:18-20) nor
13 the desire of some attorneys to obtain reciprocal admission to other states' bars (*see* Pet.
14 2:17-3:11) is germane. It is true that Arizona's extraordinary population growth makes
15 motion by admission particularly problematic here. Unlike many of the states that permit
16 admission by motion, people are flocking to Arizona. Were the Petition to be adopted, the
17 burdens imposed on the State Bar to adequately police the expected influx of applicants
18 would be overwhelming. Our concerns apparently are not unique: We note that of the
19 seven Sunbelt states, five do not permit admission by motion.³ Two of these — Arizona
20 and Nevada — are the fastest growing states in the country.⁴

21 The bottom line, however, is that Arizona's citizenry need counsel well-versed in
22 Arizona law. That need transcends the preferences of current Arizona lawyers whether
23 they favor the proposed rule change or not. That same need transcends the economic
24 interests of the Bar, which the Petition suggests might be better served by charging
25 significantly higher fees for admission on motion. (Pet. 8:5-7.)

26 ³ Arizona, California, Florida, Nevada, and New Mexico do not permit
admission by motion. Texas and Utah do.

27 ⁴ *See* U.S. Census Bureau News Report, “Louisiana Loses Population;
28 Arizona Edges Nevada as Fastest-Growing State” (available at
<http://www.census.gov/Press-Release/www/releases/archives/population/007910.html>).


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V. CONCLUSION.

To adopt the Petition would be to abdicate our collective responsibility to ensure that Arizona practitioners are reasonably competent in Arizona law. This Court should reject it.

DATED this 11th day of May, 2007.

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