

**COMMENT IN OPPOSITION TO
PETITION IN SUPPORT OF
REVISION OF THE RULES FOR
ADMISSION TO THE BAR OF ARIZONA**

Introduction

On October 3, 2006, Timothy P. Burr, Esquire, filed a Petition in Support of Revision of the Rules for Admission to the Bar of Arizona (“Petition”). By Order dated and filed on October 19, 2006, this Honorable Court invited public comment on the Petition. As provided in the Order, any comment that is made is required to be filed no later than May 21, 2007.

The undersigned, a member of the State Bar of Arizona, the State Bar of California, The Florida Bar, and The District of Columbia Bar, respectfully submits this Comment in opposition to the Petition.

Economic Considerations Are Not Relevant

When prescribing requirements relative to the qualifications and obligations of Arizona lawyers, one of this Court’s objectives has been, and must continue to be, the development of rules which “foster and maintain on the part of those engaged in the practice of law high ideals of . . . learning . . .” Rule 32(a)1., Ariz. R.S. Ct. Economic considerations should play no part in setting that standard. Just as it would be improper to impose an unreasonably difficult bar examination for the purpose of artificially limiting the number of lawyers in Arizona, we should not be concerned with whether the current rule permits a lawyer’s practice to have “economic viability,” Petition at 2, or whether a lawyer is “able to join other states’ bars if they and their families move to other states.” Petition at 3. Arizona bar admission requirements must be

designed for the benefit and protection of Arizona residents and not for the convenience of lawyers who choose to practice elsewhere.

The proposed rule provides only limited assistance to “Arizona attorneys [who] practice near state borders or [who] have clients whose need for legal services cross state borders.” Petition at 2. Colorado and Utah permit admission on motion, but California and New Mexico do not.¹ Nevada permits admission on motion for faculty of the National Judicial College, Boyd Law School, in-house corporate, and some government agencies, but admission on motion is generally unavailable in that jurisdiction.² A lawyer admitted only in Arizona, and desiring to be admitted in California, Nevada, or New Mexico, would still be required to take and pass a bar examination. In states which permit admission on motion, a lawyer who seeks admission is required to undergo a character and fitness investigation, and that process may not be completed in time sufficient to assist a client in a pending matter.

Currently, ten states, including Arizona, require all applicants to take and pass a bar examination.³ In seven other states, admission on motion is permitted in limited circumstances, but is generally unavailable.⁴ Although Arizona is in the minority, Petition at 5, the minority is

¹*Comprehensive Guide to Bar Admission Requirements* at 25-27 (2007 ed.), published by the National Conference of Bar Examiners and the American Bar Association Section of Legal Education and Admissions to the Bar (“Comprehensive Guide”). The cited pages from the Comprehensive Guide are attached as **Exhibit A**.

²*Id.*

³*Id.*

⁴*Id.*

not so small when we consider the fact that it includes California and Florida,⁵ respectively the first and fourth most populous states in the nation.⁶ There are more than 200,000 members of the State Bar of California,⁷ and more than 80,000 members of The Florida Bar.⁸ Those states' insistence that all applicants take and pass a bar examination does not seem to have had any adverse affect on the number of persons legally authorized to advise Arizonans with respect to any California or Florida legal needs they may have. The rules permitting a lawyer to seek and obtain admission *pro hac vice* are sufficient for the occasional need that an out-of-state lawyer may have to engage in litigation in Arizona without going through the formal admission process.

Requiring All Applicants to Take and Pass the Bar Examination is Justified

The Petition quotes the Arizona Multijurisdictional Task Force as stating that there is “no articulated justification for Arizona’s examination requirement, . . .” and characterizes it as “a relic of another time.” Petition at 5. I respectfully disagree.

For an experienced out-of-state lawyer, the most difficult part of practicing in a new jurisdiction is realization that there are substantial state-to-state differences in the law. Legal principles and methods of analysis that, over the years, have become second nature to the lawyer may no longer be applicable in the new state. For example, Arizona is a community property jurisdiction. Most other states are not. With respect to married persons, questions involving the formation and operation of business entities, the conveyance of real property, inheritance,

⁵*Id.*

⁶See U.S. Census Bureau, Table 1: States Ranked by Population: 2000, attached as **Exhibit B**.

⁷See <http://www.calbar.ca.gov>

probate, and creditors' rights are analyzed and resolved far differently in Arizona than they are in a state which derives its marital property rules from the English common law. There are no two community property states with exactly the same law. A lawyer who has practiced extensively in another jurisdiction must resist the temptation to analyze Arizona legal questions in terms of legal principles that he or she learned in another jurisdiction.

Requiring the out-of-state lawyer to take and pass a bar examination based on Arizona law brings home, as nothing else can, the fact that Arizona law is not necessarily the same as that found in the lawyer's state of origin, and that, to function effectively here, he or she needs to become familiar with Arizona law.

Naturally, a bar examination cannot test knowledge of Arizona law in depth, but an applicant, before being admitted to practice in Arizona, should be required to demonstrate an ability to identify Arizona-specific legal issues, to state the applicable rule, to apply the rule to the facts, and to reason logically to a conclusion. The out-of-state lawyer who has gone through the process of studying Arizona law and taking and passing the bar examination will be a better lawyer than one who has not done so.

Merely requiring the lawyer to take a state bar course on Arizona law within six months of admission is insufficient. Although the applicant would be required to complete the course "successfully," Petition at 10, there is no explicit requirement that the applicant take and pass a written test. Thus, the proposed rule does not necessarily provide an objective measure of how well the applicant has absorbed the subject matter of the course. Assuming without conceding that the course will provide the lawyer with the requisite knowledge of Arizona law, what

⁸See <http://www.flabar.org>

protection does the public have during the first six months?

The character and fitness investigation addresses an entirely different aspect of a person's qualification to practice law and does not eliminate the need to determine that a person seeking admission to practice law in Arizona has an adequate knowledge of Arizona law. The fact that a person has a "clean record" in another state, where the laws are different, is no sure predictor of how well that person will advise clients on Arizona law. The establishment of character and fitness is an essential and integral part of the bar admission process, but it should not be permitted to substitute for a lack of knowledge of the law.

Some may contend that lawyers who come here from out-of-state only practice in specific areas of the law, and therefore, do not need to be given a comprehensive test on Arizona law. Unfortunately, once a lawyer is admitted to practice here, there is no practical or workable limitation on the types of law that he or she may practice if the lawyer believes that he or she is competent to do so. The most practical approach is to require all applicants to take and pass the bar examination. Doing so has the added benefit of assuring the public that all Arizona lawyers have fulfilled the same requirements for admission.

Conclusion

For the foregoing reasons, I respectfully request this Honorable Court to deny the petition.

Respectfully submitted,

JOHN PAUL PARKS

Comment in Opposition to Petition

Original and six copies delivered
this 21st day of May, 2007, to:

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and

Copy delivered this 21st day of
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