

Name: Kenneth C Smith  
Address: 2728 E Minton Street, Mesa, AZ 85213  
Phone: 480-567-6663  
Fax: 480-304-9299  
Email: [kcalsmith@gmail.com](mailto:kcalsmith@gmail.com)  
New Mexico Bar# 149157

I would like to address my concern for Rule 34 for Application for Admission under A.R.S. Supreme Court Rules. Changes were taken place on January 1, 2016. More specifically Section f(4) of which states:

**"An applicant who has failed a bar examination administered in this jurisdiction or who has passed the uniform bar examination in another jurisdiction but failed to achieve the Arizona scaled score within five years of the date of filing an application under this rule shall not be eligible for admission on motion."**

In an effort to provide some background to my situation (and several others). I took the Arizona bar exam Feb 2016 and I received 7 points under passing. I decided to transfer my score to New Mexico and practice Federal Law instead of taking the bar exam again. I have a large family and it was just too difficult for me to put my life on hold again for another 2 months or so. At the time I transferred my UBE score, I was under the impression (as were many other colleagues) that after a few years I could apply for admission on motion and avoid having to taken the bar exam again. To my surprise, I know understand that I'm not eligible to apply for admission by motion because I took the bar in Arizona and did not pass with a qualifying score. And by the way the statute is written, it could also be interpreted that after 5 years one would be eligible but I was told by the attorney admission department that it means I would not be eligible at all.

While I feel fortunate to be able to practice law and for the ability to transfer a score with a reciprocal UBE state (which we were not able to do previously), I also feel like it is discriminating that an attorney who was admitted in good standing to a state could not waive into a state because his score was a few points off. Before the UBE and likely before January 2016 (starting in 2012 when UBE began in Arizona) if someone was admitted in a reciprocal state, and they met all the other requirements regardless of UBE score, they could likely become admitted by motion. So now, someone that sends an application that received a UBE score of between 260 and 272 (lowest acceptable UBE score for a state and below 273) between 2012 and December 31, 2015 and has all the other requirements could be eligible for admission on motion, but not for someone that applied on January 1, 2016 and after. It is my belief that this rule is going to create a lot of pushback and while I understand why the Supreme Court would create the statute this way (to protect the public), I feel other less drastic measures could be taken to ensure the protection of the public from incompetent legal representation.

I strongly feel that if an applicant can become licensed in a reciprocal state and can demonstrate that he/she has practiced in good standing for 3 of last 5 years, it should not matter that their score was under "273". At this time, if an applicant was licensed in another UBE state with a score below Arizona, the very lowest acceptable score would be 260. While this score is not high, it is not so low to where a person could be held to be incompetent. Some people experience test anxiety and do not test well, but that doesn't mean they could not be an exceptional attorney.

If an applicant can get licensed in another state, even if their score is lower than 273, they should not automatically be disqualified. I believe if someone has passed a character and fitness in another state, has practiced in good standing 3 of 5 years (or even 5 of 7 years) and has demonstrated to be competent and ethical during that time period, the applicant should be eligible for admission on motion.

Furthermore, after researching some of the other reciprocal states New York, Colorado, Utah, New Mexico, Washington State and Idaho to name a few do not seem to have the same UBE score disqualifying language and those that have demonstrated to have good standing in a state along with the active practice and good moral character required appear to be eligible. I strongly hope that this petition will be given all the weight it deserves and that Rule 34(f)4 can be removed. While I know it is always possible for one to put their life/families on hold and take the bar again, I feel that the spirit of admission by motion is being jeopardized.