



*Supreme Court*  
STATE OF ARIZONA

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**COMMITTEE ON EXAMINATIONS**

1501 W. Washington Street, Suite 104  
Phoenix, Arizona 85007-3222  
602-452-3971

March 27, 2009

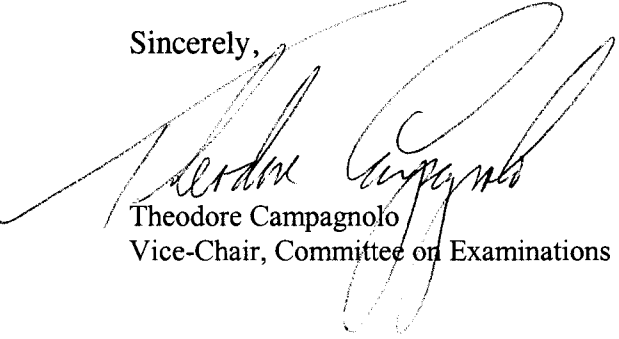
Honorable Ruth V. McGregor  
Chief Justice of the Arizona Supreme Court  
Room 402, Arizona State Courts Building  
1501 West Washington Street  
Phoenix, Arizona 85007-3329

Dear Chief Justice McGregor:

This letter is in response to the petition to amend Rule 35(b) of the Arizona Rules of the Supreme Court, which seeks to include Indian Law as one of the subject areas that may be tested on the Arizona Bar Examination. Your Committee on Examinations carefully considered this issue when it was previously raised three years ago, and the Committee voted to not recommend a change to the rule at that time. Our then-Chair Jeanette Boulet provided the Committee's decision and reasoning in a letter to you dated September 22, 2006. Because we have not seen any new evidence or arguments regarding this issue in the interim, the Committee has not altered its recommendation to the Court.

For your information, I have enclosed copies of the September 22, 2006 letter, along with documents and copies of correspondence that provided the basis for our decision not to recommend a change. Please let us know if we can provide you or the other justices with additional information about our review and recommendation.

Sincerely,



Theodore Campagnolo  
Vice-Chair, Committee on Examinations

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Anna Maria Chavez, Chair · Theodore Campagnolo, Vice-Chair · Jeffrey B. Messing  
Terri L. Clarke · Michael G. Galloway · K. Scott McCoy · David B. Earl · Raymond K. Ramella  
Jeff T. Bergin · Jim Drake, Jr. · Jeffrey A. Weinstein · Karen L. Karr



## *Supreme Court*

STATE OF ARIZONA

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### **COMMITTEE ON EXAMINATIONS**

1501 W. Washington Street, Suite 104  
Phoenix, Arizona 85007-3231  
602-364-0371

September 22, 2006

Honorable Ruth V. McGregor  
Supreme Court, State of Arizona  
Room 402, Arizona State Courts Building  
1501 W. Washington  
Phoenix, Arizona 850007-3329

Dear Chief Justice McGregor:

As you may or may not be aware, your Committee on Examinations has been considering whether or not to support or recommend an amendment to Rule 35(b), Ariz. R. Sup. Ct., 17A A.R.S., to include federal Indian law as a tested subject on of the Arizona Bar Examination. I am writing to apprise you that the Committee will not be recommending such a change at this time.

We first began our inquiry after we learned that New Mexico had decided to include this subject area, and based on our appreciation of the Indian law issues that frequently arise for Arizona lawyers. After our initial discussions, we were approached by the Indian Law Section of the Arizona State Bar, supported by the State Bar Board of Governors, and asked to "work together with the Indian Law Section to include Indian law jurisdictional subject matter on the Arizona State Bar examination, beginning with the summer 2008 examination and continuing thereafter, such that every bar-licensed attorney will receive knowledge reasonably necessary for the representation and protection of all who are subject Arizona State law." (For your information, I have enclosed the Board of Governors' resolution, along with a cover letter from the Indian Law section, with this correspondence.)

During the course of our review over many months beginning in 2005, we met with members of the Indian Law Section and others in the Arizona legal community who are knowledgeable about either federal Indian law or our bar examination requirements. In addition, the Committee members contacted various of their counterparts in other jurisdictions. And lastly, Carolyn de Looper of your staff has provided invaluable assistance in collecting and reporting to us about similar considerations in other states. (A survey of the thirty-seven states that responded to Carolyn's inquiries is also enclosed.)

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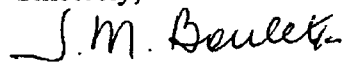
Jeanette M. Boulet, Chair · Daniel P. Beeks, Vice-Chair · Kari B. Zangerle  
Anna Maria Chavez · Marilyn A. Pollard · Theodore Campagnolo · Jeffrey B. Messing  
Terri L. Clarke · Michael G. Galloway · K. Scott McCoy · David B. Earl · Raymond K. Ramella

Honorable Ruth V. McGregor  
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Ultimately, after much discussion, the committee determined that it would not, at this time, offer its support to the rule amendment proposed by the Indian Law Section. Our reasons for that decision are explained in the enclosed correspondence to Shannon O'Loughlin, our contact with that section's executive council.

Please let us know if we can provide you or the other justices with any further information about our review. Although our decision was one of "no action at this time," we nonetheless wanted you to be aware of our consideration of this subject.

Sincerely,



Jeanette M. Boulet  
Chair, Committee on Examinations

jmb  
attachments



August 2, 2005

Ms. Carolyn DeLooper  
Committee on Examinations, Committee on Character and Fitness  
Arizona Supreme Court  
Administrative Office of the Courts  
1501 W. Washington, Suite 104  
Phoenix, AZ 85007-3231

*Re: Indian Law Subject Matter on Arizona State Bar Examination*

Dear Ms. DeLooper:

On May 20, 2005, the Arizona State Bar Board of Governors adopted and approved the Executive Council of the Arizona State Bar Indian Law Section's Resolution concerning Indian Country Jurisdiction on the Arizona State Bar Examination. Enclosed is a copy of that Resolution.

In addition, our Indian Law Section members have been informing the Indian legal community and Indian tribal communities about the Resolution. The Resolution was a topic of discussion at the Indian Law Section's CLE presentation and annual meeting at the Annual Bar Convention in Tucson, and at the May 2005 meeting of the Inter-Tribal Council of Arizona.

As stated in previous correspondence, the Indian Law Section is happy to assist the Committee on Examination in this matter in any way that it can. We appreciate your time and consideration into this matter. Please feel free to contact Shannon O'Loughlin, Chair Elect of the Indian Law Section, at (602) 528-4030.

Sincerely,

A handwritten signature in black ink, appearing to be "Shannon O'Loughlin".

The Indian Law Section of the Arizona State Bar

**AUG 03 2005**



## RESOLUTION

### Federal Indian Jurisdiction on the Arizona State Bar Examination

**Adopted and Approved by the Arizona State Bar Board of Governors on May 20, 2005,  
and the Executive Council of the Arizona State Bar Indian Law Section on April 18, 2005**

**WHEREAS**, we, the members of the Indian Law Section of the Arizona State Bar Association, in support of our purpose to advance the understanding, study, adoption, application, interpretation, and improvement of Arizona state and tribal laws, rules, and regulations that pertain to Indians, Indian tribes or Indian Country, and to their administration and enforcement, to understand and improve the relationships of these bodies of law and judicial and administrative systems, and to encourage and support mutual respect for, and understanding of, the cultures, values, customs, and heritages which underlie them, hereby submit this Resolution; and

**WHEREAS**, the recent growth in tribal economic development and the resulting increase in interaction of Arizona's twenty-two (22) federally recognized Indian tribes with non-Indian entities and individuals, both on and off of the reservation, has given rise to an array of business transactions, regulatory issues and litigation matters between tribal and non-tribal parties in this state; and

**WHEREAS**, the citizens of Arizona and their attorneys do not generally understand the sovereign legal rights of Arizona Indian tribes; nor do they understand precisely how tribal self-governance and self-determination, and the laws and ways of Arizona Indian tribes, affect and intersect Anglo-American legal and jurisdictional principles; and

**WHEREAS**, the integrity and competence of the legal profession in this state would be enhanced if attorneys licensed by the Arizona State Bar Association generally understood significant Indian law jurisdictional principles, particularly the common law doctrines of tribal sovereignty, tribal sovereign immunity, tribal subject matter jurisdiction (both criminal and civil), and the Indian Child Welfare Act; and

**NOW THEREFORE BE IT RESOLVED**, that we do hereby support and urge that the Arizona Supreme Court and its Committee on Bar Examinations work together with the Indian Law Section to include Indian law jurisdictional subject matter on the Arizona State Bar examination, beginning with the Summer 2008 examination and continuing thereafter, such that every bar-licensed attorney will receive knowledge reasonably necessary for the representation and protection of all who are subject to Arizona State law.

Testing on Indian Law  
March 2006 Survey

Jurisdiction	Do you currently test on Indian Law?	If yes, when did you begin?	Do you plan to test on Indian Law?	If yes, when?
Arizona	No		Under consideration.	
Colorado	No		No	
Connecticut	No		No	
Delaware	No		No	
Georgia	No		No	
Florida	No		All currently tested subject matters will be reviewed this year; does not imply IL will be added.	
Hawaii	No		No	
Idaho	No		No	
Illinois	No		No	
Indiana	No		No	
Iowa	No		No	
Kansas	No		No	
Louisiana	No		No	
Maryland	No		No	
Massachusetts	No		No	
Michigan	No		No	
Minnesota	No		No	
Mississippi	No		No	
Missouri	No		No	
Montana	No		No	
Nevada	No		No	
New Hampshire	No		No	
New Jersey	No		No	
New Mexico	Yes	Feb. 2003	IL is a "testable" subject matter; not necessarily tested on every exam.	
Ohio	No		No	
Oklahoma	No		No	
Oregon	No		No	
Pennsylvania	No		No	
Rhode Island	No		No	
South Carolina	No		No	
South Dakota	No		The SD Equal Justice Commission has recommended adding an Indian law question. The Board of Bar Examiners is in the process of proposing rule changes to the Supreme Court to allow for this. The Court will hear these sometime in the late summer or early fall of 2006. If approved the earliest would be July 2007.	

Tennessee	No		No	
Texas	No		No	
Utah	No		No	
Vermont	No		No	
Washington	No		IL will be tested, but no sooner than July 2007.	
West Virginia	No		No	
Wyoming	No		No	



*Supreme Court*

STATE OF ARIZONA

**COMMITTEE ON EXAMINATIONS**

1501 W. Washington Street, Suite 104  
Phoenix, Arizona 85007-3231  
602-364-0371

June 15, 2006

Shannon Keller O'Loughlin  
Dreyer Boyajian LLP  
75 Columbia Street  
Albany, New York 12210

By Fax 518-463-4039 (3 pages)

Re: Arizona State Bar Indian Law Section Proposal

Dear Ms. O'Loughlin:

The Supreme Court Committee on Examinations has considered the proposal of the Executive Council of the Indian Law Section to amend Rule 35(b), Ariz. R. Sup. Ct., 17A A.R.S., to include Indian Law as a subject tested in the essay portion of the Arizona State Bar Examination. We are currently conducting a full review of our bar examination, including the areas tested and the format of the questions, and may in the future be submitting proposed rules changes to the supreme court to implement any recommendations we reach through that process. At your request, we have separately considered the change proposed by the Indian Law Section, which would amend the potential areas of testing to include, in addition to the twelve topics currently listed:

Tribal sovereign immunity; and civil and criminal jurisdiction over actions involving Tribes, Tribal members or entities, or arising on Indian lands.

After considerable discussion, the committee has voted to withhold its support for such an amendment to Rule 35 at this time.

As you know from our meeting with members of the Indian Law Section Executive Council last fall, we appreciate the need for Arizona attorneys to recognize and respond

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Jeanette M. Boulet, Chair · Daniel P. Beeks, Vice-Chair · Karl B. Zangerle  
Anna Maria Chavez · Marilyn A. Pollard · Theodore Campagnolo · Jeffrey B. Messing  
Terril L. Clarke · Michael G. Galloway · K. Scott McCoy · David B. Earl · Raymond K. Ramella

Shannon Keller O'Loughlin  
Dreyer Boyajian LLP  
June 15, 2006  
Re: Arizona State Bar Indian Law Section Proposal  
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appropriately to Indian Law issues that may be relevant to a case or legal problem. The committee discussed other ways such education might be provided, such as mandatory CLE, or integration of Indian Law issues in mandatory law school core courses.

We are concerned, however, about attempting to improve the knowledge of Arizona attorneys by including this sophisticated and complex field on the bar examination, when the subject matter is not a required course in Arizona's law schools or, to our knowledge, any law school in the country. As you can imagine, there is a tension between competing concerns about the efficacy of our bar examination, with some critics maintaining that the bar exam already tests too many subject areas and judges applicants too harshly, and others questioning whether the existing topics are sufficient to test basic legal knowledge.

We are mindful of our supreme court's admonition that the practice of law "is not a privilege but a right, conditioned solely on the requirement that a person have the necessary mental, physical and moral qualifications." *See, e.g. In re Klahr*, 102 Ariz. 529, 433 P.2d 977 (1967). Accordingly, the bar exam is designed to test the core competencies needed to begin the practice of law, not expertise in any particular area. Other highly specialized fields of legal knowledge that routinely impact practice are not tested. Committee members noted that taxation, administrative law, and bankruptcy are all examples of such omitted subject areas that regularly require attention in an Arizona attorney's practice.

Committee members also addressed whether a proposed change provides fair notice of the specific areas to be tested on the exam, an issue we discussed with you last fall. We appreciate your work in drafting the proposed language, but find it sweeps broadly, touching upon Indian Law aspects of constitutional law, jurisdiction, criminal law, procedure, and possibly conflicts of law. In the context of testing a range of topics to ensure general competency, the committee expressed concern that this change requires too much of applicants, at least in the context of the bar examination as it is currently comprised and formatted.

Shannon Keller O'Loughlin  
Dreyer Boyajian LLP  
June 15, 2006  
Re: Arizona State Bar Indian Law Section Proposal  
Page Three

We wish you well in your important efforts to improve the education of members of the Arizona Bar about the Indian Law issues that may regularly affect their clients, and have appreciated the opportunity to meet with you about your concerns.

Sincerely,



Jeanette M. Boulet, Chair  
Committee on Examinations  
Supreme Court of Arizona

JMB/

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Jeanette M. Boulet, Chair · Daniel P. Beeks, Vice-Chair · Kari B. Zangerle  
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