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WSBA #54421

IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of:)	
)	Supreme Court No. R-21-0013
)	
PETITION TO AMEND)	
RULE 34(f)(4) OF THE AZ.)	
SUPREME COURT RULES)	
)	Comment to Petition to Amend
)	Rule 34(f)(4) A.R.S.
)	
)	
)	
_____)	

Pursuant to Rule 28(D), Rules of the Supreme Court, Daniel J. Fulce respectfully submits this Comment for the Court’s consideration to adopt amendments of Rule 34(f)(4), governing Arizona’s rule on out of state attorney’s being admitted on motion to the Arizona State Bar. The original Rule states as follows:

“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 (5) years of the date of filing an application under this rule shall not be eligible for admission on motion.”

I. Rule 34 (f)(4) should be removed as it jealously prohibits the Courts intent for reciprocity with other states, and it serves no purpose for adequate admission requirements.

While it is well established that a State has the inherent authority to regulate its requirements for professional licenses, Rule 34(f)(4) does not accomplish the goal that Arizona set out to carefully guards its bar admission. It can only be said that the rule is meant to serve 2 purposes: (1) That the Arizona Court’s want to ensure that only those who live in Arizona are able to practice so that applicants don’t bar shop, or (2) It wants to give an advantage to those who take the Arizona Bar to be licensed first. Both points, however, are flawed in its practical application.

In relation to point (1), those who are licensed to practice in a state, typically reside in that State to practice. Therefore, if Arizona's intent it to limit bar shopping and give the benefit of its bar to Arizona residents, then there would not be a need for reciprocity at all. However, because Arizona has reciprocity with many States, this reasoning is voided.

Secondly, and most importantly, the second reasoning is rather moot by this Court's adoption of the rule for admission by bar score by someone who has achieved a passing Arizona UBE score. The reason why this is moot is because dealing with admission on motion should not relate to a different rule for admission by bar examination score. Plainly speaking, a person does not need to even entertain admission on motion if they have achieved an Arizona UBE Scaled Score because they can just apply for the bar using their score and skip admission on motion all together. Thus, having a rule that requires someone to pass the Arizona UBE Score requirement while also giving them a way to be admitted on motion is just counterintuitive; the person does not need to apply for admission by motion.

Lastly, as indicated in the original petition, and the previous comment, the inequity this rule causes by discriminating against legal experience bears no fruit on one's ability to practice. While I do agree, experience is far greater than any score on the UBE, to say that one person waits only 3 years (when they could apply at anytime due to their score), and the other has to wait 5 is egregious. There is functionally no difference when it comes to experience between two people who both have 3 years of experience. If this Court allows for someone to be admitted who only has 3 years' experience but has an Arizona UBE score, and another who has the same experience, but didn't have a Arizona Scaled Score to not be admitted, it is essentially saying experience doesn't matter, the scaled score does. If that is the case, then again, that ideology runs contrary to the Courts adoption of reciprocity. That is what reciprocity is; it is meant as a way where experience is more desired than a score on a test. For example, on January 28, 2021, the California Supreme Court passed a rule using this same idea where it that allowed admission to the bar for those who narrowly failed the bar exam in recent years, but successfully completed 300 hours of supervised legal practice. Even the California Supreme Court recognized that experience in the practice of law is much more important than any score. Thus, because rule 34(f)(4) is functionally discriminatory, and completely contrary to the desired effect of admission on motion, it should be deleted.

II. I propose that Rule 34(f)(4) be stricken from the Arizona Supreme Court Rules and allow those who are seeking admission on motion to only need to be engaged in the

active practice of law 3 of the last 5 years, as is the rule for those who achieved an Arizona Scaled Score.

As mentioned above, Rule 34(f)(4) is quite honestly not needed as the Court should primarily focus more on the persons experience rather than their score. The only time a score should matter is if a person is seeking admission based solely on their scaled score. Having a requirement for experience AND a score is counterintuitive. A person does not need to apply for admission on motion if they have a passing score. Thus, Rule 34(f)(4) is moot and should be stricken.

RESPECTFULLY SUBMITTED this 19th day of March 2021