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Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Richard J. Hughes Justice Complex
P.O. Box 037
Trenton, New Jersey 08625-0037

Re: Comments: Special Committee on Attorney Ethics and Admissions

Dear Judge Grant:

I am writing in response to the Notice to the Bar dated June 9, 2015, inviting public comments on the Special Committee's Report and Recommendations issued on May 12, 2015. More specifically, I would like to comment on that part of the Special Committee's Report and Recommendations that addresses admission on motion.

First, I agree with the arguments advanced by the Special Committee's members who are in favor of admission on motion. Given the ever-increasing need for lawyers' mobility, I believe that it is time for New Jersey to join the vast majority of U.S. jurisdictions that currently allow admission on motion for out-of-state attorneys, if they meet certain requirements.^{1/} While not specifically focusing on this issue, I have not come across any studies that would suggest that the attorneys who were admitted on motion are more likely to commit malpractice than the ones who had to take a bar exam.

The most frequently cited reason for the requirement that all applicants to the New Jersey bar must take a bar exam—regardless of how long they may have practiced law in another state—is to protect the clients by ensuring familiarity with the New Jersey state laws and procedure. However, what the advocates of the continuing bar exam requirement for the experienced out-of-state attorneys apparently fail to recognize is that the subjects covered by the New Jersey bar exam are generally the same as the ones tested by the Multi-state Bar Exam (MBE) multiple choice questions. For instance, Rutgers School of Law – Newark describes New Jersey bar exam as follows:

^{1/} Whether New Jersey should adopt the most recent recommendation (requiring that a lawyer seeking admission on motion has practiced law in another state for 3 out of last 5 years), the previous version of the Model Rule (requiring that a lawyer seeking admission on motion has practiced law in another state for 5 out of last 7 years), or some other variation of the ABA Model Rule on admission on motion is a different issue and one on which I do not comment.

The first day of the New Jersey exam is the MBE. The second day consists of seven 45-minute essay questions. Six of the questions focus on one or more of the six MBE subjects (seven subjects beginning with the February 2015 exam) and generally do not require knowledge of local New Jersey law; the seventh question focuses on both federal and New Jersey Civil Procedure.

See <http://law.newark.rutgers.edu/bar-examinations-and-admissions>.

In other words, except for that seventh essay question, none of the subjects tested on the New Jersey bar exam require preparation beyond what one needs to know to successfully complete the MBE portion of the bar exam, which constitutes part of bar examinations in the majority of the U.S. jurisdictions.^{2/}

In essence, under the current rules, as part of their admission process to the New Jersey bar, the experienced out-of-state attorneys are required to [re-]take the bar exam that is virtually identical to a bar exam administered in their home jurisdictions. Even the out-of-state attorneys who move to New Jersey from the states that do test local law (e.g., California, Florida, Texas, New York) would have already studied and passed the same MBE subjects that are tested on the New Jersey bar exam. Moreover, a good number of the states (albeit not all) that do test local law on their bar exam also recognize the changing world and need for the lawyers' mobility. For instance, Texas allows admission on motion for the experienced out-of-state attorneys already for many years, Florida is currently considering whether to change its rules to allow admission on motion (see Vision 2016 Bar Admissions Sub-Group's Preliminary Report available at <http://www.floridabar.org/vision2016>), and New York (which already provides for reciprocal admission on motion) recently adopted the Uniform Bar Exam, effective July 2016.

Furthermore, whatever concerns might remain about the out-of-state attorneys' ability to competently practice law in New Jersey, they may easily be addressed by an additional requirement that, upon admission on motion, such attorneys must take certain continuing education courses to assist them to catch up on the New Jersey state laws and procedure.

In short, continuing to require that all bar applicants must take the New Jersey bar examination without providing for admission on motion does not serve the stated purpose of protecting the public and, in any event, such goal could easily be accomplished by other means (e.g., taking the appropriate/specific CLE courses).

Thank you for your attention.

Very truly yours,

Ekaterina Schoenefeld

ES/hs

^{2/} It is also worth noting that, in the course of their preparation for the MBE subjects, bar applicants do not study what is the law in any particular jurisdiction; rather, they are taught what the "majority" and "minority" rules are, generally.