
From: Thomas Abraham
Sent: Tuesday, September 15, 2015 8:29 AM
To: Comments Mailbox
Subject: Comment on report for Special Committee on Attorney Ethics and Admissions
Attachments: New Jersey Law Journal Article Federal Court Admissions 2015.pdf

Dear Honorable Justice Glenn Grant and Special Committee on Attorney Ethics and Admissions,

I read the Notice to the Bar posted online at work. I am an employee of the Judiciary, but I am writing as a private citizen. If you ever so choose to open comments to the public on this matter please consider my comment. I read the Notice to the Bar and the Report and Recommendations written on May 12, 2015. This is my person opinion out of State lawyers should be considered for admission to the New Jersey State Bar by Motion, if Pro Hac Vice. My understanding of Pro Hac Vice Motion is limited to just observation, but my understanding is that out of state attorneys are partnered with in state attorneys.

I feel getting input from the outside public is important as well. I attached an article I read on my break from the New Jersey Law Journal of the implications on the Federal level of your decision on the State level. I think this is a decision to be considered carefully. I am writing this before my workday starts at 8:30am. This is just my personal opinion, not as an esteemed member of the bar as many of your membership. Again, if you decide to open commentary to members of the public, please consider my comment in your consideration and have a great day.

Sincerely,

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New Jersey Law Journal

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Suit Over NJ Federal Court Admissions Rule Dismissed

Charles Toutant, New Jersey Law Journal

September 1, 2015

A federal judge has dismissed a suit seeking to make admissions rules for New Jersey's federal courts more welcoming to out-of-state lawyers.

The plaintiffs failed to support their claims that the U.S. District Court for the District of New Jersey's Local Rule 101.1 violates the statutory and constitutional rights of lawyers and litigants. U.S. District Judge Gerald Austin McHugh of the Eastern District of Pennsylvania ruled Sept. 1 in *National Association for the Advancement of Multijurisdictional Practice v. Simandle*.

The suit named U.S. District Chief Judge Jerome Simandle of the District of New Jersey and all the district judges and magistrates in New Jersey as defendants, along with former U.S. Attorney General Eric Holder Jr. McHugh was enlisted to hear the case so the New Jersey judges would not be in conflict. The defendants were represented by assistant U.S. attorney Kristin Lynn Vassallo of the District of New Jersey.

The suit attempted to overturn Rule 101.1's requirement that lawyers must be admitted to practice in New Jersey before they can practice in the state's federal courts. But McHugh rejected the plaintiffs' claims that Rule 101.1 exceeds the statutory authority of the district court, and that the rule violates the Constitution's First Amendment and supremacy clause.

The National Association for the Advancement of Multijurisdictional Practice (NAAMJP) brought the case along with two New York lawyers who claimed they were injured by the inability to be admitted to New Jersey's federal bar without first taking the New Jersey bar exam. The suit sought to allow out-of-state attorneys to be admitted to New Jersey's federal courts on motion, just as in-state attorneys are. Currently, lawyers not admitted in New Jersey must either sit for the state's bar exam or be admitted *pro hac vice*, which requires them to work with local counsel.

The plaintiffs also argued the American Bar Association's Commission on Ethics 20/20 has endorsed admission by motion, which is currently allowed in all but eight states. In addition to New Jersey, the others are Delaware, Florida, Hawaii, Louisiana, Montana, Nevada and South Carolina.

The issue has been a divisive one in New Jersey—so much so that a state Supreme Court committee studying admission by motion, finding its members evenly divided, issued dual reports in May, taking both sides of the controversy. The Supreme Court is accepting input on the reports until Sept. 15.

In the federal case, McHugh rejected the defense's claims that the NAAMJP and the two individual plaintiffs lacked jurisdiction to bring their suit. But he agreed with the defendants that the plaintiffs' claims of violation of the supremacy clause misstated the effect of Rule 101.1. The state did not impose its authority on the District of New Jersey, and the state's federal court is free to change its rule if it so desires, McHugh said.

The judge also rejected the plaintiffs' claims that the rule violates the First Amendment for being overbroad, discriminating based on content or viewpoint or engaging in prior restraint. The rule is narrowly tailored to regulate the bar, and the plaintiffs have not shown that it permits the court to censor speech or leads speakers to censor themselves, McHugh said.

The lawyer representing the plaintiffs, Joseph Giannini of Los Angeles, said in a statement that the suit "is about attorney equality in the 21st century United States of America."

A spokesman for the U.S. Attorney's Office for the District of New Jersey, Matthew Reilly, declined to comment.

Karol Corbin Walker, president of the Association of the Federal Bar of New Jersey, said her group is pleased with McHugh's ruling.

"I agree with the opinion that Local Rule 101 passes constitutional muster because it allows anyone to practice here via pro hac vice admission, which is not a difficult process at all," she said. "New Jersey practitioners enjoy a collegiality that you may not find in many other districts across the country. People who practice pro hac vice practice alongside a local counsel. Local counsel introduces the primary counsel to the New Jersey federal family."

McHugh also presided over a similar suit filed by NAAMJP in Pennsylvania. In that case, the group raised a constitutional challenge to Pennsylvania's rule allowing out-of-state lawyers to join the state's bar without taking its bar exam as long as they come from a state that grants the same privilege to Pennsylvania lawyers. McHugh dismissed the case, *NAAMJP v. Castille*, and the U.S. Court of Appeals for the Third Circuit affirmed the ruling Aug. 26.

Contact the reporter at ctoutant@alm.com.

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