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Via Electronic Mail (denise.foster@courts.wa.gov)

Clerk of the Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

Dear Clerk:

The WSBA Board of Governors has proposed changes to Admission to Practice Rule 3, including an amended list of qualifications to sit for the Washington bar examination and a provision for admission by motion. I believe that this proposal is, for the most part, a step forward in simplifying and updating the rules for admission. But under the proposal as it stands, not all attorneys who have been admitted by examination in other states would be treated fairly and consistently within the logic of the proposal. The suggested amendments to APR 3 should be modified to maintain consistency with their rationale, to ensure fair access to the profession, and to benefit the public.

Logical Consistency Within the APR 3 Amendments

To maintain consistency with the rationale for the suggested APR 3(b) amendments, the amendments should be modified so as to allow any attorney who has been admitted by examination in another U.S. jurisdiction to take the Washington bar examination.

The need for this modification is shown by the proposal that would allow a person who has graduated from a foreign law school, or any other non-ABA-approved law school, to sit for the Washington bar examination if he or she completes an LL.M. degree for the practice of law. Among those excluded by this rule would be graduates of distance-education law schools¹ and attorneys admitted in another state on the basis of some type of apprenticeship or law-clerk program.² The WSBA's rationale for this requirement is that it would ensure that the applicant has a basic understanding of United States law. This rationale, however, does not logically apply to an attorney who has been admitted by examination in another state. By already passing another state's bar examination, the attorney has shown at least a basic understanding of U.S. law. He or she should therefore be permitted to sit for Washington's bar examination without obtaining an unnecessary and expensive LL.M.

¹ An ABA-accredited law school may grant a student no more than 12 credit hours toward a J.D. degree under Standard 306 of the ABA Standards and Rules of Procedure for the Approval of Law Schools (2012-2013).

² In fact, a person who is admitted by examination in another state after completing a program akin to Washington's APR 6 law-clerk program would not even have the option of obtaining an LL.M. degree to qualify for Washington's bar examination.

Internal logical consistency within APR 3 would also be improved by allowing any attorney who has passed another state's bar examination to take Washington's examination. This is due to suggested APR 3's differing treatment of foreign lawyers and U.S. lawyers. In suggested APR 3(b)(v), a foreign lawyer from a common-law country becomes eligible to sit for the Washington bar examination after at least three years of active legal experience. By contrast, a U.S. lawyer with the same period of experience qualifies for admission by motion under suggested APR 3(c). This distinction makes sense because it recognizes that a foreign lawyer is probably less familiar with U.S. law, and it therefore requires him or her to pass the bar examination.

However, suggested APR 3(b) fails to make the same distinction when it requires, as a prerequisite to admission by examination, an LL.M degree for graduates of all non-ABA-approved law schools, whether foreign or domestic. This requirement includes even those applicants who have become licensed by examination in another state. Yet a lawyer who has passed a U.S. bar examination has already shown a basic understanding of U.S. law, while a graduate of a foreign law school has not. Thus, it would be a sensible distinction to place the LL.M. requirement on a foreign graduate while not placing it on a lawyer who has been admitted by examination in the United States. Allowing the U.S.-licensed lawyer to take Washington's bar examination would make that distinction and give him or her a fair opportunity to demonstrate competence, consistent with the rationale of the suggested amendments.

Aiding Public Access to Justice and Diversity in the Legal Profession

Passing the bar examination is the "ultimate test for determining minimum competence to practice law," as the WSBA's APR Task Force stated in its final report to the Board of Governors (September 6, 2012). Because the bar examination serves to determine competence, the prerequisites for taking the examination should be constructed to be accessible for persons from a diverse range of socioeconomic and experiential backgrounds. This ensures that admission is predicated, as much as possible, on merit.

Granting access to the Washington bar examination for any attorney who has already been admitted by examination in another state would benefit the public in two ways: first, it will help increase diversity in the legal profession; second, it may improve access to justice for clients of low or moderate means. The main reason for these effects is the rapidly climbing cost of traditional law school, with the corresponding increase in law-student debt. Other means of legal education, such as distance education and clerking, can often provide quality at a more efficient cost, which helps to both open the profession to those of lesser means and frees up new lawyers to provide more pro bono or affordable legal assistance.

The burden of high tuition and debt falls most heavily on students of lesser means and students from families of lesser means, because many of those people can finance law school only by taking on a higher-than-average level of debt. This dampens the level of socioeconomic diversity within those joining the legal profession. Similarly, law-student debt appears to disproportionately burden ethnic minorities, as recently concluded by a special committee of the Illinois State Bar Association (ISBA).³

The ISBA committee also found that high debt levels burden access to justice for disadvantaged clients. Financial pressure on a debt-laden new lawyer makes it difficult for him or her to provide much pro bono work. Likewise, the committee's report concluded that the cost

³ See <http://www.isba.org/sites/default/files/committees/Law%20School%20Debt%20Report%20-%202013-8-13.pdf>.

of law school inhibits new lawyers from rendering affordable services to those of limited means and from working on a sustained basis in public-interest jobs because the pay available for those roles is often inadequate to support law-student debt.

These debt-driven problems can be largely avoided by students who study law using cost-efficient alternatives such as distance-education or law-clerk programs. Schools offering distance education can pass on significant savings to the students, and persons working in law-clerk programs akin to our APR 6 program are learning in the context of a paying job. These students thus have more freedom to provide public service after completing their education. The greater flexibility and affordability of such alternatives also assist less-advantaged people and those with established careers in other fields to transition to the legal field; this fosters diversity within the legal profession. People with a non-conventional legal education, after passing another state's bar examination, should be permitted to demonstrate their merit and competency by taking Washington's bar examination.

The executive director of the WSBA recently suggested that now is a time for bold change to solve the problems in legal education and public access to justice.⁴ But simply allowing all attorneys who have been admitted by examination in another state to sit for Washington's bar examination, on an equal basis, is a relatively modest change that could ease access to justice. This change would make room for competent lawyers educated by innovative methods. Our state will benefit if lawyers licensed in other states, even if trained through non-traditional media, are allowed to serve the public here after proving their competency by a double-bar-examination screening process.

Sincerely,

A handwritten signature in cursive script that reads "Timothy Cover".

Timothy Cover

⁴See <http://www.nytimes.com/2013/02/11/us/lawyers-call-for-drastic-change-in-educating-new-lawyers.html>.