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WSBA

WASHINGTON STATE BAR ASSOCIATION

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April 28, 2017

The Hon. Charles Johnson
Chair, Supreme Court Rules Committee
Washington Supreme Court
Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929

Re: Comment to suggested amendments to APR 3

Dear Justice Johnson:

The WSBA is submitting this letter comment as a response to the comments submitted by Kenneth Kagan regarding the suggested amendments to APR 3 as they relate to applicants who received their law degree in another country and are applying for Washington's lawyer bar exam and admission and licensing to practice as a lawyer in Washington. We respectfully urge the Court to adopt the original suggested amendments as submitted by the WSBA to the Court, with the customary effective date.

Mr. Kagan's letter in some respects is less of an objection to the suggested amendments than an argument to the Court on behalf of particular clients. The WSBA does not believe that a comment to a suggested rule amendment is the appropriate forum for resolving issues related to individual clients' existing or potential applications to take the lawyer bar exam and be admitted to practice as a lawyer in Washington, however, we recognize the Court may be interested in how the WSBA would resolve Mr. Kagan's clients' concerns. For this reason, we will address the issues separately, starting with the appropriateness of the suggested rule amendment in general, and then addressing the concerns of Mr. Kagan's individual clients.

Is the Suggested Rule Amendment Appropriate?

One of the primary purposes of the Admission and Practice Rules is to protect the public by ensuring that only qualified individuals who have met the essential eligibility requirements to

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practice law are licensed to practice law in Washington. The essential eligibility requirements for the practice of law under APR 20(e) require “the ability to competently undertake fundamental lawyering skills such as legal reasoning and analysis, recollection of complex factual information and integration of such information with complex legal theories, problem solving, and recognition and resolution of ethical dilemmas.” To protect the public, people who want to be licensed as lawyers are expected to have a level of education that teaches the skills required by the essential eligibility requirements and prepares individuals for the practice of law in Washington.

It is traditionally understood in the U.S. that a Juris Doctor (JD) degree earned in the U.S. is the required qualifying education for the lawyer bar exam and ultimately for the practice of law as a lawyer. In Washington, our rules provide for some narrowly drawn alternative methods for qualifying applicants to take the lawyer bar exam, but they are based on establishing that essentially equivalent educational requirements are met.

The expectation that the underlying qualifying educational requirements for competent practice of law as a lawyer have been met also must be applied to an individual with a non-JD law degree earned in another country seeking to take the lawyer bar exam and be licensed to practice law as a lawyer in Washington. If the applicants are not currently licensed to practice law as lawyers (or the equivalent of lawyers) in the jurisdiction where they completed their education, the foreign law degree that they use to qualify for our lawyer bar examination should be one that would currently qualify the applicant to practice law (upon completion of any additional admission or licensing requirements established in that jurisdiction).

This approach is designed to ensure that, according to the foreign jurisdiction’s standards, the individual has met the minimum educational requirements designed to give them the knowledge and skills necessary to practice law in that jurisdiction. (Note: The standard is different for lawyers who are already licensed in a foreign jurisdiction. By virtue of their licenses to practice law, these lawyers have already established the minimum qualifications for their jurisdiction. Thus, applicants with a foreign law degree who are licensed in the same jurisdiction as the law degree do not need to have the education that is *currently* required to practice law in that jurisdiction, as long as their license to practice law is still current—but they do need to have a degree in law.)

This approach also the original intent of the drafters of this rule. As stated on page 2 of the GR 9 Coversheet for the Suggested Amendments to the APR, submitted by WSBA to the Court in October 2012:

First, under proposed APR 3(b), the qualifications for general admission are broadened to include foreign attorneys or graduates from foreign law schools who earn an LL.M. degree in the practice of law from an ABA approved law school.

And, as stated on page 5 of the APR Task Force Memo to WSBA Board of Governors dated September 6, 2012 (attached to the GR 9 Coversheet in 2012):

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Permitting foreign lawyers and foreign law school graduates to seek admission by exam provides access to licensure for individuals who have education and experience similar to (and in some cases, greater than) that of individuals educated at an ABA approved law school.

As these statements demonstrate, the drafters anticipated that unlicensed graduates from foreign law schools or foreign lawyers would have similar or more education and experience as is required for an ABA approved law school JD degree. An undergraduate degree that does not qualify the individual to practice law, from a university that may or may not be a law school, is not education and experience similar to JD graduates from ABA approved law schools.

Further, it is interesting that Japan has changed its own determination about the type of education that is believed to be sufficient to qualify one to practice law in that country. Japan now requires that people who want to practice law in Japan have a JD degree. If the type of degree in question here is no longer sufficient to engage in the practice of law in Japan, it seems unreasonable to expect that Washington should consider it to be sufficient to engage in the practice of law in Washington.

How Would the WSBA Resolve the Concerns Raised by Mr. Kagan on Behalf of His Clients?

Upon learning that applicants were applying for the Washington lawyer bar exam who would not qualify as lawyers in the jurisdictions where their law degrees were earned, WSBA sought to remedy the situation in as equitable a manner as possible. We contacted law schools that we knew had foreign students who had applied for the bar exam, **including Florida Coastal School of Law**, and informed them that the foreign law degree must qualify the applicant to practice law in the jurisdiction where they earned the degree. We learned that some individuals had already enrolled in programs and had planned to sit for the bar exam in 2017. Because the LLM for the practice of law program is generally about one year in duration, we informed those law schools that individuals already enrolled in the LLM program would be eligible to sit for the bar exam, but that we would not consider such individuals qualified for the bar exam in 2018. By doing this, we were clarifying the Bar's policy and interpretation of the rule far enough in advance for the law schools to apply this policy in their admissions decisions and inform potentially affected applicants that they would not qualify for our lawyer bar exam and would not make decisions based on false assumptions.

A comment against a proposed rule does not appear to be an appropriate forum for advocating for one's individual clients relying on their individual facts; however, we would like to briefly comment in a generalized way on the declarations and information regarding Mr. Kagan's clients without identifying the particular applicants being referred to by any particular statement. Of course, WSBA is not permitted to disclose in this publicly available document any information attributable to particular applicants.

Of Mr. Kagan's 23 clients, please note:

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- All clients are enrolled, or planned to enroll, in an LLM program at Florida Coastal School of Law. Florida Coastal's LLM program can be completed entirely via online education. And Florida Coastal was one of the first law schools that the WSBA informed of this policy and rule.
- Seven clients have already registered for the 2017 Summer Bar Exam; two of those would also qualify to take the Bar exam in 2018 because one has a JD and one is a licensed lawyer; and one of them is repeating after failing the Winter Bar Exam, and thus qualifies for that reason.
- One client failed the bar exam twice previously and has not reapplied but could.
- One client (not the same as the one described in the second bullet point above) is a lawyer in Japan and therefore qualifies and has applied for the Winter 2018 Bar Exam.
- One client completed the LLM in April 2015, yet did not apply for the bar exam.
- One client only "plans" to enroll in the LLM program and has not enrolled yet, and therefore can simply not enroll in the program if they don't qualify. In other words, there has not yet been any detrimental reliance.
- Of the remaining 12 clients who enrolled in 2014 to 2016: two of his clients graduated in Japan after the new rules took effect in Japan, and therefore would have known that they would need a JD degree in Japan in order to practice law there; another is a lawyer who would qualify to take Washington's bar exam if he/she maintains the license to practice in Japan. We do not know the status of their studies or why there is a delay in completing the program

We also think it is important to note that only two of Mr. Kagan's clients mention some type of legal work in Japan in their declaration as a possible need for the license to practice law in Washington or the United States. The rest of the clients only refer to the license as a highly-valued credential in Japan.

For these reasons, we continue to urge the Court to adopt the suggested amendments to APR 3 as submitted, and with the customary effective date.

Please feel free to contact me if you have any further questions about this matter.

Sincerely,



Jean K. McElroy
General Counsel/Chief Regulatory Counsel

Cc:

Paula Littlewood, WSBA Executive Director
Robin Haynes, WSBA President
Kenneth Kagan

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Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, April 28, 2017 3:43 PM
To: Tracy, Mary
Subject: FW: Correspondence: Comment to Suggested Amendments to APR 3
Attachments: APR 3 comment response 4-28-17.pdf

Forwarding.

From: Margaret Shane [mailto:Margarets@wsba.org]
Sent: Friday, April 28, 2017 3:42 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>; Johnson, Justice Charles W. <Charles.Johnson@courts.wa.gov>
Cc: Jean McElroy <jeanm@wsba.org>; Paula Littlewood <PaulaL@wsba.org>; Robin Haynes (Robin@giantlegal.net) <Robin@giantlegal.net>; Ken Kagan (ken@kenkaganlaw.com) <ken@kenkaganlaw.com>; Jennings, Cindy <Cindy.Jennings@courts.wa.gov>
Subject: Correspondence: Comment to Suggested Amendments to APR 3

Good afternoon –

Attached please find the PDF of a letter regarding comment to suggested amendments to APR 3.

Please let me know if you have any difficulty accessing the attached document.

Thank you,
Margaret



Margaret Shane | Executive Assistant

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The WSBA is committed to full access and participation by persons with disabilities. If you have questions about accessibility or require accommodation please contact karar@wsba.org.