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April 26, 2017

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

Re: Comments Regarding Proposed Rule Change
Admission and Practice (APR) 3

Dear Justice Johnson:

As I have previously advised the Court, I serve as counsel for Abitus, an educational services company based in Tokyo, Japan, as well as at least twenty-three student clients of Abitus, whose interests I am representing with regard to the changes under consideration to APR 3.

By cover letter dated March 31, 2017, I submitted to the Court (with a copy to the Washington State Bar Association), two documents from each of twenty-three affected students who will wish to qualify to sit for the Washington State Bar Exam. Each of those individuals had executed a Declaration regarding her or his particular educational and professional history and the way in which the proposed changes to APR 3 would affect her or him, and, additionally, each had executed a "Waiver of Objection to Joint Representation," attesting to the fact that she or he understood the risks of joint representation, but wished to waive any objection they might have had.

As I noted in my previous letter, while each of my clients has a unique story to tell about what she or he did to acquire a legal education that would qualify them to sit for the Bar exam, there is a common thread that connects each person's narrative, and that is the fact that each woman and man acted in reliance on the Admission and Practice Rules as they existed at the time they launched their legal education, and each would be grievously harmed if the proposed rule change becomes effective prior to the submission of their applications to sit for the Bar exam.

I. BACKGROUND REGARDING THE ISSUE BEFORE THE COURT

The relevant portion of the current version of APR 3 now reads as follows:

(b) **Qualification for Bar Examination.** To qualify to sit for the bar examination, a person must present satisfactory proof of either:

(iv) ***graduation from a university or law school outside the United States with a degree in law together with the completion of an LL.M. degree for the practice of law as defined by these rules***... (Emphasis added.)

Despite differing and changing interpretations and applications, the Regulatory Services Department ("RSD") of the WSBA has most recently indicated that its interpretation of APR 3(b)(iv) is that the degree in law must ***currently*** qualify the applicant to practice law in the jurisdiction in which the degree was earned (though nowhere in the Rule is that language or requirement found), as opposed to the qualifications to practice law when the degree was earned.

To that end, the RSD sent the Board of Governors of the WSBA the following language it proposed in order to amend/clarify APR 3 (with the proposed changes highlighted):

(4) graduation with a Master of Laws (LL.M.) degree for the practice of law as defined below and....:

.....

(B) graduation from a university or law school in a jurisdiction outside the United States, with a degree in law ***that would qualify the applicant to practice law in that jurisdiction.***

Thus, the issue before this Court is not only whether to adopt the changes proposed by the RSD of the WSBA and the Board of Governors, but also the effective date, and, most significantly, its application to students who had obtained university degrees in law outside of the United States and began the process of completing a Master of Laws (LL.M) degree from a law school in the United States in reliance on the formulation of the Rule at the time.

II. COMMENTS REGARDING THE PROPOSED RULE CHANGE

A. The Definition of a "First Degree in Law" or Even a "Degree in Law" For These Purposes Has Never Been Clear

Abitus' students decided to enroll in the LL.M. program at Florida Coastal School of Law ("FCSL") and began their Washington State Bar Exam preparation, based upon, and in reliance upon, the qualifications stated on the WSBA's website, which were:

> "Graduated from a university or law school outside of the U.S. ***with a first degree in law*** and earned an LL.M. degree meeting the requirements of APR 3 from an ABA approved law school" (emphasis added).

It was essentially impossible to interpret the wording of a "first degree in law" as a degree that qualified the applicant to practice law in that jurisdiction. The definition of a "first degree in law" was not to be found anywhere in the rules. It is unreasonable to impose that definition retroactively, and to hold the applicants and their law schools accountable for that ambiguity.

B. The Position of the WSBA Has Changed Over Time

I have had the opportunity to review correspondence (*see* below) over the years between WSBA and FCSL, and it is clear from that correspondence that the WSBA had not defined the meaning of "first degree in law" even for itself until quite recently. In other words, it was only recently (late summer, 2016) that the WSBA expressed its view that a "degree in law" or a "first degree in law" meant "a degree in law that qualifies the applicant to practice law in that jurisdiction."

1. Response to FCSL from the WSBA regarding the eligibility of Mr. Kensuke Iryo to sit for the Washington Bar exam on May 17, 2016:

   Given the information in your email, this person may qualify to sit for our exam after completion of the LLM degree that meets the requirements of APR 3.

2. Response to Mr. Yasuhiro Suzuki from the WSBA about his eligibility to sit for the Washington Bar exam from Eric Winder, WSBA Admissions Analyst in mid-August 2016:

   A degree in law from a foreign university plus an LLM from an ABA-accredited law school meet the requirements for eligibility to sit for the UBE in Washington State. I think that answers your question, which seems to be focused on whether or not you have to have a JD – you don't, a degree in law from a foreign university will suffice (along with the LLM).

3. Response to FCSL from the WSBA about eligibility of six students to sit for the Washington Bar exam on August 17, 2016:

   I reviewed these and they all appear to meet our requirements for one.

4. Response to FCSL from the WSBA regarding the eligibility of six students to sit for the Washington Bar exam on August 17, 2016:

   I'd like to actually take back my previous analysis that they appear to meet the requirements until I've had a chance to discuss this further here with colleagues.

In fact, the RSD then sent the following language via e-mail to law schools in the United States that the RSD had reason to believe had foreign LL.M applicants:

> Good afternoon,
>
> I am following up on the email below regarding foreign LLM students. Due to the confusion caused in clarifying the policy about qualifications to sit for the bar exam with an LLM, we will allow students currently enrolled in the LLM program to sit for both bar exams in 2017 even if they do not meet the stricter standard.
>
> However, we are submitting proposed amendments to the Court this year that will make clear that ***the foreign law degree (legal education) must be sufficient to qualify the applicant to practice law in that jurisdiction. This was the original intent of the rule.*** We expect the rules to be effective September 1, 2017. Therefore, applicants who do not meet the qualifications will not be allowed to sit for the bar exams in 2018, including those who fail an exam in 2017.
>
> The purpose of the amendment is to make sure that the applicants receive a full legal education in their home country that would qualify them to practice law. (This is the same for U.S. students—they must receive a J.D. to qualify for the bar exam, not a lesser law degree such as an E.J.D. (Executive Juris Doctor) which is a shorter law program for those who do not want to practice law.) In many cases, simply receiving the appropriate degree is sufficient. However, in some cases, additional formal education is required beyond the degree before the applicant can sit for the bar exam in their home country. In those cases, applicants will need to submit proof of completing all education requirements before qualifying for the Washington bar exam with the LLM from the ABA approved law school. (Emphasis added.)

The RSD of the WSBA ***now*** takes the position that the "original intent of the rule" was that the "foreign law degree (legal education)" had to be "sufficient to qualify the applicant to practice law in that jurisdiction." While it ***may*** be true that that was the ***original intent*** of the rule, nowhere was that intent communicated, nor is it reasonable to conclude that such an intent could be properly inferred from the Court Rule or information that could have been gleaned from the WSBA's website.

Moreover, in the materials I have reviewed, I have seen no evidence supporting the implicit assertion that students like my clients in this affected class are underqualified or perform poorly as lawyers. This lack of documentary support certainly raises the question of why this change is necessary.

III. CONCLUDING COMMENTS

Colleges and Universities in Japan have been offering law programs since the late 19th century, but "law school," as we understand that term in the United States (i.e., as representing a graduate program requiring a Bachelor's Degree as a prerequisite to admission) is a relatively new phenomenon in Japan. It was not until 2004 that the Japanese *Diet* (its Legislature) passed a law allowing for the creation of graduate level law schools that offer a J.D. The 2006 Bar examination was the first in Japanese history to require a law school degree as a prerequisite to sitting for the Bar exam. Nonetheless, the exam applicants who met the previous education requirements had been allowed to sit for the Bar exam until 2010.

If this Court adopts the proposed Amendment as constituted, it would have a considerable impact on my clients (Abitus' students). There are more than 50 students who earned their LL.B. degrees before 2010 and 7 students (Nobuo Yokoyama, Hiromu Hosoi, Ryosuke Nakajima, Rieko Kuwano, Takashi Tamura, Yuichiro Asari and Terukane Yamamoto) who earned their LL.B. degrees post-2010. They have been planning to take the Washington State Bar Exam following the completion of their LL.M. degrees. Many of them were not (or will not be) ready to apply for the Bar exam in time for the February, 2017 or July, 2017 exams.

Those students have been advised that while they might have been eligible to take the exam in 2017, they will not be eligible to take the exam in 2018 or thereafter.

It is my hope that in contemplating its actions with regard to the proposed amendment to APR 3, the Court will review the 23 Declarations I previously provided from my clients (Abitus students), because the impacts on them will become apparent. Considering their years of hard work and good faith efforts, acting in reliance on what was publicly available when reviewing the Rule itself and the WSBA's interpretation of the Rule, it would work an injustice on those future applicants to be deemed ineligible to sit for the Bar exam in a retroactive, *ex post facto* manner.

On behalf of my clients (and others similarly situated), I urge the Court either to reject the proposed Amendment, or, in the alternative, to limit its application to those who earned LL.B. degrees (or non-Juris Doctor equivalent degrees) in foreign jurisdictions in or after 2011, as California is doing.

Finally, I am writing to request that the application of the Rule also ***not*** apply to the seven students I referred to above (Nobuo Yokoyama, Hiromu Hosoi, Ryosuke Nakajima, Rieko Kuwano, Takashi Tamura, Yuichiro Asari and Terukane Yamamoto), each of whom earned their LL.B. degrees post-2010.

As I noted above, the definition of a "first degree in law" was not to be found anywhere in the rules. These seven students interpreted this Rule literally, as did FCSL, and on that basis, in reliance on what was the governing interpretation of the law, the FCSL gave these students permission to apply to, and then accepted them into, the LL.M. program. It would constitute an

extreme injustice if these students, acting in good faith on the black letter of the Rule, and relying on the Admissions Department of the FCSL and its interpretation of the black letter of the Rule, were deprived of their willingness to studying the law and seek admission to the Bar of the State of Washington.

The Court could consider, for example, adoption of a "grandfather" clause to these students. For example, due to these extraordinary circumstances, this Court could grant them permission to sit for the Washington Bar exam, if they appropriately apply for the exam by the summer of 2020.

Beyond the approximately 50 students who earned LL.B. degrees prior to 2010, and these seven students who earned LL.B. degrees post-2010, there are no more students who fit that category, because after the matriculation of these seven named students, the FCSL ceased accepting non-JD students from Japan into its LL.M. program.

It is my belief, and my hope, that this Court, in its exercise of its wisdom and plenary authority, will see fit to grant the requests in these Comments, and protect the futures of these innocent law students.

Thank you for your consideration.

Very truly yours,

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Cc: Ms. Jean K. McElroy, General Counsel
Washington State Bar Association