Studying for the bar exam is the start of this process. In Nevada, two-thirds of the exam is Nevada-centric. In order to succeed on the exam, the examinee is required to immerse herself/himself in the subjects from a Nevada perspective. The purpose of the bar exam itself is to protect the Nevada public from unqualified practitioners. While the exam is not a perfect method with which to accomplish this goal, to simply disregard it, as is being advocated, does nothing to further this end.

This does not mean to say that the particulars of each state’s laws are such that an out-of-state lawyer cannot familiarize herself/himself with an appropriate amount of study. And it does not mean to say that all lawyers within that same jurisdiction are familiar with the entire body of law within the jurisdiction. There are hundreds of basic principles of law that are different from jurisdiction to jurisdiction and a lawyer unfamiliar with that jurisdiction’s pertinent laws would need to charge his/her clients for the time necessary to acquire the basic knowledge with which the local practitioner is otherwise familiar.

I think we would all agree that the practice of law is not mechanical. Were that the case then we could all be replaced with computers. The practice of law entails familiarity with the law and its most recent pronouncements from the state’s supreme courts, as well as familiarity with the make-up of the lower courts and the local bar. It is the courts and the bar that are charged with the administration of justice. This obligation becomes all the more challenging when expanded to all other states within the union. Unlike the accounting profession, law and procedures are not uniform across the country. We don’t have a Generally Accepted Accounting Principles equivalent and, unlike the medical profession, laws change from state to state while the human body and its diseases and cures ignores state lines.

DISADVANTAGES OF RECIPROCITY

RECIROCITY: Plus ça change plus c’est la même chose…
(The more things change, the more they stay the same…)

BY RICHARD M. TRACHOK II, ESQ.

Should practitioners from other states be allowed to practice in Nevada without taking the Nevada bar exam? The arguments supporting this notion are being made once again. The justifications for this change are the modern-day realities of the legal practice, the ability of clients to retain the counsel of their choice and our increasingly mobile society, which results in lawyers moving from state to state. Before we jump into such a radical change we need to examine our present system and the purposes it serves.

One is constrained to examine the basis of this proposition. Is it to accommodate the lawyers who move from one state to the next and for whom the bar exam is an unnecessary impediment? Is it to accommodate lawyers and law firms who wish to appear for single cases or for a single client but have no intention of actually practicing in Nevada beyond that extent?

The courts and their respective rules vary from jurisdiction to jurisdiction even within the federal court system. Even with the various model statutes, from the Uniform Commercial Code (UCC) to enforcement of judgments, each state’s statutes and case law varies widely. Experienced lawyers licensed in more than one state still retain local counsel to assist in matters outside the state of residence or primary practice. The uniqueness of the laws, customs and practice of each state are such that the expertise of a local attorney can be critical to the client’s case.

As one’s practice develops in a given jurisdiction, the attorney becomes familiar with the intricacies of the state’s laws, practice and procedures. This knowledge is obtained through interaction with the local bench and bar, such as attending bar luncheons, conventions and continuing legal education seminars; working on bar committees; and reading the bar journal. It is also obtained by the expertise and experience gained through day-to-day practice.

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The bar exam is not a protective device to insure that the local bar is free from competition from colleagues across state lines; neither is the annual requirement for continuing legal education. Both of these bar functions aim to protect the public from unqualified practitioners. Our rules acknowledge that certain clients desire attorneys from out of state to represent them here in Nevada. This is precisely why Nevada Supreme Court Rule 42 for single-case waivers was enacted. This rule allows the client to retain counsel of choice — regardless of the state of licensure — and requires that local counsel be retained in order to assist the court in administering justice and protecting the client and the public.

For those wishing to practice in the state beyond the single-case waiver scenario, the bar is hardly a major impediment. There are certainly good arguments for adopting an attorneys’ bar, similar to California’s, for those who have practiced a certain number of years. In Nevada it is easy to foresee waiving the Multistate Bar Examination (MBE) and Multistate Performance Test (MPT) for seasoned practitioners meeting the other requirements for admission, and testing these candidates on only the eight Nevada topics, including professional responsibility.

All in all, the nature of the practice certainly continues to change. Indeed, the nature of how we practice is changing with regional and national firms becoming the norm. These changes do not, however, necessitate abandoning the steps required to obtain admission to practice. If anything we should examine whether or not more is needed in preparing a would-be practitioner for the practice of law. Ours is the only profession where some form of internship is not required. Perhaps this should be our inquiry. Multi-state reciprocity is neither necessary nor advisable. Our system can be improved, but it should not be altered simply for the sake of expediency.

Richard M. Trachok, II is a partner in the Reno law firm of Bruce & Trachok, concentrating in international transactions, international regulatory issues, gaming and regulatory law. He is an adjunct professor at the University of San Francisco, School of Law, teaching the law of international trade. Trachok received his undergraduate degree from the University of Nevada, Reno, graduated summa cum laude from California Western School of Law and received an LLM degree in international law from Cambridge University. Trachok has served as chairman of the Nevada Board of Bar Examiners since 2000.