



The State Bar Tackles RECIPROCALITY

BY ANN MORGAN, ESQ.

Over the past eight years, the State Bar of Nevada's Board of Governors (BOG) has considered and discussed reciprocity issues. Because each state has a fundamental right to determine bar admission requirements, the BOG determined that it was time to look at this matter in depth.

In January 2017, the BOG formed a taskforce consisting of three members from small firms or solo practices, two members from regional firms, one member from a national firm, one member from the public sector, the dean of the UNLV William

S. Boyd School of Law and the chair of the Board of Bar Examiners. Six members of the taskforce are from Las Vegas, three are from Reno and one is from Elko. Four members are female, and five are male.

At its first meeting, the taskforce reviewed a memorandum submitted by the Boyd School of Law discussing reciprocity, employment of Boyd graduates and practices in other states. The director of admissions presented a memorandum outlining character and fitness issues and possible financial considerations. The taskforce reviewed Supreme Court Rule 49's limited practice certifications for circumstances including, among other things, in-house attorneys, pro bono providers and members of the attorney general's staff. Finally, the taskforce reviewed information and charts outlining trends in other jurisdictions.

The taskforce identified four avenues that could be available for admission without taking the Nevada bar examination. They are:

1. Transfer of bar exam scores,
2. Attorney examination,
3. Admission by motion, and
4. Limited license certifications.

The taskforce agreed to research the pros and cons of each method, with the agreed objective being to determine how the State Bar of Nevada can insure that minimum competence, skills and knowledge, and fitness to practice are met by those seeking admission. In so doing, the taskforce recognized that no state should abdicate its responsibility to insure that the attorneys admitted to practice in its jurisdiction meet its standards.

The taskforce also identified six additional areas that need to be part of the discussion:

1. Discipline,
2. Character and fitness,
3. Client preferences,
4. Multi-jurisdictional practice,
5. The effect of reciprocity on Nevada-licensed attorneys and the communities they serve, and
6. The budget impact reciprocity will have on revenue and expenses of the State Bar of Nevada.

Because changing the landscape of bar admission can have unexpected consequences, the taskforce is committed to thoroughly reviewing all four of the admission avenues and, specifically, to consider the opportunities presented by, and threats that may result from, each of those avenues.

Transfer of Bar Exam Scores and Attorney Examination

With respect to the transfer of bar exam scores, we are reviewing and analyzing the different ways an attorney can transfer into the state of Nevada using bar exam scores from other states (i.e.: essays, Multistate Bar Exam, Uniform Bar Exam). Currently the Nevada bar exam consists of essays, the Multistate Bar Exam, a Multistate Practice exam and an ethics exam. Standards used to scale the bar exams to a passing score (75 in Nevada) are based on what is commonly referred to as “the cut score.” The cut score is applied to a 0-200 scale, the same as that used to score the Multistate Bar Exam. Nevada

has historically used a cut score of 140; this score is then used to convert the essay grades to the passing score of 75. Ensuring that attorneys from states with different cut scores have the same competency as attorneys who passed Nevada’s bar exam is an issue that the taskforce will discuss.

Admission by Motion

Admission by motion contemplates allowing an attorney who is already licensed in another state to practice law in a different state upon filing a motion with that state. The taskforce is researching how other states handle this practice and what

requirements they impose on the attorneys seeking admission (i.e. certain bar scores, years of practice, continuing legal education requirements, limitations).

Many states allow practicing

attorneys to take a different exam in place of the general bar exam if they seek to be admitted to a new state after they have practiced for a certain number of years elsewhere. Whether those exams actually provide a pathway to admission that is less onerous than just taking the regular bar exam is up for debate. As with the prior methods of admissions, however, the primary issue is determining how such an exam insures the minimum competence and skills for attorneys practicing law in Nevada.

Limited License Certifications

Finally, the taskforce has reviewed the limited practice certifications provided by Supreme Court Rule 49. The issue of limited

practice was addressed in 2001, 2002 and, most recently, in 2007. In 2007, the label “limited practice admission” was changed to “limited practice certification.” SCR 49 has nine exemptions:

1. Clinical law faculty of the William S. Boyd School of Law (SCR 49.1);
2. Emeritus pro bono attorneys approved by the Access to Justice Commission or its designee (SCR 49.2);
3. Deputy district attorneys in rural counties who have practiced less than two years in the state (SCR 49.4);
4. Law students who meet and comply with certain supervision and educational criteria (SCR 49.5);
5. Attorneys employed by the State Bar of Nevada (SCR 49.6);
6. Attorneys employed by the Nevada Attorney General, who have practiced less than two years in the state (SCR 49.8);
7. Attorneys employed by the State Public Defender, or county equivalent, who practice in rural counties and who have practiced less than two years in the state (SCR 49.9);
8. Attorneys employed exclusively for a single governmental entity, and in-house attorneys employed exclusively for a single business entity whose lawful business consists of activities other than the practice of law (SCR 49.10); and
9. Attorneys employed by the Federal Public Defender for the District of Nevada (SCR 49.11).

None of these exemptions allows an attorney to practice law carte blanche in the state. As

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it relates to the limited practice certification for law school faculty, employees employed by the state bar, government/in-house counsel, Federal Public Defenders and counsel certified by the Access to Justice Commission or designee, their limited practice certification terminates immediately upon leaving employment. For those employed by the rural district attorneys and public defenders' offices, and attorney generals' offices, their certification also terminates upon leaving employment, but as noted, no longer than two years after the issuance of the certificate, by which time they must have taken and passed the Nevada bar exam.

Potential New Exemption for Military Spouses

The taskforce was also asked to review the possible admission of an additional exemption: military spouses of active duty servicewomen and servicemen, an exemption provided by 25 jurisdictions. Upon reviewing this request, the taskforce recommended, and the Board of Governors approved, submitting a proposed ADKT to the Nevada Supreme Court creating a tenth exemption to allow for the temporary certification of attorney spouses of active duty military personnel. The proposal requires the spouse to be admitted to practice in another jurisdiction, reside within Nevada and be a spouse of a member of the United States Armed Forces.

The taskforce recommended, and the Board of Governors approved, submitting a proposed ADKT to the Nevada Supreme Court creating a tenth exemption to allow for the temporary certification of attorney spouses of active duty military personnel.

Upon the active duty spouse either separating, retiring from the military or being transferred from Nevada, the exemption terminates. As of the writing of this article, the ADKT is pending; the Nevada Supreme Court held a hearing on this ADKT on February 6, 2018.

Limited Practice Certification Statistics

What do limited practice certifications look like currently? Only one person has practiced law in Nevada as a district attorney in a rural county in the past three years, with the highest number of attorneys practicing under this exemption being four in 2012. None currently practice under this

exemption. At present, two attorneys are certified under the attorney general exemption. Six attorneys practice as clinical law faculty, and another seven practice as emeritus pro bono attorneys. There are 19 attorneys currently practicing under the exemption for federal public defenders. The most widely used exemption is the one provided to government/in-house counsel attorneys; 150 currently practice under that exemption, including three of emeritus status. The majority work in the gaming industry.

Taskforce Recommendations

After reviewing all of the existing limited practice certifications, the taskforce recommended the removal of the state bar exemption of SCR 49.6.

The taskforce believes that attorneys who are overseeing the conduct of those authorized to practice law in Nevada should themselves have passed the Nevada bar exam.

The taskforce also recommended that the Attorney General exemption be eliminated and that the exemption for government/in-house counsel be separate exemptions. Whether the government attorney exemption should continue is still being looked at, along with how to monitor these exemptions and whether such exempt attorneys should have to make the same mandatory disclosures as all other Nevada-licensed attorneys. The fees to be charged for these exemptions is also under discussion.

No recommendations have been made to either the Board of Governors or the Nevada Supreme Court with respect to the remaining avenues of admission without taking the Nevada bar exam. Because it is the mission of the State Bar of Nevada to govern the profession, support its members and protect the public, the taskforce will continue to carefully analyze the issues raised by granting reciprocity to attorneys who have not taken the Nevada bar exam. **NL**



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