

RECIPROCIITY UPDATE:

INTRODUCTION BY ANN MORGAN, ESQ.

On June 2, 2019, the State Bar of Nevada sent out a survey to all members licensed in the state. Of the 11,806 attorneys eligible to respond, 3,191 attorneys, or 27 percent of those surveyed, responded. The participation was exceptional, far exceeding the state bar's expectations.

The results are currently available on the state bar's website, at: <https://www.nvbar.org/2019-reciprocity-survey-results/>. Responses show a fairly even split among our members, with approximately half favoring some form of reciprocity and half not favoring reciprocity. This split continued regardless of respondents' demographics, whether by age, geography or public/private practice. More surprising than the number of survey respondents were the number of respondents who specifically wanted their name attached to their response. Finally, the bar received more than 70 pages of comments. To date, my favorite response advised that if there was only one state with whom Nevada attorneys had reciprocity, Hawaii was clearly that state.

Reciprocity System Would Better Serve Members, Protect Public

BY ALEX VELTO, ESQ.

PRO

The State Bar of Nevada's role is to "govern the legal profession, to serve [its] members, and to protect the public interest."¹ With this mission in mind, we, as members of the state bar, need to ask ourselves: Is Nevada's current licensing system achieving those goals?

Currently, 45 states and Washington, D.C., have some form of reciprocity.² Nevada is not one of them. The best system of reciprocity for Nevada may be requiring that prospective attorneys take an attorney examination in addition to being licensed in another state. It would be a much less onerous exam than Nevada's current bar exam, focusing solely on local rules and procedures, and would strike a balance between an open-door system and closing Nevada off from legal markets and legal talent. Another strong option is to allow admission on motion based on a set criteria of experience and qualifications. Maybe Nevada requires three years of experience, maybe Nevada requires five years of experience: either of these would be preferable to its current requirement that all Nevada attorneys have sat for and passed the Nevada bar exam.

A reciprocity system would properly govern the legal profession and protect the public interest. Because an attorney test would focus on local rules and procedure, attorneys entering Nevada by way of the examination would be better prepared than those entering straight out of law school. Having just taken the Nevada bar exam,

it does not focus as much on the day-to-day work of an attorney. The proposed attorney test could.

A common cause for concern by opponents of reciprocity is that it will lead to a flood of unqualified and unethical attorneys. This fear is overblown. More states than not have had some form of reciprocity for at least a decade. If a wave of unqualified and unethical attorneys would jump at the chance to cross state lines and start fresh, wouldn't there be data to show it? I've spent hours researching this question. No study supports the answer opponents of reciprocity want. If reciprocity is weeding out unqualified and unethical attorneys in other states, it likely would in Nevada as well.

A reciprocity system would better serve the members of the state bar. Nevada has seen immense growth since the financial crises wreaked its havoc more than a decade ago. Since then, our state has diversified its economy. We now see a number of technology companies calling Nevada home, positioning Nevada as a hub for corporations and industries beyond gaming.

But, Nevada's attorney licensing system "is a relic of another time, when mobility was less common, state law was less uniform and business were more local in nature."³ Accompanying economic growth is growth in the legal market. Nevada will increase its need for lawyers by 270 attorneys every year until 2024.⁴ And as much as I love my alma mater, UNLV's Boyd School of Law won't graduate half that amount. This

puts you, the employers and leaders of our legal community, at a disadvantage when finding competitive candidates to work for your firm or agency.

The truth is, if the State Bar of Nevada can properly regulate the admission of attorneys from other jurisdictions to ensure they provide quality legal services, its inquiry into reciprocity should end. As a profession that prides itself on integrity, we shouldn't forgo an option that will allow attorneys in Nevada to prosper just because we fear a little competition. The state bar has a chance to improve its licensing system, meet hiring demands and make its legal community stronger. It's time we turned toward the future on reciprocity. **NL**

1. State "About Us," available at <http://nvbar.org/about-us/> (last visited July 19, 2019).
2. See National Conference of Bar Examiners and American Bar Association Section of Legal Education and Admissions to the Bar, *Comprehensive Guide to Bar Admission Requirements*, 42 (2019).
3. Tom Ryan, *Benefits of Reciprocity*, Nevada Lawyer, January 2009.
4. "Long Term Occupational Projections 2014-2024," available at <http://nevadaworkforce.com/projections> (last visited April 20, 2019).

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Debate Points, Survey Results

In general, the comments in favor of reciprocity noted the increase in employment opportunities both for attorneys, and for the firms and entities that are seeking to hire attorneys. The benefit of diversity was also commented on by those favoring reciprocity.

The comments against reciprocity fell into a few categories: Market saturation, clogs to the legal system in Nevada by those unfamiliar with the state's laws and procedures, less connection to the local communities, decreased civility, dilution of the state bar's culture and a lowering of standards, and potential increase in bar fees to cover new burdens on discipline. Of those who had taken a bar in other states in which they were licensed, a majority favored requiring a bar exam to be licensed to practice.

At the Annual Meeting in Vail, your state bar hosted a Lincoln-Douglas style debate. That debate, conducted by Alex Velto and Kevin Speed, is reproduced in writing, below. If you want to replicate the audience participation portion of this debate, before you read the following article, write down whether you favor or are opposed to or are undecided regarding reciprocity. After you read both articles, see if you read something that changed your mind.

Nevada is Too Good to Follow Reciprocity Trend

BY KEVIN C. SPEED, ESQ.

CON

My negative position on reciprocity focuses on the effectiveness and proven reliability of the system we already have in place – Nevada Supreme Court Rule (SCR) 42. It allows attorneys licensed in other jurisdictions to provide services to clients in Nevada on a limited and regulated basis, while protecting Nevada based practitioners from interlopers who often either know very little or couldn't care less about our local rules and customs. Because of the success of SCR 42, our "pro hac vice" rule, I argued that reciprocity was nothing more than a trendy and unnecessary solution in search of a problem.

One of the state bar's goals arising out of its 2018 – 2020 *Strategic Plan* was: "...given regional and national trends, [we will] engage in discussing the way one should be eligible to practice law in Nevada and through what vehicle(s), with special emphasis on the merits of reciprocity and [the] utilization, benefits and/or areas of concern of the Uniform Bar Exam." Time and again, our personal experiences teach us how simply following trends usually leads to disappointing results or even rear-view-mirror embarrassment. Whereas when we choose to base our policy-making motivations and decisions on evidence,

study and common-sense approaches to confident leadership, we produce sustainable outcomes that are beneficial long after any trendy fixes wear off.

One argument in favor of reciprocity states that because Nevada's bar examination pass rate was so low (57 percent in July 2018 and February 2019), unless it adopts a system of reciprocity, there may come a time when its sole law school – the Boyd School of Law at UNLV – will not be able to produce enough practitioners to keep up with the market demand for attorneys in the state. California, for example, also has a notoriously low bar examination pass rate, a mere 41 percent of all takers in 2018; yet it has also steadfastly refused to adopt reciprocity. The "unable-to-meet-demand" argument simply does not hold up when examining the numbers for either locale. Even with its abysmal pass rate, no reasonable person can argue that California is now, or has ever been in danger of experiencing a drought of attorneys of such severity that the Golden State's residents would find themselves without enough licensed practitioners to meet their needs. American Bar Association (ABA) statistics from 2017 revealed that California had a population of 39,536,653, with 168,746 active/resident lawyers, for a total of 42.7 attorneys for every 10,000 residents. States like California that do not

offer reciprocity are functioning just fine without opening the floodgates to inexperienced practitioners whose lack of familiarity with local rules and norms rarely enhance the quality of a jurisdiction's talent pool.

On the other hand, in Arizona we see a jurisdiction that copied the trend and adopted a system of reciprocity for attorneys from the 35 states (and Washington, D.C.) that allows waiving-in for Arizona practitioners. To go along with its popular but marginally useful reciprocity compact, Arizona also adopted the Uniform Bar Examination, but July 2018 bar results showed that its ABA-accredited law schools' "first-time" and "repeat" test takers enjoyed only a 59.3 percent pass rate. So, even when the traditional licensure examination tool is either re-engineered or scrapped altogether in favor of a so-called "uniform" test, the resulting pass rate is only incrementally better. Moreover, those same 2017 ABA statistics revealed that Arizona had a population of 7,016,270, with 14,960 active/resident lawyers, for a total of 21.3 attorneys for every 10,000 residents, which seems adequate given the state's significantly smaller population compared to California. What is more disconcerting than all of that, however, is the carnival atmosphere that a reciprocity policy

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evidently foments in jurisdictions that, by adopting such, seem to abdicate a very solemn responsibility to ensure that the practice of law remains a respected association of discerning *professionals*.

Cheering for ourselves for a moment, Nevada has a reported population of 2,998,039, with 7,281 active resident lawyers, for a total of 24.3 attorneys for every 10,000 residents – nine spots ahead of Arizona in the national rankings. Plus, the *Nevada Supreme Court's 2018 Annual Report* proudly reported that in 2018, the Eighth Judicial District, which encompasses metropolitan Las Vegas and the rest of Clark County, saw some 289,088 civil, criminal, family and juvenile case filings. Of those cases, attorneys and judges in the district disposed of 289,075, or 99.99 percent of cases! Indeed, Nevada attorneys have shown themselves perfectly capable of getting the work done for the people who trust us with their lives, property and safety.

Protectionism in this context is not a dirty word. The evidence shows that we are too good to be afraid of the future.

The state of our bar is strong. We are not broken and we certainly do not need the reciprocity fix. **NL**



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PRO BONO *Honor Roll*

The State Bar of Nevada Board of Governors and the Access to Justice Commission extend a special thanks to the following attorneys who generously accepted cases through the Legal Aid Center of Southern Nevada, Washoe Legal Services, Nevada Legal Services and Volunteer Attorneys for Rural Nevadans, and those who donated their time to work at events like Ask-A-Lawyer and Lawyer in the Library.

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BOLD honors multiple cases accepted and/or sessions conducted within the month.

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