



1025 Connecticut Avenue, NW, Suite 200
Washington, DC 20036-5425 USA

tel +1 202.293.4103

fax +1 202.293.4701

www.acc.com

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Chief Justice Petra Jimenez Maes
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
Sent by facsimile and filed on the internet

Re: Proposed Revisions to New Mexico Rules Governing Admission to the Bar

Dear Chief Justice Maes:

On behalf of the Association of Corporate Counsel, we are writing to express our support for moving beyond the current New Mexico admission rules that require even experienced lawyers to take an exam to obtain full membership in the bar.

However, we urge this Court to adopt a more open standard than the reciprocity rule that the Board of Bar Examiners proposes. New Mexico should allow all experienced lawyers without disciplinary problems to practice in the state. Not only does requiring reciprocity limit clients' ability to retain the counsel of their choice, but there is also no evidence that reciprocity serves any interest beyond that of the locally-licensed lawyer.

At the same time, ACC commends the proposal for explicitly recognizing that in-house practice falls within the definition for the active practice of law.

I. About ACC

ACC is a global bar association that promotes the common professional and business interests of in-house counsel. Since its founding in 1982, ACC has grown to become the world's largest organization serving the professional and business interests of lawyers who practice in private-sector legal departments. ACC has over 30,000 members, employed by over 10,000 organizations in more than 75 countries. For years, ACC has worked to remove obstacles that can make it difficult for in-house lawyers to practice law for their employers. Specifically, ACC has worked with many government bodies and bar organizations to open up rules that regulate the right-to-practice and multi-jurisdictional practice, such as the proposal on reciprocity that this Court is now considering.

II. The proposed reciprocity rule would limit clients' choices.

Today's system does not serve New Mexico's clients' need for flexibility. But neither does the current proposal. It would effectively subject clients' needs to a roulette wheel of reciprocity, with everything riding on where the lawyer's license happens to come

from. Instead, ACC urges New Mexico to embrace a rule that would allow for even wider admission. ACC would therefore support a more open system of admission by motion, along the lines that the American Bar Association recommends.

A. Clients demand cross-border legal practice.

The New Mexico Board of Bar Examiners' proposal to amend NMRA 15-103 and add a new NMRA 15-104.1 does an excellent job of identifying the problems that unnecessary restrictions on admission can cause for clients. The proposal astutely summarizes the situation by noting that "[i]t is beyond cavil that law practice is a transboundary reality." Bar Examiners' Rec. and Pet. in Support of Amends. (May 2, 2013) at 9. And it correctly pegs the current requirement of having experienced lawyers sit for a bar exam as "a relic of another bygone time," "anachronistic," and "outdated." *Id.* at 3. Local bar exams are indeed "irrelevant" to evaluating an experienced lawyer's ability. *Id.* at 6.

Most important, the Bar Examiners' proposal highlights "client . . . demands for national, regional, and other transboundary access to legal services." *Id.* at 6. It accurately states that "[p]roviding for admission by motion would enable clients to benefit from access to a wider range of attorneys," and to "continue to utilize their counsel of choice . . . across state lines as the need arises." *Id.* at 7. By contrast, under the current rules, "[c]hoice of counsel of clients and prospective clients is unnecessarily restricted." *Id.* at 2.

In short, the Board recognizes that the profession must serve clients and the public. It quotes this Court's statement that the legal profession "has a responsibility" to make sure that its rules consider "the public interest" rather than "parochial or self-interested concerns of the bar." *Id.* at 5 (*quoting Roy D. Mercer, LLC v. Gandy Dancer, LLC*, 2013 NMSC 002, 45; 292 P.3d 466, 476 (2012) (*quoting* N.M. R. of Prof'l Conduct pmb1.)).

B. Reciprocity does not serve clients.

Reciprocity does not fix the problems that the Board points out. Instead, reciprocity subjects the needs of clients to the whims of state-to-state diplomacy. A more open admission system serves clients better.

As the American Bar Association correctly notes, "[o]ut-of-state lawyers may need to move to, or establish a regular practice in New Mexico in order to serve clients who are relocating there or who regularly do business in New Mexico." Letter from Ethics 20/20 Implement. Subcomm. of the CPR Policy Implement. Comm. (July 8, 2013). The source of the lawyer's law license, of course, has nothing to do with what clients need. Tellingly, the Board offers no evidence indicating that lawyers under a reciprocity rule will provide better legal services to clients than lawyers admitted under a more open system.

Worse, the reciprocity system places lawyers' own economic interests over the needs of clients. The Board's proposal correctly states that its "role is not to protect, or continue protection of, New Mexico's attorneys from competition, real or imagined." Board Rec. and Pet. at 5. But the Board's rationale for reciprocity boils down to protecting the

interests of lawyers: “A New Mexico attorney should be afforded the same opportunity and ability to secure admission to practice law in other jurisdictions as attorneys from such jurisdictions who seek the opportunity to become licensed in New Mexico.” *Id.* at 14. In contrast, a more open standard would place front and center the clients’ needs “to benefit from access to a wider range of attorneys.” *Id.* at 7.

IV. This Court should lower the proposal’s experience requirement.

For any new admissions standard that New Mexico adopts -- either reciprocity or a broader system -- ACC urges New Mexico to lower the minimum experience requirement that the Board proposes. ACC supports the American Bar Association’s suggestion to require active practice for three of the last five years. *See* ABA Letter at 1-2. There is no evidence to support the longer five-of-seven years requirement, and imposing it will restrict the pool of lawyers that clients can choose from.

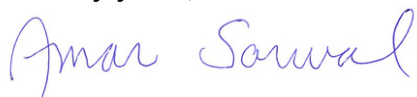
V. ACC commends the proposal for recognizing that in-house work counts as the practice of law.

At the same time, ACC fully supports the proposed provision that would recognize “service as in-house counsel provided to the applicant’s employer or its organizational affiliates” as falling within the definition of the “active practice of law.” *See* Proposed Rule 15-104.1(D)(6). Too often, the legal community treats in-house counsel as second-class citizens. Changing the black-letter rule to explicitly include in-house practice helps to ensure that the broader legal community recognizes the experience, expertise, and sophistication of in-house lawyers.

VI. Conclusion

ACC commends the Board’s proposal for addressing the fact that modern legal practice requires an admission system that looks beyond state borders. But requiring reciprocity is a step in the wrong direction. That system leaves far too much to the off-chance that retained counsel comes from the “right” state. In doing so, the Board’s approach values the interests of lawyers over the interests of their clients. Because the Board offers no evidence indicating that reciprocity improves the services that clients receive, ACC recommends that the reciprocity requirement be deleted from the Board’s proposal.

Sincerely yours,



Amar D. Sarwal
Vice President and Chief Legal Strategist
sarwal@acc.com

Evan P. Schultz
Senior Counsel and Director of Advocacy