

April 11, 2013

TO: Senate Judiciary Committee

- Senators Coghill, McGuire, Dyson, Olson, Wielechowski

FROM: Thomas S. Obermeyer, Licensed Missouri Attorney, MBA

RE: HB 63 – Extending Termination Date of Alaska Bar Association to June 30, 2021.

You are being asked to extend the termination date of the Board of Governors of the Alaska Bar Association EIGHT YEARS to June 30, 2021 under HB 63(FIN). Senator Coghill's companion bill, SB 51, extended the termination date FOUR YEARS. I object for such a long period under either bill for the following reasons:

1. The Legislative Audit last year failed to address the abominably low passage rate on the Alaska Bar Association for the last 29 years I have been sitting for it at 64-68%, hitting a low 52% in 2011.
2. There is no justification or explanation for such low passage rates from qualified graduates of ABA approved law schools except as a restraint of trade. The Alaska Bar Exam is not as alleged a "test of minimal competence" to protect of the public. It is a test of exclusion. The public is adequately protected by disciplinary counsel and fee arbitration. The best protection and service to the public is to license more lawyers living in Alaska that people can afford to pay.
3. Since the standards vary with each examination the Alaska Bar Exam is not a test of "minimal competence." The low passage rates are arbitrarily controlled by the Alaska Bar Association.
4. Many practicing attorneys have told me as the Alaska Sales Rep for Lawyers Cooperative Publishing Company for six years that they could not sit down and pass this exam on both substantive law and form in multiple choice and essay questions without months of preparation over the entire 3 years of law school and Alaska Law. They found the bar exam had very little to do with their practice of law.
5. The audit found that in the last four years 37% of admissions were by reciprocity from other states, not by Alaska Bar Exam. Many have never set foot on our soil.
6. Unlike those reciprocity applicants from out of state, I am denied reciprocity from Missouri because I have failed the Alaska Bar Exam under Bar Rule 2.2(b)3 which was designed to exclude me. No one else has been similarly harmed by the impact of this rule to my knowledge.
7. It is a detriment to live in Alaska and take the bar exam. It is easier to be admitted in Alaska by reciprocity and avoid taking the Alaska Bar Exam which posts the lowest passage rates in the nation.
8. Sen. Lisa Murkowski I am told failed the bar exam 4 times. By contrast, Marla Greenstein, was admitted by reciprocity in 1997 after working for 15 years as Executive Director, Alaska Counsel on Judicial Conduct since 1982. She rushed through an application for reciprocity when reportedly she feared that the Board would redefine the practice law to require full

time practice. She never sat for the Alaska Bar Exam and was sworn in quickly by retired Justice Rabinowitz. I was similarly situated living and working in law in Alaska at the Municipal Attorney's Office for over 10 years, law publishing for six years, contract legal work for two years, and six years for the Legislature. I should likewise have waited 5 years to apply for reciprocity.

9. I have maintained an active Category I law license in Missouri for 23 years and taken 15 hours mandatory CLE annually and 2 hours Ethics. Alaska requires only three hours.
10. Compared to requiring higher passage rates on admission by examination, the amendment to HB63, Section 3, 08.08.082, to address the audit's recommended increase in Alaska CLE hours, is of little importance. Moreover, the amended new section is vague and unwarranted. It places in statute rules which are still undefined until the Board meets with the Supreme Court to set increased mandatory CLE hours, as attested to by Mr. Stephen Van Goor, Disciplinary Counsel, Alaska Bar Association in (H)JUD this week.
11. The only significance of the amended lines 13 and 14 to elect members of the Board from members residing in Alaska is that it brings attention to the fact that only about 2600 attorneys practice in Alaska while the Bar Association touts its membership as 4000 on the top of its web page.

Recommendation:

If you have the power to put in statute a change in mandatory minimum CLE hours, please provide for review of the rule on reciprocity at the same time for approval by the Alaska Supreme Court. Either Alaska has reciprocity with another state or it does not. The Bar Association should not carve out exceptions for taking the exam here while licensed in another state. That could be covered by a separate exam like Missouri, which is now using the national Uniform Bar Exam (UBE) and requiring passage of a separate Missouri Law section. All states using the UBE will still control passage rates, but they will be more reasonable. Missouri passed 90% in July, 2012.

Granting 8 years extension to the same people who have been running the Alaska Bar Association for 30 years defeats public service, convenience, and competence. They likely will be retired before the next audit. The Bar Association should be sunset until it remedies the above, or it should be limited to one or two years extension for the above matters to be revisited while the legislature is not under the pressure to vote in the last few days of session.

Respectfully Submitted,
Thomas S. Obermeyer