

Sea to Sea

Admission
on
Motion
Comes
to
Arizona

In

September, the Arizona Supreme Court revised the rules for admission to permit “admission on motion”—allowing attorneys in some situations to be admitted without taking the bar exam. The path to this order was a long one. For some background, we sat down with Tim Burr, the lawyer who petitioned the Court to make the change.

ARIZONA ATTORNEY: Tim, how would you describe your practice?

TIM BURR: Half of my practice is real estate transactions, and the other half is commercial mediation and arbitration.

AzAT: Are you an Arizona native?

BURR: No. I’m originally from New York. I was born in Yonkers and went to high school in Bergen County, New Jersey, the other side of the George Washington Bridge. So I kind of grew up all within 5 or 10 miles of the city.

AzAT: What originally brought you out west?

BURR: I went to Arizona State for undergrad. Then I worked here for a couple years in the accounting firms. Three years later I went to Pepperdine for law school. I worked a year after law school for a real estate developer in San Diego. Then an opportunity arose back here in Phoenix.

Petitioning the Supreme Court

AzAT: Why did you file the petition in favor of admission on motion for Arizona?

BURR: There are several reasons behind it, but the biggest one is money. I know people are concerned that other firms are going to come in, but we’re losing money. We—all the big firms in town, or anyone who has a practice with a client who has grown to the point where they are doing deals out of state—have to refer things out.

What frequently happens is that you have a client who has a [I.R.C. §] 1031 exchange—they sell some office complex or apartment building here for \$20 million or \$30 million, and they need to get replacement property, and they might have to go out of state to find something; there





For experienced lawyers, the bar examination... serves as an unnecessary obstacle to establishing a practice in the new state. —ABA MJP Commission, August 2002

may not be a shopping center of that size here. It's not unusual for us to sell something here and buy something in Colorado or Texas or elsewhere. And we are representing the client in both sides of those transactions.

As a result, when the client has a little issue in the other state, we're practicing law in that state. And if we don't have someone admitted there, we have to refer that work out. And you not only lose the money for the referral; you risk the chance that the client will go with some bigger interstate law firm. They might decide that you're having to refer too much stuff out.

AzAT: Has the frequency of that situation grown?

BURR: Yes. The practice of law has changed so much that state borders are kind of irrelevant to the client. The clients have grown bigger, and they want law firms where their businesses are. At our firm and any big firm, we have a chart showing where everyone's admitted. Before we start doing something, we make sure someone at the firm is admitted there.

The secondary issue is, there are not many lawyers in Arizona. We rank 49th in the country of lawyers-to-population. Eighty percent of all the laterals we've hired—those with 5 or 10 years' experience—have come from out of state, because there's just not that many people in town moving around to pick from. And then you have to wait a year if they're not admitted here. They have to take the bar, and you run the risk they won't pass the bar. You're footing the salary, but they can't have full employment; someone has to oversee the work they do. Monetary-wise, admission on motion would be good.

AzAT: And are out-of-state lawyers interested?

BURR: We can't attract talented people

from New York and Chicago because they can go elsewhere and not take the bar. If you had an offer in Colorado or Texas and here, and you could go to the other two states and not take a bar, [would] you come here [if] you have to? That's a real deterrent factor.

AzAT: But some argue that Arizona has other attractive qualities that could overcome that deterrent.

BURR: Not everyone thinks Arizona is a paradise. Probably half the contact I got after filing this petition was from people saying, "Thank God; I'm trying to leave."

There are many personal reasons you can see in the comments in response to the petition: a spouse has been transferred, family issues, moving home to take care of family. Those people can't take a bar, or they'd have to take a year off work, study for the bar and go through all these processes.

That was not why I filed it, but that's a secondary reason.

AzAT: But why did *you* file it?

BURR: Because the Bar wouldn't. They flatly refused. Basically, they had no interest in updating the [State Bar] task force report [from 2002], forming another task force to look at it again, or do anything. They just flatly refused to look at it.

I was not the only one involved, of course. We had an informal discussion group on this, with most of the big firms in town, with either the managing partner or some senior lawyer from there with e-mails going back and forth. Because it's millions

of dollars at risk. Everyone kind of *got* the issue.

And we're not breaking new ground here. We're like the 40th state to do this. We're bringing up the rear on this, and Arizona lawyers are being disadvantaged by not having this. We had a discussion group on strategy and tactics, how can we do this, and we all tried to lobby the Board of Governors. It was just flatly refused, and [a petition to the Supreme Court] was the only option left available.

AzAT: Not to belabor a point, but why *you*?

BURR: I just volunteered to do it.

AzAT: Had you done this kind of thing before?

BURR: No. I had no Supreme Court practice experience, so I had to look up the rules. I looked at other states, how they had gone about it, and

petitions filed, arguments people had made, and what was successful and what was unsuccessful.

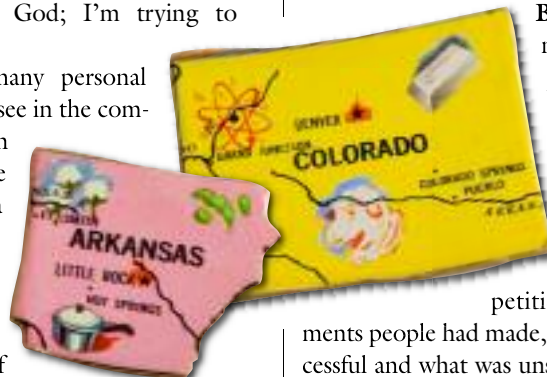
AzAT: What process did you go through?

BURR: I prepared a draft and got comments back and made revisions.

Lots of people put work into this for years trying to get this done. They were very open and supportive and gave me all their resources, copies of everything. People who had served on the Arizona task force and the ABA task force all helped and contributed.

AzAT: Anyone in particular?

BURR: Many. David Rosenbaum at Osborn Maledon and Steve Hirsch at Bryan Cave, just to name two. People at the ABA, and at the Association of Corporate Counsel [ACC] were all very helpful; the ACC filed a comment in sup-





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port. The ABA wants people to adopt their model rule, so their lawyers were very helpful in giving me copies of the original task force and helping me with what other states had done.

AzAT: Ultimately, what did you propose?

BURR: In my petition, I did not ask the Court to adopt my rule. I just said, "Four years ago we had an Arizona task force. They proposed this rule. Please adopt that rule."

That rule was a little different from the ABA model rule. And you can see from the comments that some people just thought the Court should adopt the ABA rule.

AzAT: How quickly could someone be admitted in Arizona under this new rule?

BURR: Your time frame for getting admitted should be about the same as getting admitted *pro hac*. This is not an instantaneous thing. You still have to go through character & fitness, you still have to go through every other requisite to be admitted to the bar, except for taking the exam—because you have already taken one, and that should be enough.

Reciprocity

AzAT: And the new rule will open the door only for those lawyers from jurisdictions that offer reciprocity?

BURR: Yes. The [desire for] the reciprocity

rule has to do with our being next door to California and people wanting to get in. I'm already admitted in California, so personally I didn't care that much about that issue. I just wanted to get something passed.

AzAT: Conceptually, why have reciprocity? As some people argued, once we accept the concept of admission on motion, why not permit all lawyers rather than just those from states that have the same rule? Isn't the new Arizona rule still protectionist?

BURR: It is protectionist. But it also puts additional pressure on those states that are remaining to adopt it. Because if they would get all of the benefits of having their lawyers be able to go elsewhere without having to accept lawyers in, that's a disadvantage for the rest of the country. And it only affects 10 or so states at this point. Opening to 80 percent of the country is much better than having zero.

A New Course

AzAT: The new rule will also require a course on Arizona law?

BURR: Yes. The Arizona Supreme Court formed their own admission on motion task force to study it and determine what

the course should be. It included people from the three law schools, people from the licensing group and some of their staff. I was on that task force.

We batted around, how long should the course be? Is it in-person, on the Internet? We came to the conclusion we could not have an exam, because then we just would have created an attorneys' exam, and wherever we went, other states would make our lawyers do the same, and we wouldn't have gotten anywhere.

But of course people can't just show up, sit in the back of the room and not learn anything.

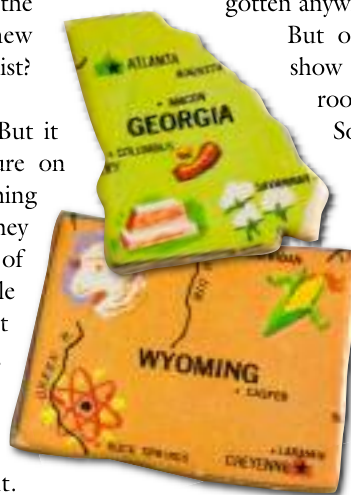
So it has to be fairly interactive and in-person. It should include the kind of things you would like to know if you went somewhere: how the courts are organized, that we have a county recorder system, all of the statutes are *here*.

Not a bar exam: These people will have been practicing for a minimum of five years; they know

how to look stuff up; they just need the right direction.

AzAT: Any other details?

BURR: The Supreme Court is going to administer it, but they don't know whether it's going to be once a year, four times a year, in multiple locations, four hours, six



MJP IN ARIZONA

NOVEMBER

2001

The ABA's Commission on Multijurisdictional Practice ("MJP Commission") issues an interim report proposing several model rules affecting the multijurisdictional practice of law. The ABA circulates the proposals nationwide for comment. It seeks responses in advance of the August 2002 ABA meeting.

NOVEMBER

2001

State Bar of Arizona President Nick Wallwork appoints the Arizona Task Force, co-chaired by attorney Steven A. Hirsch and ASU Law Professor Myles V. Lynk. That task force ultimately recommends that the Board of Governors support the MJP Commission's proposals in large part, including the proposed admission by motion rule.

MARCH 14

2002

In its feedback to the ABA MJP Commission, the State Bar Board of Governors "expresses no view" with respect to admission by motion.

hours, two days.

We also decided that the course would be completed prior to attorneys being admitted. The original task force had recommended that they take the course within six months of admission. But what if they don't take it? Do we suspend them? Instead, we recommended that it be a prerequisite. Even if it's offered twice a year on the same day people are taking the bar, that would be fine.

AzAt: Why is that appealing to an attorney?

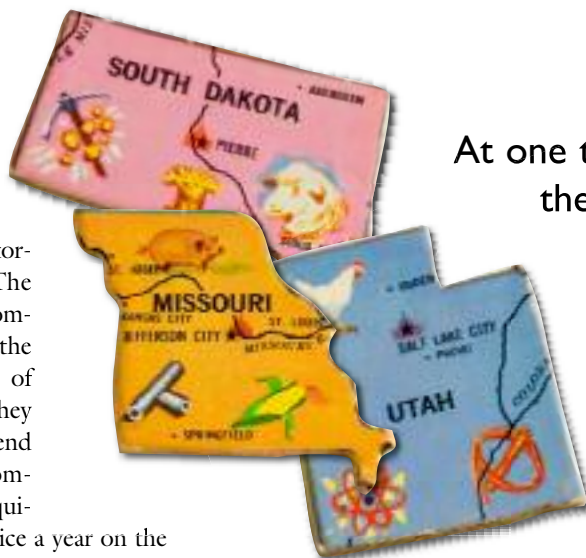
Burr: As a practicing attorney, if my choice is to study for and take a bar exam or go and learn something I need to know and want to know for a day or two, that's OK.

AzAt: How many other jurisdictions nationwide have a similar course that they require in relation to admission on motion?

Burr: Nobody. The only reason that's in there is because the original task force in Arizona put it in. So I included their model rule on my petition, rather than start over.

Opposition

AzAt: How many other jurisdictions made this change following an individual lawyer having to file a petition?



At one time, lawyers tended to maintain their law offices in a single jurisdiction over the course of their entire legal careers because of the local nature of law practice. Today, in contrast, geographic mobility is unexceptional.

—ABA MJP Commission, August 2002

Burr: None. Not one.

AzAt: What was the more typical situation?

Burr: The local bar or some judicial council or advisory board recommended adoption of the ABA model rule, and then the state supreme court or the legislature approved it.

This was the only state where someone had to file a petition. But the ball's been rolling in Arizona for years.

AzAt: Why do you think Arizona was different?

Burr: I think there's a very protectionist mentality here in Arizona. Some people have the belief that Arizona is this paradise, and everyone's just going to pick up and move. I don't believe that to be the case.

AzAt: You really think there's a unique mentality?

Burr: There's nothing wrong with a protectionist mentality. You can have that. If you are practicing in some field and you want to make it more difficult for your competition to show up, I can respect that option; I understand that.

But that is not what's best in the long term for Arizona, or long term for Arizona attorneys as a whole. We need to be able to compete at a national level. If we can't, we are going to be left behind.

AzAt: Some opponents of the petition talked a lot about our being a Sunbelt state. What did that signify in this debate? They pointed out that of the seven such states, five do not permit admission on motion, and two of those are among the fastest-growing states in the country

AUGUST
2002

The ABA House of Delegates approves all of the MJP Commission's proposals, including the model rule on admission by motion. The Conference of Chief Justices recommends adoption of the rules.

FEBRUARY
2003

The Arizona Task Force asks the Board of Governors to support the ABA's proposals and petition the Arizona Supreme Court for adoption of all necessary rule changes. The Board votes to approve all of the recommendations except for admission by motion.

OCTOBER 3
2006

Attorney Tim Burr petitions the Arizona Supreme Court to revise the Arizona Rules for Admission to the State Bar of Arizona to allow admission of five-year practitioners by motion under certain reciprocity constraints.

SEPTEMBER 8
2008

The Arizona Supreme Court grants the petition, which will be effective Jan. 1, 2010.



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(Arizona and Nevada). Should that give us pause?

BURR: I disagree with that statement. First of all, it's just flatly wrong. Depending on how you categorize those statistics, you can change the results. Nevada makes everyone take the bar exam; California is the same. Utah and Colorado do not; Texas does not. New Mexico was in the process to debate admission on motion; they did not adopt it, but it's still on the table and being discussed. New Mexico's a much smaller market than we are.

But the number of lawyers in Arizona has not kept pace with the population. And I have made this argument numerous times: The bar association is for the public; it doesn't exist for the lawyers. Its job is to police the lawyers for the benefit of the public. It is to the public's advantage to have more choices for lawyers. It lowers rates. Competition is good for the public, and it's good for lawyers; it makes us better lawyers. We shouldn't be afraid to compete.

AzAT: What other arguments did you face?

BURR: The other argument was that all these New York law firms are going to move here—but they're already here. Ballard Spahr is here; they cherry-picked a bunch of lawyers out of Fennemore Craig. Holme, Roberts & Owen is here; they cherry-picked a bunch of lawyers out of [Jennings Strouss].

These firms come here and they buy existing firms. Nobody actually moves from New York or Chicago; the same number of lawyers are here.

AzAT: So you don't foresee an

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avalanche of attorneys.

BURR: No. We have an office in Las Vegas because we think there's a good business opportunity there. The fact that a state has admission on motion or not was not in our decision-making process. If some firm out of state thinks that there is an opportunity in Arizona for whatever particular practice they have, they're coming. We're not keeping them out with a bar exam.

AZAT: But the Bar would disagree with your premise; it serves the public *and* it serves lawyers.

BURR: It was fairly evident that they were opposed to admission on motion. The population as a whole overwhelmingly supports it.

The number of letters that were written by big firms to the Board of Governors, and I was copied on, in which the firms said they supported the petition—that bloc was thousands of lawyers.

AZAT: Did you expect a different reaction from Bar leadership?

BURR: Yes.

AZAT: Some of the comments posted on the Court's Rules Forum (<http://azdnn.dnnmax.com>) were pretty harsh. One called the board "disturbingly retrograde." Would you go that far?

BURR: I read that. The board completely ignored the needs of the members. This petition was not filed by someone out of state knocking on the door saying, "I want to retire there." It was filed in my name but by a group of lawyers in the state saying, "We are losing money. Please help

us." We had made that pitch to the people at the Bar before.

AZAT: Was that a uniform response?

BURR: The Bar staff—the executive director and the Bar staff—have been tremendously helpful and supportive and nonpartisan in this effort. And I also have to thank the staff at the Arizona Supreme Court for all the work they did. But I was actually quite sorrowed by the Board of Governors' vote.

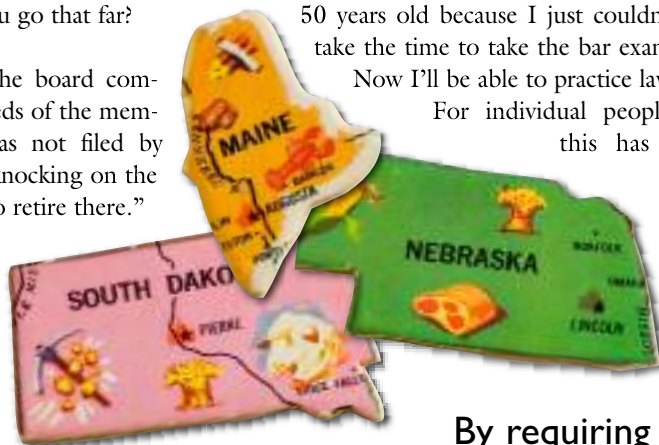
Reactions

AZAT: How do you describe your feelings about the result? Surprised? Grateful?

BURR: I'm very pleased. It doesn't affect my day-to-day life. But I've gotten hundreds of e-mails and phone calls since it passed; every single one has been, "Congratulations, this is great." From people both in-state and out-of-state, people at big law firms, other heartfelt letters from people I've never met.

One guy wrote me this week saying, I need to move home to somewhere in the Midwest to take care of my family, and I thought I was going to have to retire at 50 years old because I just couldn't take the time to take the bar exam.

Now I'll be able to practice law. For individual people, this has a



By requiring all applicants to sit for examination, Arizona is in the minority. ...Arizona should come into conformity with the majority of states.

—Report of the Arizona MJP Task Force, Mar. 12, 2002

MORE INFORMATION

The Supreme Court revised rule on admission is online at
www.supreme.state.az.us/rules/Recent_rules.htm
(click on R-06-0017)

For national statistics on multijurisdictional practice and admission on motion, go to
www.abanet.org/cpr/mjp

tremendous effect on their life. For the great bulk of lawyers, this will be a blip that won't matter. If 100 more lawyers show up in the state in one year, you're not going to see it. If you look at the historical statistics in other states, there's no land rush.

AZAT: Is there evidence of that?

BURR: Colorado is similar in size to us and an equal destination in growth—people are moving there. So if they have 1,000 people get admitted by taking the bar exam, and then they have admission on motion, it's about 1,050 people—250 by admission on motion and 800 by bar exam.

The number of bar exams that have to be graded and administered will drop, but the total number of growth will not.

We're not going to have 10,000 lawyers show up on January 1, 2010, asking to be admitted.

California

AZAT: How many jurisdictions now have some form of admission on motion?

BURR: The numbers move around. But it's somewhere between 37 and 40. When I spoke to the people in the ABA office, they told me we were the 40th state. I would say 80 percent of the country has some form of admission on motion now.

AZAT: And others are considering it?

BURR: Yes. California, in fact, has three proposals on the table right now.

AZAT: What is their big stumbling block?

BURR: That non-ABA-admitted lawyers in

California want to be able to take advantage of that and move elsewhere, and most of the states have adopted a rule that says you must be a graduate of an ABA-accredited law school. And it's a not-insignificant proportion of California lawyers who are non-ABA grads—I think it's about 20 or 25 percent of them. You're talking about 30,000, 40,000 people who have a significant vote who could hold that up.

AzAt: In a comment in opposition to your petition, someone called California “that behemoth to our west.” How did California affect conversation about your petition?

Burr: There is a lot of concern that these lawyers will swoop in, and California P.I. lawyers will advertise on TV. But that's such a small percentage of the number of lawyers in Arizona. And they could join up with an Arizona lawyer and do it today.

AzAt: And the movement could go back and forth.

Burr: Yes. There are people who would like to move from Arizona to California. I think the draw is employment: If there are opportunities and jobs here, people will move here. And that's money that comes to Arizona.

Other Concerns

AzAt: One of the comments in opposition, though, said that “Economic considerations should play no part in setting the standards to foster the high ideals of learning.” He argued that even if law is a business, that's not the Bar's purview. How do you respond to that argument?

Burr: I think he's right. That [economics] is one of our reasons for doing it, but that's not the reason the Court adopted it, and I'm sure that the Court did not consider that in their decision-making. I read that comment, and it was very well-crafted, but that was not solely our argument.

I can respect that argument much better than the protectionist argument. But everyone's entitled to their opinion. If you want to have a protectionist policy, that's fine, just say that that's what you want.

AzAt: There appear to have been three

arguments against your petition: an avalanche of lawyers who will come to the state; what you perceive as protectionist arguments; and consumer protection. How do you respond to that last one?

Burr: The steps are in place for consumer protection. I don't think consumers are more at risk by having experienced lawyers admitted by motion rather than by forcing them to take a bar exam on archaic principles that they don't use every day.

It's better for the consumers to have admission on motion; the citizens of Arizona are better served by this. And you can see that in the Attorney General's comment. He steps up and says that his office needs to hire other experienced lawyers from other states. We can't hire people until they're admitted; this is a real roadblock for us. But he also states that no other states have an issue with this.

So if the citizens of Arizona have more choices, and more competition leads to lower rates, it's better for the consumers.

AzAt: You argue it helps lawyers too.

Burr: Yes. It's better for lawyers too if we need to move.

I know I could not stomach taking another bar exam. I mean, I would do it if I had to, if my family all relocated to somewhere, or some great opportunity came into my lap and I had to move to X state—I'm not going to pass that up simply because I have to study and pass a bar exam. But the fact that I wouldn't have to now would make my life much easier.

AzAt: In the comments, lawyers seem very committed to their bar exam. Why?

Burr: They want more gateposts, to make it more difficult for competition to come here.

AzAt: What about the argument that Arizona has particular laws and rules that the admission-on-motion lawyer would not know?

Burr: Most of it is common law. You can pass the Arizona bar exam and still not know particular rules, court rules.

Someone in a comment pointed out that something in Arizona has seven ele-

ments rather than five—but that's not even tested on the bar exam.

Every state has certain peculiarities, every jurisdiction, every court. You look them up, and then you proceed. The fact that you could memorize these is not relevant to law practice, especially for someone with 5, 10 or 20 years of experience, and no discipline complaints, whose practice has focused down to a particular area—making them go back and take a test on these other areas does not make them a better Arizona lawyer.

AzAt: One comment in support said that before we can enter the 21st century, we have to leave the 18th century. Do you agree?

Burr: Sure. Some people made some very impassioned pleas, very good arguments, pro and con.

AzAt: Is admission on motion the future?

Burr: There is a push now to have a national bar exam, like the medical model. That is going to be more the future.

Admission on motion has almost become irrelevant several times as people have tried to push a case up to the U.S. Supreme Court, and they just haven't had the right fact pattern yet. But the Court could rule on it and just make admission on motion and local bar exams obsolete if they wanted to.

Lessons Learned

AzAt: Did anything surprise you as you went through the petition process?

Burr: I was surprised how underserved Arizona was with lawyers. That was a comment someone else filed, and I did not know that.

I've also been surprised by the press coverage, not just here in Arizona but nationwide.

I was surprised at how many people were interested in it. When I started, I thought this was a minor procedural rule, buried in the documents. I did ask for a public comment period; I just wanted to start the conversation. If the petition got shot down, at least the conversation would have occurred.





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AZAT: Why was the conversation important?

BURR: Because our Supreme Court never got the opportunity to rule on this. All of the Arizona task force's recommendations were sent to the Court except this one.

AZAT: Would you go through it again knowing the time and energy it took?

BURR: I would do it again. It was a positive experience overall. It was the right thing to do.

AZAT: Why is this initiative so important?

BURR: Transition and relocation are rampant. The world is far different than it was 25 or 30 years ago.

AZAT: What most affected you?

BURR: The thing that has touched me the most is the individual people that this will affect, the couple hundred people a year who have to move to take care of their parents or spouse; those people's stories and thank-you notes mean a lot. Their lives have changed significantly. 