

COMMITTEE OF BAR EXAMINERS OPEN SESSION AGENDA ITEM

AGENDA ITEM NUMBER: O-300

DATE: March 13, 2013

TO: Subcommittee on Operations and Management

FROM: Greg Shin

SUBJECT: **Foreign Attorney Requirements and Qualification of Japanese Patent Attorneys**

BACKGROUND

Historically, Japanese patent attorneys were not considered eligible for attorney registration with the Committee because they did not have legal education prior to their obtaining status as a patent attorney. Approximately 2 years ago, however, the procedure was modified because in 2004 Japan's laws were changed and it started requiring that patent attorneys have legal education.

There has been some confusion in this area because of the change in the Japanese laws and a distinction was not made in our internal procedures to ensure that those with verified legal education were determined as eligible to register with the Committee of Bar Examiners (Committee) and those without, were not. Under procedures currently in place, a Japanese attorney who could not verify adequate legal education prior to becoming an attorney would not be found qualified to register as an attorney applicant. Some believe that Japanese attorneys, including patent attorneys, should qualify to take the California Bar Examination without further review of what kind of education they may have received prior to their admission to the bar.

Section 6062 (b) of the Business and Professions Code defines admission requirements for attorney applicants who have "...been admitted to practice law in a jurisdiction other than in a sister state, United States jurisdiction, possession, or territory....", but there is no further detail with how "admitted to practice law" should be defined.

The *Admissions Rules* provides the following guidance:

Rule 4.3 Definitions

(B) An "attorney applicant" is an applicant who is or has been admitted as an attorney to the practice of law in any jurisdiction.

(G) A "general applicant" is an applicant who has not been admitted as an attorney to the practice of law in any jurisdiction.

Rule 4.30 Legal education in a foreign state or country

Persons who have studied law in a law school in a foreign state or country may qualify as general applicants provided that they

(A) have a first degree in law, acceptable to the Committee, from a law school in the foreign state or country and have completed a year of legal education at an American Bar Association Approved Law School or a California accredited law school in areas of law prescribed by the Committee; or

(B) have a legal education from a law school located in a foreign state or country without a first degree in law, acceptable to the Committee, and

(1) have met the general education requirements;

(2) have studied law as permitted by these rules in a law school, in a law office or judge's chambers, or by any combination of these methods (up to one year of legal education credit may be awarded for foreign law study completed); and

(3) have passed the First-Year Law Students' Examination in accordance with these rules and Committee policies.

DISCUSSION

The issue of what the policy should be regarding determining the eligibility of Japanese attorneys, specifically whether patent attorneys qualify as attorney applicants under the statute and rules, which would make them qualified to take the California Bar Examination, is before this Subcommittee. Attorney Zachary Wechsler has submitted a petition on behalf of several of his clients, which will be considered in closed session. He intends, however, to attend the open portion of the Subcommittee's meeting and would like to address the Subcommittee concerning this issue.

RECOMMENDATION

There are at least two ways the Subcommittee could go. Either the Subcommittee could determine that the policy is that a foreign-educated attorney applicant must have verified legal education prior to admission to practice law in their foreign country, which would be verified by a credential evaluation service, in order to register as an attorney applicant. Or, the Subcommittee could determine that prior education should not be considered for determining eligibility as an attorney and merely being "admitted to the practice of law", which might include patent attorneys, is sufficient. A recommendation is on hold pending discussion and resolution of the issue in Open Session.

PROPOSED MOTION

To be determined.