

COMMITTEE OF BAR EXAMINERS OPEN SESSION AGENDA ITEM

AGENDA ITEM: May 2013 – O-300

DATE: April 15, 2013

TO: Subcommittee on Operations and Management

FROM: Greg Shin, Director for Operations and Management

SUBJECT: Proposed Qualification of Foreign Attorney Applicants Policy

BACKGROUND

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* provide 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.

In addition, in accordance with the Committee of Bar Examiners' (Committee) policy, applicants must complete the requisite legal education before they may be found eligible to take the California Bar Examination.

While this issue was brought to the Committee's attention as a result of an on-going review of eligibility requirements for a number of Japanese patent attorneys (as introduced and briefly discussed during the March 2013 Committee meeting), the policy implications obviously impact all foreign attorney applicants.

DISCUSSION

With respect to the broader policy decision, there are at least two directions the Subcommittee could consider going. The Subcommittee could determine the policy should be either: 1) a foreign-educated attorney applicant must have legal education in order to register as an attorney applicant or 2) that prior legal education should not be considered for determining eligibility as an attorney and merely being "admitted to the practice of law", which might include Japanese patent attorneys, is sufficient.

RECOMMENDATION

It is recommended that the Subcommittee recommend to the full Committee that the current practice of requiring foreign-educated attorney applicants to have legal education should be continued, which would require that a foreign applicant be admitted by the professional bar admissions regulation/licensing authority in that jurisdiction in order to register as an attorney applicant.

On the narrower issue of the qualifications of the Japanese patent attorneys, it is recommended that the Subcommittee recommend to the full Committee that any applications received be handled in the following manner:

1. Applicants who were admitted as patent attorneys in Japan beginning in 2004 through the present and who are admitted to the Japan Federation of Bar Associations or Japan Bar Association be considered as having met the requirements and be permitted to register as foreign attorney applicants; and
2. Applicants who were admitted as patent attorneys in Japan prior to 2004 be permitted to register as foreign attorney applicants if they sign a statement under penalty of perjury that they relied on advice provided by the Office of Admissions that they would be able to qualify to take the California Bar Examination based

solely on their status as patent attorneys admitted in Japan, and that this portion of the policy only remain in effect through administration of the July 2015 California Bar Examination.

PROPOSED MOTION

Should the Subcommittee agree with the above recommendations, the following motion would be appropriate:

Move that foreign-educated attorney applicants be required to have legal education and be admitted by the professional bar admissions regulation/licensing authority in that jurisdiction in order to register as an attorney applicant; that applicants who were admitted as patent attorneys in Japan beginning in 2004 through the present and who are admitted to the Japan Federation of Bar Associations or Japan Bar Association be considered as having met the requirements and be permitted to register as foreign attorney applicants; and that applicants who were admitted as patent attorneys in Japan prior to 2004 be advised that they will be permitted to register as foreign attorney applicants if they sign a statement under penalty of perjury that they relied on advice provided by the Office of Admissions that they would be able to qualify to take the California Bar Examination based solely on their status as patent attorneys admitted in Japan and that this portion of the policy only remain in effect through administration of the July 2015 California Bar Examination.