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Residence Requirements for Initial Admisson to the Bar a Compromise Proposal for Change

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NOTES

RESIDENCE REQUIREMENTS FOR INITIAL ADMISSION TO THE BAR: A COMPROMISE PROPOSAL FOR CHANGE

The licensing of lawyers in the United States has long been the exclusive power of the individual states.[1] They have jealously preserved this authority, strongly resisting proposals for change.[2] Instantaneous communication, rapid transportation, and the increasing pervasiveness of federal legislation[3] have, however, broadened the scope of local legal practice to the point where absolute state authority in bar admission standards may no longer be justifiable. Bar admission procedures and standards that reflect a prejudice against lawyers or recent law graduates from other jurisdictions are antiquated in today's increasingly urban and mobile society. Residence requirements[4] for bar admission are a

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1 As early as 1872, the Supreme Court recognized

> that there are privileges and immunities belonging to citizens of the United States . . . and that it is these and these alone which a State is forbidden to abridge. But the right to admission to practice in the courts of a State is not one of them. This right in no sense depends on citizenship of the United States. . . .
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> . . . [T]he right to control and regulate the granting of license to practice law in the courts of a State is one of those powers which are not transferred for its protection to the Federal government, and its exercise is in no manner governed or controlled by citizenship of the United States in the party seeking such license.

Bradwell v. Illinois, 83 U.S. (16 Wall.) 130, 139 (1872).

2 *See, e.g.*, Cathey, *The Fifth Amendment—Its Protection of the Right To Become and To Remain a Lawyer*, 21 ARK. L. REV. 361 (1967).

3 For example, legislation in the areas of civil rights, tax, and antitrust.

4 At present, most states have some form of residence requirement for new attorneys as a prerequisite for admission to the bar, although Florida, Illinois, Louisiana, and Ohio seem to have no such precondition. The status of the law is unclear in Georgia following Webster v. Wofford, 321 F. Supp. 1259 (N.D. Ga. 1970).

Either residence or a bona fide intent to become a resident is prerequisite to admission to the bar in these states: Alabama (ALA. STATE BD. OF COMM'RS R. IV(A)); Arkansas (Ark. Bd. of L. Examiners, Arkansas Bar Examinations—Requirements and Information) (undated); Colorado (COLO. SUP. CT. R. 204); Connecticut (CONN. SUPER. CT. R. § 8(2)); Idaho (IDAHO SUP. CT. (ADMISSION TO PRACTICE) R. 102(5)); Iowa (IOWA SUP. CT. R. 101); Kentucky (KY. CT. APP. (ADMISSION TO PRACTICE) R. 2.010(b)); Massachusetts (MASS. BD. OF BAR EXAMINERS R. V); Michigan (MICH. BD. OF L. EXAMINERS R. 1); Minnesota (MINN. SUP. CT. (ADMISSION TO BAR) R. II); New Hampshire (N.H. SUP. CT. R. 15); New Jersey (N.J. SUP. CT. R. 1:22-2); North Dakota (N.D. CENT. CODE § 27-11-03 (Supp. 1969)); Oregon (ORE. SUP. CT. (ADMISSION OF ATTORNEYS) R. 1.10); Pennsylvania (PA. SUP. CT. R. 13(A)); South Dakota (S.D. COMPILED LAWS ANN. § 16-16-2 (1967)); Washington (WASH. SUP. CT. (ADMISSION TO PRACTICE) R. 5(B)); Wisconsin (WIS. BD. OF STATE BAR COMM'RS R. 1.03(3)).

The remaining states require anywhere from 20 days to one year prior residence before admission is allowed: Maryland (MD. CT. APP. (ADMISSION TO BAR) R. 5(a)) (residence at time of application; application to be made 20 days prior to bar examination); Nebraska (NEB. SUP. CT. R. II(2)) (residence at time of application; application to be made

prime illustration of such antiquated standards. Despite an increasingly persistent call for reform,[5] most state bar examination boards still impose residence requirements that not only fail to reflect the expanding scope of modern legal practice but are also unreasonable and perhaps even unconstitutional. The hardships and inequities that result from these state procedures are unnecessary and unjustifiable. Considerations of reasonableness and progress necessarily militate toward a change in present bar admission residence requirements.

I

THE TRADITIONAL ROLE OF RESIDENCE REQUIREMENTS IN BAR ADMISSION

A state's power to establish whatever rules and regulations it deems necessary for the licensing of professions is generally derived from its broad police power to provide for the public health, safety, and welfare.[6] Thus, to protect its citizens from injuries that might re-

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four weeks prior to bar examination); Alaska (ALASKA STAT. § 08.08.130(3) (Supp. 1970)) (30 days); Oklahoma (OKLA. SUP. CT. (ADMISSION TO PRACTICE) R. 1, § 2) (60 days); California (CAL. BUS. & PROF. CODE foll. § 6068 R. III § 31(6) (West Supp. 1971)), North Carolina (N.C. SUP. CT. (ADMISSION TO PRACTICE) R. VI § 1(6)), Tennessee (TENN. SUP. CT. R. 37, § 16) (two months); Kansas (KAN. SUP. CT. R. 210(d)) (90 days); Missouri (MO. SUP. CT. (BAR & JUDICIARY) R. 8.05), Rhode Island (R.I. BD. OF BAR EXAMINERS R. 8), Texas (TEX. SUP. CT. (BAR ADMISSION) R. II), Utah (UTAH SUP. CT. (ADMISSION TO BAR) R. III § 3-1(5) (three months); Delaware (DEL. SUP. CT. R. 31(2)(c)), Hawaii (HAWAII SUP. CT. R. 15(c)), Indiana (IND. STAT. ANN. § 29-3409 (1969), IND. SUP. CT. R. 3-13(A)(1)), Maine (ME. REV. STAT. ANN. tit. 4, § 804 (Supp. 1970), Montana (MONT. SUP. CT. R. VI(A)(1)), Nevada (NEV. SUP. CT. R. 51(3)), New Mexico (N.M. SUP. CT. (ADMISSION TO BAR) R. II(A)(8)), New York (N.Y. CT. APP. (ADMISSION OF ATTORNEYS) R. II-(1)(d)), South Carolina (S.C. SUP. CT. (ADMISSION TO PRACTICE) R. 5(3)), Vermont (VT. SUP. CT. (ADMISSION OF ATTORNEYS) R. 1, § 1), Virginia (VA. CODE ANN. § 54-60 (Supp. 1970)), Wyoming (WYO. SUP. CT. R. 21(c)) (six months); Mississippi (MISS. CODE ANN. § 8654 (1942)), West Virginia (W. VA. CODE § 30-2-1 (1966)) (one year); Arizona (ARIZ. SUP. CT. R. 28(c)(IV)(2)) (three month residence prior to bar examination or final year of law study in state law school).

[5] *See, e.g.*, Theagle, *The Legal Establishment: Arbitrary, Unreasonable and Capricious Standards*, 1 JURIS DOCTOR, Jan. 1971, at 8, 10:

> "Residency requirements obviously serve no governmental interest at all, much less a legitimate and compelling interest."
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> The xenophobic residency requirements which almost all states still impose on bar applicants are an example of seemingly unlawful petty tyranny which admissions authorities could have abolished before being required to do so by the courts.

Cf. Comment, *Admission to the Pennsylvania Bar: The Need for Sweeping Change*, 118 U. PA. L. REV. 945 (1970).

[6] Dent v. West Virginia, 129 U.S. 114, 122 (1889):

> The power of the State to provide for the general welfare of its people authorizes it to prescribe all such regulations as, in its judgment, will secure or tend to secure them against the consequences of ignorance and incapacity as well as of deception and fraud. As one means to this end it has been the practice of different

sult from improper practice of the law, a state generally establishes minimum criteria to which a bar admission candidate must conform in order to practice law within the state. Basically, these criteria attempt to determine the candidate's knowledge, moral character, and residence.[7]

The criteria established to measure a bar admission candidate's knowledge and legal competence are based, in part, on the state's power to prevent the defrauding of its citizenry. State interest in a lawyer's competence requires that, before a bar candidate is admitted to practice, he be familiar with the nature, content, and peculiarities of the state's law.[8] Thus most states require that applicants seeking admission to their bar pass a written substantive examination.[9] Additional criteria designed to assure a candidate's basic knowledge of the law may include minimum pre-legal and legal education requirements,[10] or training under the supervision of a lawyer already admitted

States, from time immemorial, to exact in many pursuits a certain degree of skill and learning upon which the community may confidently rely . . . . The nature and extent of the qualifications required must depend primarily upon the judgment of the State as to their necessity.

7 A typical requirement reflecting the use of these criteria is found in New Mexico:

An applicant for admission to the Bar, either upon examination or upon certificate and motion must be a citizen of the United States, an actual bona fide resident of the State of New Mexico for at least six months prior to admission, 21 years of age and of good moral character.

N.M. SUP. CT. (ADMISSION TO PRACTICE) R. II(A)(8).

No person who is not a member of the bar of another American or common-law jurisdiction shall be admitted to practice until he has successfully undergone a written examination accomplished under terms and conditions equivalent to those applicable to all other candidates for bar admission.

Id. R. IV(24).

8 Knowledge of the idiosyncrasies of both the procedural and substantive law of the forum is not only essential to the quality of service a lawyer may render his client, but it is also an indispensable element of the smooth and orderly administration of the local judicial process.

9 In some instances the examination may be waived for graduates of the state law school. *See, e.g.*, WIS. STAT. ANN. § 256.28(1) (Supp. 1970).

10 States commonly require that a bar admission applicant complete two to four years of undergraduate study and then complete three or more years of formal legal training. Several states, however, provide for means of qualifying for admission to the bar other than by formal completion of study in an undergraduate or legal educational institution: California (CAL. COMM. OF BAR EXAMINERS R. VIII § 81(2); *id.* R. IX § 91(4)) (undergraduate equivalency examination for applicants over 23 years old; office study of law); Delaware (DEL. SUP. CT. R. 31(1)(e), (2)(d)) (undergraduate equivalency examination; office study of law); Florida (FLA. SUP. CT. (ADMISSION TO BAR) R. art. IV § 22(a)) (undergraduate equivalent); Georgia (GA. CODE ANN. § 9-103(b)(i) (Supp. 1970)) (undergraduate equivalency examination); Indiana (IND. SUP. CT. R. 3-13(B)(1)(a)) (undergraduate equivalency examination); Massachusetts (MASS. SUP. JUD. CT. R. 3:01(3)(a)) (undergraduate equivalent); Mississippi (MISS. CODE ANN. § 8654 (1956)) (undergraduate equivalent; office study of law); Montana (MONT. SUP. CT. R. XXV(B)(2)(c)) (undergraduate equivalent); New York (N.Y. CT. APP. (ADMISSION OF ATTORNEYS) R. III-3, V) (undergraduate equiva-

to the bar.[11] Although inequities may result from the means employed to measure a bar applicant's knowledge,[12] it is generally unquestioned that a state does have a justifiable interest in requiring that only competent lawyers practice in its jurisdiction.[13]

Similarly, while there is controversy about the manner in which states attempt to measure a candidate's "good moral character,"[14] the courts have never denied that a state is entitled to demand high moral and ethical standards of its legal profession.[15] As with the criterion of

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lency examination; office study of law); North Carolina (N.C. SUP. CT. (ADMISSION TO PRACTICE) R. IX § 2) (proof of completion of specified courses); Oregon (ORE. SUP. CT. (ADMISSION OF ATTORNEYS) R. 4.10(1)(b)) (undergraduate equivalent); Pennsylvania (PA. SUP. CT. R. 10(C)(1)) (undergraduate equivalent); Texas (TEX. SUP. CT. (BAR ADMISSION) R. V(1)(b)-(d)) (office study of law); Vermont (VT. SUP. CT. (ADMISSION OF ATTORNEYS) R. 1, § 2) (office study of law); Virginia (VA. CODE ANN. § 54-62(2) (1967)) (office study of law); Washington (WASH. SUP. CT. (ADMISSION TO PRACTICE) R. 2(D) (Supp. 1971)) (office study of law).

While the rules of some states do not specifically refer to pre-legal education requirements, such requirements may be incorporated by reference in the single rule that all bar admission candidates who have not been admitted to the bar of another state must have graduated from an ABA approved law school. *E.g.*, MO. SUP. CT. (BAR & JUDICIARY) R. 8.03(b). For a law school to be accredited by the ABA, it must comply with the following standard:

> It shall require as a condition of admission at least three years of acceptable college work, except that a school which requires four years of full-time work or an equivalent of part-time work for the first professional degree in law may admit a student who has successfully completed two years of acceptable college work.

STANDARDS OF THE AMERICAN BAR ASSOCIATION FOR LEGAL EDUCATION 1, 10 (1969). Therefore a student who graduates from an ABA-accredited law school will, by definition, have completed a minimum of two years of undergraduate study.

11 For examples of such "office study" provisions, see CAL. COMM. OF BAR EXAMINERS R. IX § 91(4); DEL. SUP. CT. R. 31(2)(d).

12 This problem is a serious one. Despite efforts to promulgate uniform standards and practices (*e.g.*, *Report of the Committee on Admissions to the Bar*, [1958] ASS'N AM. L. SCHOOLS PROCEEDINGS 125, app. A), states continue to exercise their licensing authority in an individual and haphazard manner. Fifty different standards of what constitutes a "minimum level of competence" on the part of bar admission applicants remain a potential source of inequity and discrimination among candidates of equal ability.

13 Note 6 *supra*; *cf.* Graves v. Minnesota, 272 U.S. 425 (1926).

14 The methods and criteria used by a state to determine what constitutes a good moral character have, of late, come under heavy attack in the courts. *See, e.g.*, Spevack v. Klein, 385 U.S. 511 (1967); Konigsberg v. State Bar, 366 U.S. 36 (1961); Konigsberg v. State Bar, 353 U.S. 252 (1957); Schware v. Board of Bar Examiners, 353 U.S. 232 (1957); Law Students Civil Rights Research Council, Inc. v. Wadmond, 299 F. Supp. 117 (S.D.N.Y. 1969), *prob. juris. noted*, 396 U.S. 999 (1970); Hallinan v. Committee of Bar Examiners, 65 Cal. 2d 447, 421 P.2d 76, 55 Cal. Rptr. 228 (1966).

15 The Supreme Court in Schware v. Board of Bar Examiners, 353 U.S. 232 (1957), held that a state clearly had a right to make character evaluations of bar admission candidates as long as it did not do so "in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment." *Id.* at 238-39 (footnote omitted). Specifically, the Court said,

> A State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualifica-

knowledge, this requirement of good moral character seems to be justified by state interest in the welfare and protection of citizens. Since lawyers are officers of the local courts, the character and integrity of the bar is a natural matter of interest to the state.[16] Although the courts may strike down unconstitutional means of assessing a candidate's moral character, it is unlikely that such requirements will ever be declared unconstitutional per se.[17]

On the other hand, state interest in the third criterion for bar admission, residence,[18] is not so easily justified. Of the three criteria

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tion must have a rational connection with the applicant's fitness or capacity to practice law.

Id. at 239.

16 Another relevant consideration in this respect is that judges themselves are almost invariably either selected or elected from the membership of the local bar.

17 *See* Graves v. Minnesota, 272 U.S. 425, 428 (1926):

Every presumption is to be indulged in favor of the validity of the [licensing] statute. . . . And the case is to be considered in the light of the principle that the State is primarily the judge of regulations required in the interest of public safety and welfare, and its police statutes may only be declared unconstitutional where they are arbitrary or unreasonable attempts to exercise the authority vested in it in the public interest.

18 Requirements of a specified period of residence may be divided into three categories. The first is "pre-application," which requires residence for a specified period before a bar admission candidate may even apply to be admitted to the bar. The following states have "pre-application" requirements: Missouri (MO. SUP. CT. (BAR & JUDICIARY) R. 8.05) (three months); Delaware (DEL. SUP. CT. R. 31(2)(c)), Montana (MONT. SUP. CT. R. VI (A)(1)), South Carolina (S.C. SUP. CT. (ADMISSION TO PRACTICE) R. 5(3)), Virginia (VA. CODE ANN. § 54-60 (Supp. 1970)), Wyoming (WYO. SUP. CT. R. 21(c)) (six months); Mississippi (MISS. CODE ANN. § 8654 (1942)), West Virginia (W. VA. CODE § 30-2-1 (1966)) (one year).

The second category is "pre-examination," which requires residence for a specified period before a candidate may be allowed to take his written bar examination. These states have such requirements: Maryland (MD. CT. APP. (ADMISSION TO BAR) R. 5(a)) (residence at time of application; application to be made 20 days prior to bar examination); Nebraska (NEB. SUP. CT. R. II(2)) (residence at time of application; application to be made four weeks prior to bar examination); Alaska (ALASKA STAT. § 08.08.130(3) (Supp. 1970)) (30 days); California (CAL. BUS. & PROF. CODE foll. § 6068 R. III § 31(6) (West Supp. 1971)) (two months); Kansas (KAN. SUP. CT. R. 210(d)) (90 days); Texas (TEX. SUP. CT. (BAR ADMISSION) R. II), Utah (UTAH. SUP. CT. (ADMISSION TO BAR) R. III § 3-1(5)) (three months); Hawaii (HAWAII SUP. CT. R. 15(c)), Maine (ME. REV. STAT. ANN. tit. 4, § 804 (Supp. 1970)), Nevada (NEV. SUP. CT. R. 51(3)) (six months); Arizona (ARIZ. SUP. CT. R. 28(c)(IV)(2)) (three month residence prior to bar examination or final year of law study in state law school).

The third category consists simply of those states having residence requirements which do not fall into either of the previous classifications. These requirements may be called "pre-admission" residence requirements, and the following states have them: North Carolina (N.C. SUP. CT. (ADMISSION TO PRACTICE) R. VI § 1(6)), Tennessee (TENN. SUP. CT. R. 37, § 16) (two months); Oklahoma (OKLA. SUP. CT. (ADMISSION TO PRACTICE) R. 1, § 2) (60 days); Rhode Island (R.I. BD. OF BAR EXAMINERS R. 8) (three months); Indiana (IND. STAT. ANN. § 29-3409 (1969), IND. SUP. CT. R. 3-13(A)(1)), New Mexico (N.M. SUP. CT. (ADMISSION TO BAR) R. II(A)(8)), New York (N.Y. CT. APP. (ADMISSION TO PRACTICE) R. II-(1)(d)), Vermont (VT. SUP. CT. (ADMISSION OF ATTORNEYS) R. 1, § I) (six months).

generally used by a state to determine eligibility for admission to its bar, residence is perhaps the most patently unreasonable and discriminatory requirement, in terms of both theory and practical consequences. By requiring a specific period of time for a student to wait before he is allowed admission to a state bar,[19] some states clearly inhibit a student's choice of where to begin his practice.[20] Determination of residence, in addition, often involves an element of chance,[21] since it depends upon where the law student's residence is considered to be by the state bar to which he has applied.[22]

Furthermore, the practical effect of residence requirements as they

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19 In some cases this would even include the right to take the written bar examination.

20 For instance, it is conceivable that a student whose parents live in New York might attend an undergraduate university in Massachusetts and a law school in Connecticut. Except for New York, this student upon graduation could not practice law immediately in any of the states that require a specific period of pre-application, pre-examination, or pre-admission residence. In a state such as Nevada, he could effectively be precluded from practicing for nearly 18 months. Nevada offers its bar examination once a year on the third Monday of September (NEV. SUP. CT. R. 65), and requires six months residence prior to the examination, (*id.* R. 51 (3)). Thus a student coming to Nevada after March would have to wait until September of the next year before he could even be considered for admission to the bar.

21 It is often difficult for a law student to establish a residence in a state other than that in which his parents reside, even by residing in another state while attending law school:

> We think, in fairness to a future applicant, he should be advised that if he adopts Tompkins County [location of Cornell Law School] as a new residence, we may want to inquire into facts to be satisfied that Tompkins County is, in fact, an actual residence rather than a place where the applicant is living while attending law school.
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> . . . Sometimes in the past we have been too lenient in accepting the affidavits of law professors who do not know too much about the family background of the applicant. We do not think that we do a person a favor in letting him start his professional career by accepting his statement of residence if it is purely *pro forma*.

Letter from the Comm. on Character and Fitness, Sixth Judicial District of New York, to William Ray Forrester, Dean of the Cornell Law School, Aug. 10, 1970.

22 "[A] student who moves into residence on the campus of an educational institution does not, without more, accomplish a change of voting residence . . . ." Robbins v. Chamberlain, 297 N.Y. 108, 110, 75 N.E.2d 617 (1947).

The harsh effects of residence requirements are not necessarily confined to newly graduated law students. Practicing attorneys who wish to move to another state may find that they must suspend their practice while they wait the requisite period of time before being admitted in their new state. Lawyers who wish to make special appearances in particular cases may find that they are not allowed to do so because they are not members of the local bar, and that they may not become a member of that bar without fulfilling the requisite period of residence.

Most states provide for admission of practicing attorneys on the basis of comity or special motion procedure—*pro hac vice*. A. KATZ, ADMISSION OF NONRESIDENT ATTORNEYS PRO HAC VICE 1, 8 (1968). But frequently these methods are time consuming, unavailable, or unsatisfactory in other ways.

are applied by some states suggests that such requirements are used for purposes less justifiable than the protection of local citizenry from malpractice. Residence requirements may, in fact, be nothing more than a means of limiting local competition.[23] Such requirements may reflect a parochial prejudice against outsiders,[24] and, in some cases, a desire to thwart the effective enforcement of civil rights legislation.[25] If this is true, residence requirements may actually work against some citizens rather than on their behalf. By keeping their membership low, for instance, state bars may demand higher fees than would be justified if more practicing lawyers were available.

II

RESIDENCE REQUIREMENTS AS UNREASONABLE IMPEDIMENTS TO INITIAL BAR ADMISSION

Theoretically a state may justify its residence requirements on the grounds that the time a candidate spends in the community before he is admitted to the bar (*1*) allows him to become familiar with local customs, practices, and idosyncrasies of the law, (*2*) permits his peers to observe his behavior and determine his moral worthiness, (*3*) gives him a deeper sense of community responsibility, and (*4*) affords him an opportunity to give a strong indication of his sincere intent to become a permanent resident of the community.[26] Close examination

23 "The ostensible purpose is to promote high standards protective of the public, but a cynic might wonder if the public shield does not conceal a sword against unwanted competition." Howell, *Does Judge Advocate Service Qualify for Admission on Motion?*, 53 A.B.A.J. 915 (1967).

24 [T]hose states which have made the entrance of foreign attorneys most difficult have done so for one reason only: to discourage, as much as possible, the entrance of foreign attorneys in order that legal business in their state go exclusively to their own native attorneys. That these exclusionary rules were initiated and promoted by the attorneys and bar associations of these several states seems highly probable, inasmuch as they are the persons and organized groups most interested in such restrictions.

Dalton & Williamson, *State Barriers Against Migrant Lawyers*, 25 U. KAN. CITY L. REV. 144, 147-48 (1957).

25 Mann, *Not for Lucre or Malice: The Southern Negro's Right to Out-of-State Counsel*, 64 NW. U.L. REV. 143 (1969). According to this article, residence requirements may be used to thwart the efforts of out-of-state lawyers who assist Negroes trying to exercise various civil rights guaranteed them under recent federal legislation. *Id.* at 146-49. This, coupled with the refusal of local bar members to represent Negroes (*id.* at 144-46), constitutes a means of perpetuating barriers "against the Negro advance toward equality" more subtle but no less serious than segregation. *Id.* at 143.

26 Some of these justifications, as well as portions of the textual analysis, may be found variously in Horack, *"Trade Barriers" to Bar Admissions*, 28 J. AM. JUD. SOC'Y 102, 103-04 (1944); Mann, *supra* note 25, at 152-57; Note, *Attorneys: Interstate and Federal*

of these justifications, however, indicates that they are actually only extensions of the first two criteria of bar admission—written examinations and character requirements.

The first justification merely supplements written examinations in attempting to ensure that a lawyer is knowledgeable in local law. Not only is a residence requirement repetitious in this respect, but it would seem that there is little correlation between a student's knowledge of local law and his mere residence in the community. The only practical way a student can learn the refined aspects of his state's law is to be exposed to it in his education or in his practice. Residence can have no bearing on the quality of education he receives,[27] however, and an applicant cannot practice law until after he has been admitted to the bar. Thus, pre-admission residence requirements have little or no reasonable connection to an applicant's knowledge of the peculiarities of local law.

The second justification of residence requirements is nothing more than a "good moral character" requirement. Community observation is simply another means to the end of licensing honest, trustworthy lawyers. This procedure, however, is a dubious and at best inefficient way to investigate an individual's character. In today's increasingly urban society, a community's observation of one of its members is impractical if not completely impossible. Therefore, a state's justification of residence requirements along these lines is unwarranted in light of the reality of modern urban existence.[28]

The last two justifications for residence requirements suggest that loyalty to the community is an important characteristic to be determined in a bar admission applicant. A lawyer's loyalty to a community may prevent him from defrauding or victimizing that community by dishonest, unscrupulous behavior. The purpose of character requirements, however, is to prevent just that. Community loyalty, therefore, if nothing more than a means of ensuring a lawyer's good

Practice, 80 HARV. L. REV. 1711, 1714-16 (1967); Note, *Restrictions on Admissions to the Bar: By-Product of Federalism*, 98 U. PA. L. REV. 710, 717-18 (1950).

27 That is, the independent fact that a student resides in State *A* or State *B* would, in and of itself, have little bearing on the amount or quality of information that he is able to obtain about a particular state's local law. Other considerations such as the location and calibre of the law school where he is trained are more important.

28 Residence requirements may remain of some value in smaller communities where, in fact, local citizens might have an opportunity to evaluate effectively an applicant's "moral character" prior to his admission to the bar. Residence requirements based on this ground alone, however, manifest an unwarranted preference for rural communities. The ineffectiveness, inconvenience, and impracticality created by the application of such requirements in more populous cities would appear to outweigh any marginal benefits that they might provide in less populated areas.

moral character, is, like community observation, inefficient and unnecessary. Furthermore, moral character cannot be measured within the confines of a particular state or community. A lawyer's loyalty, honesty, and integrity should extend to all people in any community, not merely to any single community.

More pragmatically, it is conceivable that a state could claim a legitimate interest in the residence of its lawyers on the grounds that residence (*1*) facilitates attorney-client communication, (*2*) gives the public confidence in the stability of the local bar, (*3*) expedites the conduct of trials and local judicial proceedings,[29] (*4*) aids in the apprehension of lawyers suspected of malpractice, or (*5*) eases the administration of bar admission procedures such as registration, testing, investigation, and interviewing. These interests may be generally classified as "convenience" justifications, and although it might be argued that progress in transportation and communication makes even these justifications unreasonable, it may be conceded that a state has some vested interests in the smooth and convenient operation of its legal processes. Even granting this point, however, there is still little justification for pre-admission residence requirements of any great length. Except for the few weeks that a bar candidate might be required to be present in the state for registration, testing, investigation, and interviewing, the need for residence requirements pertains to post-admission problems. Nonetheless, it is clear that any reform of present requirements must recognize that there may still exist some valid state interests justifying alternative, though more moderate, residence requirements.

III

RESIDENCE REQUIREMENTS AS UNCONSTITUTIONAL IMPEDIMENTS TO INITIAL BAR ADMISSION

As obvious as many of the unreasonable aspects of residence requirements may be, only recently has the judiciary considered the constitutional problems raised by such regulations. In *Keenan v. Board of Law Examiners*[30] three practicing lawyers brought a class action in federal court requesting a declaratory judgment to void as uncon-

29 *See, e.g.*, Note, *Restrictions on Admission to the Bar: By-Products of Federalism*, 98 U. PA. L. REV. 710, 718 (1950).

30 317 F. Supp. 1350 (E.D.N.C. 1970). Lengthy residence requirements are already being challenged in other states. In Webster v. Wofford, 321 F. Supp. 1259 (N.D. Ga. 1970), a Georgia federal district court held that the equal protection clause of the fourteenth amendment invalidated Georgia's one-year residence requirement for initial admission to the state bar.

stitutional North Carolina's one-year residence requirement[31] and seeking an injunction to prevent the Board of Law Examiners from enforcing the requirement.[32] The special three-judge court unanimously declared that the requirement as presently administered was unconstitutional.

A. *Denial of Equal Protection*

The court in *Keenan* concluded that the Board of Law Examiners' presumption that everyone who had resided in North Carolina for less than a year was unfit to practice law in that state was a denial of equal protection of the laws in contravention of the fourteenth amendment.[33] State legislation may create distinctions between different classes of people, but such classification must reasonably relate to the purpose of the legislation.[34] Thus, while a state may reasonably create a distinction between those who are allowed to practice law within the state and those who are not, the question remains as to whether a state may reasonably base that distinction upon a determination of residence.[35] Addressing itself to this question, the court in *Keenan* held that such a distinction was so unreasonable as to be an arbitrary and capricious denial of equal protection to those candidates who might otherwise be qualified to practice in the state.[36] The court apparently recognized that a residence requirement, standing alone, bears little or no relation to a bar admission candidate's fitness. Thus, even though such a requirement might, coincidentally, effectively eliminate some unfit and incompetent candidates,[37] the North Carolina requirement was defi-

31 N.C. SUP. CT. (ADMISSION TO PRACTICE) R. VI § 1(6).

32 The suit was brought as a class action under FED. R. CIV. P. 23 on behalf of all prospective applicants for the North Carolina Bar examination who had not resided in the state for one year or longer. 317 F. Supp. at 1351 n.1.

33 317 F. Supp. at 1360.

34 [L]egislation may impose special burdens upon defined classes in order to achieve permissible ends. But the Equal Protection Clause does require that, in defining a class subject to legislation, the distinctions that are drawn have "some relevance to the purpose for which the classification is made."

Rinaldi v. Yeager, 384 U.S. 305, 309 (1966), *quoting* Baxtrom v. Herold, 383 U.S. 107, 111 (1966). This passage was quoted with approval by the *Keenan* court. 317 F. Supp. at 1358.

35 317 F. Supp. at 1358. The court in Webster v. Wofford, 321 F. Supp. 1259 (N.D. Ga. 1970), noted that Georgia's one-year residence requirement

creates two classes of prospective bar members. One class is comprised of those bar applicants who have met all requirements for admission, including the one-year residency requirement. The other class is comprised of those bar applicants who have met all admission requirements except that of one year's residence. . . . The issue is whether the [one-year residence] requirement furthers some [legitimate state interest, thus escaping] the conclusion that the requirement denies equal protection. We find that it does not.

Id. at 1261.

36 317 F. Supp. at 1361.

37 *Id.* at 1360.

cient because it could potentially injure those candidates who were both fit and capable.[38]

B. *Improper Restraint on Interstate Travel*

Besides denying a bar admission candidate equal protection, residence requirements may also effectively inhibit a student or practicing attorney from moving to a new state to establish his practice. Economic considerations such as support of a family or repayment of accumulated educational debts may make it imperative that a recent graduate or lawyer be eligible to begin his practice as soon as possible. There are certain administrative delays he must endure,[39] but if they are further complicated by length-of-residence requirements,[40] he may be effectively prevented from moving to the new state. Thus, residence requirements may unconstitutionally inhibit a citizen's right to unimpaired interstate travel.

In considering this point, the *Keenan* court first noted that the constitutionally protected "right" of interstate travel had been recently reviewed by the Supreme Court in *Shapiro v. Thompson*.[41] In that case, the Court held that certain state and federal welfare regulations,[42] which required welfare recipients to be residents of a state or the District of Columbia for one year before being entitled to receive welfare payments, were unconstitutional as a denial of equal protection.[43] The Court also held that since the Constitution guaranteed a right of interstate travel, the statutory classification of indigent persons created by the one-year waiting period[44] was an unjustifiable impediment to

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38 [The statute's] constitutional infirmity is "over inclusion." . . . It burdens some who, because of unfitness or incompetence, should not be licensed to practice; but it also injures others who are both fit and capable. There are here no exigent circumstances justifying such over inclusion.

Id. (footnote omitted).

39 The most common delays are having to wait for the specified date of the examination and then having to wait for the publication of the results of the examination and character investigation. These delays themselves may effectively inhibit interstate travel. For instance, Nevada only offers a bar admission examination once a year. NEV. SUP. CT. R. 65.

40 Note 18 *supra*. "Pre-application" residence requirements are the most inhibitive type of requirement and hence the clearest examples of unconstitutional bar admission criteria. This is not to say, however, that either "pre-examination" or "pre-admission" residence requirements are less inhibitive and, therefore, constitutional. The difficulties and burdens that all such requirements place on interstate travel are sufficient to make them equally unconstitutional.

41 394 U.S. 618 (1969).

42 CONN. GEN. STAT. REV. § 17-2d (Supp. 1965); D.C. CODE ANN. § 3-203 (1967); PA. STAT. ANN. tit. 62, § 432(6) (1968).

43 394 U.S. at 627.

44 Similar to *Keenan*, the classifications created by the legislature in *Shapiro* were of a class of citizens who were poor and who had lived in the state or District of Columbia

interstate movements. The Court held that although no specific language of the constitution guaranteed the right, it was nevertheless well established.[45]

The *Keenan* court followed the *Shapiro* rationale[46] and ruled that the North Carolina residence requirement "unconstitutionally condition[ed] the exercise of the constitutional right to interstate travel."[47] In the absence of any compelling state interest[48] to justify classification of bar applicants into those who had resided in the state for more than one year and those who had not, the court held that those plaintiffs who had successfully passed their written examinations and who were found to be of good moral character must be licensed to practice law in North Carolina.[49]

IV

Alternatives to Present Residence Requirements

A. *Complete Abolition*

In light of the unreasonable and, on the basis of *Keenan*, probably unconstitutional burdens that lengthy residence requirements impose on a lawyer's ability to practice law wherever he may choose, it is clear

for one year, and of another class of citizens, also poor, but who had not fulfilled the one-year residence requirement.

> [45] This Court long ago recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement.

394 U.S. at 629-30.

> [46] The court in *Keenan* was aware of the Supreme Court's caveat in *Shapiro*:
>
> We imply no view of the validity of waiting-period *or* residence requirements determining eligibility to vote, eligibility for tuition-free education, to obtain a license to practice a profession, to hunt or fish, and so forth. Such requirements may promote compelling state interests on the one hand, or, on the other, may not be penalties upon the exercise of the constitutional right of interstate travel.

Id. at 638 n.21 (emphasis in original). Despite the explicit narrowness of *Shapiro*, however, the *Keenan* court clearly felt that the reasoning was equally applicable to residence requirements for admission to the bar. 317 F. Supp. at 1361.

> [47] 317 F. Supp. at 1361.

> [48] *Id.* at 1362. The court's reference to state interests included the "theoretical justification" for residence requirements. Text accompanying note 26 *supra*. As for "convenience justifications," outlined in the text accompanying note 29 *supra*, the court seemed to imply that even these state interests could not justify arbitrary residence requirements: "Administrative inconvenience is, however, insufficient justification for an arbitrary, over inclusive regulatory classification." 317 F. Supp. at 1360.

> [49] *Id.* at 1362. Following *Keenan*, North Carolina revised its residence requirement from one year to two months. N.C. Sup. Ct. (Admission to Practice) R. VI § 1(6).

that a change in existing requirements is imperative. The first alternative is the complete elimination of all residence requirements for admission to the bar. This is the alternative suggested by the *Keenan* case,[50] and it would undoubtedly be the simplest solution to the problem. Without stringent residence requirements, a lawyer could easily become a member of several different bars, provided that he was competent and morally fit.

As simple a solution as this would be, however, it is not the most practical one. Since residence requirements may be an important means used by state bars to protect vested interests and eliminate outside competition,[51] it is clear that any proposal for change may have to overcome substantial local resistance.[52] Considering the fact that there are arguably some justifiable state interests[53] in requiring at least post-admission residence, the best solution may be one that takes into account both an applicant's interest in immediate eligibility for admission to a state bar and a state's interest in the residence of its lawyers after admission.

B. *Declaration of Intent*

One approach to reconciling state interests with those of the individual would be the adoption of a system whereby a candidate seeking initial admission to a state bar would merely declare, prior to being admitted to practice, his bona fide intention to become a resident of that state.[54] Depending on the number of times the bar examination is offered, a law student might be able to begin his practice with a minimum amount of delay. The same would also be true of the lawyer moving to the state to start a new practice. This procedure would not eliminate the inevitable delays in waiting for the results of the examina-

50 The court seemed to believe that state interests in such residence requirements as pre-admission registration, testing, investigating, and interviewing could just as easily be served by different means. The court said:

> The plaintiffs concede, and we agree, that some reasonable period of time may be necessary to delve into the character qualifications of bar candidates; however, such time can be provided by a deadline for the applications of all applicants set sufficiently before the examination. If the Board be concerned that out of state applicants may not be readily available for interviews or may not fully cooperate in the determination of their fitness, reasonable cooperation can be assured by requiring it for admission.

317 F. Supp. at 1361.

51 Notes 23-25 and accompanying text *supra*.

52 Note 24 *supra*. For a not entirely objective discussion of recent Supreme Court decisions in the traditionally autonomous area of state regulation of the legal profession, see Cathey, *supra* note 2.

53 Text accompanying note 29 *supra*.

54 Several states permit bar admission on this basis. *E.g.* MICH BD. OF L. EXAMINERS R. 1.

tion and character investigation,[55] but at least such delays would not be further compounded by residence requirements. Thus, theoretically, a "bona fide intent" requirement would allow a state to maintain its legitimate interest in the post-admission residence of its lawyers while avoiding unreasonable and perhaps unconstitutional discrimination among its bar admission candidates.

From a practical point of view, however, it is unlikely that a state favoring strong residence requirements would accept such an alternative. Declaration of a "bona fide intent" to become a resident in the absence of proof or enforcement techniques could become a mere formality. Hence, from the state's perspective, there would be very little practical difference between this alternative and the complete abolition of residence requirements.

C. *Conditional Licensing*

The third and most viable approach to residence requirements represents a compromise between applicant interest in eliminating such requirements and state interest in maintaining the status quo. This approach would authorize the continued use of residence requirements by states believing that the public welfare and the smooth and efficient operation of their legal processes justifies the imposition of such requirements.[56] An important element of this approach, however, would be that only post-admission residence requirements could be imposed.[57] This would be accomplished by regulations under which a candidate could apply for admission to the bar regardless of his original or present residence on the condition that he could not be fully certified until he had resided in the state for a specified period of time. The permanence of the license that was first granted to him would thus be contingent upon his continued residence in the state.[58]

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[55] For instance, even though a New York bar admission examination was given July 30-31, 1970, the results of the examination could not be announced until December 1, 1970. This delay was apparently due to the large amount of time required to grade the 1,985 examinations that were taken during the two-day period. N.Y. Times, Dec. 2, 1970, at 42, col. 1.

[56] This proposal is designed to modify the procedures of those states that presently have very harsh residence requirements. It is not suggested that all states, least of all those with few or no residence requirements, adopt this proposal. Perhaps with time, all residence requirements will disappear, making such a "compromise" proposal unnecessary.

[57] Problems of bar admission procedures could be handled in the manner suggested by the *Keenan* court. Note 50 *supra*. Presence would naturally be required for bar admission testing and interviewing, but actual residence would not be important until *after* the candidate had been admitted to the bar.

[58] How long this probationary period would last could be optional with each state. Conceivably, a license could be issued which would be revocable whenever the lawyer

If the candidate were to change his residence before the license became permanent, he would be required to go through the entire pre-admission testing and interviewing procedure before he could be readmitted, even conditionally, to the bar of that state.

The conditional licensing of attorneys would not present insurmountable obstacles to newly graduated law students or to practicing lawyers who wish to move to the state. At the same time, state interest in the local residence of attorneys, for effective and convenient administration of the law, would also be secured.

Precedent for this method may be found in the present licensing procedure followed in New Jersey. There, two types of licenses to practice law are issued. One is a plenary license granted to those who have passed the required admission examination and who have also completed a skills and methods course (or, if authorized, a nine-month legal clerkship). The other is a certificate of limited admission to those who have passed the required examination but who have not completed the skills and methods course (or the clerkship).[59] New Jersey limits the scope of this latter group's practice,[60] although ideally such limitation would be unnecessary in a dual licensing system based solely on residence. The New Jersey classification system thus provides precedent for issuing more than one type of license to practice law.[61]

Thus there are several feasible alternatives to existing state residence requirements. Considerations of the "perfect" solution, however,

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discontinued his residence, no matter how long he had previously practiced in the state. A more reasonable suggestion would be to make the post-admission residence period the same as it now is for pre-admission. In that case, no probationary period would last longer than one year.

[59] N.J. SUP. CT. R. 1:27-1(b) provides, in part:

> An applicant who has successfully . . . completed an approved skills and methods course or . . . has satisfactorily completed a legal clerkship, shall be issued a certificate of plenary admission; and an applicant who has only passed the bar examination shall be issued a certificate of limited admission. . . . An applicant holding a certificate of limited admission shall be entitled to a certificate of plenary admission upon the successful completion of an approved skills and methods course or, if authorized, a legal clerkship.

See also id. R. 1:26 (skills aud methods course; clerkship).

[60] A New Jersey bar admissions candidate employed by an attorney or a law firm may, after receiving his certificate of limited admission, practice law in the name of that attorney or law firm. Moreover, he is entitled to share fees with the attorney or law firm employing him. The holder of a limited certificate of admission may not, however, have his own clients or appear as attorney of record in any cause. *Id.* R. 1:21-3(b).

[61] Further precedent may also be found in tbe Oregon conditional licensing system, which applies only to aliens. An alien is admitted to the bar with full membership privileges, even though he may not yet be naturalized, providing he declares it his intention to become a United States citizen and providing he is a resident of Oregon. If, however, he fails to become a United States citizen within six months after the time he is eligible, his admission to the Oregon bar becomes void. OR. REV. STAT. § 9.230 (1969).

must be balanced against the more pragmatic consideration of finding the solution with the best chance of being adopted. The conditional licensing approach, therefore, although perhaps not the ideal solution, appears at present to be the best alternative for eliminating many of the inequities that now result from state residence requirements.

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