

RECIPROCITY RULES

Thought some of you might find this post I wrote for the NC Law Blog interesting. A fellow solo and friend, Rania Combs, brought this outdated reciprocity rule to my attention. I'm wondering how many other states have similar rules restricting reciprocity by requiring physical location. <http://www.nclawblog.com/journal/2011/11/11/nc-reciprocity-requirements-need-updating.html>

Stephanie L. Kimbro

See, I'm not real sure it's an 'outdated' rule.

The comity rule allows an attorney from another state to be admitted without bar exam. Not all states have comity rules; Florida, for one, does not. No state is under any obligation to have a comity admission. If you want to become an attorney in Florida you need to sit for and pass the bar exam. Period.

States can allow attorneys to waive in under some circumstances; and they can set the conditions under which they can waive in. If they want to require actual physical office then they can; if they want you to be in full time practice for a period, they can. At least with respect to the question of full time practice, the rationale is likely that an attorney who is in full time practice is likely to be up to speed on law, rules, procedure, etc; whereas someone who is NOT in full time practice of law may have forgotten more than they remember. And, ultimately, if you don't meet the comity requirements, you can still gain admission via sitting for the bar exam. In fact, if I wanted to be NC lawyer, that's what I'd have to do; because Florida does not allow NC lawyers comity admission, NC would deny my admission on a comity application. The rule reads, "and duly licensed in a reciprocal jurisdiction for at least four out of the last six years". Florida is not one of those "reciprocal" jurisdictions.

In Florida's case, it is precisely because they don't want retired lawyers coming here from out of state and waiving in; everybody retires to Florida. So Florida requires all attorneys to pass the bar exam.

So long as there's a "plan B" for out of state attorneys to become admitted (pass bar exam) I'm not seeing any real problem with them requiring full time practice or physical presence.

Ronald Jones, Florida

I agree with all you're saying, Ron, but I think what Steph's pointing to as odd here is that the person petitioning for comity in North Carolina **IS** in

North Carolina. She has been here, practicing law in Texas for some time.

The oddity is not that N.C. requires her to be in N.C. to practice, but rather that they won't give her "credit" for purposes of comity for her practice in Texas ... because she wasn't *in* Texas while she was doing it; she was *here* in N.C., where she now seeks admission to practice locally. Texas apparently has no problem with her being in N.C. and practicing in Texas, however.

While none of that negates your point that "it's at their discretion," her puzzlement stems from the odd nature of the requirement. In N.C.'s defense, the only justification I can think of is that they don't want you to rely on a license in a state where you've never actually sat in practice for comity, or where you've been practicing in a different state under comity and the original license is a legacy. (E.g., you were licensed in N.Y., practiced there 10 years, got comity in Ohio, moved there and practiced for 10 years without sitting the bar, then moved to N.C., and sought to use the "stale" N.Y. bar exam for comity admission when none of your recent experience was under that original license.) Just speculating, however.

-Rick

(Who *did* sit the N.C. bar exam and passed it, just a little over three long, arduous years ago, but still manages to find comedy in his work.)

Richard J. Rutledge, Jr., North Carolina

Well, it could also be that they are concerned why someone would be licensed and practicing in State A while they had physical location in State B but not admitted to State B because the person was concerned that they wouldn't be able to be licensed in State B. In other words, this may be a 'red flag' to them, why's a person living in a state where they're not practicing but practicing in that state over there, where they're not living? It may be a very innocuous explanation; but the fact is, some states are 'tougher' on bar admissions than others; I've corresponded with an attorney on this list privately who was, and is, licensed in a state other than Florida; they have something in their past that, frankly, would probably give the Florida Board of Bar Examiners a major problem; however, the state in which they are licensed has permitted them to practice. They were considering a move to Florida and had question about whether this thing could cause problems. I told them that they needed to talk to someone who handled bar admissions, but that in my experience the bar examiners would at least question it. And there's a lawyer on this list who I will not identify, but she was duly licensed to practice for YEARS out of state, moved to Florida, and was

ASTONISHED at how god awful intrusive our process was; asking for stuff from decades ago. She's since been admitted but it was a rough year and a half or so.

Ronald Jones

Admissions here are admittedly pretty "intrusive," especially if you're not a kid fresh out of law school with little life experience. If memory serves me, my bar application was about 128 pages long.

-Rick

Richard J. Rutledge, Jr.

I don't understand why the laws need updating at all: admission by motion/comity is a privilege, not a right (the "always wrong" answer on the MBE). If a state has "crazy" requirements for admission by motion (ie: not DC), so be it. I was planning to use the DC bar to waive into PA, but PA requires that I practice *in* a reciprocal jurisdiction if I wasn't admitted there by exam (and not just hold a license there, which would *not* be the case if I was admitted in a reciprocal jurisdiction by exam) - long story short I had to sit for another bar.

Last I checked, and I could definitely be wrong, Virginia and Ohio require a physical presence if admitted by motion/comity (whereas if the attorney is admitted by exam there is no such requirement). I think Virginia will even yank your license if you leave and were admitted by motion/comity - again I'm sure Virginia Sezzers such as Flu Shot will have better input.

Nicholas Proy, Maryland

I didn't know that working in your chosen profession is a privilege?
Once you are licensed in one state, you should be able to move anywhere you want in the US to practice your profession.

Michael A. Blake, Connecticut

The process is quite intrusive and at times borders on absurd. Although I am in my mid-50's, I have been asked to produce employment information going back to when I was 16. When the inquiries to these defunct businesses and deceased supervisors were returned as unclaimed, I had

to tell them why. I have had to reveal why I was suspended for three days from a high school chemistry class in 1973. I have had to send in credit reports with credit scores, list mortgage amounts, account numbers and lenders, credit card companies and balances. Some states want you to list every lawyer with whom you have worked or with whom you have office shared. Some places demand that you list every traffic violation. I have not had been ticketed in more than 10 years and just cannot remember details of speeding tickets from 20 years ago.

The most absurd one was a request to submit a certificate of good standing from each federal court to which I am admitted. State courts, I understand that. But federal courts? Why?

I think there is a certain amount of fraternity initiation hazing to all of this. The idea may be to create enough barriers that applicants are reluctant to go through the process.

Craig A. Stokes, Texas

Of course it is blatant State-initiated protectionism, something for which I believe there is a commerce clause somewhere around here that is supposed to address such things.

Darn, I must have misplaced it. Maybe it morphed and I simply cannot recognize it.

Sincerely,

Arthur B. Macomber, Idaho

It'd be easier to find if it weren't dormant.

-Rick

Richard J. Rutledge, Jr.

Ohio admission without examination rules do state that they can inactivate your ohio license if you move out of the state.

Hence just another reason for me to maintain my Missouri license.

Erin Schmidt

OH! *That's* where it is, under the doormat! Thanks for the reminder.

Sincerely,

Arthur B. Macomber
