



THE BUCKEYE INSTITUTE

Comment on Proposed Amendments to Rule I for the Government of the Bar of Ohio

Public Comments

Dave C. Tryon, Director of Litigation
Alex M. Certo, Legal Fellow
The Buckeye Institute

August 30, 2023

Introduction

Currently, Rule I(10) of the Supreme Court Rules for the Government of the Bar of Ohio limits admission to the Ohio Bar without examination to applicants that have been admitted as an attorney in another state or in the District of Columbia who, for at least five full years out of the last ten years, engaged in the practice of law on a full-time basis. The current rule makes Ohio one of a small minority of states that require full-time practice in another jurisdiction before admission without examination. This requirement prevents qualified part-time attorneys from practicing in Ohio without going through the additional burden of taking the Ohio bar exam.

The proposed amendments to Gov.Bar R. I(10) eliminate the full-time requirement and replace it with the requirement that, for at least five out of the last seven years, the applicant spent at least one thousand hours per year engaged in the active practice of law. The proposed amendments would also expand the “practice of law” to include individuals representing “one or more clients in the private practice of law,” and would extend Ohio’s job pool to those who have practiced law in Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

The proposed amendments to Gov.Bar R. I(10) may appear minor, but they will profoundly and positively affect the Ohio legal landscape. Most importantly, the proposed amendments would allow qualified attorneys licensed in other jurisdictions to practice law in Ohio without unnecessary additional examination or risk to those employing the qualified attorneys. The court should adopt the proposed amendments because they would increase the availability of legal services and help individual attorneys, while maintaining the competency of Ohio’s legal profession.

Proposed Amendments Require Ohio Attorneys to be Competent

The court restricts the practice of law to members of the bar to help maintain competency in the profession and protect the reputation of the bar.¹ To further ensure competency, Gov.Bar R. I restricts admission to those who have passed the bar exam or who are admitted without examination under Gov.Bar R. I(10).

Nearly 1,000 new attorneys are licensed through examination in Ohio every year.² Although most newly licensed attorneys have recently spent three or four years in law school and preparing for the bar exam, they typically lack the experience to understand the practicalities of legal practice. On the other hand, attorneys with at least 1,000 hours of practice in five of the last seven years—as the proposed amendments would require—have the legal training of law school and practical, on-hands, experience. They are more prepared to practice law in Ohio than those nascently emerging from law school.

Further, states where most of the part-time attorneys are currently located and who would be

¹ See *Ohio State Bar Ass’n v. Klosk*, 155 Ohio St. 3d 420, 2018-Ohio-4864, 122 N.E.3d 107, ¶ 10, quoting *Cleveland Bar Assn. v. CompManagement, Inc.*, 104 Ohio St.3d 168, 2004-Ohio-6506, 818 N.E.2d 1181, ¶ 40.

² **Ohio Bar Exam Results Announced**, Supreme Court of Ohio, October 22, 2021.

admitted under Gov.Bar R. I(10) as amended, require part-time attorneys to fulfill continuing legal education requirements to maintain an active status in those states.³ And, most had to take some version of the bar exam.⁴ With the recent homogenization of the bar exam, and with Ohio administering the Uniform Bar Examination beginning in 2020 along with 37 other states, it is no longer persuasive that differences between state bar exams justifies requiring full-time practice for admission by waiver. Additionally, the rules' current exemption for individuals admitted without examination from the Ohio Law Component—the purpose of which “is to ensure that attorneys who desire to be licensed in Ohio are aware of the unique aspects and rules of the Ohio judicial system, as well as state-specific legal principles”⁵—shows that knowledge of Ohio specific law is not a principal concern of Gov.Bar R. I(10)'s fulltime practice requirement.

The bar exam is an expensive⁶ and time-consuming⁷ process. This is especially true for those who have chosen to work less than full-time. Requiring those who have already proven themselves capable of passing a bar exam in another jurisdiction and working in the legal profession is not necessary to maintain competency in the profession. Rather it forces an unnecessary burden on practicing attorneys. Part time employment does not disqualify in-state attorneys from practicing law, neither should it disqualify out-of-state attorneys seeking to waive into the practice in Ohio. Additionally, once admitted to practice in Ohio, these attorneys will be subject to the same professional responsibility requirements as every other admitted attorney in the state.

Proposed Amendments Give Consumers Greater Access to Legal Services

There are many reasons why an attorney is not working full-time: men or women trying to balance at-home responsibilities while continuing to provide for their families, semi-retired attorneys who want to retire in Ohio, attorneys with disabilities who cannot work full-time, and military spouses who relocate with their spouses to Ohio. Ohio is among a small minority of states that require full-time practice to be admitted without examination.⁸ By removing the full-time practice requirement, the proposed amendments encourage part-time attorneys who are considering moving to a new state to move to Ohio by removing a barrier to their entry into the Ohio bar. An increase in admitted attorneys increases the availability of legal services across the vast spectrum of legal needs.

Not every individual who requires legal services can afford a high-priced attorney. Full-time attorneys at large firms are pushed to bill lots of hours, and other full-time attorneys are often trying to maximize their profits. These full-time attorneys often have high billing rates. Yet other attorneys wish to provide legal services as a service to the community and may not have the need to charge high rates. They may see the practice of law as a calling or simply a way to supplement a spouse's income. Part-time lawyers may fill the underserved niche of poor people who need legal

³ Meredith Cohen-Pilat, **CLE Requirements for Attorneys**, Lawline (accessed August 15, 2023).

⁴ **State-by-State Bar Exam Requirements**, Washington Collage of Law (accessed August 15, 2023).

⁵ **Ohio Law Component**, Supreme Court of Ohio (accessed August 15, 2023).

⁶ **Ohio Bar Exam Dates/Details**, University of Akron School of Law (accessed August 15, 2023).

⁷ **The Best Way to Study for the Bar Exam**, St. Francis School of Law, August 3, 2021.

⁸ Karin Lips, **Should Attorneys Need to Work Full-time to Receive Bar Admission Reciprocity?**, Federalist Society, October 3, 2022.

help but do not qualify for the services of legal aid societies. Of course, some clients will prefer to retain full-time lawyers and eschew part-time lawyers. But that is their prerogative, and the government should not restrain clients from making this choice. Indeed, no current prohibition exists for a lawyer already admitted in Ohio to practice part-time. And so, there should be no prohibition on part-time lawyers admitted in other jurisdictions from joining the Ohio Bar.

Proposed Amendments Facilitate Increased Family Involvement and Personal Well-Being

Attorneys' mental health has been at the forefront of recent changes in the legal profession.⁹ The fight to satisfy billable hour requirements, meet client demands, prevent work from piling up, and personal feelings of guilt are among the top reasons attorneys forgo their home and personal time for the profession.¹⁰ Many lawyers have complained of burn-out and advised others against entering the profession. Despite the push to promote a healthy home-work balance in the legal community, the current Gov.Bar R. I(10)(A)(2)(c), exacerbates the problem. That rule requires attorneys to engage in the practice of law "on a fulltime basis." But many lawyers choose, or yearn for, a lifestyle where they can spend more time with family or non-legal endeavors. Everyone has a different view of what that balance should be in their lives. Lawyers who take the bar exam to begin their practice of law in Ohio have that luxury. Lawyers who have practiced elsewhere in that same fashion are arbitrarily denied those same choices if they move to Ohio. They should not be punished for continuing those life-style choices here; instead, the Ohio Bar should welcome them.

Conclusion

The court should adopt the proposed amendments and allow qualified part-time attorneys to become admitted without additional hardship.

⁹ Dan Roe, **"There's a Lot of Backlog to Address': Why Mental Health in the Legal Profession Is Getting Worse**, *New York Law Journal*, May 18, 2023.

¹⁰ *Ibid.*

About The Buckeye Institute

Founded in 1989, The Buckeye Institute is an independent research and educational institution – a think tank – whose mission is to advance free-market public policy in the states.

The Buckeye Institute is a non-partisan, non-profit, and tax-exempt organization, as defined by section 501(c)(3) of the Internal Revenue Code. As such, it relies on support from individuals, corporations, and foundations that share a commitment to individual liberty, free enterprise, personal responsibility, and limited government. The Buckeye Institute does not seek or accept government funding.

