

May 1, 2022

**Blue Ribbon Commission on the Future of the Bar Exam**

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Re: Public Comment for Hearing May 5, 2022 Re Recommending  
BRC Adoption of Admission on Motion For Out-of-State Attorneys  
in California and For California Attorneys in Other States

To The Commission:

The undersigned has submitted public comments with supporting exhibits for each of the BRC hearings, averring “the time is now” for adopting reciprocal licensing on motion for out-of-state attorneys in California, which will facilitate California attorneys reciprocal licensing in other states That is one nation, indivisible with liberty and justice for all. Reciprocal licensing in California will reduce the “justice gap.” Under the Business and Professions Code, many learned professions in California require reciprocal licensing. California also has public policy of providing open competition.

Please take notice a lawsuit against the United States was filed in the District Court in Trenton, N.J, on April 26, 2022. A copy is attached. The complaint seeks to invalidate local Rules in two-thirds of the 94 United States District Courts that deny general admission privileges to out-of-state licensed attorneys. These challenged local Rules limit general bar admission to home-state licensed attorneys.

This federal discrimination in favor of in-state citizens over out-of-state citizens does not occur in the Supreme Court, United States Courts of Appeal, or practice before federal administrative agencies.

The [American Bar Association](#) has studied reciprocal lawyer licensing in open public hearings all over the United States. The ABA has concluded that “one bar exam is enough” and that licensed lawyers have already demonstrated their competence and that they are not a threat to the public. The ABA has recommended that District Courts and all [States](#) should adopt admission for licensed lawyers without taking another bar exam.

This lawsuit is the first to argue the entire concept that already licensed attorneys should be required to take and pass another state’s entry level bar exam is arbitrary, irrational, and unlawful economic protection. See Complaint ¶¶ 42-86. It argues this paradigm trespasses nationally recognized testing *Standards*. The lawsuit cites multiple testing expert conclusions that bar exams are not valid, reliable, or a fair measurement of attorney competence as it is almost impossible to get graders to agree on subjective tests. Multiple choice tests are equally unfair as Google has democratized information and the practice of law is open book. Many practice specialties are not tested on any state bar exam.

The lawsuit further alleges claims based on recent Supreme Court decisions under the First Amendment freedoms to speech, association, and to petition the government with counsel for the redress of grievances, the separation of powers doctrine, the full faith and credit statute, and the right to travel.

Further attached is a copy of a letter sent to Attorney General Merrick B. Garland. This letter was included with the Summons and Complaint served on the Attorney General and each defendant. It argues:

It is wrong when one party (i.e. Mitch McConnell) categorically and unilaterally blocks another party’s (President Obama) choice of representative (Merrick B. Garland). The vast majority of Americans agree that this is an egregious and self-evident pervasive injustice that affects our entire nation. The challenged local Rules commit a parallel and glaring injustice. They

allow forum state licensing official to categorically and unilaterally block American citizens from choosing their own representative. A citizen's choice of counsel does not require the advice and consent of the Senate. Likewise, a citizen's choice of independent counsel should not require the approval and consent of forum state licensing officials. The fundamental rights to counsel and to petition include the fundamental rights to counsel and to petition the Article III courts.

Further attached is a copy of the New Jersey Law Journal article describing a tiny fraction of the issues in the case. This article may be helpful to this BRC in understanding the recipe for the cake being baked.

Further attached is a copy of an ABA Journal article, "Lawyers should be able to practice law in any state, says group urging ABA model rule change," published April 20, 2022. The group urging this change is the Association of Professional Responsibility Lawyers. With the onset of the pandemic, technology advances allowing and encouraging people to work remotely, and the well-known justice gap, more and more lawyers have questioned the rite of passage requiring them to reinvent the wheel every time they travel over a state boundary line.

The foregoing is provided as several members of this BRC have stated in prior hearings they want California's attorney licensing paradigm to be state of the art.

Thank you for your consideration and attention.

Respectfully submitted,

*/s/ Joseph Robert Giannini<sup>1</sup>*

Joseph Robert Giannini

Counsel for Lawyers for Fair  
Reciprocal Admission/

Member of the APRL

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<sup>1</sup> Not Admitted to Practice Law in California, having failed the California Bar Exam eight times, receiving subjective essay and performance test scores in the bottom ten percent every time, while receiving MBE scores in the top 25%.