

Oregon Board of Bar Examiners Proposes Admission Based on Comity

Please send your comments by June 20, 2022 to:

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On May 20, 2022, the Oregon Board of Bar Examiners (BBX) approved a proposed rule (RFA 15.05A) that would change how Oregon considers applications for admission to the Oregon State Bar from experienced attorneys licensed in other jurisdictions. Under the proposed rule, applicants still be required to meet specific qualifications for admission, but would not have to come from a jurisdiction that offers the same rules of admission to Oregon attorneys (*i.e.*, reciprocity). Adoption of the new rule would require the approval of the Oregon Supreme Court, which is the final authority on admission to the Oregon State Bar. Following are answers to some key questions relating to this proposal.

What would change, and what would remain the same moving from a Reciprocity structure to a Comity structure?

Comity would offer a mechanism for admission without taking a bar exam to lawyers from all 54 United States jurisdictions, rather than the current 40 under reciprocity. Applications could be accepted regardless of whether the originating jurisdiction offers the same process to Oregon lawyers.

It would require that applicants have been engaged in the full-time practice of law for a minimum of two of the past four years immediately preceding their application. The current rule requires five years of active practice over the previous seven years.

It would retain most other requirements of the current rule, including a character and fitness review; graduation from an ABA-accredited law school; completion of minimum hours of education on Oregon law and ethics requirements; and mandatory malpractice coverage.

The rule does not impact an Oregon lawyer's ability to take advantage of the reciprocity provisions available in other jurisdictions.

How did the BBX arrive at the requirement of two years of active practice in the past four years?

The Board first prioritized its obligation to ensure that attorneys admitted in Oregon have the "requisite learning and ability" to be admitted to practice law. ORS 9.220. The BBX concluded that the current rule requiring three out of the past five years of active practice offered no more valid mechanism under this test than a "two of the past four" rule.

A point of comparison is illustrative: Since 2017, Oregon has administered the Uniform Bar Exam (UBE), an exam developed by the National Conference of Bar Examiners that tests knowledge of general principles of law. A graduate of an ABA-accredited law school who passes the Oregon Bar Exam (and meets all other requirements) is immediately admitted to practice under ORS 9.220. The BBX concluded that the admission of a practicing lawyer should be no more arduous than the pathway to meet ORS 9.220.

Proposed RFA 15.05A requires the applicant to have been fully admitted to another U.S. jurisdiction through a bar examination. It includes the “standard” requirements for admission in Oregon (such as graduation from an ABA law school or qualifying foreign school and demonstrating one’s character and fitness to practice). Finally, it requires a lack of recent disciplinary history and includes an affirmative CLE requirement on Oregon law.

Why is the BBX proposing a change from the current reciprocity rule?

Oregon is facing a crisis in the availability of lawyers to meet the needs of a growing population. One measure of a state’s ability to meet the legal needs of its residents is the ratio of lawyers to population. Oregon is in the bottom tier of lawyers per capita nationally, with 2.9 lawyers per 1000 citizens when last counted in 2020. Further, the state’s lawyers are concentrated in a few cities, and many areas outside the Willamette Valley are considered “legal deserts,” where clients must travel far to find legal help if they can find it at all.

In the past 10 years, the number of bar exam applications in Oregon has steadily dropped, while the number of applications from experienced out-of-state practitioners has helped maintain a base of lawyers to serve the state. Based on projections, this balance is shifting, as retirement numbers increase.

There is growing concern that Oregonians may increasingly struggle to find legal help as the ratio of lawyers to population continues to decrease. The issue could be particularly acute in the criminal justice system, as well as in more rural counties.

In light of the changing demographics of Oregon lawyers which impacts all sides of the criminal justice system as well as other high volume areas of law, the BBX sought to evaluate whether the “reciprocity” rule was unnecessarily impeding the inflow of quality lawyers to Oregon. The BBX concluded that the answer was yes.

The “reciprocity rule” traditionally has two key elements: 1) consumer protection, which examines whether an applicant is qualified to represent clients in Oregon, including such factors as education, experience and character and fitness; and 2) whether the other jurisdiction offers the same to Oregon lawyers.

The BBX concluded that the newly proposed comity rule would retain the examination of lawyer applicants’ qualifications (the consumer protection element) but would not impose

the unnecessary bureaucratic barrier to admission by requiring the applicant first be admitted to a “reciprocal” jurisdiction before applying to Oregon.

In sum, the BBX believes that the new rule will increase the number of experienced and qualified attorneys who could choose to relocate to Oregon without having to take a bar exam.

Does this issue have any connection to Oregon’s current public defense crisis?

The lack of attorneys serving Oregon’s public defense system is a multi-faceted problem, and it is not confined to indigent defense as county DAs offices also are affected. However, adopting the Comity Rule could contribute to efforts to recruit public defenders and prosecutors to the state. Public defense providers have shared anecdotally that they receive applications from lawyers in other states who later withdraw applications when faced with taking another bar exam.

In addition to positioning Oregon as an attractive option to relocate a law practice, it could put the state’s public defense providers in a better position to compete for that talent.

Addendum: History of Oregon’s Reciprocity Rule since its 2001 Adoption

ORS 9.220 tasks the Supreme Court with ensuring that an applicant has the “requisite learning and ability” to be admitted to practice law. The Court, through its Rules for Admission, has adopted a variety of methods by which people at different stages of their legal careers can demonstrate the requisite learning and ability for admission.

In 2001, the Supreme Court adopted Rule for Admission (RFA) 15.05, which provided for the admission of attorneys licensed in Washington or Idaho provided the attorney had passed either the Washington or Idaho bar examination and practiced in one of those jurisdictions for the three years prior to their application for admission in Oregon. SCO 2001-095. The rule was adopted in conjunction with Washington and Idaho, who each adopted similar pathways for admission for Oregon lawyers. Because it was a reciprocal rule adopted via agreement of the three jurisdictions, this pathway became referred to as admission through “reciprocity.”

In 2004, the Supreme Court amended the rule to change the practice requirement to a requirement that the applicant had practiced in three of the past four years prior to admission. SCO 2004-018.

In 2005, the Supreme Court amended the rule to expand the jurisdictions participating to include Utah. SCO 2005-007. In 2007, Alaska was added. SCO 2007-054.

In 2009, the Supreme Court expanded the rules’ coverage to include any “qualifying jurisdiction.” A qualifying jurisdiction was any “United States jurisdiction which allows attorneys licensed in Oregon to become regular members of the bar in that jurisdiction without passage of that jurisdiction's bar examination.” SCO 2009-076. To qualify for admission, the applicant

had to have previously sat for and passed a bar examination administered in a “qualifying jurisdiction.”

When adopting this expansive rule, the Court—subject to a grandfather clause relating to attorneys applying from the initial NW jurisdictions through 2015—changed the practice requirements from three out of the four years immediately before admission to five out of the last seven.

By 2018, there were 40 jurisdictions who enjoyed “reciprocal admission” with Oregon. Among those that did not: California, Delaware, Florida, Hawaii, Louisiana, Maryland, Nevada, New Hampshire, Puerto Rico, Rhode Island, South Carolina, and West Virginia.

However, in 2018, the Supreme Court modified a RFA 15.05 to authorize the admission through reciprocity of an attorney who had sat for and passed a bar examination in any United States jurisdiction (rather than in a “qualifying jurisdiction”), who had been admitted to a qualifying jurisdiction, and who met the other requirements for admission. SCO 2018-035.

The impact of this rule was significant. For example, a lawyer who has membership in both California (non-reciprocal state) and Washington (reciprocal state), but who passed the exam in California would previously have been ineligible for reciprocal admission. After the 2018 amendment to RFA 15.05, this same applicant could now apply under the new reciprocity rule and not be required to pass Oregon exam. This is true even if the person has gained their experience through the practice of law in the non-reciprocal state. In other words, an experienced California attorney who has only practiced in California can “waive” into Oregon under the reciprocity rule but only if the attorney first seeks admission on a motion in Washington and then, once admitted in Washington, applies to Oregon.

In 2021, the BBX decided to review whether maintaining a “reciprocity rule” for experienced, licensed attorneys continued to make sense and to review the qualifying requirements to determine whether they still were necessary to meet the Court’s obligations under ORS 9.220 regarding the admission of attorneys.

As detailed in the proposed rule (RFA 15.05A), having undertaken that review, the BBX recommends that the requirement of “reciprocity” be dropped. The BBX believes that most of the admission requirements, including taking and passing a bar examination, graduation from an ABA-accredited law school (or a qualifying foreign law school), participation in Oregon continuing legal education programs, a lack of recent or pending disciplinary history, and a demonstration of the good moral character and fitness to practice law should remain in place for attorney admission. However, in the light of those requirements, the BBX recommends that the requirement that a duly licensed and admitted attorney from another jurisdiction practice for five of the last seven years was not necessary to demonstrate that the applicant has the requisite learning and ability to practice as required by ORS 9.220. In the light of the other requirements, the BBX believes that a requirement of two of the last four years prior to admission is a more appropriate requirement.