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In the Matter of the Petition for Amendment  
To Supreme Court Rule 40.05  
Relating to Admitting Lawyers  
Upon Proof of Practice Elsewhere

PETITION

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To: Chief Justice Shirley S. Abrahamson  
Justice Ann Walsh Bradley  
Justice N. Patrick Crooks  
Justice David Prosser, Jr.  
Justice Patience D. Roggensack  
Justice Louis B. Butler  
Justice Annette Kingsland Ziegler

Filed with the Clerk of Court David R. Schanker  
Clerk of Supreme Court Office  
110 East Main Street, Suite #215  
Madison, WI 53703

The Board of Bar Examiners, by its director John E. Kosobucki, petitions the Supreme Court of Wisconsin for orders amending Supreme Court Rule 40.05, relating to admitting lawyers to the Wisconsin bar upon proof of practice elsewhere, by deleting SCR 40.05(1)(c), (1m), (5) and (6), and by amending SCR 40.05(1)(b) and (2). If the Court issues these orders, SCR 40.05 will read as follows:

PROPOSED AMENDMENT:

**SCR 40.05 Legal competence requirement: Proof of practice elsewhere.**

(1) An applicant shall satisfy the legal competence requirement by presenting to the clerk certification of the board that the applicant has provided all of the following:

(a) Proof of admission to practice law by a court of last resort in any other state or territory or the District of Columbia.

(b) Proof that the applicant has been ~~primarily~~ actively and substantially engaged in the ~~active~~ practice of law in the ~~courts of the~~ United States or another state or territory or the District of Columbia for ~~3~~ five years within the last ~~5~~ seven years prior to filing application for admission.

~~(c) If any state, territory or the District of Columbia practice in which is proposed to satisfy the requirement of sub. (b) has, as of the date of the filing of the application, requirements for bar admission in that jurisdiction on the basis of practice in Wisconsin other~~

than those set forth in subs. (a) and (b), proof that the applicant has satisfied those requirements of that state, territory or the District of Columbia.

~~(1m) Eligibility for admission under this rule shall be limited as follows:~~

~~(a) An applicant who proposes to satisfy sub. (1)(b) by practice in a jurisdiction that does not grant bar admission to attorneys licensed in Wisconsin on the basis of practice in Wisconsin shall not be eligible for admission on proof of practice elsewhere.~~

~~(b) An applicant who proposes to satisfy sub. (1)(b) by practice in a jurisdiction that does not grant bar admission on the basis of practice to attorneys licensed in Wisconsin under SCR 40.03 shall not be eligible for admission on proof of practice elsewhere.~~

(2) Legal service as corporate counsel or trust officer, or lawfully before the courts or administrative agencies of the United States or of another state or territory or the District of Columbia, if conducted in compliance with the rules of a state or territory or of the District of Columbia where the applicant was admitted to practice law, may be deemed to be the practice of law for the purposes of sub. ~~(1)(b) and (c)~~ this section.

(3) The following activities, whether or not conducted in a state where the applicant was admitted to practice law, may be deemed to be the practice of law for the purposes of sub. (1)(b): ~~and (c):~~

(a) Service as a judge of a court of record of the United States, any state or territory or the District of Columbia.

(b) Legal service with any local or state government or with the federal government.

(c) Legal service in the armed forces of the United States.

(d) Teaching in any law school approved by the American bar association.

(4) An applicant who has failed the Wisconsin bar examination shall not be eligible for admission on proof of practice elsewhere.

~~(6) An applicant who satisfies sub. (1)(b) by legal service in the U.S. armed forces is not subject to the limitations under sub. (1)(c).~~

#### JUSTIFICATION:

Wisconsin welcomes competent lawyers from twenty states and the District of Columbia upon proof that they have practiced elsewhere. Lawyers from other states and territories are not eligible for admission here unless they first pass the Wisconsin bar examination. This disparate treatment of foreign lawyers, required by SCR 40.05(1m), depends not on their competence or their usefulness to Wisconsin consumers of legal services, but on whether their home jurisdictions admit Wisconsin lawyers without examination.

Nor are lawyers from those twenty-one favored jurisdictions all treated equally. Under SCR 40.05(1)(c), lawyers from jurisdictions with requirements different from Wisconsin's for admission on proof of practice elsewhere must satisfy their own state's terms as well as Wisconsin's if they are to be admitted here without examination.

SCR 40.05(1m) and (1)(c) should be repealed because Wisconsin consumers of legal services are better served when there are no artificial barriers to the admission of capable lawyers. If competent lawyers from California or Ohio (states that do not admit foreign lawyers without examination) are welcomed here on the same basis as those from Illinois and Indiana (states that do), Wisconsin residents will have wider choices when they need legal services.

The petitioner therefore asks the Court to repeal SCR40.05(1)(c) and (1m). SCR 40.05(6) should also be repealed because it is unnecessary if SCR40.05(1)(c) is repealed.

The other proposed amendments to SCR 40.05 are of less moment. Requiring foreign lawyers to practice for five years (instead of three) before being admitted without examination here might better assure the applicants' competence. All the other recommended changes to SCR 40.05 are deemed to be insubstantial, and intended solely to clarify what constitutes a foreign practice of law.

Dated this 31<sup>st</sup> day of March, 2008.

Respectfully submitted,

// Original Signed //

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