

## PETITION TO AMEND OR REPEAL SCR 40.03

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Petitioner Steven Levine and 70 other State Bar members petition the Supreme Court to amend SCR 40.03 by removing the words “in this state” wherever they are found in the rule<sup>1</sup> or, in the alternative, to repeal SCR 40.03 entirely. This proposed change would extend the diploma privilege to graduates of all ABA-approved law schools or abolish it entirely. Reasons for this petition are as follow:

1. In 1870 the Wisconsin legislature established the diploma privilege as an incentive to encourage prospective lawyers to prepare for the profession by a regular course of academic study at the University of Wisconsin law school rather than by apprenticeship or “reading law” and then passing a bar exam. Please see Ch. 79, Laws of 1870.

2. From 1897-1903 the diploma privilege was extended to graduates of out-of-state law schools. Please see Steininger, *The Diploma Privilege—Recent Developments*, Wis. B. Bull. April 1974, pp. 14-18.

3. In 1933 the Wisconsin legislature extended the diploma privilege to graduates of Marquette University Law School, which extension was acquiesced in by the Supreme Court of Wisconsin. Please see Ch. 60, Laws of 1933 (amending Wis. Stat. § 256.28(1)) and *In re Admission of Certain Persons to the Bar*, 211 Wis. 337, 247 N.W. 877 (1933).

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<sup>1</sup> The rule would read as follows: “SCR 40.03 (intro) An applicant who has been awarded a first professional degree in law from a law school ~~in this state~~ that is fully, not provisionally, approved by the American bar association shall satisfy the legal competence requirement by presenting to the clerk certification of the board showing.” Other provisions may require amendment for consistency.

4. Today the diploma privilege is no longer necessary as an incentive to encourage lawyers-to-be to attend law school. All Wisconsin bar admission applicants are required to have attended law school as a prerequisite to admission to practice law in Wisconsin. Please see SCR 40.03 (intro.) and 40.04(1).

5. The quality of American Bar Association-approved law schools located outside Wisconsin is as high as those located in Wisconsin.

6. Requiring a bar exam of graduates of law schools located outside Wisconsin imposes a substantial financial, time, pressure, family, and employment disadvantage burden which would be alleviated by striking the words “in this state” from SCR 40.03.

7. As indicated by the inclusion of the Multi-state Bar Exam and Multi-state Practice Exam in the Wisconsin Bar Exam, the purpose of the Wisconsin Bar Exam is to test the applicant’s ability to think and to reason like a lawyer, not primarily to memorize Wisconsin law.

8. The limitation of the diploma privilege to graduates of Wisconsin law schools discriminates against Wisconsin residents who may be unable to enroll in law schools located in Wisconsin because of those schools’ admission policies unrelated to academic performance, because of capacity limitations, or for other reasons.

9. Wherefore, petitioners respectfully request the Court to remove the words “in this state” from SCR 40.03 for a 10-year trial period to test whether such an amendment is practical. This amendment would extend the diploma privilege to graduates of all ABA-approved law schools. If the Court declines to so amend the rule, petitioners respectfully request that the rule be repealed in its entirety.

Respectfully submitted,

*/s/ Steven Levine*

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September 25, 2009

Cc: Board of Bar Examiners  
State Bar of Wisconsin

## MEMORANDUM IN SUPPORT OF PETITION TO AMEND OR REPEAL SCR 40.03

### **Introduction.**

The purpose of this petition is to end the double standard discrimination in Wisconsin bar admission whereby University of Wisconsin and Marquette University Law School graduates are admitted under the current diploma privilege while graduates of all other ABA approved law schools are required to pass the Wisconsin bar exam. There is no longer any justification for this discriminatory double standard. This petition seeks to equalize bar admission requirements by either extending the diploma privilege to new graduates of all ABA-approved law schools or by requiring new graduates of all law schools to pass the Wisconsin bar exam.

### **Historical Context**

This request represents the latest step in the historical progression of groups seeking equal treatment in admission to the Wisconsin bar. In order to provide an incentive to encourage lawyers-to-be to study law in an academic setting rather than merely apprentice or read law with a practicing lawyer, the state legislature adopted the diploma privilege in 1870 for graduates of the University of Wisconsin Law School. For years after its founding, Marquette University Law School decried the unequal treatment under which its graduates were required to pass the

Wisconsin bar exam, until the legislature extended the diploma privilege (and the supreme court acquiesced) to Marquette graduates in 1933. In 1983 Marquette University Law School officially celebrated 50 years of diploma privilege admission as a badge of equality with the University of Wisconsin Law School. (Having felt the sting of such discrimination, petitioners hope that Marquette University Law School and its graduates will support their petition for equal treatment.)

Now, graduates of ABA-approved law schools located outside Wisconsin seek the same recognition of equal status by asking this Court to extend the diploma privilege to them under the same requirements as apply to UW and Marquette graduates. In order to be accredited by the American Bar Association, these law schools meet the same requirements as do Marquette and UW. The courses they offer are as varied and demanding as those at Marquette and UW, and their professors and academic staff are as qualified as those at Marquette and UW. The time has come to end the discriminatory treatment whereby graduates of ABA-approved law schools located outside Wisconsin must pass the Wisconsin bar exam while Marquette and UW law school graduates are admitted under the diploma privilege. Graduates of ABA-approved law schools located outside Wisconsin seek to be held to the same bar admission standards as Marquette and UW law school graduates – nothing more, nothing less.

### **Discrimination**

The requirement that graduates of ABA-approved law schools located outside Wisconsin pass the Wisconsin bar exam to be admitted to practice while UW and Marquette law school graduates are admitted via the diploma privilege imposes a significant burden on the former in terms of study time, the cost of review courses, stress, time away from job and family, and disadvantage in seeking employment. This cost imposed on graduates of out-of-state law

schools -- but not on UW or Marquette law school graduates -- is a significant discriminatory burden which should be allowed to continue only if there exist important justifications for it.

### **Lack of Justification**

No convincing justification exists for the different bar admission treatment. ABA-approved law schools located outside Wisconsin offer the same quality and diversity of instruction as do UW and Marquette law schools. They teach the same federal law courses and courses based on uniform laws as do Marquette and UW. UW Law School does not emphasize particular Wisconsin law in its courses, which are taught from national casebooks and materials. All ABA-approved law schools teach all aspects of an area of law – not merely the law of the state in which they are located.

Additionally, the fact that the Wisconsin bar exam includes the Multi-state Bar Exam and Multi-state Performance Test(s) indicates that the purpose of the bar exam is to test an applicant's ability to think and reason like a lawyer, not to memorize specific Wisconsin law. The Multi-state Bar Exam tests applicants on “national” law in the areas of constitutional law, contracts, criminal law and procedure, evidence, property and torts – some of which is contrary to specific Wisconsin law. And most law learned by a new practitioner is learned through study and experience after admission to the bar – not through cramming for the Wisconsin bar exam. There is no justification for the disparate treatment of graduates of out-of-state ABA-approved law schools.

### **Extending the Diploma Privilege**

Extending the diploma privilege need be neither complicated nor costly. Elimination of the words “in this state” from SCR 40.03 coupled with the adoption of administrative rules by the Board of Bar Examiners to flesh out the requirements of SCR 40.03 should be able to

accomplish this goal. Any start up costs to make the change can be paid for through user fees, and those costs will be more than offset by later savings from not having to administer the bar exam. Money and administrative burden should not be factors in preventing equality in Wisconsin bar admission standards.

## **Conclusion**

In 1983 Marquette University Law School celebrated the 50<sup>th</sup> anniversary of its achieving equality with the UW Law School in bar admission requirements -- the extension of the diploma privilege to its graduates in addition to the graduates of UW Law School. Now graduates of ABA-approved law schools located outside Wisconsin seek elimination of the last vestiges of discrimination in Wisconsin bar admission by requesting that the diploma privilege requirements for bar admission be extended to them. ABA-approved law schools located outside Wisconsin offer the same rigorous, diverse, and quality legal education as do the in-state law schools, and their graduates deserve to be held to the same bar admission standards as are Marquette and UW law school graduates. The Court should end Wisconsin's double standard system of bar admission requirements by eliminating the words "in this state" from SCR 40.03 for a ten year trial period to see if and how extending the diploma privilege to graduates of all ABA-approved law schools can work. If the Court declines to so amend the rule, petitioners respectfully request that the rule be repealed in its entirety.

Respectfully submitted,  
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September 25, 2009  
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