

Originally published in the Federal Practice and Procedure Section Newsletter Vol. 11, No. 1/January 2017

Commentary:

New Jersey Does the Waive[r]: Implications and Effect of Adoption of Admission to the New Jersey Bar by Motion

by Jonathan D. Klein

On April 14, 2016, New Jersey officially joined 40 other states and the District of Columbia in allowing admission by motion, putting an end to decades of dialogue and debate on the controversial subject. Admission by motion, as formally adopted by the New Jersey Supreme Court, removes only the requirement that certain applicants take and pass the New Jersey bar examination (the form and content of which was also altered by the Court's April administrative determination). As the Court reassured, "[a]ll applicants, whether by motion or by exam, must still be certified by the Committee on Character and meet all other criteria for admission." Admission by motion thus does not, as some might mistakenly believe, equate to automatic admission to the New Jersey bar.

Rather, applicants must still adhere to certain requirements in order to apply and be considered, including: 1) holds a *juris* doctor degree from an American Bar Association-accredited law school; 2) demonstrate fitness and character to practice law; 3) attain a qualifying score on the Multi-State Professional Responsibility Examination or pass an approved law school ethics course; 4) have practiced for five of the last seven years in another jurisdiction; 5) have previously passed a bar examination in another jurisdiction; 6) be admitted in a jurisdiction that would extend a reciprocal license by motion to New Jersey lawyers; and 7) complete a course on New Jersey ethics and professionalism as a condition precedent to admission. New Jersey federal practitioners can breathe a sigh of relief knowing these safeguards will (hopefully) ensure that lawyers admitted via admission by motion uphold New Jersey's standards of quality and ethics.

Previous court advisory committees on the subject in 1983 and 2002 called for the easing of restrictions on out-of-state lawyers, but ultimately these recommendations did not lead to any real changes. When the American Bar Association (ABA) released amendments to the Model Rules of Professional Conduct and the standards for admission to practice law, the Court created an advisory committee—the Special Committee on Attorney Ethics and Admissions—to again review the issue. Although tasked, in part, with examining admission by motion and the process of admitting out-of-state lawyers to practice law in the state without taking and passing the bar examination, the advisory committee ultimately deadlocked on a decision, prompting the Court to fully analyze the issue and reach a decision.

Notwithstanding strong opposition to a measure that would effectively open the practice of law to lawyers located out-of-state, the Court "could not identify a reason grounded in public interest to continue to decline adoption of admission by motion." The Court's decision aligns with the ABA, which has long advocated for admission by motion, believing it to be a benefit to lawyers and clients alike. Historically, the debate about admission by motion in New Jersey generally relates to the economic impact from out-of-state competition and the need for a true New Jersey bar that does not consist of potentially fair-weather lawyers from nearby neighboring states. Such concerns, however, did not convince the Court, which ultimately adopted admission to the New Jersey bar by motion because of the growing need "to follow clients, cases, or a family member to New Jersey" without taking another bar examination.

Impact

Only time will tell what true effect the adoption of admission by motion will have on New Jersey federal practice. For decades, New Jersey federal practitioners have benefited from a healthy local counsel business from out-of-state lawyers with cases pending in the District of New Jersey. Although concerns about losing a true ‘New Jersey bar’ are understandable and fears about losing local counsel business valid, the author believes adoption of admission by motion is unlikely to drastically alter the legal landscape in New Jersey because of the added safeguards required by the New Jersey Supreme Court before admission is granted.

For example, an out-of-state lawyer who has a discreet case in the District of New Jersey is unlikely to go through the effort required to gain admission by motion when he or she can simply utilize the much easier/faster *pro hac vice* procedure with the aid of local counsel. Likewise, an out-of-state lawyer is only eligible for admission by motion in New Jersey if the state where that lawyer is located enjoys a reciprocal relationship with the state. Thus, while the New Jersey bar is opening its borders to out-of-state lawyers for the first time in recent history, it is doing so only if New Jersey lawyers can also reap a benefit.

By joining the 40 other states and the District of Columbia, the New Jersey Supreme Court has signaled its understanding of the ever-changing landscape of the legal industry. In this tech-savvy age of increased client mobility resulting in cross-border and/or transnational needs, the author believes admission by motion is not something to fear or deride, but to embrace. New Jersey lawyers should seize the opportunity and utilize the reciprocal relationships with other states created by the adoption of admission by motion to remain competitive and, hopefully, attract additional clients beyond New Jersey’s borders.

Jonathan D. Klein practices with Clark Hill PLC.