

ORIGINAL

FILED

May 21 2012

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Gregory G. Smith
Smith, Oblander, PC
104 2nd St. So., Suite 101
Great Falls, MT 59401
Telephone: (406) 453-8144

IN THE SUPREME COURT OF THE STATE OF MONTANA

AF 11-0244

IN RE PETITION TO ADOPT UNIFORM
BAR EXAMINATION

and

IN RE THE PETITION AND
MEMORANDUM IN SUPPORT OF
REVISION OF THE 2005 RULES FOR
ADMISSION AND RULES OF PROCEDURE
OF THE COMMISSION ON CHARACTER
AND FITNESS OF THE SUPREME COURT
OF MONTANA

COMMENT

FILED

MAY 21 2012

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

COMES NOW, the undersigned, Gregory G. Smith, and offers the attached Petition in
Opposition to the Uniform Bar Exam and the Implementation Plan proposed by the Board of Bar
Examiners.

The Petition was posted online at www.ipetitions.com, and the public was able to
electronically 'sign' it.

Dated this 18th day of May, 2012



SMITH OBLANDER, PC
By: Gregory G. Smith

This petition has collected
66 signatures
using the online tools at iPetitions.com

Printed on 05-17-2012

Petition Against Montana's Adoption of the Uniform Bar Examination

Sponsored by: Gregg Smith Kristen Juras Jason Holden

About the petition

I am a Montana Attorney or an interested citizen. I am signing this Petition and Comment to express my opposition to the Montana Board of Bar Examiner's (the Board) Petition (the Petition) to adopt the Uniform Bar Examination (UBE), as well as their proposed Implementation Plan. I believe the Montana Supreme Court should consider the Petition and Plan based on sound principles of judicial restraint and in the context of a burden of proof.

The Petition and Plan seek to fundamentally alter the practice of law in Montana. The Court should approach the Petition and Plan with caution and the same judicial restraint it would approach the reversal of a long-standing rule of law. The current bar examination format has created a well-regarded professional bar in Montana, and has always rigorously tested an applicant's knowledge of Montana law. The Petition and Plan seek to do away with this rigorous testing.

Although there may be great respect for the work of the Board, the Court should not be persuaded to grant the Petition merely because the Board believes in it. The will of a few members of the State Bar of Montana should not be imposed on all members of the Bar, Montana Courts, or Montana Citizens.

In addition to applying sound principles of judicial restraint, the Court should require the Board to sustain a high burden of proof in proposing the Petition and Implementation Plan. The Board seeks to alter the status quo, and accordingly should bear the burden of demonstrating that there are problems inherent in the status quo, and that its proposed Petition and Plan will remedy those problems without unintended consequences. There are likely numerous unintended consequences of the Petition and Implementation Plan that have not been considered by the Board. The Board has failed to produce any evidence of problems with the current Montana bar examination, and has failed to produce any evidence that its Petition and Implementation Plan will improve any aspect of the current licensing procedure. Put simply, the Board has wholly failed to meet any reasonably applicable standard of a burden of proof showing that the current system is ineffective, does not achieve its desired goals, or is broken.

Contrary to its title, the UBE is neither uniform, nor is it a national test. It is a very young test in the format proposed. The Court should appreciate that the law, including the practice of law, is not national. The competing interests in Montana are dramatically different from, Alabama, Missouri, Washington, Idaho, Arizona, Colorado, Nebraska, and North Dakota. Only those states have adopted the UBE (Nebraska and Washington have yet to implement the test), and they have adopted it in the context of differing bar admission procedures. The Board has offered no evidence suggesting a good reason, or even a reasonable basis, for Montana to leap into the unknown for the sake of alleged uniformity, especially when the consequences of such movement are currently unknown (and were apparently not even considered in depth). Adopting the UBE would actually place Montana in the very

small minority of states. There is no reason to rush the adoption of the UBE.

The use of an on-line, multiple choice, open book format for testing an applicant's knowledge of Montana law lacks rigor and invites collusion and other improper tactics. Allowing an applicant the opportunity to simply re-take the test immediately after failing, and as many times as desired, renders the test an illusory demonstration of an applicant's qualifications. The Board failed to provide any evidence that requiring applicants to take a superficial memory quiz repeatedly until they can remember 30 of 35 answers will lead to a competent bar prepared to provide legal services to Montana's public.

Montana has been described as a "small town with long streets." Montana has zealously guarded the competence of our local attorneys, and our citizens have access to quality legal services at rates that are extremely low by comparison with rates in other states. The Montana Bar is uncommonly collegial in the vast majority of cases, and this collegiality results in efficiencies for clients. Our pro hac vice rules require that attorneys licensed in other jurisdictions remain accountable for their conduct in Montana courts. The Board has offered no evidence to suggest that making it significantly less difficult for non-Montana residents to practice before our Courts will positively impact the provision of legal services to Montana's citizens.

I therefore respectfully request that the Montana Supreme Court refuse to adopt the Petition as proposed by the Board. Any further comments I have on this issue will be posted with my signature.

Signatures

1. Name: Gregg Smith on Apr 30, 2012
Comments: I think this is a solution in search of a problem.
Please enter your Zip Code.: 59404
Are you an attorney?: Yes

2. Name: Jean Faure on Apr 30, 2012
Comments:
Please enter your Zip Code.: 59403
Are you an attorney?: Yes

3. Name: Kirk Evenson on Apr 30, 2012
Comments:
Please enter your Zip Code.: 59401
Are you an attorney?: Yes

4. Name: Patrick R. Watt on Apr 30, 2012
Comments: Clients would better served by associating Montana counsel who practice in Montana Court's. The current mechanism for pro hac vice admission works well and assures that clients have experienced Montana counsel on board. If an attorney believes they should be admitted to the Montana bar, then that candidate should sit for the Montana bar and prove they are competent for admission to practice in Montana Courts, just like the rest of us have.
Please enter your Zip Code.: 59401
Are you an attorney?: Yes

5. Name: Jon Kudrna on Apr 30, 2012
Comments:
Please enter your Zip Code.: 59404
Are you an attorney?: Yes

6. Name: Lee Bruner on Apr 30, 2012
Comments:
Please enter your Zip Code.: 59701
Are you an attorney?: Yes

7. Name: Paul R. Haffeman on Apr 30, 2012
Comments:
Please enter your Zip Code.: 59403
Are you an attorney?: Yes

8. Name: R. Allan Payne on Apr 30, 2012
Comments:
Please enter your Zip Code.: 59602
Are you an attorney?: Yes

9. Name: Robert Drummond on Apr 30, 2012
Comments:
Please enter your Zip Code.: 59404
Are you an attorney?: Yes

10. Name: Gregory Schwandt on Apr 30, 2012
Comments:
Please enter your Zip Code.: 59404
Are you an attorney?: Yes

11. Name: Stephanie Oblander on Apr 30, 2012
Comments:
Please enter your Zip Code.: 59405

Are you an attorney?: Yes

12. Name: E. Lee LeVeque on Apr 30, 2012
Comments:
Please enter your Zip Code.: 59404
Are you an attorney?: Yes

13. Name: Anonymous on Apr 30, 2012
Comments:
Please enter your Zip Code.: 59405
Are you an attorney?: Yes

14. Name: Antonia Marra on May 01, 2012
Comments: I have grave concerns about on-line testing, particularly where an applicant can re-take the test multiple times and the testing is all multiple choice. While I agree that legal research is valuable and that we use such research, rather than memory in all aspects of the law, when an attorney is in court, in argument, or meeting with a client, that attorney should have sufficient working knowledge of the law to recognize claims that may exist, problems which exist in cases, possible objections and legal arguments at first blush, rather than relying on crutches, which such on-line testing will allow. This will not provide an adequate picture of whether an applicant has what is necessary, i.e., the ability to think on one's feet, to recognize issues quickly, and to articulate an argument logically. We think, we problem solve, we do not memorize or merely spew answers to questions. Therefore, we should test for those qualities, and multiple choice on line is just not going to get us there. We do not need test takers, we need working lawyers who can do what needs to be done.
Please enter your Zip Code.: 59401
Are you an attorney?: Yes

15. Name: Antonia Marra on May 01, 2012
Comments: I have grave concerns about on-line testing, particularly where an applicant can re-take the test multiple times and the testing is all multiple choice. While I agree that legal research is valuable and that we use such research, rather than memory in all aspects of the law, when an attorney is in court, in argument, or meeting with a client, that attorney should have sufficient working knowledge of the law to recognize claims that may exist, problems which exist in cases, possible objections and legal arguments at first blush, rather than relying on crutches, which such on-line testing will allow. This will not provide an adequate picture of whether an applicant has what is necessary, i.e., the ability to think on one's feet, to recognize issues quickly, and to articulate an argument logically. We think, we problem solve, we do not memorize or merely spew answers to questions. Therefore, we should test for those qualities, and multiple choice on line is just not going to get us there. We do not need test takers, we need working lawyers who can do what needs to be done.
Please enter your Zip Code.: 59401
Are you an attorney?: Yes

16. Name: Michelle Bryan Mudd on May 01, 2012
Comments:
Please enter your Zip Code.: 59801
Are you an attorney?: Yes

17. Name: Shari Gianarelli on May 01, 2012
Comments: I do not believe lowering the standards of admission to the State Bar of Montana is a good idea. Already, I witness too many under-educated, under-prepared attorneys who are unfamiliar with the laws of our State, practicing here.
Please enter your Zip Code.: 59425
Are you an attorney?: Yes

18. Name: Eric Mills on May 01, 2012
Comments:
Please enter your Zip Code.: 59404
Are you an attorney?: Yes

19. Name: Jeffry M. Foster on May 01, 2012
Comments:
Please enter your Zip Code.: 59401
Are you an attorney?: Yes

20. Name: David A. Hopkins on May 01, 2012
Comments:
Please enter your Zip Code.: 59404
Are you an attorney?: Yes

-
21. Name: Jason T. Holden on May 01, 2012
Comments:
Please enter your Zip Code.: 59401
Are you an attorney?: Yes
-
22. Name: Anonymous on May 01, 2012
Comments:
Please enter your Zip Code.: 59715
Are you an attorney?: Yes
-
23. Name: Devan Smith on May 01, 2012
Comments:
Please enter your Zip Code.: 59404
Are you an attorney?: No
-
24. Name: Patrick L. Paul on May 01, 2012
Comments:
Please enter your Zip Code.: 59403
Are you an attorney?: Yes
-
25. Name: Anonymous on May 02, 2012
Comments: I oppose the implementation plan as insufficient testing of MT law knowledge of the applicants for admission to practice in our state.
Please enter your Zip Code.: 59804
Are you an attorney?: Yes
-
26. Name: Lisa Swan Semansky on May 02, 2012
Comments: For several years I corrected the essay part of the Montana Bar exam and was both pleased by potential lawyers' grasp of Montana law or dismayed their abysmal lack thereto. This proposal to change the exam is not a good idea.
Please enter your Zip Code.: 59401
Are you an attorney?: Yes
-
27. Name: Lisa Lynn on May 02, 2012
Comments:
Please enter your Zip Code.: 59401
Are you an attorney?: Yes
-
28. Name: Michael J. George on May 02, 2012
Comments:
Please enter your Zip Code.: 59401
Are you an attorney?: Yes
-
29. Name: Aspen Northerner on May 02, 2012
Comments:
Please enter your Zip Code.: 59404
Are you an attorney?: No
-
30. Name: Nikole D. Joseph on May 03, 2012
Comments:
Please enter your Zip Code.: 59404
Are you an attorney?: No
-
31. Name: Nikole D. Joseph on May 03, 2012
Comments:
Please enter your Zip Code.: 59404
Are you an attorney?: No
-
32. Name: L. Charles Evans on May 04, 2012
Comments:

Please enter your Zip Code.: 59923
Are you an attorney?: Yes

33. Name: Steve Nardi on May 04, 2012
Comments:
Please enter your Zip Code.: 59922
Are you an attorney?: Yes

34. Name: Mary Matelich on May 07, 2012
Comments:
Please enter your Zip Code.: 59403
Are you an attorney?: Yes

35. Name: Mark Meyer on May 07, 2012
Comments:
Please enter your Zip Code.: 59403
Are you an attorney?: Yes

36. Name: Laura Christoffersen on May 07, 2012
Comments:
Please enter your Zip Code.: 59218
Are you an attorney?: Yes

37. Name: Joshua Campbell on May 08, 2012
Comments: My support of this petition does not necessarily reflect the opinions of Jardine, Stephenson, Blewett, & Weaver, P.C.
Please enter your Zip Code.: 59405
Are you an attorney?: Yes

38. Name: Debra M. Johnson on May 09, 2012
Comments:
Please enter your Zip Code.: 59105
Are you an attorney?: Yes

39. Name: Quentin Rhoades on May 09, 2012
Comments:
Please enter your Zip Code.: 59801
Are you an attorney?: Yes

40. Name: Ryan Coleman on May 09, 2012
Comments:
Please enter your Zip Code.: 59701
Are you an attorney?: Yes

41. Name: Mary Leffers Barry on May 09, 2012
Comments:
Please enter your Zip Code.: 59101
Are you an attorney?: Yes

42. Name: Joseph M. Ransmeier on May 09, 2012
Comments: Bar No. 11951
Please enter your Zip Code.: 59102
Are you an attorney?: Yes

43. Name: Anonymous on May 09, 2012
Comments: I do not agree with altering the Montana portion of the Bar examination. If the state wishes to change the other portions of the test into the UBE, I am not opposed. However, I feel state-specific questions should be in essay form.
Please enter your Zip Code.: 59101
Are you an attorney?: Yes

44. Name: Mary Elizabeth Duncan on May 09, 2012
Comments:
Please enter your Zip Code.: 59102
Are you an attorney?: Yes
-
45. Name: James W. Thompson on May 09, 2012
Comments: I recommend that the UBE be presented at the State Bar Convention this Fall.
Please enter your Zip Code.: 59102
Are you an attorney?: Yes
-
46. Name: Heather McDougall on May 10, 2012
Comments:
Please enter your Zip Code.: 59935
Are you an attorney?: Yes
-
47. Name: Matthew David Neill on May 11, 2012
Comments:
Please enter your Zip Code.: 59937
Are you an attorney?: Yes
-
48. Name: Alex Marie Neill on May 11, 2012
Comments:
Please enter your Zip Code.: 59937
Are you an attorney?: Yes
-
49. Name: Tim Lohrmann on May 14, 2012
Comments:
Please enter your Zip Code.: 59103
Are you an attorney?: Yes
-
50. Name: Seth Cunningham on May 14, 2012
Comments:
Please enter your Zip Code.: 59106
Are you an attorney?: Yes
-
51. Name: Laura L. Simonson on May 14, 2012
Comments:
Please enter your Zip Code.: 59404
Are you an attorney?: Yes
-
52. Name: Mike Talia on May 14, 2012
Comments:
Please enter your Zip Code.: 59401
Are you an attorney?: Yes
-
53. Name: Al Smith on May 15, 2012
Comments:
Please enter your Zip Code.: 59624
Are you an attorney?: Yes
-
54. Name: Jeffrey G. Winter on May 15, 2012
Comments:
Please enter your Zip Code.: 59401
Are you an attorney?: Yes
-
55. Name: Anonymous on May 15, 2012
Comments:
Please enter your Zip Code.: 59101
Are you an attorney?: Yes
-

56. Name: David P. Legare on May 15, 2012
Comments:
Please enter your Zip Code.: 59101
Are you an attorney?: Yes

57. Name: John Kutzman on May 15, 2012
Comments: I am opposed to further diminishing the essay component of the bar exam or eliminating it altogether. There is an old saying that "issue spotting is the sine qua non of the lawyer." A multiple choice test can never equal an essay examination in the way it displays the applicant's competence in spotting and treating legal issues lurking in a fact pattern. The essay exam further verifies that the applicant can coherently analyze the legal issues he or she has identified in the fact pattern. I believe we owe it to all of the potential clients in our state to continue to require would-be Montana attorneys to display these skills as a condition to their admission. Increased emphasis or reliance on multiple-choice testing would be a step in the wrong direction.
Please enter your Zip Code.: 59404
Are you an attorney?: Yes

58. Name: Stefan T. Wall on May 15, 2012
Comments: Given that 90-95% of all cases settled before trial, writing can be considered - above trial practice skills - the essential component of the practice of law. A bar exam which does not emphasize and evaluate the writing skills of putative attorneys does a disservice to the bar, the bench, and the public. I would urge the rejection of the adoption of the UBE.
Please enter your Zip Code.: 59602
Are you an attorney?: Yes

59. Name: Gary M. Zadick on May 15, 2012
Comments: Considering that graduates from out of state law schools have such varied legal educations that a real bar exam testing on Montana law is very important. For example, some law schools have more electives and fewer core requirements. A graduate from an out of state law school should be examined in all of the fundamental areas of Montana law.
Please enter your Zip Code.: 59403
Are you an attorney?: Yes

60. Name: Richard F. Gallagher on May 15, 2012
Comments:
Please enter your Zip Code.: 59403
Are you an attorney?: Yes

61. Name: Mark Luebeck on May 15, 2012
Comments:
Please enter your Zip Code.: 59715
Are you an attorney?: Yes

62. Name: Kristen Juras on May 15, 2012
Comments:
Please enter your Zip Code.: 59404
Are you an attorney?: Yes

63. Name: Kristen Juras on May 15, 2012
Comments:
Please enter your Zip Code.: 59404
Are you an attorney?: Yes

64. Name: Alexander(Zander)Blewett III on May 15, 2012
Comments: I oppose
Please enter your Zip Code.: 59401
Are you an attorney?: Yes

65. Name: Mike Lamb on May 16, 2012
Comments: I believe the proposal and the implementation plan are ill advised, and contrary to the best interests of the legal services consuming public and the Bar.
Please enter your Zip Code.: 59601
Are you an attorney?: Yes

66. Name: Mark Kovacich on May 17, 2012
Comments:

Please enter your Zip Code.: 59404
Are you an attorney?: Yes
