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CLERK OF THE SUPREME COURT
STATE OF MONTANA

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February 28, 2014

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MAR - 3 2014

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Clerk of the Montana Supreme Court
Room 323, Justice Building
215 N. Sanders
P.O. Box 203003
Helena, Montana 59620-3003

Re: Public comment regarding proposal for pro bono requirement for admission to the Montana Bar, No. AF 11-0765

Dear Clerk:

I am writing in response to the Supreme Court's December 3, 2013 order seeking public comments on the Access to Justice Commission's (ATJC) recommendation that applicants to the Montana bar be required to complete fifty hours of pro bono service within three years before they are admitted to the bar. I am writing to state my opposition to the proposed requirement.

I was admitted to the Montana bar in 1999, and currently practice law in Bozeman, Montana. I am a native Montanan, but I did not receive my JD at the University of Montana School of Law. I have several objections to the proposal under consideration, but my primary concern relates to the fact that the ATJC's proposal seems to view graduates of law schools outside of Montana as *persona non grata*.

In order to help meet the unmet legal needs of Montanans, the proposal under consideration would require bar applicants to provide "law-related services" that would closely approximate actual legal services from licensed attorneys. This creates a problem in that law students are not yet licensed attorneys. To remedy this problem without also watering down the meaning of pro bono service, the ATJC recommends the development of a "Law School Signature Program":

The Supreme Court should direct the Access to Justice Commission to work in conjunction with the University of Montana School of Law, the Student Bar Association, the State Bar of Montana, the Supreme Court's Pro Bono Coordinator, and legal services providers to develop a signature program to pair Montana attorneys with law students to work on Rule 6.1 pro bono matters that are eligible to be reported as pro bono hours by both the attorney and the student.

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This would all be commendable, save for the fact that the only bar applicants afforded the opportunity to participate in a “signature program” affiliated with the University of Montana School of Law would be law students attending the University of Montana School of Law. Needless to say, not every applicant to the Montana bar is a new graduate of the University of Montana School of Law. Yet the new pro bono requirement would apply to all bar applicants, regardless of their access to a law school signature program.

The attached *Chart of Law School Pro Bono Programs*, from the ABA’s Standing Committee on Pro Bono & Public Service, shows that only 39 of 176 law schools require pro bono or law-related public service as a requirement of graduation. 118 other schools have formal voluntary programs, while 19 schools “have no formal program for school-wide pro bono coordination and support.”¹

Participation in pro bono programs is purely voluntary at a substantial majority of law schools. Under the current proposal, a student at one of these schools who chooses not to participate in a program portrayed by their school as voluntary will not have the same standing to apply for the Montana bar as a graduate from the University of Montana School of Law. To achieve the same footing, prospective applicants to the Montana bar from non-Montana law schools will need to recognize that their school’s “voluntary” pro bono program is actually mandatory, and will need to recognize this far enough in advance to make compliance possible.

When and how a student at a non-Montana law school might become aware of the proposed 50-hour pro bono requirement would largely be a matter of luck. 175 of the 176 law schools listed on the attached chart are located outside of Montana. It seems unlikely that these schools can be counted on to impart notice of the proposed Montana requirement to every student who might eventually apply for the Montana bar. Even if notice of the Montana requirement is given to every law student at every law school, such notice might not be useful to a student who only decides at a later date to apply for admission to the Montana bar. This is not to mention that law students lacking access to a University of Montana-style “law school signature program” may have difficulty complying with the proposed rule regardless of their awareness of Montana’s rules.

Even at law schools where pro bono service is mandatory, discharging the school’s pro bono requirement might still be insufficient to meet the standard required under the current proposal. The ATJC’s proposal explicitly rejects the loose pro bono standard applicable in the only jurisdiction (New York) that even has a pro bono service requirement for bar applicants. In other words, if the current proposal is adopted, Montana will have the strictest pro bono requirement for bar applicants in the country. In the ATJC’s view, generic clinical and volunteer work that

¹Coincidentally, two of the four attorneys in my law firm are graduates of schools on the list of 19 law schools with no formal pro bono program.

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might pass muster elsewhere will dilute the definition of “pro bono publico” in Montana, and will not help meet the unmet legal needs of Montanans.

The only safety valve for addressing inequities in the proposal is in the ATJC’s recommendation of a reporting requirement rather than a service requirement. The proposal provides that all law student pro bono reporting will be referred to the Character and Fitness Commission, but offers no further guidance as to how the pro bono requirement should be interpreted or enforced by the Commission. If the requirement of a report, rather than of actual service, is used as a safety valve to allow nonconforming pro bono services from applicants hailing from schools outside of Montana, this would create a perverse outcome where out-of-staters might face less-onerous requirements than U of M graduates. On the flip side, if the reporting requirement versus a service requirement is treated as a distinction without a difference, then law students from out of state would be penalized for having attended schools lacking pro bono opportunities that resemble those found at the University of Montana.

Regardless of how the requirements are interpreted, the reporting requirement sets the stage for the creation of a dual system where University of Montana law grads, having been guided through the signature program set up by the Montana Bar to ensure compliance, will have much less to worry about than non-Montana graduates, who will be tasked with defending their own pro bono efforts in the absence of such a signature program.

In sum, the ATJC’s pro bono proposal would impose a pro bono requirement for law students in which compliance can be effectively accomplished only through participation in a new program that will be affiliated with the University of Montana School of Law. Participation in such a program will obviously not be available to students from other law schools. Yet the ATJC’s report fails to even acknowledge the existence of bar applicants from law schools outside of Montana. Even assuming the proposed pro bono requirement can be discharged by non-Montana law students lacking access to a signature program at their school, compliance by such students will require resourcefulness that will apparently not be demanded from U of M graduates.

The proposal suffers from a number of other flaws as well:

- The November 26, 2013 *Report and Recommendation of the Access to Justice Commission* fails to acknowledge the novelty of the proposed requirement. According to the ABA’s Standing Committee on Pro Bono & Public Service, only one jurisdiction, New York, has adopted such a requirement. And New York’s pro bono rule will not even be applicable to bar applicants until January 1, 2015. Montana is one of only three states (with California and New Jersey) where a similar proposal is under consideration. One

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other state, Connecticut, has declined to adopt a similar proposed requirement.²

- One of the stated goals of the proposal is to assist in serving the unmet legal needs of Montanans. The irony is that the proposal advances this goal by imposing a new hurdle for bar applicants to overcome before they will be able to offer bona fide legal services to Montanans. If the legal needs of Montanans are not being met, then it makes no sense to make it *more* difficult for someone to provide legal services.
- With regard to the other stated goal of creating a “culture of volunteerism,” there is a fundamental incongruity in promoting volunteerism through the imposition of a compulsory pro bono requirement. In addition to this abuse of the English language, the implication is that the existing culture of volunteerism in law school must be deficient, and the Montana Bar must therefore intervene in order to provide all prospective bar applicants with a much-needed attitude adjustment. This view is condescending at best, and the proposed solution is both clumsy and potentially counterproductive.
- There is also a fundamental incongruity in attempting to meet the unmet legal needs of Montanans by requiring pro bono service from nonlawyers. In every other context, the unmet legal needs of Montanans typically take a back seat to the interests of Montana lawyers protecting their turf from competition. This Court, for example, eliminated all attorney reciprocity in 1998, and summarily rejected the State Bar’s 2004 multistate reciprocity proposal. Montana likewise imposes some of the strictest *pro hac vice* rules in the nation. I feel confident in assuming the State Bar would quickly squelch any attempt by a law student in Montana to accept a fee for the “law-related services” they would be required to perform under the proposal.
- In its July 7, 2004 order rejecting the State Bar’s multistate reciprocity proposal, this Court stated, “We believe these rules [requiring all applicants to take the bar exam] have resulted in a degree of competence and professionalism in the Bar which would otherwise be hard to achieve and maintain.” Yet the same Court that was unwilling to allow Montanans to be represented by lawyers admitted in Montana through reciprocity is now considering the use of compelled “law-related services” from unlicensed bar applicants to meet the unmet legal needs of Montanans. I do not mean to denigrate the value of the services that an unlicensed bar applicant might be able to provide. My point is that the demand for legal services from unlicensed law students cannot be reconciled with the rejection of legal services from attorneys licensed elsewhere.

²www.americanbar.org/groups/probono_public_service/policy/bar_pre_admission_pro_bono.html (Accessed on February 27, 2014.)

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Sincerely,

A handwritten signature in black ink, appearing to read 'Alexander L. Roots', written over a horizontal line.

Alexander L. Roots



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Standing Committee on Pro Bono & Public Service and the Center for Pro Bono

Directory of Law School Public Interest and Pro Bono Programs

CHART OF LAW SCHOOL PRO BONO PROGRAMS*

176 Law Schools Represented -- June 24, 2011
 (definitions for these categories are at the bottom of the page)

Graduation Requirement	Formal Voluntary Pro Bono Program	Independent Student Pro Bono Group Projects	Definitions of Categories
Graduation Requirement (39)			
Pro Bono (21)	Public Service (14)	Community Service (4)	
Charleston School of Law	City University of New York Law at Queens College	Appalachian School of Law	
Charlotte School of Law	Harvard University Law School	Barry University School of Law	
Columbia University School of Law	Inter American University of Puerto Rico School of Law	Gonzaga University School of Law	
Drexel University Earle Mack School of Law	Loyola Law School, Los Angeles	University of Saint Thomas School of Law (MN)	
Florida International University College of Law	Loyola University New Orleans School of Law		
Florida State University College of Law	Northeastern University School of Law		
Hanline University School of Law	Touro College Jacob D. Fuchsberg Law Center		
Northern Kentucky University Salmon P. Chase College of Law	University of Akron C. Blake McDowell Law Center		
Roger Williams University School of Law	University of Denver Sturm College of Law		
Saint Thomas University School of Law (FL)	University of Maryland Francis King Carey School of Law		
Southern Methodist University Dedman School of Law	University of Montana School of Law		
Stetson University College of Law	University of New Mexico School of Law		
Texas A & M University School of Law	University of Puerto Rico School of Law		
Tulane University School of Law	University of Washington School of Law		

University of Hawaii William S. Richardson School of Law		
University of Idaho College of Law		
University of Louisville Louis D. Brandeis School of Law		
University of Nevada, Las Vegas William S. Boyd School of Law		
University of Pennsylvania Law School		
University of the District of Columbia David A. Clarke School of Law		
Valparaiso University School of Law		

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Formal Voluntary Pro Bono Program (118)		
Characterized by a Referral System with Coordinator(s) (97)		Characterized by Administrative Support for Student Group Projects (21)
Albany Law School	Syracuse University College of Law	Arizona State University Sandra Day O'Connor College of Law
American University Washington College of Law	Temple University James E. Beasley School of Law	Brigham Young University J. Reuben Clark Law School
Baylor University Law School	Thomas Jefferson School of Law	Brooklyn Law School
Boston College Law School	Thomas M. Cooley Law School	
Boston University School of Law	University of Arizona James E. Rogers College of Law	Elon University School of Law
California Western School of Law	University of Arkansas at Fayetteville School of Law	Fordham University School of Law
Capital University Law School	University of Arkansas at Little Rock William H. Bowen School of Law	New England School of Law
Catholic University of America Columbus School of Law	University of California at Davis School of Law	New York University School of Law
Chapman University School of Law	University of California-Hastings College of the Law	Ohio State University Michael E. Moritz College of Law
Cleveland-Marshall College of Law	University of California-Los Angeles	Pepperdine University Odell McConnell Law Center
	University of Cincinnati College of Law	Saint Louis University School of Law
Cornell Law School	University of Colorado School of Law	Saint Mary's University of San Antonio School of Law
DePaul University College of Law	University of Connecticut School of Law	SUNY Buffalo Law School
Drake University School of Law	University of Florida Fredric G. Levin College of Law	University of Alabama School of Law
Duke University School of Law	University of Iowa College of Law	University of California, Berkeley, School of Law
Duquesne University School of Law	University of Maine School of Law	University of Chicago Law School
Emory University School of Law	University of Miami School of Law	University of Dayton School of Law
Faulkner University Thomas Good Jones School of Law	University of Michigan Law School	University of Illinois College of Law
Florida Coastal School of Law	University of Minnesota Law School	University of Memphis Cecil C. Humphreys School of Law

George Washington University Law School	University of Missouri Kansas City School of Law	University of San Diego School of Law
Georgetown University Law Center	University of New Hampshire School of Law	University of Tennessee College of Law
Golden Gate University School of Law	University of North Carolina School of Law	Yale University Law School
Hofstra University School of Law	University of Oklahoma College of Law	
Howard University School of Law	University of Oregon School of Law	
Illinois Institute of Technology Chicago-Kent College of Law	University of Pittsburgh School of Law	
Indiana University Maurer School of Law (Bloomington)	University of Richmond T. C. Williams School of Law	
Indiana University School of Law, Indianapolis	University of San Francisco School of Law	
John Marshall Law School ♦ Atlanta	University of South Carolina School of Law	
Lewis & Clark College School of Law	University of Southern California Gould School of Law	
Loyola University Chicago School of Law	University of Texas at Austin School of Law	
Marquette University Law School	University of the Pacific McGeorge School of Law	
New York Law School	University of Toledo College of Law	
North Carolina Central School of Law	University of Tulsa College of Law	
Northern Illinois University College of Law	University of Utah College of Law	
Northwestern University School of Law	University of Virginia School of Law	
Nova Southeastern University Shepard Broad Law Center	Vanderbilt University Law School	
Oklahoma City University School of Law	Villanova University School of Law	
Pennsylvania State University The Dickinson School of Law	Wake Forest University School of Law	
Regent University School of Law	Washington University School of Law	
Rutgers The State University of New Jersey School of Law, Camden	Wayne State University Law School	
Rutgers The State University of New Jersey, Center for Law and Justice (Newark)	West Virginia University College of Law	
Samford University Cumberland School of Law	Western New England College School of Law	
Santa Clara University School of Law	Western State University College of Law	
Seattle University School of Law	Whittier Law School	
Seton Hall University School of Law	Widener University School of Law	
South Texas College South Texas College of Law	Willamette University College of Law	
Southwestern University School of Law	William & Mary School of Law	
Stanford Law School	William Mitchell College of Law	
Suffolk University Law School	Yeshiva University Benjamin N. Cardozo School of Law	

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Independent Student Pro Bono Group Projects (19)
Campbell University Norman Adrian Wiggins School of Law
Case Western Reserve University Law School
Creighton University School of Law
Liberty University School of Law
Louisiana State University Paul M. Hebert Law Center
Michigan State University College of Law
Mississippi College School of Law
Notre Dame Law School
Ohio Northern Claude W. Pettit College of Law
Southern Illinois University School of Law
Texas Tech University School of Law
University of Georgia School of Law
University of Kansas School of Law
University of Kentucky College of Law
University of Nebraska College of Law
University of South Dakota School of Law
University of Wisconsin Law School
Vermont Law School
Washington and Lee University School of Law

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Models of Law School Pro Bono Programs

Pro Bono Graduation Requirement:

These schools require students to perform a set number of hours of law-related public service. The number of hours required by these schools ranges from 20 to 70. The students' service is pro bono as they receive neither academic credit nor pay for their service.

Public Service Graduation Requirement:

These schools require students to perform law-related public service or to be exposed to poverty law through a class or independent study. The ways in which the graduation requirement can be met vary from school to school. Eligible service options include the completion, in a public interest setting, of a pro bono placement, externship, clinic, and/or internship.

Community Service Graduation Requirement:

This school requires students to perform a set number of hours of public service. Eligible service options include both law and non-law related placements. The students receive neither pay nor academic credit for their service.

Formal Voluntary Program Characterized by a Referral System with Coordinator(s):

These schools have a formal pro bono program designed to match students through a referral system with law-related pro bono opportunities in the community. These programs have a designated pro bono coordinator/advisor, or group of coordinators/advisors, who has the responsibility of developing, promoting and/or coordinating pro bono placements. In some schools, these coordinators/advisors also provide administrative support to in-house and collaborative student group projects. Students participate voluntarily.

Formal Voluntary Program with Administrative Support for Student Group Projects:

These schools promote pro bono service primarily through the provision of administrative support for student groups engaged in law-related pro bono work. The student groups often work in collaboration or partnership with outside organizations. The type of support provided by the school ranges from full-time staffing of a center where the pro bono projects may locate to administrative assistance in tracking hours volunteered. Students participate voluntarily.

Independent Student Pro Bono Group Projects:

Schools in this category have no formal program for school-wide pro bono coordination and support, but individual pro bono projects--usually student organized and run--do exist. These group projects generally target a particular legal need or a particular segment of the population. Most groups work with a faculty supervisor and/or in collaboration with an outside organization.

*

The initial version of this document was first published by Cynthia F. Adcock, then Director of the AALS Pro Bono Project, in 2001 and incorporates data gathered since 2001 by Ms. Adcock, as Consultant to the ABA/AALS Law School Pro Bono Project (2001-02) and, subsequent to 2002, by the staff of the ABA Center for Pro Bono. The information in this chart is based on returned surveys, follow-up contact, content provided previously and public information. In 2006, data was also gathered from Equal Justice Work's Law School Public Interest Survey. See introduction for further background.

Updated: 9/23/2013

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