

No. 00-1176

IN THE

Supreme Court of the United States

THOMAS S. OBERMEYER, ATTORNEY

Petitioner,

ALASKA BAR ASSOCIATION,

Respondent

Regarding His Denied Petition for Writ of Certiorari
to the Supreme Court of the United States

PETITION FOR REHEARING

THOMAS S. OBERMEYER,
Attorney PRO SE
(Counsel of Record)
3000 DARTMOUTH DRIVE
ANCHORAGE, ALASKA 99508-4413
PHONE: (907) 278-9455

WHY RECONSIDERATION OF THE PETITION IS BEING SOUGHT

Selected issues should be reconsidered in light of fairness from the petitioner's perspective, since government action in this case is so oppressive and denial sets national precedence by inaction. The Court is reminded that "the only thing necessary for the triumph of evil is for good men to do nothing"..., and "kings will be tyrants from policy, when subjects are rebels from principle." (Edmund Burke, 1729-1797).

1. Antitrust (ref: Question 1.)

The Court failed to consider that the Alaska Bar Association consistently and arbitrarily may have limited admission by examination semiannually by deliberately suppressing passage rates for over 20 years in direct violation of the Sherman Antitrust Act. This effort to limit competition has increased the cost of representation in Alaska, decreased the public's access to the courts, and cost the public unnecessary additional money in resolving disputes. This action is an abuse of discretion and improper conduct on the part of the Board, Executive Director and the Examiners' Committee. Obermeyer, therefore, has met the threshold level for an administrative hearing.

It should not matter that Obermeyer did not protest details of the grading of his July, 1998 Alaska Bar Examination to seek a hearing under Alaska Bar Rule 6.2. He did that successfully in part in his earlier case, In the Matter of the *Application of Obermeyer*, 717 P.2d 382, Alaska 1986, 57 ALR 1195. Obermeyer's examination papers and assigned scores become meaningless when the Alaska Bar Association adjusts scores to

reflect a prescribed passage rate. Obermeyer, therefore, retains 'standing' and 'ripeness' because of the abuses of the Alaska Bar Association. As the court above said:

"A hearing is required In response to sufficient allegations of either procedural improprieties or substantive deficiencies. Conclusory statements ... are insufficient." Id at ³⁸⁶. Obermeyer's allegations of antitrust are not "conclusory." They are irrefutable facts supported by the publications and archives of the National Conference of Bar Examiners in Chicago, Illinois.

Proof of antitrust violation lies in the consistently low scores in Alaska reported to the National Conference of Bar Examiners. These scores are calibrated to the desired passage rate by the Alaska Bar Association manipulating the subjective essay scores which are weighted and combined with the more objective Multistate Bar Examination scores through a multiple regression analysis. The late dean of the University of Missouri School of law and former Director of the. National Conference of Bar Examiners, Joseph Covington, confirmed this practice in the ***Handbook of Bar Examiners, 1980.***

In context, the Court should note that Alaska is a new state, only 41 years old. It still remains the only state or territory without a law school. Back in the 1950's and 1960's Alaska welcomed anyone willing to practice law with or without a law degree. Some lawyers and judges gained admission by clerking for lawyers. Bar examinations were non-existent and the only limitation reportedly was ones political party. Now, after completing and graduating from three years of law school before applying for admission in Alaska, one final examination is supposed to determine competence, giving little credence to applicants passage and graduation by law

faculty in American Bar Association accredited law schools. By contrast, the 57% to 64% passage rate in Alaska would not be tolerated in Missouri (with an 80%-90% passage rate) where there are a number of law schools with faculty advocates, and clerks and applicants with judges and powerful law firm advocates to defend the interests of law school graduates and applicants before the bar.

2. Due Process (ref. Question VII.)

In the Matter of the *Application of Obermeyer*, 717 P.2d 382, Alaska 1986, 57 ALR 1195, the court ruled that to prove a violation of due process Obermeyer must establish that the “challenged procedures are so irrational or arbitrary, or so lacking in fairness as to shock the universal sense of justice.” Id at 386-87. What could be more arbitrary or lacking in fairness than to take an applicant’s money and time (\$15,000, 27 bar exams, 81 days) over 17 years and deny him a license without recourse but repeated examinations?

Obermeyer’s criticisms are more than “disputes with the ABA (Alaska Bar Association) about the ideal way to handle the bar exam.” Memorandum Opinion 987, August 23, 2000. There has to be a “fundamental fairness” in the process and underlying policy. In the Matter of the Application of Obermeyer, Id. Procedural due process is deficient without alternative admission by internship, reciprocity, or allowing applicants’ retaking only failed portions of exams. Substantive due process is lacking, where the underlying policy of the examination is to limit entry, rather than to prove competence. No practicing Alaska attorneys are required to sit down and take the examination to verify content, knowledge, competence, and fairness.

No other applicant has been so singled out as Obermeyer, as evidenced by Alaska Bar Rule 2.2(b)(3) which limits reciprocity from other states until 5 years after a last failed Alaska Bar Examination. This rule was implemented after Obermeyer began taking the exam and it serves no legitimate state purpose under the rational basis test but to limit admission and to target Obermeyer.

3. Reciprocity from Missouri (Ref. Question 11)

Either Alaska has reciprocity with Missouri or it does not. Qualifying admission by Alaska Bar Rule 2.2(b)(3) (explained above) violates the tenets of reciprocal agreements between states. Both states have similar bar exams with multiple-choice (Multistate) and essay questions. Both states have independent bar examiners. The main difference is that Alaska limits entry to 57% or so, while Missouri consistently licenses over 80% of applicants. The fact that Obermeyer had no application for reciprocity before the court at the time of his appeal does not prevent his raising the issue, because the Alaska bar counsel admitted that he would have rejected Obermeyer's application out of hand for failure of the bar exam under Alaska Bar Rule 2.2(b)(3). The Alaska Bar Association had in fact done just this in 1997 when Obermeyer applied for reciprocity.

Note, by contrast, that there is no reciprocity between Alaska and its closest neighboring state, Washington, since presumably the large Seattle firms would quickly take over most of the commercial legal business in Alaska concerning big oil, mining, fishing, shipping, and retail interests. The ostensible explanation, of course, is that the Washington State Bar Exam is different from Alaska: it does not test by the Multistate Bar Exam, but

rather, by only essays. At the same time, there is little evidence that competency to practice law is demonstrated by the Alaska Bar Exam or any examination nationally. Most problems with practitioners according to the American Bar Association result from lack of communication with clients and misuse of clients' funds.

4. Violation of Privileges and Immunities and Right-to Travel (ref. Question V).

Obermeyer claims and can prove dual residency with Missouri and therefore finds a violation of the Privileges and Immunities Clause. Furthermore, as argued below and addressed by the Alaska Supreme Court in its Memorandum Opinion, Obermeyer also contends that the Alaska Bar Association's refusing reciprocity also limits his constitutional Right to Travel because the "governmental entity creates distinctions between residents based upon the duration of their residency." *Gilman v. Martin*, 662 P.2d 120, 125 (Alaska 1983). Clearly, the Alaska Bar Association distinguished between Missouri applicants for reciprocity based on duration of residency when it imposed the 5-year ban on Obermeyer pursuant to Alaska Bar Rule 2.2(b)(3) for having failed an Alaska Bar Exam. Alaska Bar Rule 2.2(b)(3) effectively limits Missouri applicants from traveling to Alaska to practice if they have taken and failed an Alaska Bar Exam. The only distinction to his great disadvantage is that Obermeyer spends most of his time as a resident of Alaska, while requesting reciprocity from Missouri.

CONCLUSION

Obermeyer recognizes states' rights and interests in autonomy over licensing the trades and professions. Licensing by the Alaska Bar Association requires graduation from an American Bar Association accredited law school. To limit access to the profession at the end of the educational process by arbitrarily controlling the passage rate on the Alaska Bar Examination violates anti-trust law and constitutional rights of due process. This practice must be stopped by recognizing what has been going on for decades in Alaska and most likely in other jurisdictions. Electronic filing in the future, due to the pressure of national and international commerce, will likely force open barriers to the practice of law across state lines without a license in every state. Until that happens, Obermeyer should be granted relief in this case. He has already sacrificed greatly for the improvement of the profession based on sound legal and moral principles. The Petition for Rehearing, therefore, should be granted.

Respectfully submitted,

Thomas S. Obermeyer, Attorney Pro Se
3000 Dartmouth Drive
Anchorage, Alaska 99509-4413
(907) 278-9455

Please refer to rejections U. S. Supreme file "Rejections U. S. Supreme Court
Tom 5/21/01, Theresa 10/10/97" on Home page.