

Mailed/E-mailed October 20, 2002

Board of Governors  
Alaska Bar Association

RE: 1) **Request for Admission without examination:**

a) By active practice in Missouri since 1990, a state with which Alaska has reciprocity under AK Bar Rule 2.2(b)[subject to approval under 2.2(b)(3) which excludes applicants who have failed AK Bar Exam within last 5 years -it has been 3-1/2 years since February, 1999 Exam for Obermeyer]

b) By "active practice of law" under AK Bar Rule 2.2(c)(2), "serving as an attorney in governmental employment"

2) **Opposition to change in Bar Rule 4(5)**, removing review of MBE questions by applicants and limiting review of MPRE (See The Alaska Bar Rag, September-October, 2002, Vol. 26, No. 5, page 14).

3) **Opposition of partnership with Russian province of Khabarovsk** before Alaska Bar recognizes fair treatment of its own American applicants who are graduates of American Bar Association Accredited Law schools. (See The Alaska Bar Rag, September-October, 2002, Vol. 26, No. 5, pages 1,6).

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**Dear Board of Governors:**

I am submitting the following comments concerning the above matters in order:

**1) Request for Admission without Examination**

I am asking that you admit me ad hoc by reciprocity under Bar Rule 2.2 as a non-agenda item at your Board meeting on October 24-25, 2002. On October 11, 2002 I met briefly with Executive Director, Deborah O'Regan, concerning admittance

by reciprocity from Missouri and I understood that it was too late to submit documents; that your "Board Meeting packages had already gone out." I also understood from Ms. O'Regan that admission under Bar Rule 2.2(c)(2) as a governmental attorney would require confirmation that I have been engaged in work required of an attorney. Bar Rule 2.2(c)(2) reads:

For the purposes of this section, the "active practice of law" shall mean: . . .  
(2) serving as an attorney in governmental employment, or as a law clerk for a judicial officer, provided graduation from an ABA or AALS accredited law school is a required qualification of such employment.

I am an exempt professional executive employee of the Municipality of Anchorage Civil Law Department. As a Special Administrative Assistant dealing with litigation matters on a daily basis for nine years, I can provide evidence of my work as a professional attorney. In handling from 1,200 to now over 3,000 civil cases a year, I am certain a number of attorneys and judges across the state would attest to the consistent high quality of my work, my courteous and professional demeanor, and my high ethical standards. Working almost autonomously in my areas of expertise requires the skills of a attorney and law school graduate.

As to exclusion under Bar Rule 2.2(b)(3) – failure of an examination within the last five years, please consider:

- 1) The rule was created specifically to exclude Obermeyer: it was created after Obermeyer first applied for admission in February, 1984 and just before he qualified in 1995 and applied for reciprocity in 1997.
- 2) No other applicant has been similarly affected under this rule;
- 3) Obermeyer has already been excluded for 3.5 of 5.0 years under that rule since his last "failed" Examination 2/99. There is no further benefit of a delay of another 1.5 years as the rule is unfair and arbitrary on the face of it); and
- 4) Obermeyer has been actively engaged in the practice of law for 12 years.

**2) Opposition to change in Bar Rule 4(5)** (See The Alaska Bar Rag, September-October, 2002, Vol. 26, No. 5, page 14), denying review of MBE/MPRE questions for security reasons under demands of the National Conference of Bar Examiners.

Is the Board ignoring the Alaska Supreme Court decision in In the Matter of the Application of Thomas S. Obermeyer, 717 Pacific Reporter 2nd, 57 American Law Reports 4<sup>th</sup> 1195 (Alaska 1986)? I am unaware of a reversal in the Court's holding to allow inspection, or a reversal in the NCBE's policy prohibiting inspection unless required

by a statute or court rule. Please read below a verbatim summary of the MBE portion of the court's holding in Obermeyer, ALR 4<sup>th</sup>, supra::

The court also held that a failing applicant should have access to the Multistate Bar Examination (MBE) questions and answers, grader's guides, and a representative sampling of passing and failing answers to failing applicants, while another bar rule prohibited access to MBE materials if the material is unavailable under the rules or policies of the National Conference of Bar Examiners (NCBE) – the strong policy of which was to prohibit inspection of the MBE unless required by statute or court rule –the court held that absent a blanket prohibition of the NCBE, the policies upon which the Alaska bar rule restricting access to the MBE rested should be balanced to accommodate a failing applicant's interest both in learning why he failed the exam and in discovering any errors in grading or scoring., Id., 1195 (emphasis added).

Has the NCBE issued a “blanket prohibition?” If so, can such a “prohibition” offset an applicant’s “interest” (or constitutional due process right) to review his failed exam? Is your own executive staff too cozy and close to the NCBE to continue MBE review against its general policy, or does your staff merely find it more convenient not to have to allow hours of inspection and security over exams in your employees’ own offices? Do you need to hire an employee specifically for this task?

Under this rule change, not only is there no “accommodation” of applicants, there is absolutely no advocacy for applicants. In fact, unless applying to failed applicants by implication, the language of the rule now appears to allow only passing applicants to review their score sheets. Alaska has no law school, no faculty, no advisors, no mentors to assist these lonely law school graduates in the wilderness who brave this intellectual hazing, and the expensive and time-consuming bar review courses. It is no wonder that so many applicants now shun admission by bar examination in Alaska, where applications have dropped remarkably to 30 to 50 or so, and your passage rate remains 50-60%. It is far safer instead for these applicants to wait and work out of state five years for admission by reciprocity –which to me, weakens the Alaska Bar Association and the practice of law in Alaska. Of course, the Alaska Bar Association’s primary objective of limiting admission continues to be achieved, because few of these out-of-state applicants will apply and come here to practice after becoming established elsewhere. So the “real number” of attorneys in private practice in Alaska remains fairly constant at around 2,250. There are few notable exceptions, usually applicants with money and power or “juice”: I am waiting for you to carve out a special exception to admit newly announced Conoco Phillips Alaska vice president and chief counsel, Graham Vanhegan, who is a graduate of the University of Glasgow (see Anchorage Daily News, E-2,

10/7/02). I would question if he is an American citizen, a graduate of an American Bar Association accredited law school, and licensed by similar bar exam and requirements in another state.

I am aware of only one other attorney-applicant, Marla Greenstein, who was similarly situated as I, living and working in law in Alaska for many years, and then applying for reciprocity from another state in 1997. She was admitted and I was not, simply because she had not taken and “failed” an Alaska Bar Examination under Bar Rule 2.2(b)(3). By contrast, Ms. Greenstein has not faced the emotional and time-consuming process before each of my 27 Alaska Bar Exams for 81 days of her life. She has spent at most a \$1,000 for her reciprocity application while I have spent over \$17,000 on Bar Exams, review courses and appeals. Ms. Greenstein, who was making a very good living in law all this time as Executive Director of the Commission on Judicial Conduct, had passed a similar bar examination, as I, in the state from which she applied for reciprocity. Although she technically was not practicing law in her capacity as Executive Director of the Commission on Judicial Conduct, she was able to be admitted quickly to avoid a rumored bar rule change concerning the “active practice” of law. Of course, it did not hurt that she had the revered former Alaska Supreme Court Justice Rabinowitz pressing for her admission (he swore her in after he retired).

In Obermeyer, supra, the Alaska Supreme Court recognized a precedent in procedural due process based on “fundamental fairness,” an underpinning of review in quasi-governmental licensing actions. Admission procedures are already harsh, requiring retaking an entire Alaska Bar Exam offered only twice a year within two to four months after notice of failure. In fairness, the applicants’ need for information should supercede any concerns of the National Conference of Bar Examiners regarding the security and integrity of the MBE exam. The only breach of security could come from your own administration.

Moreover, continuing to allow the checking of scores against a score sheet without the exam question is useless, unfair, and unreasonable. This is a procedural dance aimed to placate disgruntled “failed” applicants with no partner on hand at the end of the dance. There is no proof that the score sheet is correct, or that the penciled answer sheet has not been “doctored.” Applicants are not given carbon copies of their answer sheets when they walk out of the MBE. Even if correct, the average person cannot recalculate final scores without the assistance of an expert, using the multiple-regression analysis formula and/or the computer program, and all scores of all applicants.

Under this rule change, must every applicant now sue the Alaska Bar Association every time they want to review their answers? Does the Alaska Supreme Court have the

authority to supercede a “blanket prohibition” policy of the National Conference of Bar Examiners, or would you drop the MBE? Please provide me with the written information from the National Conference of Bar Examiners so that I can respond intelligently.

Like the “Last Mohican,” I am the sole surviving applicant abused by the Alaska Bar Association under the guise of well-intended governmental authority with the institutional memory to remind you that the rule change will create more distrust by the applicants and the public in the Alaska Bar Association in an Alaska Bar Exam designed to pass only 50% to 60% of qualified applicants from American Bar Association accredited law schools. If you do not advocate for applicants, then at least stand up for what is fair and reasonable. That is your job in a quasi-governmental capacity. You are supposed to be protecting and serving the needs of the citizenry in a public trust, not just the desires and pocket books of members of a private trade guild or bar association.

**3) Opposition of partnership with Russian province of Khabarovsk** (See The Alaska Bar Rag, September-October, 2002, Vol. 26, No. 5, pages 1,6).

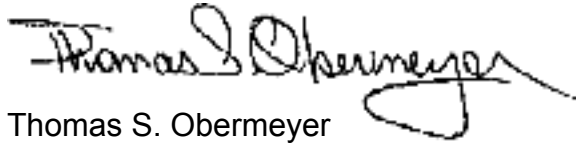
Since 1993 when you granted limited access to the Alaska Courts to a Russian Ph.D. as a “foreign law consultant” sponsored by the law firm of Hughes-Thorsness *et al*, I have been adamantly opposed to “partnerships” with the Russians. It is very apparent that the U.S. Government wants to increase democracy and legal reforms in a land of vast economic inequality, corruption and nuclear threat. The U.S. Agency for International Development and the Foundation for Russian American Economic Cooperation are pumping millions of dollars into this process, sending American (and Alaska) lawyers and judges to train and assist. The fact that the Alaska Bar Association either approves or does not oppose this Khabarovsk-Alaska Rule of Law Partnership implies that there will be further demands upon the Alaska Bar Association and our American citizens and their pocket books. I understand we are going to be “treated” to a Russian circus October 22-24, 2002 and an Alaska CLE November 8, 2002 for “Due Process Rights for Foreign Nationals.” I assume the federal government is picking up the tab for all of this. What an irony. What about concern for due process for your own American applicants?

Conspicuously absent from the Alaska Bar Rag article, “Alaska inaugurates a partnership with Khabarovsk,” are discussions of admission or limited practice in American courts by Russian nationals without American law school training, graduation, and admission by bar exams. Like the Russian foreign law consultant who was given limited access to Alaska Courts in 1993, and the U.S. military attorneys granted waivers under Rule 43 for full practice in the Alaska courts for military personnel, these people are all granted more access to Alaska Courts than Obermeyer, a licensed attorney in Missouri

(a state with which Alaska has reciprocity), a graduate of an ABA accredited law school, a former officer in the USAF, an MBA, and an Alaska resident. Are you afraid that given the opportunity, I might succeed? It very apparent that you can and do change the rules anytime you wish to achieve your objectives and political agenda.

In conclusion, the Board of Governors, Alaska Bar Association, continues to admit ad hoc those whom it wants, including applicants without exam from other states at every meeting who never set foot on Alaska soil. By contrast, excluded from the Alaska Bar, I have raised a family on limited means in Alaska by honest and ethical hard work, while opportunistic Russians become millionaires at Alaska Bar Association-approved U.S. government expense. How can you treat Russians better than Americans, Alaskans, and qualified applicants? Are your high-profile attorney and judicial members who are involved in this Russian "partnership" being influenced by free trips, money, or prestige, or are they motivated by altruistic desires for a more democratic world order? I would suggest you first set your own house in order. You could start by admitting me upon motion at your October, 2002 Board meeting or by advising me how to proceed to be admitted as soon as possible.

Respectfully submitted,

A handwritten signature in black ink that reads "Thomas S. Obermeyer". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Thomas S. Obermeyer

Cc: Deborah O'Regan, Executive Director

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# ALASKA BAR

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A S S O C I A T I O N

November 6, 2002

Thomas S. Obermeyer  
3000 Dartmouth Drive  
Anchorage, AK 99508

Dear Mr. Obermeyer:

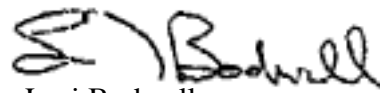
At the October 24, 2002 Board of Governors meeting you stated that you would like to apply for reciprocal admission to the Alaska Bar Association. If you were to submit an application, your reciprocity application would be denied on its face because you are not eligible for admission without examination.

Bar Rule 2, Section 2(3) provides that an applicant is not eligible for admission without examination if the applicant failed the Alaska Bar Exam within the last five years. You failed the July 1999 Bar Exam. Since, the Board certified the results of the July 1999 Bar Exam at its October 22, 1999 meeting, October 22, 2004 would be the earliest date you could file a reciprocity application.

Because you are ineligible to apply for reciprocity application based on the 1999 Bar Exam failure, the Bar does not need to address the issue of whether you have engaged in the active practice of law for five of the previous seven years.

As you know, Bar Rule 2 is a rule passed by the Alaska Supreme Court. The Board of Governors does not have the authority to waive the requirements under the Bar Rules.

Sincerely,



Lori Bodwell  
President

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