Summary of the Comments

The Steering Committee of Division VI recommends that the District of Columbia Court of Appeals reject the proposed amendments to Rule 46-I(c)(3) of the District of Columbia Court of Appeals rules. The rule governs the admission of attorneys by motion.

This recommendation is based primarily on the Steering Committee's concern for attorney competence in the District Bar. The proposed amendments lower the standard upon which minimal attorney competence is judged, without providing any offsetting safeguards for fostering and enforcing such competence. The Steering Committee recognizes that no admission standards can guarantee the total competence of all practitioners admitted. The Steering Committee believes, however, that the current rule 46-I(c)(3), with all its deficiences, goes further toward making attorney competence a reality than do the proposed amendments.

These comments were drafted by the Steering Committee of Division VI and unanimously endorsed by it on September 8, 1983.

COMMENTS OF THE DISTRICT OF COLUMBIA AFFAIRS DIVISION VI OF THE DISTRICT OF COLUMBIA BAR REGARDING THE PROPOSED AMENDMENTS TO RULE 46-I(c)(3) OF THE DISTRICT OF COLUMBIA COURT OF APPEALS (ADMISSION OF ATTORNEYS BY MOTION)

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DISCLAIMER

The views expressed herein represent only those of Division VI Steering Committee: District of Columbia Affairs, and not those of the D.C. Bar or of its Board of Governors.

Comment on Proposed Amendments to Rule 46-I(c)(3), Rules of the District of Columbia Court of Appeals

I. Introduction

On March 28, 1983, this Court gave notice of a proposed amendment to Rule 46-I(c)(3) governing the admission of attorneys to the Bar of the D.C. Court of Appeals upon motion. Under the current Rule 46-I(c)(3) an attorney may be admitted to the bar without examination if he or she has engaged in the practice of law in another jurisdiction for at least five of the eight years immediately preceding his or her application or has practiced law for a period of less than five years where the state or territory in which he or she has practiced provides for admission without examination based on such lesser period of time. Specifically, this five year reciprocity/practice rule states:

> (i) Members of a Bar of a court of general jurisdiction of any state or territory may, upon proof of general fitness to practice law and good moral character, be admitted to the Bar of this Court without examination provided such member has engaged in the practice of law for a period of not less than five years of the eight years immediately proceeding the date of his or her application.
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> (ii) In the event that the requirements for admission without examination of the state or territory upon which the application for admission is based provides for a period of practice of less than five years, the applicant may seek admission based upon the time period requirements of that jurisdiction.

The proposed amendments would replace the five year practice requirement with a five year "active member in good standing" requirement and eliminate the provision for reciprocity. In addition, the proposed amendments would

offer an alternative method of membership without examination available to anyone who has been awarded a J.D. degree by an ABA approved law school, been admitted by examination in any state or territory, and received a scaled score of at least 133 on the Multistate Bar Examination. The text of this new Rule 46-I(c)(3) reads as follows:

(3) Admission Requirements

Any person may, upon proof of his or her good moral character as it relates to the practice of law, be admitted to the Bar of this Court without examination, provided that such person:

(i) has been an active member in good standing of a Bar of a court or general jurisdiction in any state or territory of the United States for a period of five years immediately preceding his or her application; or

(ii)(A) has been awarded a Juris Doctor degree or its equivalent by a law school which, at the time of the awarding of the degree, was approved by the American Bar Association, and

(B) has been admitted to the practice of law in any state or territory of the United States upon the successful completion of a written bar examination and has received a scaled score of 133 or more on the Multistate Bar Examination which was taken as part of such examination. Prior to July 1, 1988, application for admission under this subparagraph (ii) must be made within five years from the date of the Multistate Bar Examination that is being used as the basis of the application. On or after July 1, 1988, application for admission under this subparagraph (ii) must be made within twenty-five months from the date of such Multistate Bar Examination.

II. The Proposed Amendments

The Steering Committee of Division VI is particularly concerned with this proposed rule change as it affects the broader issue of attorney competence in the District. While no particular bar admission standards can ultimately ensure the competence of a given practitioner, the standards do serve to establish a benchmark for the jurisdiction's perception of the minimal skills and knowledge necessary to serve clients competently. The Steering Committee believes that the proposed change significantly diminishes the level of knowledge and skills which define minimal attorney competence in the District. Moreover, we find nothing in the proposed change that would strengthen other means of safeguarding attorney competence as a balance to more liberal admissions standards. For these reasons, we oppose the proposed change.

At first blush, many of the supposed substantive benefits attributed to an easing of the current rule sound impressive. These supposed benefits have been said to include:

1. Relieving those who practice primarily in federal law areas from the burden of either taking the D.C. bar examination or practicing elsewhere for several years.

2. Expanding the number of attorneys available to serve District citizens and litigants.

3. Fostering increased competition between attorneys.

4. Making it easier for young attorneys to start their careers in law.

5. Making it easier to recruit attorneys to work for such organizations as the Legal Aid Society, Public Defender Service, and U.S. Attorneys Office.

6. Simplfying the administration of admissions by motion.

Upon closer examination, however, it becomes clear that even if these supposed benefits of liberalizing the admissions rule were to occur, consideration of the element which should be of primary concern and upon which the value of these benefits must be tested is sorely lacking, namely competence.

Making it easier for attorneys whose practices mainly involve questions of federal law to become members of the D.C. Bar must not be allowed to take precedence over concern for competence in the practice of local law. Neither of the methods for admission under the proposed amendments are in any way limited to attorneys whose practice is either solely or primarily in federal matters. Nor is it clear that special treatment for such practitioners is necessary. Federal agencies permit members of any state bar to practice before them. Federal courts recognize <u>pro hoc vice</u> motions. In any case, standards for admissions for local federal courts is best addressed by those courts. If, on

the other hand, the underlying purpose of the proposed amendments is to make it easier for federal practitioners to also handle matters involving District law and procedure, then these practitioners, along with all others, should be subject to some admissions policy which helps to assure their competence in local matters. The proposed amendment provide no assistance in assuring such competence.

Providing litigants with a choice between a greater number of attorneys does such litigants, the courts, and the administration of justice no service if the attorneys available are not cognizant of the law and rules of procedure governing the cases they handle. Lay persons are often at a loss when selecting an attorney to know how to determine if he or she is competent, and so must rely upon the license to practice as a guarantee of minimal competence.

Likewise, increased competition, ease of admission for young attorneys, and greater recruitment opportunities for certain organizations are goals with no intrinsic value apart from the competence of the attorneys involved. Competition is a worthy goal if the attorneys competing are capable of providing the services needed. Without this capability the value of competition is lost. Similarly, no one advocates placing unnecessary barriers in the path of young lawyers seeking to establish themselves in their chosen profession, but neither does the fact that one is a recent law school graduate, able to pass the bar in another

jurisdiction and score well on the Multistate Bar Examination, automatically instill one with knowledge of District law and rules of procedure. Correspondingly, increasing the pool of applicants for any attorney position does no recruitment officer a favor if the applicants are not qualified to perform the duties associated with the available position.

While it is true that the current rule on admissions has presented some difficulties in administration, mere ease of administration is not a sufficient reason for abandoning important competency safeguards. If ease of administration alone were the goal, then the best rule would be one that admitted any attorney who has been admitted to the bar of another jurisdiction. Indeed, the proposed amendments come close to such a rule, merely adding that the prior admission must have been based on examination with a Multistate Bar Examination score of 133 or more and that the applicant must have received a J.D. degree from an ABA approved law school.

While ease of administration is a valid concern in regard to any rule, administrative complications in related areas must not be ignored. Given the lack of any requirement for knowledge of local laws and rules of procedure in the proposed amendments, it is not unlikely that attorneys would be admitted who lack this important attribute. This could lead to increased grievances and increased workloads for Bar Counsel and this Court.

Attorneys seeking to acquire the needed competence could well request additional delays and continuances in cases pending before this Court and the Superior Court of the District of Columbia. Thus, ease in administering the admissions rule could create administrative problems and increasing backlogs for the District courts, hardly a fair trade off.

We find the proposed amendments deficient when viewed in light of the overall need for attorney competence. The first method for admissions on motion would be by meeting the simple test of having been "an active member in good standing" of a bar of another jurisdiction for a least the immediately preceding five years. The term "active member" is not defined, but for purposes of this comment it is assumed that an "active member" of another bar pays dues and satisfies any other requirements of that bar necessary to qualify for that designation. Given this interpretation, the requirement could be satisfied without the attorney applicant having demonstrable experience in any particular practice of law. This eliminates both the element of experience and the policing of the attorney's professional conduct which the current rule embodies in its five year practice requirement, without substituting other standards which address the caliber of attorneys who will be practicing in the courts of the District of Columbia and in whom the public will be placing their trust.

The second method for admission on motion under the proposed amendments would be by meeting the following requirements:

1. have been awarded a J.D. degree by an ABA approved law school;

2. have been admitted by examination in any state or territory of the United States; and,

3. have received a scaled score of at least 133 on the Multistate Bar Examination.

None of the requirements under this method address an applicant's knowledge or understanding of District law or rules of procedure or his or her general ability to practice law in a professional and competent manner. This method virtually allows any one who has been able to graduate from law school and pass a bar examination anywhere in the country to be admitted to the D.C. Bar. The only limitation of substance is the requirement of a score of at least 133 on the Multistate Bar Examination. The Multistate Bar Examination does not, however, test any element of District law or procedure and a correct answer contributing to the 133 score may, in fact, be contrary to District law. If this standard is adopted, persons will be encouraged to take a bar examination elsewhere secure in the knowledge that they can automatically get a "free" D.C. Bar admission if they do comparatively well on the Multistate Bar Examination. It is easy to foresee how such a standard

could lead to a type of "forum-shopping"--taking the bar examination in a jurisdiction with a high pass rate and concentrating study on the elements tested by the Multistate Bar Examination.

The net result of both methods of admission under the proposed amendments is to defer the determination of who may practice law in the District of Columbia to the admission standards of other jurisdictions. Questions in regard to professional competence are presumed to have been resolved by others, and concern for the understanding of local laws and rules of procedure is absent. Any change in the standards for admission to legal practice in the District needs to be formulated to reflect respect for the laws of the District and to protect the professional integrity of the bar.

III. The Current Rule

The current Rule 46-I(c)(3) is not without its deficiencies and difficulties, but these concerns are not adequately addressed by the proposed amendments. Based on a period of actual practice, the current rule at least assures that attorneys admitted to the D.C. Bar without examination will have some track record which can be reviewed before admission is granted and will be familiar with the day-to-day practice of law. The current rule, while stricter than prior admissions requirements, still reflects

an admissions policy that is more liberal than those in neighboring jurisdictions. Further liberalization of this rule may serve the needs of a small number of attorneys who, for whatever reason, wish to avoid the inconvenience of taking the District bar examination, but such liberalization must also be tailored to serve the broader interests of the Bar and the local citizenry. The current rule is not perfect, but the proposed amendments build on its weaknesses not its strengths. Accordingly, we recommend against adoption of the proposed amendments to Rule 46-I(c)(3).